



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය  
අති විශේෂ

# The Gazette of the Democratic Socialist Republic of Sri Lanka EXTRAORDINARY

අංක 1,485/3 - 2007 පෙබරවාරි 19 වැනි සඳුදා - 2007.02.19  
No. 1,485/3 - MONDAY, FEBRUARY 19, 2007

(Published by Authority)

## PART I : SECTION (I) — GENERAL

### Government Notifications

My No.: T23/P/47/2002. Case No.: A 3196

AND

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between T. Raveendran, No. 15, 1/1, Collingwood Place, Colombo 06, and Sri Lankan Airlines Ltd., Administration and Training Building, Bandaranayake International Airport, Katunayake was referred by order dated 09.11.2006 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.

D. S. EDIRISINGHA,  
Commissioner General of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
08th February, 2007.

#### In the matter of an Industrial Dispute Between

Mr. T. Raveendran,  
No. 15, 1/1, Collingwood Place,  
Colombo 06,

Sri Lankan Airlines Ltd.,  
Administration and Training Building,  
Bandaranayake International Airport,  
Katunayake

#### AWARD

1. The Hon. Minister of Labour Relations and Foreign Employment by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act No. 43 of 1950 (as amended) appointed Mr. S. Ediriweera on 14.09.2000 as Arbitrator for settlement of the following dispute by arbitration.

“Whether the termination of the service of Mr. T. Raveendran who was in employment at Sri Lankan Airlines Ltd., by the said company is justified and if not to what relief he is entitled.”

2. The Hon. Minister by his order dated 09.11.2006 has revoked his order of 14.09.2000 and appointed me as Arbitrator by order dated 09.11.2006 for settlement of the aforesaid dispute by arbitration.

### 3. Background facts

Mr. Kapila Dissanayake Asst. Director General had appeared for Sri Lankan Airlines Ltd., and Mr. A. Vinayagamoorthy, Attorney at Law had appeared for Mr. T. Raveendran.

The Registrar of the Industrial Court had sent a notice to the parties on 08.12.2006 calling for statement under Regulation 21(1) of the Industrial Disputes Regulations 1958 as amended. In response to this notice Mr. Kapila Dissanayake Asst. Director General Employers' Federation of Ceylon has sent a reply on 14.12.2006 on behalf of Sri Lankan Airlines Ltd., a member of the Employers' Federation of Ceylon stating, *inter alia*, as follows. :-

- (i) The matter was taken up for inquiry and concluded before Mr. S. Ediriweera on 27th July, 2003.
- (ii) Thereafter parties had rendered written submissions and marked documents to facilitate the Arbitrator making the Award.
- (iii) In these circumstances no useful purpose would be served in filing fresh statements by parties and the case be called on a convenient date before the new Arbitrator in order decide on the course of action to be taken.

When the case was called before me on 09.01.2007, Mr. Raveendran was present and stated that his Attorney at Law Mr. A. Vinayagamoorthy was sick. Mrs. Ransirini Panditharatne from Employers Federation of Ceylon appeared on behalf of Sri Lankan Airlines Ltd., Mrs. Thushari Perera, Senior Human Resources Executive was present on behalf of the Company. The course of action to be taken was discussed with both parties. It was agreed by both parties that the Award be made by me having examined the entirety of the Case Record, written submissions and marked documents Both parties signed the Case Record in my presence signifying consent for me to proceed to make the Award. I am therefore taking action to make the Award.

### 4. Relevant Facts

It is common ground that—

- (i) T. Raveendran joined the company as a trainee in 1990.
- (ii) He was appointed Asst. Aircraft Technician on 24.06.1991. Letter of Appointment is marked as A1.
- (iii) He was upgraded and retitled as Aircraft Technician on 24.12.1991. This is marked as R2.

(iv) He was confirmed on 24.06.1992.

(v) He was arrested by Terrorist Investigation Department (TID) on 26.03.1999. This is marked as R3.

(vi) He was produced before the Magistrate Colombo and remanded. Letter of 28.05.1999. This is marked as R4.

(vii) He was interdicted by letter dated 08.06.1999, effective from 26.03.1999.

(viii) His services were terminated by letter dated 18.06.1999.

