

the Public Sector. The Circular is marked as R2. He further said that the Sri Lanka National Design Centre is considered to be incorporated body. (However, I find that this Circular marked as R2 has not gained entry into the case file).

After the receipt of that Circular since the said Circular was applicable only to the Public Sector a Cabinet Paper was presented through the Hon. Minister of Mahaweli Development requesting approval to revise the salaries of the incorporated establishment of his Ministry in keeping with the said Circular. The witness produced a letter dated 17.05.1998 which contained the Cabinet decision of the Cabinet Meeting held on 11.05.1988. The copy of the decision is marked R3. A previous decision of the cabinet with regard to this revision of salary was also taken on 10.02.1988. The approval was given to the ministries to revise salaries of the corporate sections based on the new salary scale awarded to the public servants subject to the following limitations.

- (i) The availability of funds for the purpose without anticipating additional funds from the Treasury.
- (ii) The proposed revisions from each establishment should be subject to the approval of Salaries and Cadre Commission. (The document dated 17.02.1998 No. Cabinet Paper/1988/Misc. (60) is marked as R4).

Based on such Cabinet Decisions a new salary structure was proposed for the Sri Lanka National Design Centre on the directions given by the Secretary to the Ministry to the Chairman of the Center. The Chairman of the Centre has a responsibility to carry out the instructions given by the Secretary to the Ministry. The Board of Directors was entrusted to prepare a new salary structure in keeping with the said directions. A new salary structure so proposed is included in the document marked R5. R5 was forwarded by the Board of Director of the respondent National Design Centre to obtain the approval of the Cabinet and of Salaries and Cadre Committee. R6 is the Board Paper No. 88/03 pertaining to the said decision. By this paper it was proposed a new salary scale for revision of salaries of the entire staff covering nine grades from 1 – 9 of the National Design Centre. He further said that it was not only the salary of this applicant that was revised. It was proposed to revise the salaries of all the employees of Grade 1 – Grade 9 of the National Design Centre.

The Cabinet, in turn referred the said proposed salary scales for the recommendation of the salaries and cadre committee. A copy of the letter dated 11.05.1988 of the Secretary to Cabinet which contained the relevant Cabinet Decision is marked as R7. Thereafter the salaries and cadre committee has recommended the proposed revised salary scales made by the Cabinet by the committee paper No. 42 of 1988. The

committee paper No. 42 and the document which contained the approved salary scales are marked as R8 and R9.

The Cabinet approved the new salary scales recommended by the Salaries and Cadre Committee. The document which contained the decision reached at the Cabinet Meeting held on 28.12.1988 pertaining to the relevant paper dated 04.01.1989 is marked as R10.

It was the Cabinet that approved the salary scales adopted to be effective from 01.01.1998 in respect of the employees of the respondent National Design Centre. Such salary scales were selected in accordance with the Cabinet decision. After the Cabinet gave approval for the relevant salary scales the salaries of the employees of the National Design Centre were revised.

The revised salary scales approved by the Cabinet were not in consistent with the salary scales obtained by the staff of the National Design Centre at that time. The revised salary scales contained in the Public Administration Circular No. 327/86 which were in operation by that time, corresponding to the revised new salary scales were not applicable to the staff of the National Design Centre. The revised salary scale corresponding to the step received by the applicant at that time, that is pre-revised salary scales contained in the Public Administration Circular No. 327/86 corresponding to the salary scale contained in the Public Administration Circular No. 387/87 and taking into consideration the approved revised three salary scales by means of the committee paper No. 42, the salaries of Mrs. Ninel Fernando and other staff have been revised.

The document marked X annexed to the written statement is made use of at this stage to explain the manner in which the salary of the applicant was revised. A copy of the document is marked as R11.

At this stage the witness went on to explain how the salary of the applicant was revised to be effective from 01.01.1988. In accordance with the new revised salary scale that has been approved by the Cabinet which in turn had been proposed by means of Committee Papers No. 42, the salary scale R – 11 : 3 has been proposed for officers in Grade IV including Mrs. Ninel Fernando. The salary scale – 30 – 4 : 2 which the officers of this Grade had been drawing at that time was adjusted with the salary scale 34 – 3 : 1. The Initial salary point of the salary scale 34 – 3 : 1 has been Rs. 14,400 and its maximum was Rs. 24,960 and she was placed on the relevant step of the salary scale R – 11 : 3 which was the corresponding salary point of the preceding salary scale.

At this time of the revision Mr. Ninel Fernando was on the scale 30 - 4 : 2. That salary scale was the scale R / 5 : 1 shown in the Public Administration Circular No. 387/87. However, the National Design Centre did not resort to the salary scale R - 5 : 1 at the time of this revision. Instead, in keeping with the Cabinet decision, the salary scale R - 11 : 3 had to be applied in place of R - 5 : 1. The pre-revised salary scale relevant to this R - 11 : 3 salary scale was the scale 34 - 3 : 1.

If the salary conversion was done step by step as laid down in the Public Administration Circular No. 387/87 she should have been placed on the 11th step that is Rs. 34,800. However, according to the method of conversion used by the Sri Lanka National Design Centre she was placed on the salary point of R. 39,600 which was the maximum of the salary scale R - 11 : 3.

