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EXTRAORDINARY

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No. 1374/10 - WEDNESDAY, JANUARY 05, 2005

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## PART I : SECTION (I) — GENERAL

### Government Notifications

My No. T23/Co/98/97.

THE AWARD

#### THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. D. H. Gamage of No. 67B, Podujana Mawatha, Walana, Panadura and twenty (20) other retired officers of National Savings Bank whose names are referred to in the Schedule 'A' and two (2) Officers referred to in the Schedule 'B' who are in the Services of the National Savings Bank of the one part and National Savings Bank, 255, Galle Road, Colombo 03 of the other part was referred by order dated 11.05.1999 made under Section 3 (1) (d) of the Industrial Dispute Act, Chapter 131, (As amended) and 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,  
30th November, 2004.

Ref. No. T23/CO/98/97.

#### IN THE MATTER OF AN INDUSTRIAL DISPUTE

Case No. : A/2740.

between

D. H. Gamage  
69B, Podujana Mawatha, Walana, Panadura  
and twenty (20) other retired officers of  
National Savings Bank whose names are  
referred to in the attached Schedule A and  
(2) two officers whose names are referred  
to in the attached Schedule B.

AND

National Savings Bank,  
No. 255, Galle Road,  
Colombo 03.

1. The Commissioner of Labour by virtue of the powers vested in him by Section 3 (1) (d) of the Industrial Disputes Act, Chapter 131, as amended by the Industrial Disputes (Amendment) Acts, Nos. 14 and 62 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 11.05.1999 and referred the aforesaid dispute to me for settlement by arbitration.

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

(1) Whether it is justified by the management of National Savings Bank to deprive twenty-three (23) officers whose names are referred to in the attached Schedules 'A' and 'B' of monetary benefits from 04.03.1987 by backdating their promotions from Grade IV to Class III of Grade III to that date, whereas eleven (11) officers who were promoted to the same Grade with effect from 04.03.1987 have enjoyed from that date.

(2) Whether it is justified by the management of National Savings Bank to deprive arrears of monetary benefits from 01.01.1988 to twenty-three (23) officers whose names are referred to in the attached Schedules 'A' and 'B' as a result of backdating their promotions to 04.03.1990 from Class III of Grade III to Class II of Grade III whereas eleven (11) officers who were promoted to the same Grade with effect from 01.01.1988 have enjoyed from that date.

(3) (a) Whether it is justified by the management of National Savings Bank to deprive promotions

from Class II of Grade III to Class I of Grade III and arrears of monetary benefits to eighteen (18) officers whose names are referred to in the Schedule 'A' from 1-18 as from 01.01.1991, whereas eleven (11) officers in the same Grade have enjoyed with effect from 01.01.1991.

- (b) Whether it is justified to deprive three (03) officers referred to in the attached Schedule 'A' and two (02) officers referred to in the Schedule 'B' of promotions from Class II of Grade III to Class I of Grade III and arrears of monetary benefits from 01.01.1991 as a result of delaying the said promotions up to 01.11.1996.

and

- (4) Whether it is justified for the twenty-three (23) officers referred to in the attached Schedules 'A' and 'B' for receiving less favourable monetary benefits as a result of being retired from the services of the National Savings Bank on a lower salary point and if not, to what relief the said officers are entitled.

*Appearances* : Mr. N. Wigneswaran State Counsel with Mrs. S. Gunasekara, Legal Officer of the Bank appeared for the Bank.

Mr. S. Hewamanne, Attorney-at-Law with Miss. Ramya Geeganagay, Attorney-at-Law appeared for the twenty-three officers whose names are given in Schedule 'A' and 'B'.

