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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

My No: IR/COM/05/2017/155

Ref No. 1R/COM/05/2017/155

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

Matter of an Industrial Dispute

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between **A.V. Ekanayaka, Paragahahena, Paraduwa, Akuressa** of the one part and **Road Development Authority, Maganeguma, Mahamedura, Koswatta, Battaramulla** of the other part was referred by order dated 17.01.2018 made under section 4(1) of the Industrial Dispute Act, Chapter 131, (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 2055/8 dated 22.01.2018 for Settlement by Arbitration is hereby published in terms of section 18(1) of *the* said Act.

Between

Mr. A. V. Ekanayaka
Paragahahena
Paraduwa
Akuressa

Case No. A/06/2018

Of one Part

And

Road Development Authority
“Maganeguma, Mahamedura”
Koswatta
Battaramulla

A. WIMALAWEERA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat, Colombo 05,
31st January 2020.

Of other Part



The Award

The Honourable Minister of Labour and Trade Union Relations by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts Nos.14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes - Special Provisions) Act No. 37 of 1968 appointed me as Arbitrator by his order dated 17th January 2017 and referred the following disputes to me for settlement by arbitration. The matter in dispute between the aforesaid parties are :

“Whether Mr. A.V. Ekanayaka, an Engineer of the Road Development Authority who was engaged as the Project Engineer of the combined Road Investment Project (“I” Road Project) implemented under the Ministry of Higher Education and Highways has been caused injustice by being transferred before the completion of the project without any reason and if so, to what reliefs he is entitled.”

Appearance

Mr. Gratian Silva
Representative appeared for the party of the First Part.

Mr. S.A.D. Nishanth
Legal Officer for the Party of the Second Part

Both parties have filed the statements under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

Mr. A.V. Ekanayaka, the Applicant in his evidence stated as Follows.

The Applicant joined the Respondent Road Development Authority as a Technical Officer on 07.12.1999. Marked as A1

The Applicant, after 16 years service as a Technical Officer and a Senior Technical Officer he was as an Engineer by the Respondent Authority as the Applicant passed the engineering examination and qualified as an Engineer.

The applicant was appointed as a Project Engineer of I Road Project, marked the letter of Appointment dated 04.06.2015 marked as A2

The period of the Project was 5 years, (construction period 2 Maintenance period 3 years.)

The Applicant stated he received Rs. 57,500/- as a Project Allowance for a period of 3 years in addition to his salary and other perks.

Upon the Appointment as the Project Engineer, the Applicant received a sum of Rs. 57,500/- as Project Allowance with his salary among other things.

The Applicant was transferred from I Project to PD Office with effect from 31.08.2016. Marked as A4 without giving valid reason.

On 06.09.2016 he made an Appeal to the Director general of the Respondent Authority requesting the cancellation of the transfer, marked A5 Again the Applicant made an another Appeal marked A6.

The Applicant made a complaint to the Labour Commissioner of Matara with regard to his transfer and an inquiry was held in this respect.

The letter addressed by the Director General of Road Development Authority to Commissioner of Labour dated 25.10.2016 marked as A7.

The Applicant said he was suddenly transferred By the Director General as instructed by the Chairman of the Respondent Authority.

The Applicant further stated, after working for a period of 1 year and 3 month in I Road Project he was suddenly transferred to Galle District Engineering Office as a result he lost monthly allowance of Rs. 57,500/= whereas the said Project to be continued for a period of 5 years.

The Applicant stated in cross examination By letter dated A -2, he was appointed as an Engineer, thereafter he was assigned to a project as Project Engineer.

The Applicant further said though his designation was "Engineer" once assigned to a Project by the Respondent Road Development Authority he will act as a Project Engineer.

He said before he was assigned to I Road Project by the Director General, as per A2 he was working for RNI Project.

The applicant said when he was assigned to I Road Project, he was not selected by an interview. No other Engineer was selected to the Projects by an interview as suggested by the Respondent.

The Applicant stated when he was assigned to I Road Project, he was not given a duty list, but the Project Director instructed to the Engineers to work in co-operation with The Divisional Secretaries, and Relief Committees. In this respect the Applicant marked letter as A-8.

The Applicant said Circular marked R 2 issued by the Ministry of High ways not applicable to him. He was appointed and transferred by the Director General of the Road Development Authority.

