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## PART I : SECTION (I) – GENERAL

My No.: T23/Co/12/97.

### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. C. Ranatunge, 15A, School Mawatha, Gangodawila, Nugegoda of the one part and Bank of Ceylon, New Head Office, No. 4, Bank of Ceylon Mawatha, Colombo 01 of the other part was referred by order dated 6.2.1998 made under section 4(1) of the Industrial Disputes Act, Chapter 131 (As amended) and published in the *Gazette Extraordinary of Democratic Socialist Republic of Sri Lanka* No. 1015/22 of 20.02.1998 for settlement by arbitration is hereby published in terms of section 18(1) of the said Act.

MAHINDA MADIHAHEWA,  
Commissioner General of Labour.

Department of Labour,  
Colombo 05.  
12th October, 2004.

Ref. No.: T23/ Co/12/97.

### IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

Mrs. C. Ranatunge, 15A, School Mawatha, Gangodawila, Nugegoda.

AND

Case No. A/2662

Bank of Ceylon, New Head Office, No. 4, Bank of Ceylon Mawatha,  
Colombo 01.

### THE AWARD

The Hon. Minister of Labour by virtue of the powers vested in him under Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1958 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 06th February, 1998 and referred the said aforesaid dispute to me for settlement by arbitration.

2. The matters in dispute between the aforesaid parties are -

- (i) Whether the non-payment of arrears of salary to Mrs. C. Ranatunge on re-instatement of her in service by Bank of Ceylon is justified.
- (ii) Whether the demotion of Mrs. C. Ranatunge to Class II of Grade III is justified.
- (iii) Whether the deprival of promotions for 03 years from the date of interdiction of Mrs. C. Ranatunge by Bank of Ceylon is justified and if not what relief she is entitled to.

Appearances: Mr. S. T. Gunawardane, Attorney at Law with  
Mr. Sumith Hewage, Attorney at Law appeared for Mrs. C. Ranatunge.

3. Mrs. C. Ranatunge gave evidence and marked documents A1 to A44. Documents A40, A41, A43 and A44 were marked from the documents of the Bank. The Bank led the evidence of Mr. P. A. R. S. de Silva, Manager, promotion Unit of the personnel Division and Mr. W. G. Herath, Manager and marked documents R1 to R17A. Both sides have tendered written submissions together with the documents marked in evidence.

The size of the Brief is very large and unmanageable. I have an uphill task in reading through the evidence and evaluating same and also in examining the documents marked and the written submissions tendered by both sides.

4. **Facts in Brief**:- Mrs. C. Ranatunge joined the Bank of Ceylon as a Junior Clerk on September 11, 1972. She had thereafter been promoted to -

- (a) 01.02.1975 - Staff Assistant, Grade III Class III
- (b) 09.05.1979 - Asst. Manager, Grade III Class II
- (c) 15.01.1987 - Grade III Class I

She was appointed Manager, Union Place Bank on 09.03.90 and worked in that Branch until 15.12.1992. The Bank had taken disciplinary action against Mrs. Ranatunge for certain alleged acts of misconduct committed by her.

The sequence of events in relation to this dispute referred to me for arbitration is as follows:

- (i) 07.03.94 - She was placed on compulsory leave consequent to investigations conducted by the chief Internal Auditor regarding complaints against/irregularities committed by her whilst serving as Manager, Union Place Branch. This letter of 07.03.94 has been marked as A6 but in the written submissions of her, it is mistakenly given as A4. Her entitlements to receive salary/allowances during the period of compulsory leave, according to A6 is in terms of Sections 15.3 and 15.4 of the Disciplinary Code is marked as A 7 Sec. 15.3 and 15.4 are marked as A7(a) and A7(b) respectively.
- (ii) 20.05.94 She was served with a charged sheet embodying (13) thirteen charges. This is marked as A 10.
- (iii) 09.06.94 - She sent her reply to the charge sheet. This is marked as A 11.
- (iv) 10.03.95 - She wrote to the General Manager of the Bank that she was issued a charge sheet on 20.05.2004 and she replied it on 09.06.94 but she is on compulsory leave from 07.03.94 and no disciplinary action has been taken against her although almost one year has lapsed. She has further stated that as there is no fraud involved, she be reinstated and the inquiry can be conducted thereafter. This is marked as A 13.
- (v) 17.04.95 - She was interdicted with immediate effect without pay. This is marked as A 14.
- (vi) 08.05.95 - She appealed to the General Manager to withdraw the interdiction and restore the earlier decision to send her on compulsory leave or re-instate her. This is marked as A15.
- (vii) 18.05.95 - Disciplinary inquiry commenced. The inquiry was conducted by Mr. G. Padumadasa, an outside officer appointed by Bank.
- (viii) 08.06.95 - She was issued a further charge sheet containing (03) three charges regarding certain lapses/irregularities committed by her. This is marked as A 18.
- (ix) 10.07.95 - She sent a reply denying the charges. This is marked as A 19.
- (x) 31.01.96 - Disciplinary inquiry was concluded.
- (xi) 28.10.96 - The Decision of the Disciplinary Authority was notified to her. This is marked as A 28. According to the letter of 28.10.96, the Disciplinary Authority has considered the Report of the Inquiry Officer connected documents and oral submissions made by the 'friend' of Mrs. Ranatunge and decided to impose the following punishments on her-