3. The Evidence-in-chief of Gamage and others hereinafter referred to as "applicants" was given in Affidavits. Of the 21 applicants in Schedule 'A', it was stated that two officers - No. 8, S. Pathirana and No. 17, A. S. Karunaratne had passed away. Gamage and Nagoor were cross examined by the Learned Counsel for the Bank on the affidavits tendered by them. It was agreed between both parties that cross examination would be confined only to Gamage and Nagoor as the facts are same and also cross examination of all the applicants would result in the case being long delayed. Both parties have not furnished a Schedule identifying the documents marked and also describing what the documents deal with. The applicants have marked documents A to H along with their statement under the Industrial Disputes Regulations. They have also marked documents A1 to A24 and X to X5. The Respondent Bank has marked documents R1 to R9. Both sides have filed Written Submissions also.

4. *Facts in Brief*:- The grievance of the twenty-three (23) applicants is precisely as follows -

They were stagnating in a post for several years. There was disparity between them and eleven officers who were promoted and paid arrears of salary which is reflected as follows :

- (i) Backdating promotions from Grade IV to Class III of Grade III was done to them without any monetary benefit from 04.03.1987 whereas eleven (11) officers who were promoted to the same grade on 04.03.1987 have enjoyed from that date all monetary benefits.
- (ii) Denial of arrears of monetary benefits from 01.01.1988 to them as a result of backdating their promotions to 04.03.1990 from Class III of Grade III to Class II of Grade III whereas eleven (11) officers who were promoted to the same grade on 01.01.1988 have enjoyed the monetary benefits from that date.
- (iii) Denial of promotion from Class II of Grade III to Class I of Grade III and arrears of monetary benefits to eighteen (18) (01 to 18) of the applicants referred to in Schedule 'A' from 01.01.1991 whereas eleven (11) officers in the same grade have enjoyed from 01.01.1991.
- (iv) Denial of promotion from Class II of Grade III to Class I of Grade III and arrears of monetary benefits from 01.01.1991 to three (03) officers in Schedule 'A' and two (02) officers in Schedule 'B' as a result of delaying their promotions up to 01.11.1996.

In support of the contention of the applicants that there was discrimination or disparity between them and the eleven (11) officers, they had in their statement under the Industrial Disputes Regulations cited the case of an applicant P. E. Navaratne, No. 1 in Schedule 'B' and compared her case with that of W. S. R. Basnayake an officer who received the promotion and monetary benefits on the due date. They have annexed documents in respect of P. E. Navaratne as A, B and C and 'E' in respect of Mrs. W. S. R. Basnayake one of the eleven officers who received all monetary benefits on the due date. The letter received by N. P. Amarasena - an applicant on 05.02.1995 regarding his promotion without monetary benefits is marked as 'F'. The letter given to Gamage regarding promotion without any monetary benefits is marked as 'G'. He is applicant No. (1) in Schedule 'A'. They have also stated that as a result of the denial of monetary benefits they incurred loss in salary and received lower quantum of bonus, and pension less EPF and ETF. They go on to state further that -

- (i) although they made representations to the Bank from time to time, the Bank had not taken any remedial steps.
- (ii) the recommendations given in the Report of the Sri Lanka Institute of Development Administration (SLIDA) after obtaining oral and documentary evidence have not been implemented.

The position taken up by the Bank in its statement under the Industrial Disputes Regulations is, inter alia, as follows :

- (i) In accordance with the scheme of promotion of the Bank twelve (12) officers (the number according to the reference to me is eleven (11) were promoted to Grade III on 04.03.1987 on the basis of an interview and purely on merit. Gamage and the 22 other officers too were among the 89 candidates who faced the interview.
- (ii) The twenty three officers had been stagnating in Grade IV without earning any increment, after having reached the maximum in Grade IV. They were promoted to Grade III in 1995 on a decision by the Board. The promotions were backdated to 04.03.1990.
- (iii) In 1987, when the twelve (12) officers were promoted to Grade III the said Grade was an Executive grade and the said officers were considered as Executives thereafter. However, after the structural changes in 1988, Class III of Grade III was only a supervisory grade to which the twenty-three (23) officers were appointed on a Board decision.
- (iv) The said eleven (11) officers who were promoted with effect from 01.01.1991 to Grade III from Class I and were paid back wages from that date as they were performing the duties of Executive officers. The eighteen (18) officers in question who were promoted to Grade III Class II from 04.04.1990 were not paid arrears as they did not perform the functions of Executive officers.
- (v) The backdating of promotions to Grade III Class III of the said twenty-three (23) officers was a device to grant them relief from stagnation so that when computing their salary they could enjoy the benefit of incremental credit for the period 04.03.1987 to 05.02.1995. These twenty-three (23) promotions to Grade III Class III were not made due to administrative requirements but merely to grant relief to officers who had failed to compete successfully with their colleagues.
- (vi) The twelve (12) officers (11 officers in the reference) originally promoted to Grade III obtained their subsequent promotions speedily to Grade II Class III.