(ix) He was interdicted and his services were terminated while he was in remand.

Termination of employment of T. Raveendran was admitted by Sri Lankan Airlines Ltd., The burden is on Sri Lankan Airlines Ltd., to being the case lead evidence and justify the termination of employment of T. Raveendran. The company led the evidence of—

- (i) Rohini de Silva Human Resources Manager Legal.
- (ii) Don Lal Titus Kannangara Security Manager Administration and Operations.
- (iii) D. J. A. P. Mohan Perera Asst. Base Maintenance Manager.
- (iv) Mrs. Renuka Bowie Manger Financial Planning and Accounting

and closed the case marking documents R1 to R14.

T. Raveendran gave evidence and marked documents A1 to A8. Both parties have tendered written submissions along the documents marked in evidence. I have read the proceedings and examined the written submissions and the documents marked in evidence and I now switch on to evaluation of the evidence in order to decide whether termination employment of T. Raveendran is justified.

### 5. Sequence of events leading to termination of employment of T. Raveendran.

It is considered appropriate to deal with the sequence of events which led to the termination of employment of T. Raveendran who was employed from 1990 in Sri Lankan Airlines Ltd., by letter dated 18.06.1999.

- (i) By letter dated 30.03.1999 Mr. J. M. U. Goonewardane Senior Manager Security and Investigation Air Lanka Ltd., wrote to Senior Manager Eng. and Maintenance - Actg. Manager HRD that T. Raveendran has been arrested and is presently in the custody of the Terrorist Investigations Department (TID) of Sri Lanka Police. It is also stated in this letter that it is

alleged that he is closely connected to several high ranking members of the LTTE including the intelligent staff operating in Colombo and further inquiries are being conducted by the TID in this regard. This is marked as R3.

(ii) Director Terrorist Investigation Dept. of Sri Lanka Police N. G. Wickremasinghe has sent a letter dated 28.05.1999 to J. M. U. Goonawardane, Senior Manager Security and investigation Air Lanka Ltd., Wherein it is stated *inter alia* as follows—

(a) T. Raveendran Air Craft Technician was arrested on 22.03.1999 by officers of TID in connection with an ongoing investigation into terrorist (LTTE) activities in and around Colombo.

(b) Investigations revealed the he had been in close contact with a very prominent LTTE Intelligence Wing member who was in charge of the LTTE network in Colombo and had agreed to support the LTTE in their activities.

(c) This suspect (T. Raveendran) was produced before the Magistrate Colombo and remanded to the Fiscal custody.

(d) He could be considered as a security threat in a High Security Zone such as Katunayake International Airport. This is marked as R4.

(iii) By letter dated 08.06.1999 ( eleven days after the letter 28.05.1999 marked as R4) he was interdicted by Actg. Manager Human Resources Development Air Lanka Ltd., The reason given for interdiction in this letter of 08.06.1999 is given in the first sentence which reads as follows:

“It is reported that you have been taken into custody by State Law Enforcement Authorities in connection with an Investigation conducted by them. In view of this, you are interdicted from service with effect from 26.03.1999”.

This letter also states that he will be on no pay and that he is strictly prohibited from entering any of the Air Lanka premises and further that he is not entitled to any travel privileges until completion of DISCIPLINARY PROCEEDINGS AGAINST YOU”. This is marked as R5.

(iv) J. M. U. Goonawardane Senior Manager Security and investigations Air Lanka Ltd., has sent a letter on 14.06.1999 to Senior Manager Human Resources Development strongly recommending that Raveendran’s services be terminated forthwith since the TID is of the view that he could be considered a

security threat. A report from Director TID in respect of the involvement of Raveendran in LTTE activities is attached to this letter which is marked as R6. The REPORT HAS NOT BEEN MARKED.

(v) By letter dated 18.06.1999 marked as R7 the services of T. Raveendran had been terminated effective from 26.03.1999 - the date of interdiction. The reasons for termination is given in this letter as follows:

“It is reported that you have been taken into custody by State Law Enforcement Authorities and produced before the Magistrate Colombo and Remanded to the Fiscal Custody. In view of the above, your services are terminated with effect from 26.03.1999.”