The Applicant stated once a Project Engineer was appointed, he will be there project is over unless he was involved in irregularity.

The Applicant further said he has to work additional 40 hours per, month in order to get Project Allowance of Rs.57,500/-He said he go, this allowance for a period one year and three months.

The Applicant further said further to the project allowance he also lost holiday pay. During Re- Examination the Applicant stated as follows.

The Applicant said he received the Project Allowance of Rs.57,500/= every month till he was removed from the Project by letter dated 31.08.2016. marked as A 4.

In A 4 there was no reason given for the Applicant's transfer from the Project.

The Applicant said the R2 Circular is not applicable to him. And he was not recruited to the Project not on Contract basis.

Mallika Priyadarshani Wattage , Deputy Director (Administration) of Respondent Authority in her evidence stated as follows.

The Applicant made a request from The Respondent for him assigned to a project as was undergoing financial difficulties.

The witness said once a person was assigned to Project, he can be re called by the Respondent Authority.

The Witness said according to A 2 he was assigned I road project but no time period was mentioned.

The witness said an employee could recruited to a project for a period of 5 years

The witness admitted that the Respondent Authority did not reply to the Applicant's Appeal marked A5.

Since there was no reply the Applicant appeal again as per the letter marked A 6.

The witness admitted in letter A 7, The letter addressed by the Director General of Road Development Authority , to the Assistant Commissioner of Labour , Matara there was no mention that the Applicant was transferred from I Road Project for a service necessity, which was contrary to the stand taken by the witness (page 8 of evidence dated 18.07.2019.)A 7 merely stated that the Applicant was transferred due to internal reasons which was not specified.

In the Applicant's Pay Slip marked as A3 project allowance of Rs. 57,500/= was marked as A3b whereas the basic salary of Rs. 28,260/= is marked as A3 (a).

In overall analysis of evidence I have come to following conclusions.

- i. The Applicant was assigned to I. Road Project as a Project Engineer by letter dated 04.06 2015 which was funded by Asian Development Bank. Period of the Project was for 5 years. Construction Period of the Project was 2 years and Maintenance period was 3 years.
- ii. The Applicant received monthly Project allowance of Rs 57,500/=(A3 b) in addition to his salary. That sum was paid by the Project and re- imbursed by Road Development Authority. The Applicant has to work additional 40 hours in order to earn the Project Allowance.
- iii. The Applicant maintained the Circular marked R2 is not applicable to him.
- iv. The Responded failed to show that there was a irregularity in respect of the Applicant's work and performance in order to effect the sudden transfer depriving the Applicant of the Project Allowance.
- v. Whereas by marking letter A8 the Applicant stated that he was instructed by the Project Director for him to work in co-operation with the Divisional Secretaries, and Relief Committees.

vi. By A7, The letter addressed by the Director General of Road Development Authority to the Assistant Commissioner of Labour, Matara, it was not mentioned that the Applicant was transferred from I Road Project for a service necessity but has merely stated transferred due to internal reasons which was not specified.

vii. The Respondent has acted unfairly and maliciously towards the applicant by transferring him from I Road Project depriving him the Project Allowance. In the circumstances, I wish to quote majority decision of the Supreme Court in *State Bank in India vs. Edirisinghe* (1991) that the arbitrator has to make an award which is just and equitable, he is not tied down and fettered by the terms of the contract of employment. He can create new rights and introduce new obligations between the parties. The effect of the award is to introduce terms which become implied terms of the contract. It was pointed out that as industrial arbitrator creates a new contract for the future in contrast to a judge who enforces rights and liabilities arising out of an existing contract. An industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contrast to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the Respondent, Road Development Authority (party of the second part) has caused injustice to the Applicant, A.V. Ekanayaka (party of the First part).

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part:

i. be paid a sum of Rupees Two Million Five Hundred and Eighty Seven Thousand and Five Hundred (Rs. 2,587,500/-) being the Project Allowance at the rate of Rs. 57,500/- for 45 months.

And the aforesaid money should be deposited by the Party of the Second Part at the office of the Assistant Commissioner of Labour, Matara.

I, further make order that this award should be implemented within 21 days of the publication in the *Government Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award is just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

12th January, 2020.

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