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PART I : SECTION (I) – GENERAL

Government Notifications

My No. : CI/1469/98.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Telecommunication Engineering Diplomats Association, 2nd Floor, Overseas Telecommunication Service, P.O. Box 235, Colombo 01 and Sri Lanka Telecom Ltd., Sri Lanka Telecom Headquarters, Lotus Road, P.O.Box 503, Colombo 01 was referred by order dated 22.02.1999 made under Section 4(1) of the Industrial Disputes Act, Chapter 131 (as amended) for settlement by arbitration is hereby published in terms of section 18(1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

06th September, 2004,
Department of Labour,
Colombo 05.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

Telecommunication Engineering Diplomats Association, 2nd Floor,
Overseas Telecommunication Service, P.O.Box 235, Colombo 01.

Case No. A 2726

AND

Sri Lanka Telecom Ltd., Sri Lanka Telecom Headquarters, Lotus Road,
P.O.Box 503, 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 Legislature 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 22nd February, 1999 and referred the said aforesaid dispute to me for settlement by arbitration.

2. The matter in dispute between the aforesaid parties is "whether the demotion of Mr. P. G. S. Dharmatillake who is employed at Sri Lanka Telecom Ltd., from the post of Engineer by the said company is justified if not to what relief he is entitled."

Appearances : Mr. Nihal K. M. Perera, Attorney at Law with Mr. Stembo, Legal Officer of the Company appeared for Sri Lanka Telecom Ltd., Mr. Suren Peiris, Attorney at Law with Pushpika Rajapakse, Attorney at Law appeared for the Association.

3. The Respondent company led the evidence of Mr. D. Weeratunge, Head of Administration, Mr. S. Kanagasooriyar, Engineer, Regional Head, North and East and Mr. S. K. Rasiah, Management Assistant, Internal Audit and marked documents R1 to R37. Mr. P. G. S. Dharmatillake, the workman referred to the industrial disputes gave evidence and marked documents A1 to A 17. No document was marked as A2. No document have been marked as A18 to A34, but a document has been marked as A35. The documents marked would therefore be A1, A3 to A17 and A35. The size of the Brief is very large and unmanageable. I have an uphill task in reading through the evidence and examining the documents marked and written submissions tendered by both sides.

4. **Facts in Brief.**— P. G. S. Dharmatillake was appointed as Telecommunication Inspector from 01.07.1993 subject to a period of probation of three years. Letter of appointment is marked as A6 by him. It is also marked as R6 by the Respondent Company. He was appointed as Engineer from 16.10.97. The letter of appointment is marked as R9 by the company. Clause 02 of this letter states that the post is permanent. The appointment letter states that he will be on probation for a period of (01) one year.

"You may be required by the company to resign on grounds of general inefficiency after due inquiry or your services discontinued on disciplinary grounds after due inquiry in accordance with the Rules of the Company." By a document faxed to Dharmatillake which bears no date but has the month as March and year as 1998 he was reverted to the post of Inspector previously held by him with immediate effect. This document is marked as R21 by the company. It has the title "Reversion to previously held post." According to this document —

- (i) he has been reverted as his service as Engineer has not been satisfactory
- (ii) he will not be considered for the Engineer promotion for a period of 1 1/2 years.

The dispute is whether the reversion of Dharmatillake to the post of Inspector in March, 1998 from the post of Engineer held by him from 16.10.1997 is justified. The wording of the reference is whether the demotion is justified but what transpired is reversion as evident from the fax marked as R21. Reversion in this instance is nothing but demotion. It would not be a fruitful exercise to quibble with the words 'demotion' and 'reversion'.

5. **Questions which arise for consideration.**—(i). Can Mr. Dharmatillake who was on probation for a period of three years be placed on probation for a second time with his appointment as Engineer ?

- (ii). Is the company correct in reverting him to the post of Inspector from the post of Engineer which he had previously held ?

In relation to (i) above, the evidence of Mr. Weeratunge Head of the Administration is important and relevant. He has in his evidence at page 14 of the proceedings of 26.06.2000 stated as follows in response to questions posed by me.