5. *Analysis of Evidence.* - The main issue to be determined is whether the promotions of the twelve (12) officers (11 eleven as given in the reference) were merit based as claimed by the Bank.

In the Written Submissions of the applicants tendered on 10.09.2001, it is stated, inter alia as follows :

- (i) In the Circular for promotion to Grade III issued by the Personnel Manager (A11 and A12) it is stated that the Management reserves the right to summon only those candidates whom it considers suitable for Interview by the Selection Board.

- (ii) The system for promotion was not transparent or rational. For interview in 1986, all the applicants except J. S. Athukorale presented themselves for the Interview and none of them was selected for promotion. Following the said Interview 12 (twelve) persons were promoted. (Final mark sheet is annexed marked as A13 and the Bank is called upon to produce the original).
- (iii) There was no transparency or reasonableness in the process and procedure of promotions. A scrutiny of the Marks sheet reveals serious discrepancy in that Mrs. P. E. Navaratne who obtained 43 marks in the interview was not selected while Mrs. Ranjanee Basnayake who obtained 33 marks was selected. This is one example.

The Respondent has not led evidence contesting the position taken by the applicants in relation to the promotion of Mrs. R. Basanayake who scored 33 marks and the failure to select P. E. Navaratne an applicant who scored 43 marks. In the statement filed in terms of the Industrial Disputes Regulations, case of Mrs. R. Basanayake has been compared to P. E. Navaratne, an applicant. In the absence of any evidence led before me in relation to the Selection Criteria marking scheme etc. by the Bank., I am inclined to think that the promotion of the twelve (12) officers was not merit - based as claimed by the Bank. The applicants in their evidence have stated that some of them gave evidence before the Consultancy Team of the Sri Lanka Institute of Development Administration (SLIDA) appointed by the Bank to study the question of stagnation of NSB employees at different grades and anomalies created on absorption to the Bank and revision of salaries. This Report is marked as A 22. Eleven applicants have appeared before SLIDA committee and given evidence. The document R9 marked by the Respondent is supportive evidence of this. The Recommendations inter alia, were as follows :

- (i) To grant one increment for each year of stagnation on the new salary scale at the salary revision of 1988.
- (ii) To promote all officers in Grade IV as at 31.12.1979 to Grade III Class III and place them on the salary scale of Grade II Class III with effect from 01.01.1980.

The Bank granted promotions to those officers in Grade IV as at 31.12.1979 including the twenty three (23) applicants. The promotions were to Grade III Class III from 04.03.1987 and to Grade III Class II with effect from 04.03.1990. Although increments were to be paid, there was no entitlement to back wages or any other monetary benefits. In this Report, the recommendations given in respect of some of the applicants who gave evidence are as follows :

- (i) M. L. Nagoor - He should be promoted to Grade III Class III with effect from 01.01.1980.

- (ii) H. G. S. Premachandra - He should be placed on the salary scale of Grade III Class III effective from 01.01.1980.
- (iii) Mrs. P. E. Navaratne - She reached the maximum salary point on 01.10.1981 and was on that point till 1988. She is to be placed on Grade III Class III effective from 01.01.1980.