- (a) To re-instate her in the Bank service without back wages during the period of interdiction.
- (b) To demote her to the next lower grade (ie. to Grade of Officer Grede III Class 2 with effect from the date of interdiction)
- (c) not to be made eligible for promotion for a period of three (03) yerars form the date of interdiction.

as she was found guilty of charge No. 03 and 09 of the charge sheet of 20.05.94.

She was not informed in writting of the findings of the Inquiry Officer who conducted the inquiry into the (13) thirteen charges levelled against her – A 10. According to R12, the Repotr of the Inquiry Officer she was found not guilty of all the (13) thirteen charges.

As she was dissatisfied with the decision of the Disciplinary Authority, she appealed to the Bank on 05.11.96. This is marked as A 29. She has sent another appeal to the General Manager of the Bank on 12.11.96. against the order of the Disciplinary Authority. This is marked as A30. In response to her appeal, she was informed by letter dated 13.01.97 that the Appeal Tribunal appointed by the General Manager having considered the matter has recommended that the Disciplinary order should stand. This is marked as A 31. On 16.01.97, She appealed to the Commissioner of Labour in relation to the punishments imposed on her. Thereafter the dispute has been referred by the Hon. Minister for arbitration.

It will be seen from the sequence of events that the Bank had placed Mrs. Ranatunge on compulsory leave on 07.03.94, notified its decision of the disciplinary action taken against her only on 28.10.96 and that she was re-instated on 05.11.1996. By letter daed 04.06.1997 after she was re-instated she was informed that she was found not guilty of the charges contained in A 18 of 08.06.1995.

5. **Questions which arise for consideration.**– (i) Justifiability or otherwise of the decision taken by the Disciplinary Authority of the Bank to find Mrs. C. Ranatunge guilty of the charges Nos. 03 and 09 of the charge sheet dated 20.05.1994 and consequently the three punishments imposed by it on her.

(ii) Is the Establishment Code of the Bank a guide or mandatory?

(iii) Justifiability or otherwise of the decision of the Bank to act in accordance with the decision of the Disciplinary Authority.

5.1 IN RELATION TO (I) ABOVE, IT IS CONSIDERED APPROPRIATE TO EXAMINE.– (a) the charges Nos. 03 and 09 of the charge sheet which she was found guilty of - A10.

(b) the Report of the Inquiry Officer appointed by Bank who conducted the disciplinary inquiry – R 12.

(c) the Minutes of the Meeting of the Disciplinary Authority held on 13.08.1996 – R 11.

Charge No. 03 reads as follows:

“Cancelled the following Bonds/Guarantee while claims have been lodged, violating instructions in OIC No. 1170/87 dated 11th May 1987.

Type No.	Bond No.
Performance bond	48/90
Letter of Guarantee	49/90
Letter of Guarantee	20/91
Letter of Guarantee	21/91
Performance Bond	22/91
Performance Bond	23/91

The Inquiry Officer was an outsider appointed by Bank. He is an independent officer who has no interest either in the Bank or the accused officer. Evidence has been led before him in respect of Charge No. 03. He has in page 09 of his Report considered the evidence of –

- (i) Mr. J. W. G. de Silva, the chief witness
- (ii) Mrs. G. K. I. Perera, Operations Manager
- (iii) Mr. A. C. M. Zarook Officer, Grade III Class 3

He has in his findings said that Mrs. Perera under cross examination said “I cannot clearly say who had marked remark “Loan” and initial.” The evidence of Mrs. Perera in this regard is doubtfurl Mr. A. C. M. Farook’s evidence is unreliable because he is the loan officer who had failed to take action on the due date. Mrs. Perera testified that nobody had marked letter of claim, marked as P17, P18 and P19 which relate to letters of claims in respect of Letter of Guarantee 21/91, Performance Bond 22/91 and Performance Bond 23/91 respectively. He has also said that prosecution did not produce the letter of claims on Letter of Guarantee 49/90.