- Q — Was he confirmed ?
- A — Yes
- Q — Under what provision did you give the probation?
- A — We work under the Establishment Code
- Q — Does the Establishment Code provide for second probation?
- A — I think so.

Chapter II of the Establishment Code titled "Probation" has been marked as R13 by the Respondent Company 11:3 of the Establishment Code reads as follows :

"An officer confirmed in a permanent post in the public service will not normally be required to serve a period of probation on his being appointed to another permanent post. But the appointing authority may, in the first instance appoint such an officer to act in the new post for a specified period with a view to testing him in the new post."

Mr. Weerasinghe in his evidence at Pages 4 and 5 of the proceedings of 26.06.2000 has confirmed that -

- (i) Dharmatillake has been appointed Engineer in four years time. i.e Appointment as Inspector on 17.06.93 and as Engineer in October, 97.
- (ii) Ordinarily it takes about 15 years for an Inspector to achieve the position of Engineer.
- (iii) His appointment to Engineer's grade was sp rapid. He skipped several grades to be appointed as Engineer because he has an Open University Degree.

It will be seen from the above that the appointment of Dharmatillake to the post of Engineer was a meritorious one.

The first appointment as Inspector is a permanent one subject to three years probation R6 & A6. The appointment as Engineer is also subject to a probation of one year. It is also a permanent post R9.

In view of 11:3 of the Establishment Code quoted above, the Company was wrong in placing Dharmatillake on probation in the post of Engineer. The evidence of Weeratunge makes it clear that the appointment of Dharmatillake to the post of Enginner was rapid in that it had been given in four years time when ordinarily it would have taken fifteen years time. In this context, the company was wrong in appointing him as Engineer subject to a probation period.

6. The next and most important question to be answered is whether the company is correct in reverting Dharmatillake to the post of Inspector from the post of Engineer which he had previously held.

In order to answer this question, it is necessary to the examine closely the following :

- (i) the letter of appointment to the post of Engineer R9;
- (ii) Establishment Code R 13 regarding reversion;
- (iii) The Fax message of March 98 marked as R 21 reverting Dharmatillake to the post of Inspector as his work was not satisfactory;
- (iv) The evidence of the witnesses of the company regarding his work ie. satisfactory or not.

7. Now that I have Identified the matters to be closely examined to determine the main issue - whether the company is correct or justified in reverting (to quote the words in the reference - demoting) Dharmatillake to the post of Inspector from the post of Engineer he had previously held, I wish to deal with them one by one hereunder.

- (i) Letter of appointment as Engineer R9 Clause II of the letter of appointment has the following limbs :-

- (a) He will be required by the Company to *Resign on Grounds of General Inefficiency after due Inquiry*;
- (b) or his services *discontinued* on disciplinary grounds after *due Inquiry in Accordance with the rules* of the company.

The words "Due inquiry" have been specifically mentioned in both limbs. The inquiry will have to be in accordance with the rules of the company. No evidence has been led on what the rules of the company are and the document embodying the rules of the company was not produced at the inquiry before me. Was any inquiry held is the important question which calles for answer? . The answer is a definite ' No ' Dharmatillake has after the reversion was done, sent an appeal on 30.03.98, A 12 asking for an inquiry. There has been no reply to this appeal from the company. The company according to Clause II of the letter of appoinment could have asked him to resign on grounds of general inefficiency or discontinue him on disciplinary grounds. It has not done either of (i) or (ii) above. Reversion done by the company is not in accordance with Clause II of the letter of appointment. This act of reversion is wrong and not justified.

8. (ii) Establishment Code R 13 regarding reversion.

The copmpany witness has confimeds that it acts according to the Establishment Code.

11.4 deals with Reversion. It reads as follows : " During the period of probation the Appointing Authority will have the power to terminate the officer's appointment without assigning any reason. Similarly an officer appointed to act in a post under sub - section 11.3 may, where right to reversion exists be reverted to his substantive post during the acting period without any reason being assigned or have his appointment terminated". In so far as the company is concerned, it has done a wrong by appointing him to a permanent post subject to a period of probation for a second time. It should have appointed him to act in the post of Engineer and reverted him or terminated his employment.

