

Mrs. C. Ranatunge as Manager has to use her discretion and act according to the quality, integrity and past performance of the customer. She could have discussed with the Higher Authorities before releasing but she has not explained as to why she has not done so. She was not asked to show cause as to why she had not discussed this with the Higher Authorities. In the inquiry before me, she was not posed this question.

This charge has been leveled against her on 20th May, 1994 and the incident in relation to the charge occurred on 09th May, 1991 - three years ago. Did the Bank suffer any loss as a result of her releasing the sum of Rs. 13,000 to the customer on 09th May, 1991 is the question to be considered closely and carefully. The charge was leveled in May, 1994, for what occurred in May, 1991. Had the Bank suffered any loss in relation to her act of releasing Rs. 13,000 to customer, the Bank would have leveled a charge against her and also led evidence before me. The Bank has not done either. It has therefore to be taken that the Bank did not suffer any financial loss.

Be it as it may, in my view too she was wrong in not discussing with the Higher Authorities before releasing, although she has discretion to take a decision. For this lapse she can be warned.

On an overall analysis of the circumstances surrounding this charge, she cannot be found guilty of this charge.

5.3 QUESTIONS NO. (II) AND (III) ARE INTERCONNECTED AND THEY ARE TAKEN TOGETHER.— The contention of the Bank is that the Disciplinary Code is a guide and not mandatory. Mr. P.A. R. S. de Silva, Manager Promotions Unit in his evidence at pages 472 and 473 of the Brief has said that it is only a guideline and always the Bank won't be able to follow. Mrs. C. Ranatunge has marked the Code as A7 and identified certain portions of it as A7(a) to A7(h). The Bank too has identified certain portions and marked as R 15, R15(a) and R15(b).

The front page of the Code states at the bottom as follows:

“Issued on the orders of the Board of Directors”

In front page it is stated as follows:

“Disciplinary Code of Bank of Ceylon applicable to all matters concerning general conduct, performance and disciplinary control of Employees of Bank of Ceylon” effective from 02nd May, 1991.

The Bank cannot say that it is a guide.

The Bank has acted according to this Code as follows:

- (i) By letter dated 07th March, 1994, she was placed on compulsory leave and informed that her entitlements during the period of compulsory leave would be in terms of Sections 15.3 and 15.4 of the Disciplinary Code.
- (ii) By letter dated 20th October, 1994, marked as A25, she was asked to be present for the meeting of the Disciplinary Authority with her ‘friend’ to make oral submissions.
- (iii) By letter dated 28th October, 1996, marked as A28, she was informed by Bank that she was found guilty of charges 03 and 09 by the Disciplinary Authority and she was informed of the punishments imposed on her by the Disciplinary Authority.
- (iv) By letter dated 13.01.97, marked as A 31, the Bank has stated that the Disciplinary order imposed by the Disciplinary Authority should stand.
- (v) The Bank has in the evidence before me marked certain portions of the Code.

In the light of the foregoing, I hold that the Disciplinary Code is not a guide but mandatory. There are certain instances where the Bank has not complied with the provisions of the Disciplinary Code. Example 15.1(b) states that period of compulsory leave shall not exceed 14 days but she was on compulsory leave for (14) fourteen months. Page 30 of the Brief. Sec. 23(1) marked as A7(a) states that if the period of interdiction exceeds 06 months, the General Manager could convert it to a suspension entitling the employee to receive payment referred to in Sec. 17.2 i.e. 1/2 salary. The accused officer was on interdiction for a period of 18 months. Page 156 of the Brief. Her request to bank dated 08th December, 1995 A(16) was rejected by Bank by its letter of 12th February, 1996, A17. She remained without any payment of salary during the entire period of interdiction. In this instance too Bank has not complied with the Disciplinary Code.

As the Bank has failed to comply with the Disciplinary Code in certain instances, it is presumably taking up the position that the Code is a guide. For the reason stated above, I hold that the code is mandatory.

6. The next question is whether the Bank was justified in acting in accordance with the decision of the Disciplinary Authority.