#### 6. Evidence of Respondent in support of its decision to terminate employment of T. Raveendran.

It will be seen from the foregoing paragraph in relation to sequence of events leading to termination of employment that there are serious allegations against T. Raveendran according to R6 dated 14.06.1999 sent by J. M. U. Goonawardane Senior Manager Security and Investigations Air Lanka Ltd., to Senior Manager Human Resources Development Air Lanka Ltd., where at he had strongly recommended that T. Raveendran’s services be terminated forthwith since the TID of the Police is of the view that he should be considered as a security threat. He has also forwarded a Report regarding the LTTE activities of T. Raveendran which was not marked in evidence. Despite the serious allegations contained in a Report and also the strong recommendation that as he is a security threat his services be terminated, it is surprising that the reason given for termination of employment in R7 is.

(i) Taking into custody by State Law Enforcement Authorities.

(ii) Producing before Magistrate Colombo

(iii) Remanding.

It is not known as to why it was not stated in the letter of termination of employment the allegations of serious nature against him and the fact that he was a security threat. The reasons given by the company for termination of employment are far from satisfactory and not acceptable at all. The termination of employment of T. Raveendran for the reasons stated in the letter of termination of employment is unjust unfair and unreasonable.

6.1 I wish to examine the evidence led by the company with particular reference to the serious allegations against him for which he is considered a security threat. The evidence of Mrs. Rohini de Silva Human Resources Manager (Legal) was *inter alia* that—

- (i) T. Raveendran was taken into custody on 26.03.1999 and released on 01.12.1999. - Page 12 of the proceedings of 08.03.2002.
- (ii) He was not served with any charge sheet. Page 04 of the proceedings of 22.05.2002.
- (iii) His explanation was not called. Page 05 of the proceedings of 22.05.2002.
- (iv) Disciplinary inquiry was not held page 03 of the proceedings of 22.05.2002.
- (v) An independent investigation was not done by Company in order to satisfy itself that he had connection with LTTE but the company went on the reports. Page 08 of the proceedings of 08.03.2002.
- (vi) To a question posed to her under cross-examination "But he was completely released" her answer was — "Yes". It states that there is no sufficient evidence to take action against him" page 12 of the proceedings of 08.03.2002.
- (iv) After he had started work as Air Craft Technician till he was removed there was no complaint against him regarding his work. Page 09 of the proceedings of 22.05.2002.

The evidence of Mrs. Rohini De Silva confirms that his services were terminated without—

- (i) Calling for explanation from him
- (ii) A charge sheet being issued to him
- (iii) An independent investigation regarding allegations against him, although the letter of interdiction refers to disciplinary proceedings.

Her evidence is that there was no complaint against him regarding his work during the entire period of his employment at Air Lanka Ltd., Her evidence is of no value to establish the allegations against him but it is helpful to him in relation to his record of work.

The next witness Mr. Don Lal Titus Kannangara Security Manager Adm. and Operation of the Company has stated in his evidence that on 08th August, 1995, LTTE was able to send a vehicle bomb in a van to the Airport by luckily that vehicle bomb did not explode completely and only side damages to the Airport area. Page 17 of the proceedings of 25.09.2002.

He has also said in evidence that in 1995 Raveendran was working in Air Lanka at the time of the incident. To the following question under cross-examination.

*Q.* To your knowledge did the investigations with regard to the 1995 incident reveal that this workman (Raveendran) had any connection. He had given the answer-

*A.* To my knowledge there was no connection.

To the following question posed to him under cross-examination.

*Q.* Until this person (Raveendran) was taken into custody did you receive any adverse report against him his answer was "No such reports".

His evidence is very helpful to Raveendran. It does not go to establish the charges against Raveendran but it goes to prove that his past record was good in that there was no adverse report against him.

D. J. A. P. Mohan Perera Asst. Base Maintenance Manager has stated in evidence that Raveendran has done maintenance work in Air Crafts and the employee who does this work must be trustworthy. He has confirmed that Raveendran as Air Craft Technician was under close supervision and he was not found wanting anytime. His evidence too helps Raveendran but does not go to establish that charges against him.

The last witness Mrs. Renuka gave evidence regarding financial position of the company but her evidence is not relevant to prove the charges against T. Raveendran.