The act of reversion done by the company in these circumstances is wrong and not justified.

9. (iii) & (iv) are interconnected and they are therefore taken together

(iii) deals with reversion due to unsatisfactory work. (iv) deals with the evidence of company witnesses regarding his work.

The only reason according to R 21 for reversion is unsatisfactory work. No evidence at all was led on this score. Kanagasooriyar the immediate superior of Dharmatillake has sent a note on 29.03.98 *ie.* after the reversion was done on 23.03.98. This note is marked as R14 and it has three annexures marked as R14A, R14B & R14C. R14A is a letter to Manager RTO Amparai dated 22.03.98 calling for explanation on certain general and hypothetical questions within three (03) days. It is interesting to note that he was reverted on 23.03.98. It is not known what action was taken on R14A. R14B is a request for appointment urgently a qualified Inspector at Amparai. This has been sent by Manager RTO Amparai. It is not known what happened to this. R14C dated 10.03.98 is a complaint to CEO by 20 employees. No evidence has been led as to whether explanation of Dharmatillake was obtained on this complaint and also whether this document was transmitted to him. According to R 18, the CEO has sent a fax to Chief Internal Auditor on 19.02.98 asking for a draft letter of warning to RTE (the applicant) what was done was reversion of his post as Inspector. D. Weeratunge has submitted a Report to CEO on 21.03.98 marked as R20. In this Report, he has stated that -

- (i) the applicant's work was unsatisfactory;
- (ii) his attendance was very unsatisfactory;
- (iii) there had been mismanagement and corruption at RTO Amparai during his period of service as RTO Manager;
- (iv) He was incompetent and inefficient.

In this context, it is appropriate to consider the evidence given by D. Weeratunge. In his evidence recorded on 02.01.2000, he has stated as follows:

- Page 14 Q - Was there any warning letter issued by his superior Kanagasooriyar to the workman ?
A - Verbally warnings had been given.
- Page 15 Q - Are you aware that the workman had asked for an inquiry into this matter ?
A - Later he asked.
Q - Which means there was no inquiry held ?
A - No inquiry.
Q - I put it to you that there was no letter even warning the workman in relation to the alleged acts you have stated in your Evidence-in-Chief ?
A - We did not warn him.
Q - You had not even called for explanation ?
A - No.
Q - One of the allegations is that the workman had used the vehicles improperly ?
A - Yes.
Q - That would account for financial loss?
A - Yes.
- Page 16 Q - In terms of your evidence and the documents produced even in regard to the misuse of vehicles you have not called for explanation
A - No.
- Page 23 Q - The workman was not even served with a single letter about even his attendance.
A - Yes.

Q - Or even with regard to his not giving to Kalmunai.
A - Yes.
Q - No. letter was sent that he was not available to public.
A - No.
- Page 24 Q - It was after you informed the workman about his demotion that he was aware that you had taken action against him.
A - Yes.

It will be seen from the foregoing evidence of Weeratunge that his Report R20 against the applicant is without any base. His adverse Report R20 in relation to the applicant being baseless, the CEO was wrong in acting on it and reverting the applicant to the Post of Inspector.

10. The evidence of Mr. Kanagasooriyar the immediate superior of Dharmatillake confirms that reversion or demotion was unfair. His evidence was as follows :

Q - Would you concede that Mr. Dharmatillake had been subject to reversion without any warning?.

A - It is correct.

Page 10 of the proceedings of 12.07.2001.

Q - You said that it is not fair to have demoted him.

A - That is my personal opinion.

Page 11 of the proceedings of 12.07.2001.

To question posed by me, he has stated as follows :

Q - Have you recommended that he be reverted?.

A - I have never done anything regarding his reversion.

Q - You were his superior.

A - Yes.

Q - You were monitoring his work.

A - Yes.

Q - You were giving instructions regarding his work

A - Yes.

Q - Were you consulted when reversion was done?

A - I was not.

Page 14 of the proceedings of 12.07.2001.