The Disciplinary Authority comprises three Asst. general managers of the Bank and the Legal officer of the Bank. These officials being employees of the Bank would tend to have the interests of the Bank. The Inquiry officer appointed to conduct the disciplinary inquiry being an outsider will be neutral without any interests in the Bank. He has recorded evidence and done an evaluation of the evidence led before him and made the findings but the Disciplinary Authority has not done the exercise of recording evidence or evaluating evidence but it has only recorded minutes of what transpired i.e.. gist of representations of the friend of the accused officer and its comments on same. The accused officer has

been asked by letter dated 20th October, 1994, from the Bank (A25) to be present at the Disciplinary Authority meeting. It is stated in this latter that either she or her Union Representative will be permitted to make oral submissions. The minutes of the Meeting do not even casually state that she was present or not. Her statement does not appear to have been recorded. She has not been afforded an opportunity to state what she has to state. The type of exercise done by the Disciplinary Authority to set aside the finding of the Inquiry officer on charges 03 and 09 would not appear to be fair and reasonable. Sec. 47(5) of the Code reads as follows;

“Where an inquiry officer has found the employee not guilty of any one or more or all of the charges preferred against him and the Disciplinary Authority rejects such findings and is of the view that the employee is guilty of one or more or all of the charges preferred against him the Disciplinary Authority shall set out IN FULL ITS REASONS for so doing or may make the punitive order accordingly or may quash the inquiry proceedings and order a fresh inquiry before another Inquiry officer”. An examination of the minutes of the Disciplinary Authority would reveal that they have not complied with Section 47(5) in that they have not set out the reasons in full for their decision but made some comments here and there. In the light of the foregoing, I hold that the Bank was not justified in acting on the decision of the Disciplinary Authority.

7. I wish to deal with the punishment imposed by the Disciplinary Authority which the Bank had acted on –

- (i) Re-instatement without back wages;
- (ii) Demote her to the next lower grade with effect from the date of interdiction;
- (iii) Not to be made eligible for promotion for three years from the date of Interdiction.

The accused officer has been issued a charge sheet A10, dated 20th May, 1994, which relates to incidents or acts committed in the years 1990 and 1991. It has not been explained as to why a charge sheet was issued belatedly. She has to her credit more than (22) twenty two years service at the time she was interdicted. She has joined as Junior Clerk in September, 1971, but she had got three promotions and when she was interdicted she was holding the post of grade III Class I officer. Her record was good except for this belated charge sheet and another charge sheet of 08th June, 1995. In the First charge sheet, the Inquiry Officer has found her NOT guilty of all the charges. In the second charge sheet too she was found not guilty of all the charges. By letter dated 11th March, 1999, marked as A12 she has been commended by the Director, CID, Sri Lanka Police for an act she had done. This letter which is self explanatory is sent to Chairman of the Bank. The Bank accepted this letter at the inquiry before me. Pages 128 and 129 of the Brief. She was also sent a letter of appreciation by the Bank on 20th October, 2001 (A38) for her vigilance and alertness when detecting an attempted fraudulent withdrawal of cheque for Rs. 875,350. I find that by letter dated 13th October, 1980 marked as R1 she has been warned for negligence in the discharge of duties as a Ledger Officer. Except for this letter of warning in the year 1980, her record would appear to be unblemished. The Disciplinary Authority should have given its due consideration to her good record of service before it imposed punishment of this nature which are too harsh and inappropriate in this instance.

8. The punishment No. (i) and No. (ii) relate to her re-instatement. At the time of interdiction on 17th April, 1995, she was holding the post Grade III, Class I to which she was promoted on 15th January, 1987. It would be unfair to re-instate her to a post lower than what she holding as the meaning of the word “Re-instatement” is restoration of status quoante. In this context, I consider it appropriate to cite the Judgement of the Supreme Court in Elpitiya Plantations Ltd., Vs. J. M. D. Jayasinghe, Labour Officer and 2 others S.C. No. 84/96/HC Kandy, Appeal No. 73/94 decided on 11th November, 1996.