The Bank has implemented only partially the recommendations of the SLIDA Committee appointed by it specifically to go into stagnation in service, salary revision etc. As a result of this failure to implement the recommendations of the SLIDA Report by the Bank, the grievances of the applicants continued to remain.

6. *Formula of the Bank for a settlement.*— Negotiations went on for a long time with a view to a settlement. The Bank by its letter dated 23.05.2000 marked as A1 by the applicants presented a formula whereat it is stated by the Chairman of the Bank inter alia as follows :

“As a final remedy we have agreed to place Mr. Gamage and 23 others in the following manner and to adjust their salaries, pensions accordingly.

- (i) Grade III Class III with effect from 03.04.1987
- (ii) Grade III Class II with effect from 01.01.1988
- (iii) Grade III Class I with effect from 01.01.1994

The Board of Directors has taken a firm decision not to grant automatic promotions and adjusting of salaries accordingly. I wish to specifically mention that arrears or back wages will not be paid to them although their appointments have been backdated as it could be a heavy financial burden on the Bank”.

It is appropriate to point out that the Bank has not led any evidence in support of its contention of heavy financial burden referred to in the above letter. The Bank has not computed as to what its financial commitments is on the basis of its formula.

There is no dispute regarding proposal No. (1) of the Bank. The second proposal too is accepted by the applicants subject to placement on a step by step basis as given in Circular No. MF2/1154/60/3. In relation to the 3rd proposal, the applicants want the effective date to be 01.01.1991 with placement on step by step basis and adjustment of arrears and pensions accordingly.

The Bank is totally rejecting arrears/back wages etc. but the applicants insist on this. There is therefore a deadlock. Gamage in his evidence has admitted that he received payment

on the recommendation of the Political Victimisation Committee. R9 embodies the particulars regarding date of retirement, the Recommendations of Political Victimisation Committee and the action taken on the recommendations i.e. payments made to the applicants.

7. *Findings on the matters in dispute.*— Now that I have done an analysis of the evidence with reference to the documents marked and the Written Submissions of both sides, I consider it appropriate to give my finding on each of the matters in dispute referred to me for arbitration one by one—

- (i) Denial of monetary benefits to the 23 officers referred to in Schedule A and B from 04.03.1987 is not justified.
- (ii) Denial of a monetary benefits from 01.01.1988 to the 23 officers as a result of back dating their promotions to 04.03.1990 is not justified
- (iii) (a) Denial of promotion from Class II grade III to Class I Grade III and arrears of monetary benefits to 18 applicants 1 - 18 in Schedule A from 01.01.1991 is not justified.
- (b) Denial of three officers in Schedule ‘A’ and two officers in Schedule ‘B’ promotions from Class II of Grade III to Class I of Grade III and arrears of monetary benefits from 01.01.1991 as a result of delaying the said promotions up to 01.11.1996 is not justified.
- (iv) My finding in relation to the matter in dispute referred to in (4) is that the action taken by the Bank to retire in 23 (twenty three) applicants on a lower salary point is not justified.

8. *Relief.*— Gamage in his evidence marked X5 and X5 (1), two Schedules showing a computation of the amounts due to him. Under cross examination he has admitted that he received the amounts due to him on the recommendation of the Political Victimisation Committee Page 178. Proceedings of 04.12.2002. He has not included this amount in the Schedule X5 and X5 (1). According to R9, on the basis of Recommendations of Political Victimisation Committee, he was given promotions to Grade III, I effective from 04.03.1990 and Grade II effective from 01.01.1995 and his pension was adjusted accordingly and he was also paid arrears of pension with effect from 24.02.1998. In these circumstances, his schedule X5 and X5 (1) will have to be amended. In the absence of relevant data regarding promotions, conversions, salary drawn etc., step in evidence I am unable to compute the amounts due to the applicants on the basis of my findings.

It is considered appropriate to point out that the applicants did not have recourse to the Supreme Court when they were denied the promotions on the basis of an infringement of fundamental rights under the Constitution. What they have done is to resort to the convenient legal remedy under the Industrial Disputes Act to which Time Bar is not applicable.