#### 7. Evidence of T. Raveendran

- (i) He did a course in Aeronautical Engineering for 03 years and he went for a course of Training in Madras and in Air Lanka.
- (ii) He was employed from 1990. He was a confirmed Aircraft Technician.
- (iii) He was not found guilty of any offence anytime.
- (iv) He was arrested by Terrorist Investigation Department (TID) on 26.03.1999 and released on 01.12.1999 on the order of the Magistrate.
- (v) He was interdicted on 08.09.1999 without his explanation being called.
- (vi) His employment was terminated on 18.06.1999.
- (vii) An Attorney at Law wrote to company on 21.12.1999 on behalf of T. Raveendran asking for re-instatement with back wages stating *inter alia* that -
  - (a) His client was taken into custody from his residence by TID Police without any justification or reason on 26.03.1999 and was unlawfully detained till 28.04.1999.



- (b) On 28.04.1999 he was produced before Magistrate Colombo and remanded awaiting instructions from Attorney General.
- (c) His client has filed an application in the Supreme Court for violation of fundamental rights Case No. FR 453/99. When it came up for inquiry, Attorney General informed Court that as no case has been made out against T. Raveendran, steps are being taken to have him discharged and exonerated from all proceedings.
- (d) Accordingly Attorney General has issued directions to the Magistrate Colombo to order the discharge of T. Raveendran and therefore the Learned Magistrate discharged T. Raveendran on 01.12.1999.
- (e) Raveendran is therefore totally innocent and he is therefore entitled to be re-instated with back wages. This is marked by him as A5.
- (viii) On 21.02.2000 T. Raveendran wrote to the company drawing its attention to the letter of 21.12.1999 written on his behalf by the Attorney at Law (A5) and asked for re-instatement. This is marked by him as A6.

In response to the two letters A5 and A6, the Manager Employee Relations wrote to Raveendran on 14.03.2000. This letter reads as follows—

“Dear Mr. Raveendran,

Reference is made to the letters of 21.12.1999 and 21.02.2000 the contents of your letters have been carefully considered and the company is in the process of gathering information with regard to your arrest in order to ascertain the state of incidents taken place aftermath of your arrest by State Law Enforcement Authorities.

We will make appropriate action accordingly no sooner we receive feedback from the relevant authorities.

Please be guided accordingly.

L. D. V. GUNASEKARA,  
Manager Employee Relations.

This is marked as A 7.

- (i) He was never a security threat.

## 8. Analysis of Evidence led

The evidence of the witnesses of the company is weak and totally inadequate to establish the serious allegations against T. Raveendran. In the letter A7 dated 14.03.2000 he was informed that appropriate action would be taken as soon as it receives feedback from the relevant authorities. No follow up action was taken by Sri Lankan Airlines Ltd., an adverse inference has to be necessarily drawn against it for its conspicuous silence in this regard. There was not even an iota of evidence against him in relation to the allegation of involvement with LTTE or security threat. The Attorney General has confirmed that there is no case against Raveendran. Termination of employment of T. Raveendran when he was in remand without a formal inquiry or show cause letter is an unfair labour practice. His past record was good in that he had not even a single warning. There was no evidence of any involvement of any kind in LTTE activities in his entire career with the company. In relation to R3 from J. M. U. Goonawardane Senior Manager Security and Investigation of the company and R4 from Director TID Police it is observed that there are serious allegations. The company should have called these two officials and led their evidence to establish the contents of their letters. As the company had failed to do so, these allegations contained in R3 and R4 will have to be taken as baseless. T. Raveendran I find as in his written submissions filed in respect of this case cited some authorities on the principles of natural justice, issue of show cause letter holding of a domestic inquiry etc., I have given my consideration to them in making the Award.

On an overall analysis of the evidence led, I hold that the termination of employment of T. Raveendran by Sri Lankan Airlines Ltd. was unjustified and I go a step further to say that this decision of the company to terminate his employment was hasty and ill considered.