Accordingly by placing her on the maximum of the salary scale R - 11 : 3, *i.e.* Rs. 39,600 without placing her on the salary point of Rs. 34,800 she was not prejudiced.

This revision was not made applicable only to the applicant but also all the employees who had been in the service of the centre as at 31.12.1987 up to 01.01.1988 enjoyed the advantage of this salary scale R 11 : 3 was followed on the final decision of the Cabinet that had been previously decided by the Board of Directors. the witness emphasized that the applicant has got a salary more than the salary she would have got on the said salary revision since this salary revision adopted by the Centre was done in pursuance of the Cabinet decision.

The position taken up by the applicant in this case is that she should have been placed on the scale R - 5 : 1 from 01.01.1988. However, the scale R - 5 : 1 was made applicable to the Project Directors and Engineers in Grade III of the National Design Centre in accordance with the said revision which had been approved by the Cabinet. On the contrary the scale R - 5 : 1 was not applicable to any of the officers of Grade IV in which the applicant was.

With this the examination in chief was over and the cross examination commenced. In answering under cross examination the witness said he joined the respondent centre only on 01.04.1991 and therefore he did not have personal knowledge about the activities of the centre prior to that date. According to A1 that is the letter of appointment Mrs. Fernando is appointed to Grade IV on the scale of Rs. 27,240. It was suggested to him that Mrs. Fernando was placed on Rs. 27,240 as she consented to that salary scale on being invited to accept the post considering her qualifications. The witness said it may have happened that way, However, he further said that it was a wrong decision contrary to the regulations. The learned counsel for the applicant went on to question on documents R3 and R4. The witness explained to

contents of R3 and R4, emphasizing the fact that revised salary proposals were approved by the Cabinet and also by the Salaries and Cadre Committee. Under further cross examination on behalf of the center Cabinet Memorandum R12 dated 21st April, 1998 of the Ministry of Finance and Planning was marked and produced which contained the observations of the Minister of Finance and Planning.

I observe that the first paragraph thereof runs as follows. "In terms of the Cabinet decision of 10th February 1998, the proposed salary revision may be referred to the Salaries and Cadre Commission. If the proposed salary revision is approved by Salaries and Cadre Commission the Treasury will find the funds required for the salary increases in 1988 to the extent that the increases cannot be financed out of the resources of the National Design Centre". This means the proposed salary revision had to be approved by the Salaries and Cadre Commission for which in fact due approval was given by the Salaries and Cadre Commission.

R8 pertaining to Committee Paper No. 42 on the subject "revision of the salary scales of the Sri Lanka National Design Centre" states at paragraph 2 that the Salaries and Cadre Commission having carefully considered these proposals decided to recommend the revisions of the salaries as shown in the annexure hereto. The Annexure is R9. In answer to a question under cross examination the witness admitted that all the officers in Grade IV were placed on R11 : 3.

In answer to a question by the Arbitrator the witness said none of the officers belonging to Grade IV to which Mrs. Fernando too was included, was placed on salary scale 5 : 1.

In re-examination the witness stated that in the event relief prayed for by the applicant in this court is granted it would cause a great prejudice to the entire establishment.

Learned Counsel for the applicant informed Court that no evidence will be led on behalf of the applicant. Accordingly there was no evidence given either by the applicant or by anyone else on behalf of the applicant. The case was concluded at that stage and both parties were allowed to make written submissions which they did.

In conclusion I hold that the respondent center was justified in placing the applicant on the annual salary scale of Rs. 27,240 with effect from 1st of July 1987 in the Grade IV to the Post of Designer.

Also I hold that it is in order to place her on the annual salary of Rs. 36,444 on the scale Rs. 27,000—4 x 600—10 x 900—1 x 1,200—Rs. 39,600 in the approved segment R 11 : 3.

I further hold she has no claim to the scale pertaining to R-5-1 since it is in evidence that none of the officers in her Grade namely ; Grade IV has been placed on this scale R-5-1. It is in evidence that there are eight such categories in Grade IV. I observe that the applicant has not been singularly isolated to place her on the scale R 11 : 3.

As rightly asserted by the respondent center if any deviation is made to place her on R 5-1 scale it would certainly be prejudicial to the other categories of officer in Grade IV, and finally it will affect the entire establishment.

Furthermore the revision of salaries proposed by the Sri Lanka National Design Centre has got the approval of the Cabinet and also by the Salaries and Cadre Commission as evidenced in R3, R4, R5, R6, R7, R8, R9 and R10.

I also take into consideration the fact that the Public Administration Circulars Nos. 327/86 and 387/87 are not

applicable to Corporations and Boards per se. Since the respondent Sri Lanka National Design Centre is an incorporated body it is at liberty to apply the said Circulars *mutates mutandis*, if necessary, *a fortiori* it can do so with the approval of the Cabinet and of the Salaries and Cadre Commission. In this case such approval has been given.

In conclusion for the reasons given above I do not award any relief prayed for by the applicant union on behalf of its member Mrs. N. T. Fernando, the Senior Designer.

I consider this award to be just and equitable.

K. A. D. B. KARUNARATNE,
Arbitrator.

18th October, 2004.