Taking into consideration the totality of the evidence led and the circumstances surrounding this case, I have after careful thought decided to make award as follows :

SCHEDULE 'A'

(Retired Officers)

|   | Name                          | Date of Back dated to | Date of Back dated to | Date of Promotion |
|---|-------------------------------|-----------------------|-----------------------|-------------------|
|   |                               | Cl. III Gr. III       | Cl. II Gr. III        | Cl. I Gr. III     |
| (i) In relation to issue No. (1), the monetary benefits denied from 04.03.1987 be restored to the twenty three officers.  |                               |                       |                       |                   |
| (ii) In relation to issue No. (2), the arrears of monetary benefits from 01.01.1988 be restored to the twenty three officers.   | 01. Mr. D. H. Gamage          | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 02. Mr. J. S. Athukorala      | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 03. Mr. K. G. Karunaratne     | 04.03.1987            | 04.03.1990            | Not Promoted      |
| (iii) Re. Issue No. 3 (a), arrears of monetary benefits to eighteen (18) officers referred to in Schedule 'A' from 01.01.1991 be restored to them.  | 04. Mr. M. K. S. Rana-singhe  | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 05. Mr. K. G. D. George       | 04.03.1987            | 04.03.1990            | Not Promoted      |
| (iv) Re. Issue No. 3 (b), the arrears of monetary benefits to (03) three officers in Schedule 'A' and (2) two officers in Schedule 'B' be restored to them from 01.01.1991.   | 06. Mr. N. P. Amarasena       | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 07. Mr. L. Jayawardhana       | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 08. Mr. S. Pathirana          | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 09. Mr. C. J. Silva           | 04.03.1987            | 04.03.1990            | Not Promoted      |
| (v) Re. Issue No. (4), the (23) twenty-three officers in Schedule 'A' and 'B' who were retired on a lower salary point be restored the monetary benefits and also placed on the appropriate higher salary point and paid arrears due to them. | 10. Mr. M. D. S. Weera-singhe | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 11. Mr. S. A. Jayaratne       | 01.11.1988            | Not Promoted          | Not Promoted      |
|   | 12. Mr. G. Samarasinghe       | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 13. Mr. H. D. Fernando        | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 14. Mr. T. S. E. Fernando     | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 15. Mr. K. G. Sirisena        | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 16. Mr. M. G. Mahindadasa     | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 17. Mr. A. S. Karunaratne     | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 18. Mr. H. P. D. Gunawar-dene | 04.03.1987            | 04.03.1990            | Not Promoted      |
|   | 19. Mr. J. T. Somasiri        | 04.03.1987            | 04.03.1990            | 01.11.1996        |
|   | 20. Mr. K. R. Fernando        | 04.03.1987            | 04.03.1990            | 01.11.1996        |
|   | 21. Mr. M. L. Nagoor          | 04.03.1987            | 04.03.1990            | 01.11.1996        |

I make order that the National Savings Bank prepares a comprehensive schedule specifying the amounts due to each applicant on the basis of this Award as given in (i) to (v) above and deposits with the Asst. Commissioner of Labour East, 5th Floor, Labour Secretariat, Colombo 05, the monies due to the applicants within thirty (30) days of the date of publication of this Award in the Government Gazette of the Democratic Socialist Republic of Sri Lanka. The applicants are free to withdraw the monies once the deposit is made.

SCHEDULE 'B'

(Officers in Service)

I declare that this Award is just and equitable.

V. VIMALARAJAH,  
Arbitrator.

|                                |            |            |            |
|--------------------------------|------------|------------|------------|
| 01. Miss. P. E. Navaratne      | 04.03.1987 | 04.03.1990 | 01.11.1996 |
| 02. Mr. H. G. S. Prema-chandra | 04.03.1987 | 04.03.1990 | 01.11.1996 |

12th November, 2004.

01-379