## 9. Relief

- 9.1 Now that I have answered the first limb of the matter referred for arbitration, I wish to switch on to the next limb i.e. Relief T. Raveendran has asked for reinstatement with back wages. His terminal salary for March, 1999 according to the statement dated 20.11.2000 filed by him is Rs. 34,009/- a month. In his evidence he has stated that the salary for March 1999 was Rs. 26,825/- and he has produced as A8 pay slip for March 1999. He was not cross-examined on A8. I therefore take it that his terminal salary was Rs. 26,825/- a month. He has given his age as 42 in his written submissions filed on 27.08.2003. His age now would be 45. In his

written submissions he has stated *inter alia* that with his training and knowledge he can only be employed in the Respondent Company which is the only national career in Sri Lanka. He has also stated in his written submissions that there has been a series of revision of salary in the company and he has lost all his promotions and also he has an unblemished record. The Respondent company has led evidence of Erodini Renuka Bowie, Manager Financial Planning and accounting and marked as R14 the Audited Annual Report for 2001/2002 which showed operating loss. This witness was not cross-examined. This case was concluded on 25.07.2003 and submissions were tendered in Sept. 2003. The Award has not been made by Mr. Ediriweera for more than three years. The forgoing matters in para (1) will have to be given consideration by me when making the Award.

## 9.2 Just and Equitable Concept

Section 17(1) of the Industrial Disputes Act, No. 43 of 1950, as amended, deals with the duties and powers of an Arbitrator, to whom a dispute is referred for arbitration. The duty of the Arbitrator under the Industrial Disputes Act is to make an Award which is just and equitable. The meaning of these two words "Just and equitable" is not given in the Industrial Disputes Act or even in the constitution of Sri Lanka 1978. There has been a series of judicial interpretation by the Supreme Court of Sri Lanka and abroad in relation to the concept of 'just and equitable'. Some are given below:

Justice T. S. Fernando has stated as follows in Richard Peiris & Co. Ltd. Vs. Wijesiriwardane (1961) 62 NLR 233 at 235.

"Justice and equity can themselves be measured not according to the urgings of a kind heart but within the frame work of the Law"

In Peris Vs. Podisingho (1970) 78 CLW 46 at 48 Kretzer J has stated that -

"the test of a just and equitable order is that those qualities would be apparent to any fair-minded person reading that order"

In Elmo Rex Lord Vs. Eksath Kamkaru Samithiya SC 37/99 decided on 07.03.2001 Justice Amarasinghe has stated as follows :

"The law relating to employment is not a one way street. Justice fairness and equity must be meted out even handed by to employees and employers alike".

In this case of T. Raveendran, where it has been held by me that termination of his employment is unjustified, I am inclined to think that his claim for re-instatement could be considered with reference to the following matters. -

- (i) His past record is good and there is no evidence of any single incident in his entire working career which is connected to the charge leveled against him.
- (ii) He has a specialized training in Aeronautical field and at this age of 45 the avenues of securing employment in this field are not available.
- (iii) Sri Lankan Airlines Ltd. being the only national career, he will not be able to find alternate employment anywhere.
- (iv) He has lost salary revisions.

## 9.3 Re-instatement when awardable

I wish to address my mind to the following judgments of the Superior Courts which state when re-instatement is awardable. Bank of India Ltd. Vs. LAT 1955 (2) LLJ 214 (cal) deals with the powers in regard to re-instatement. Held -

"The normal rule should be re-instatement. The past record of the employee the nature of the alleged, present lapse and the grounds on which the order of the management is set aside are also relevant factors for consideration"

In the case of workman employed in Ennore Foundries Ltd. Vs. Manager of Ennor Foundries Ltd. 1970 (2) LLJ 222 and 227 Held -

"The normal relief in cases of unjustified dismissal is re-instatement and compensation in lieu is awarded only in special or exceptional circumstances"

In Brooke Bond (Ceylon) Ltd. Vs. Tea Rubber Coconut and General Produce Workers' Union (1974) 77 NLR 6.

Held - "A workman's past record is relevant to the issue of re-instatement and may result in an order for compensation even where termination is unjustified".

The Fundamental Rights Case No. 54/95 filed by Sivagnanam Satkunanathan in the Supreme Court against the Dept. of Telecommunications decided on 30.01.96 is relevant to this case of T. Raveendran as the facts are similar or identical.

**The facts of this case are precisely as follows :**

S. Satkunanathan, a Clerk in the Telecommunication Dept. was arrested on 24.04.91 on suspicion of subversive activities. He was released on 27.08.92 because there was no evidence against him. He was not allowed to resume employment upon his release from detention.