He has said in his findings as follows:

“It is not fair to fix the responsibility on the accused when four letters she had not marked. Marking on P15 (Performance Bond 48/90) is doubtful. Benefit of the doubt has to be given to the accused officer. Accused officer has stated in her statement P41 that she has not received those five letters of claims and therefore she cancelled them on 10.07.92 after the validity of guarantee has lapsed.

Therefore I find the accused NOT guilty to Charge No. 03.”

The Inquiry officer has done an evaluation of the evidence of the officers of the Bank and the evidence of the accused officer and come to a finding. It is nothing but fair that his finding based on sound reasoning should be accepted.

I wish now to switch on to the Minutes of the Disciplinary Authority which comprises three Asst. General Managers of the Bank and the Legal Officer of the Bank. No. evidence has been led before the Disciplinary Authority. They have only heard the oral submissions of the friend of the accused officer. Their comments are general assorted and hypothetical. Their finding is that “on a balance of probability we feel that the Manager was aware that claims had been lodged. She has to be held vicariously liable for the lapses that had followed” In their Minutes they state that the Operations Manager under pressure of cross examination had wavered and was uncertain on the matter. This alone shows that the evidence against the accused officer was weak and vague. In these circumstances, the finding of the Disciplinary Authority based on assumption and presumption cannot be accepted as fair and reasonable.

Mrs. C. Ranatunge in her appeal dated 12.11.1996 to the General Manager of the bank marked as A 30 has stated *inter alia* that –

- (i) I was not aware of the claims which had been lodged long before the date of cancellation and regarding which Act was no record available to me to know of such claims. The prosecution did not lead any evidence to prove that I was aware of any claim being lodged. The cancellation of the Bonds were authorized by me with another two ‘B’ class officers. No inquiry was conducted against those officers. Disciplinary inquiry was conducted only against me.
- (ii) According to Bank’s regulations ‘B’ class officers have to check and process the documents and ‘A’ class officer should authorize. Therefore greater responsibility is on the ‘B’ class officer in this matter. However, all signatories should be treated in a similar manner.

In these circumstances, the finding by the Disciplinary Authority that Mrs. C. Ranatunge was guilty of charge No. 03 cannot be accepted.

5.2 Charge No. 09 reads as follows. – “You have authorized to release the balance lying in the margin A/C by issuing pay order Nos. 729209 and 729254 for Rs. 8000 and Rs. 5000 on 09.05.1991 and 16.05.1991 respectively and further by authorizing encashment of these pay orders by canceling crossing thereon while the C/a of Wavind Construction was overdrawn by Rs. 584,910/76 and Rs. 584,973/26 on the said dates violating office instruction circulars and Banking practice.”

The Inquiry Officer in his Report marked R 12 at page 15 has dealt with Charge No. 09. He has commented as follows:

“The accused Officer had released these small sums of money to maintain the goodwill and trust she had with the customer. She did not want to hurt the feelings of the customer when such a sum of money was due from the customer. Being the Manager of the Bank, she had used her discretion. I agree with the submission of the friend of the accused.” Therefore I find the accused not guilty to charge NINE.”

According to the Report R 11, of the Disciplinary Authority, they disagree with the Inquiry Officer. The reason is given below:

“there is no reason as to why even if the matter was urgent, approval could not have been obtained over the phone from the Higher Authorities especially because it had been made out by the Defence that the customer was held in very high esteem by the Higher Authorities.”

Mrs. C. Ranatunge in her appeal dated 12.11.1996 marked as A 30 has stated *inter alia* as follows:

“The customer has requested to release Rs. 13,000 from his old cancelled Bonds to help him to pay his labour force and then get payments on his contracts WHICH WILL ENABLE HIM TO PAY HIS DUES TO THE BANK. With a view to retaining the customer and helping him to pay his dues, I released the money in the interest of the Bank and in good faith. Cancellation of these pay orders were authorized by the Loans Officer also.

However, after releasing Rs. 13,000 for his labour payments, he has deposited a cheque for Rs. 200,000 from Mahaweli Authority and the temporary overdraft was reduced by Rs. 200,000”.

In the reply to the appeal by the Bank marked as A 31, the statement of her that a cheque for Rs. 200,000 was deposited is not contested.