The evidence of Kaangasooriyar immediate superior of Dharmatillake confirms that the company has done wrong by reverting him to the post of Inspector without adequate reasons.

11. The evidence of the next witness S. K. Rasiah, Internal Audit states that Report R19 was compiled by the Chief Internal Auditor and that after investigation he compiled a Report and gave to Chief Internal Auditor. Page 06 of the proceedings of 03.10.2001. This Report R19 does not make any reference to Rasiah. He has admitted in page 9 of the proceedings of 05.02.2002 that the document R35 was a blank document unsigned and undated and signed on the date he gave evidence. Rasiah who claims to have done investigations into the allegations against Dharmatillake has admitted that he did not speak to Kaangasooriyar the boss of Dharmatillake and also that he did not record the statement of Dharmatillake. He admits that he has not checked the Movement Register to see whether approval was given to Dharmatillake by Kaangasooriyar. Page 22 of the proceedings of 26.02.2002.

His evidence is weak and vague and it does not disclose anything in relation to the work of Dharmatillake.

12. The evidence of the witnesses of the company does not have any reference to the work of Dharmatillake. Hence the reversion done by the company on the basis that his work was unsatisfactory is not justifiable. The company has stated in R21 - the document in relation to his reversion that he will not be considered for promotion as Engineer for a period of 1 1/2 years. But it is strange that it is conspicuously silent on this point up to now, although the 1 1/2 year period expired in Sept. 99. It is interesting to note that the company in its written submissions has stated that Dharmatillake is entitled to no relief except that he can apply for promotion to Engineer as envisaged in R21 and the company should respond to this application favourably. I disagree with this contention of the company and state that he is entitled to relief for the wrong done by the company in reverting him without any reason.

13. Dharmatillake in his evidence has stated that he was never disciplined by Kaangasooriyar. Page 4 of the proceedings of 15.11.2002. He has stated that Rasiah never visits Amparai for investigations. He produced A12 dated 30.03.1998 sent by him to CEO asking him to hold an inquiry. There was no reply to this letter. He has said in page 10 of the proceedings of 25.08.2003, he has not done any wrong and without holding an inquiry he has been given punishment. The principles of natural justice - *audi deteram partem* - principle has not been adopted by the company in this instance. The company has done according to its whims and fancies. The action of the company is unfair and unjust.

14. **Conclusion.**— Taking into consideration the totality of the evidence led before me with particular reference to the marked documents and written submissions of both sides, I hold that the reversion or demotion as given in the reference to arbitration done by the Respondent Company is *unjustified*. I make award that –

- (i) P. G. S. Dharmatillake be re-instated by the Respondent company as Engineer within (30) thirty days of the date of publication of this Award in the *Government Gazette* of the Democratic Socialist Republic of Sri Lanka.
- (ii) back waged be paid to him by the Respondent company from 23rd March, 1998 (the date of reversion to the post of Inspector) up to the date of re-instatement as Engineer (as he is employed as Inspector from 23rd March, 1998 onwards, he will receive the difference in salary as Engineer by way of back wages).
- (iii) the amount due as back wages be deposited with the Assistant Commissioner of Labour, Colombo South, Labour Secretariat, 6th Floor, Narahenpita, Colombo 05, within (30) thirty days of the date of publication of this Award in the *Government Gazette* of the Democratic Socialist Republic of Sri Lanka.

P. G. S. Dharmatillake is free to withdraw the monies due as back wages once it is deposited with the Asst. Commissioner of Labour, Colombo South, Colombo 05. I consider this award just and equitable.

Before I part with this Award, I consider it appropriate to state that I am not in a position to do the mathematical exercise of computing the back wages due to Dharmatillake, as he has not given evidence and provided necessary particulars regarding the salary of Inspector as well as Engineer. It will be seen from his answer to a question posed in Evidence-in-chief to him on 18.07.2003, that he is not aware of his salary particulars. Page 04 of the proceedings of 18.07.2003.

Q. If you were in the Engineering grade what was the salary that you would have received?

A. I do not know. That is a secret.

V. VIMALARAJAH,
Arbitrator.

14th August, 2004.

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