It was common ground that no formal inquiry was held. The Respondent has not given any reason for not holding the inquiry but stated that the National Intelligence Bureau NIB had not recommended re-instatement or given him security clearance. According to Director NIB inquiries had revealed that petitioner's brother was the Deputy Leader of the LTTE and that "under these circumstances it would be prudent to consider whether the re-employment of the petitioner would not constitute a threat to national security". He did not say that the petitioner was a security risk. No inquiry was held into this matter. The Report of the Commissioner for the Elimination of Discrimination and Monitoring of Fundamental Rights states that the Secretary/Telecommunication "frankly concedes that there is no material evidence available to the Ministry to implicate the petitioner in subversive activities".

The Deputy Solicitor General stated that the Respondent undertakes to permit the petitioner to resume employment as a Clerk in the Telecommunication Dept. in the post which he held in April 1991 or if that post is not in Sri Lanka Telecom in the corresponding post on the basis that he is required to serve in any part of Sri Lanka.

This case was settled on the basis that he is re-instated with arrears of salary from 24.04.91. J/Fernando made judgment confirming the settlement was reasonable. In the fundamental rights case referred to above. It has been stated that the petitioner's (Satkunanathan) brother was Deputy Leader of LTTE but in so far as Raveendran is concerned, it is not stated that any of his relatives are in the LTTE. It is noted that Satkunanathan was ordered arrears of salary from 24.04.91 to 30.01.96.

**10. Conclusion**

Taking into consideration, the totality of the circumstances surrounding this case with particular reference to the evidence led and the reason adduced by Sri Lankan Airlines Ltd. for terminating T. Raveendran's employment and the authorities cited by me in the preceding paragraphs, I make award that -

- (i) T. Raveendran is re-instated in employment by Sri Lankan Airlines Ltd. with effect from 26.03.2007 with four years back wages (Rs. 26,825 x 48) amounting to Rs. 1,287,600 (Rupees One Million Two Hundred and Eighty-seven Thousand Six Hundred only)
- (ii) The period T. Raveendran was out of employment (26.03.1999 to 26.03.2007) be treated as continuous and uninterrupted for purposes of seniority, promotions, gratuity and other employment related benefits.
- (iii) T. Raveendran is placed on the appropriate point of scale as if he had remained in employment continuously and without interruption from 26.03.1999 onwards.

It is ordered that the sum of Rs. 1,287,600 (Rupees One Million Two Hundred and Eighty-seven Thousand Six Hundred only) is deposited by Sri Lankan Airlines Ltd. Katunayake with the Asst. Commissioner of Labour, Labour Office, Negombo on or before 26.03.2007 for payment to T. Raveendran.

T. Raveendran is free to withdraw the monies once the deposit is made.

I declare that this Award is just and equitable.

V. VIMALARAJAH,  
Arbitrator.

22nd January, 2007.

03-194

My. No.: W105/01/2003.

AWARD

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131**

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Sri Lanka Nidahas Sevaka Sangamaya, (Estate section) 301, T. B. Jayah Mawatha, Colombo 10 of the one part and Udapussellawa Plantations Limited, 186 Vauxhall Street, Colombo 02 and Superintendent Mahaussa Estate, Madulkelle of the other part was referred by Order dated 15.12.2003 made under Section 4 (1) of the Industrial Disputes Act., Chapter 131, (As amended) and published in the Gazette of Democratic Socialist Republic of Sri Lanka Extraordinary No. 1321/10 of 30.12.2003 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

D.S. EDIRISINGHE,  
Commissioner General of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05.

29th January, 2007.

REF : W 105/01/2003.

**In The Matter of the Industrial Dispute Between**

Sri Lanka Nidahas Sevaka Sangamaya,  
(Estate Section)  
No.301, T. B. Jayah Mawatha,  
Colombo 10.

.....Applicant.

Case No :  
A 3019

And

1. Udapussellawa Plantations Limited,  
No. 186, Vauxhall Street, Colombo 02.

2. Superintendent,  
Mahaussa Estate Madulkelle.

.....Respondents.

Dated this 11th day of January 2007.