“The proposition that reinstatement implies restoration of the status quo and the employee is entitled to be restored to the same position with all the benefits as if he has not been discharge admits no doubt. The difference between re-instatement and re-engagement is that re-instatement envisages a return to the same position as if the dismissal has never occurred and therefore the wages in the interval between the dismissal and re-instatement. Re-engagement involves re-employment by the same employer, his successors or any associate employer in comparable or otherwise suitable employment. This is settled law and it requires no labouring at my hands.”

In the light of the foregoing judgement it is wrong to order re-instatement without back wages and also to a post lower than what she had been holding. Viewed in this context and for the many and varied reasons given in this Award, I hold that the punishment No. (iii) is far too severe and inappropriate. by letter dated 28th October, 1996 (A28) she was informed of the three punishments. The date of interdiction was 17th April, 1995 and she was according to the punishment No. (iii) eligible for promotion to Grade (iii), Class I in three years time i.e. 17th April, 1998. Evidence would not appear to have been led as to whether she did receive the promotion to Grade III, Class I or not.

9. Before I conclude, I consider it appropriate to state that some documents were marked subject to proof by both sides but at the conclusion of the case, the question of documents marked subject to proof have not been re-iterated.

In so far as the law is concerned in relation to documents marked subject to proof the position is that it is an accepted principle in law that documents marked in evidence as subject to proof must once more be re-iterated at the stage the party closes its case. If the objection is not re-iterated at the closure of the case, it is deemed to be evidence for all purposes of the law. In Sri Lanka Port Authority Vs. Jugolinija – Boal East 1 SLR 18 at 24, Neville Samarakoone, C.J. held that –

“If no objection is taken when at the close of a case documents are read in evidence they are evidence for all purposes of the law.”

In Wanigaratne and another Vs. Wanigaratne, 1997, 2SLR 267 at 269, Edusuriya J. cited the above decision and held that –

“Where no objection is taken when a document is read in evidence at the closure of the case to a document which has been marked subject to proof the earlier objection is deemed to have been waived”.

I have examined document on R 11 - Minutes of Disciplinary Authority which was marked subject to proof as I am permitted by law to act on it as both parties have not said anything regarding documents marked subject to proof at the conclusion of the case.

10. **Answers to questions referred for arbitration.** - To the questions referred to me for arbitration, the answers are as follows:

- (i) The non-payment of arrears of salary to Mrs. C. Ranatunge on re-instatement of her service by Bank of Ceylon is NOT JUSTIFIED.
- (ii) The question (ii) being a follow-up of question No. (i), the answer that demotion of Mrs. C. Ranatunge to Class II, Grade III is NOT JUSTIFIED.
- (iii) The deprival of promotion for (3) three years from the date of interdiction is also NOT JUSTIFIED.

11. Now that I have given my findings on each issue referred to me, I wish to make my AWARD as follows:

- (i) Mrs. C. Ranatunge be paid a sum of Rs. 310,824 (Rupees Three Hundred and ten thousand eight hundred and twenty four only) as arrears on re-instatement on 05th November, 1996 from the date of interdiction on 17th April, 1995 (Rs. 17,268 × 18).
- (ii) Mrs. C. Ranatunge be restored to the post of Grade III, Class I with effect from 17th April, 1995, the date of interdiction (the date on which she was demoted) together with arrears of salary.
- (iii) Mrs. C. Ranatunge, be granted the promotions she was deprived of during the period of three years from the date of interdiction together with arrears of salary for the said period subject to the condition she was eligible and qualified for such promotions.

12. In the absence of specific evidence in relation to (ii) and (iii) it is not possible for me to quantify the monies due on this score. I direct the Bank which has all the particulars relating to (ii) and (iii) above to quantify the amounts due to her. In relation to (i) above, I make award that a sum of Rs. 310,824 (Rupees Three Hundred and Ten Thousand Eight Hundred and Twenty Four only) be deposited along with the amounts due to her on (ii) and (iii) above with the Asst. Commissioner of Labour, Colombo South Labour Secretariat, 6th Floor, Colombo 05 within (30) thirty days of publication of this Award in the government Gazette of the Republic of Sri Lanka. Mrs. C. Ranatunge is free to withdraw the monies once the deposit is made. I declare that this Award is just and equitable.

V. VIMALARAJAH,  
Arbitrator.

28th September, 2004.