The Honourable Minister of Labour by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, Chap. 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Act., Nos. 14 of 1957, 63 of 1957, 4 of 1962 and 39 of 1968 (read together with the Industrial Disputes (Special Provisions) Act., No. 37 of 1968 has appointed me to be the Arbitrator and referred the following dispute to me for settlement by Arbitration:

“ Whether the transfer of only (04) officers employed at Mahaussa Estate, Madulkelle of the Udapussellawa Plantations Limited, namely, K. Wijeratne, M. Sundaram, V. Muttukrishnan and K. Suresh Kumar who are members of the Sri Lanka Nidahas Savaka Sangamaya, treating them as excess employees in the restructuring process in the said estate is just and fair, or if not, to what relief each of them is entitled”.

The Applicant Union on behalf of the four workmen, namely K. Wijeratne, M. Sundaram, V. Muttukrishnan and K. Suresh Kumar, state that the transfer of these four workmen from the Mahaussa Estate which is controlled by the first Respondent Udapussallawa Plantations Limited has been done due to their being members of the Applicant Union, the Sri Lanka Nidahas Sevaka Sangamaya on grounds of political victimization as against some other members of a different trade union whose name is not mentioned by the Applicant union in the present statement;

The Respondent- Udapussellawa Plantations Company Limited and the Superintendent, Mahaussa Estate, in filing their responses state that these transfers were necessitated by a restructuring programme of the Mahaussa Estate. They argue that the restructuring of the Management of the estate was necessary since the estate being a small one, cannot financially shoulder the present burden of excess employees. They also argue that by means of these transfers they afforded an opportunity for the younger workmen to further their individual careers in the plantation industry and also that these transfers were done taking into account the principle of “last to come first to go”. The Respondents deny any allegation of political victimization.

The above dispute was heard by the undersigned on 10 dates of hearing and both Parties led the evidence of several witnesses. The Applicant Union marked documents A 1 to A 34 while the Respondents marked documents R1 to R17 and RXI, RX2, RXA and RY.



The thrust of the Applicant Union's argument was that the four transfers from its membership was done for the reasons of political victimization and not with any view to restructuring the economic aspects of the estate. They raised the question that if the transfers were done for the sake of economic restructuring and on the principle of the last to come first to go. Why was a junior officer named Dinesh Rodrigo, who was more junior than the officers who were transferred, not transferred also?

At the commencement of the hearings, the applicant Union informed Court that two of the persons named by them in the dispute and members of their union, namely K. M. Wijeratne and K. Sunderam, were no longer interested in the proceedings and had withdrawn from the proceedings. In fact it transpired that Wijeratne had applied and obtained the transfer in question on his own request and that K. Sunderam had also accepted the transfer without protest. Thus the dispute centred round the transfers of V. Muttukrishnan and K. Suresh Kumar only.

The Applicant Union's main contention was that the transfers were based on the fact that the two officers in question were members of the Applicant Union, the Sri Lanka Nidahas Sevaka Sangamaya, and that these transfers were the result of political victimization. The Applicant Union though it led the evidence of the two employees concerned and marked documents from A1 to A34, did not show any cogent arguments to substantiate that these transfers bore a political flavour. They merely cited the case of the non transfer of one Dinesh Rodrigo who they contended was more junior than the two officers who were transferred.

The Applicant Union marked several documents to show that they had made representations of these transfer to the Commissioner General of Labour and that two inquiries were conducted into these complaints by the department.

The Applicant Union failed to cite any other reasons such as any punishment that may have been meted out in the past to their membership to prove victimization except the fact that these four members belonged to the working committee of the Union. Neither did the applicant union produce any evidence to show previous instances if any, of political victimization of these members or other members, if any, of its union by the Respondents.

The Respondents showed that they had transfer these 4 officers since the estate was not a viable financial unit as it was and therefore necessary to have its staff reduced to become financially viable in view of the fact that this estate

was much smaller in contrast to its other properties. It was pointed out that the Mahaussa estate contained 112 hectares of land but had 21 field officers in its employment, which made the estate top heavy. They also showed that these transfers were done on the basis of these transferees being given a fair opportunity to improve their future in the plantation sector by going into estates where there would be more work from which they would gain more experience, working in larger estates. The Respondents also argued that the four transferees did not have their status, nor housing facilities or salary reduced and therefore they made sure that the 4 transferees did not lose any of the benefits they were enjoying at the time of their transfers from Mahaussa estate.

The management also argued that in deciding on the transfers, they took into consideration that the transfers would be effected to estates in the area and where housing would be available to them. The Respondents contended that the transfers of M. Sandanam, V. Suresh Kumar and V. Muttukrishna were done on the said basis and taking into account the availability of housing in Duckwari and Yatawatte estates. It was argued that in terms of clause 19 of the Collective Agreement between the Parties these officers were issued letters of transfers giving them 3 months notice of transfer. The transfers were also in accordance with the letters of appointment of these transferees. The Respondents in their evidence showed that in the case of K. M. Wijeratne, he was a senior field officer in receipt of a monthly salary of Rs. 13,180/- and the payment of such a salary to an employee of Mahaussa estate was not considered financially viable. However, the Respondent showed that this transfer had been done at the request of Wijeratne and not for any other reason.

It was by argued by the Applicant Union that the transfer of these four officers was done with malice since they belonged to the applicant's trade union. However, the contention of the Respondent that these transfers were done due to financial viability of running Mahaussa estate and also taking into account that they were afforded housing facilities at Duckwari and Yatawatte estates show that there was no malice nor *mala fides* in the transfers done by the Respondents. The Respondent argued that it was in the sole position of managing its business successfully. It has to be pointed out that in the Indian Case *Canara Banking Corporation Vs. U. Vittal* (1963) (7) FLR 184 it was held by the Supreme Court of India that the "management is in the best position to judge how to distribute its man power..." From this point of view I agree that the Respondents had the right to transfer these officers for the reasons contended by the management of the Respondents. I do not see any malice or political victimization in the act of the Respondents in transferring these officers from Mahaussa to Duckwari and

Yatawatte estates.

Besides, the transfers of these officers had not caused any financial loss to them because neither status in their jobs nor their salaries had been reduced. For example, in document RY the Respondent shows that both Suresh Kumar and Muttukrishnan had accommodation available to them. The argument that these transfers caused the disruption of the education of the children and that, in one case, that living in two places would cause financial burdens, is unacceptable since on the one hand, the schools are located in the same area, and on the other hand, the aged parents of these workmen could still live with them in the new accommodation made available to them. Documents RXA and RY show that these officers selected for transfer had a record of good work and that there had been no punishments given to them during their terms of office. Thus the argument of the applicant union that the transfers were done out of political victimization is untenable. Besides, the union did not provide any documentary nor oral evidence to prove political victimization.

The Applicant Union in concluding its written submissions state that they had submitted representations to the Secretary Ministry of Labour and the Commissioner General of Labour alleging unfair transfers, and two inquiries had been held into these representations by a Deputy Commissioner of Labour vide documents A12 and A13, By A12, the Deputy Commissioner of Labour has merely recommended that the dispute referred to him be submitted to the Human Rights Commission of Sri Lanka. It is well known that the Human Rights Commission of Sri Lanka addresses questions

where there has been an infringement or the imminent infringement or a violation of any fundamental rights enshrined in the Constitution of Sri Lanka. It is my considered view that the transfer of any officers from one station to another within the same area and in accordance with the terms of their employment, would not entail a violation of a fundamental right. Re A13, the Deputy Commissioner has recommended that these matters be referred to arbitration. It is clear therefore that the Department of Labour did not take the representations made by the applicant union too seriously. Unfortunately, the applicant union has been unable to submit any documentary or sufficient oral evidence to prove the allegation of political victimization, which otherwise could be a serious allegation.

#### Award

In the premises, taking all the facts and circumstances into consideration and on a balance of probabilities, the transfers of M. Sandanam, V. Muttukrishna and K. Suresh Kumar do not reveal any political victimization. In the case of Wijeratne, the transfer was in accordance with his own request. I agree that the Respondents carried out the transfers of these officers as part of the re-structuring of the estate to enable a small estate like Mahaussa to become financially viable and that these transfers were just and fair. Therefore I make no award.

Dr. V. IWIN JAYASURIYA,  
Arbitrator.

03-195