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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 2188/37 – THURSDAY, AUGUST 13, 2020

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/10/84/2013.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. M. W. A. S. B. Rambukwella, No. 22B/4, Rukmalgama Housing Scheme, Kottawa, Pannipitiya of the one part and Industrial Development Board of Ceylon, No. 615, Galle Road, Katubedda, Moratuwa of the other part was referred by order dated 27.09.2016 made under section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1987/14 dated 04.10.2016 for Settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

A. WIMALAWEERA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
29th July, 2020.



In the matter of an Industrial Dispute*Between,*

Mr. M. W. A. S. B. Rambukwella,
No. 22B/4,
Rukmalgama Housing Scheme,
Kottawa,
Pannipitiya.

*Of One Part**Case No. A/3666**and*

Industrial Development Board of Ceylon,
No. 615, Galle Road,
Katubedda,
Moratuwa.

*Of Other Part***THE AWARD**

The Honourable Minister of Labour and Trade Union Relations by virtue of the powers vested in him by Section 4 (1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 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 27th September 2019 and referred the following disputes to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties are:-

Whether the claim made by Mr. M. W. A. S. B. Rambukwella who is working as the Chief Security Officer of the Industrial Development Board of Ceylon from 03.09.2001 that he had been caused injustice by being appointed to the post of Chief Security Officer as a new appointment from 01.07.2014 and being deprived of the promotions and salary increments as a result is justified and if so, to what relief he is entitled.

Appearance:

Mr. Gratian Silva
Representative appeared for the Party of the First Part

Mrs. K. H. Nayana Kanthi Peiris
Legal Officer for the Party of the Second Part

Both parties have filed the statement under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

Mr. M. V. A. S. B. Rambukwella, the Applicant in his evidence stated as follows:

The Applicant joined the Sri Lanka Police Department in 1976 as a constable and in 1978 he was promoted as a Sub Inspector and later promoted as an Inspector of Police.

The Applicant joined Industrial Development Board on 01.04.2001 as a Chief Security Officer on casual basis. The said letter of appointment is marked A01 and A01(a) respectively.

On 30th July, 2001, there appeared an advertisement in Daily News for the Post of Chief Security Officer, marked as A 02.

After the interview was held, he was recruited for Grade V with an undertaking to be promoted to Grade V marked as A 03, on 06.10.2004 he was made permanent to the said Post as at 03.09.2001. The Applicant said he sent a letter to Respondent requesting him to be place in Grade IV marked as A 05 (X 4).

The Responded stated that they have not received X 4. And it has not gone to the Applicant's Personnel file.

The Applicant wrote again on the same matter to the Respondent on 04.07.2008, marked as A 06.

The Applicant has further written to the Respondent on 23.11.2009 on the same matter, marked as A 07.

The Applicant also marked list of duties assigned to him as at 29.10.2002 as A 08.

Annexure to A 08 dated 26.11.2002 was sent to the Applicant marked as A 09.

Again letter was issued on revision of salary according to Public Administration Circular No. 09/2004 dated 26.02.26. Marked as A 11.

The Applicant marked new circular No. 30 dated 28.12.2006 in respect of New Salary Scheme mared as A 12 and the correction of the aforesaid letter was marked as A 13.

New Salary revision of Industrial Development Board of 2006 was marked as A 14.

The letter sent for the interview for promotion dated 13.05.2014 marked as A 15.

The letter dated 24.07.2014 to appoint as Chief Security Officer was marked as A 16.

The letter sent by the Applicant on 02.07.2014 to the Director Administration in respect of the above Appointment was marked as A 17. And the follow up letter dated 18.11.2014 was marked as A 18. The letter issued by the Director Administration dated 30.11.2012 in respect of the retirement of the Applicant is marked as A 19. After extending of the Service, the letter of retirement issued to the Applicant is marked as A 20. The Applicant marked the letter pertaining to his Gratuity as A 21. The Applicant stated that he is requesting relief in respect of not placing him in a suitable salary scale in par with relevant grade. He said he has worked more than 15 years and he also received an award for his service. (A 23).

During the cross examination, the Applicant stated as follows:

The Applicant said, at first he came to know that there was a vacancy for the Post of Security Officer and he made an Application accordingly.

The letter, by which the Applicant was called for the interview is marked as A 24.

The Respondent marked the Application submitted by the Applicant as R 01.

The Applicant stated he joined the Police in 1976 as a Constable and he was stationed as a Sub Inspector attached to Maharagama Police Station 1978 to 1981.

The Respondent marked the Applicant service certificate as R 02.

The Applicant stated as per R 02 that the Applicant served as Reserve Inspector of Police for 14 years.

The Applicant further said even though he worked 16 years reserve Officer more than 16 years it was not mentioned in R 2.

The Applicant further stated that he worked as Police Inspector for 12 years.

The Applicant's covering Letter dated 08.08.2001 and the Application was marked as R 3, R 3a, R 3b and R 3c respectively.

According to R 3c for the period of 1992 to 1994, the Applicant underwent a further training. Applicant's Personal information is marked R 4 and according to that his termination of service is due to his leaving overseas for studies marked as R 4.

Letter dated 01.04.2003 issued by the General Manager,, requesting the Applicant to provide a letter of discharge from the Police Service was marked as R 5.

When inquired according to the document produced by the Applicant, he was de mobilized from the Police for 2 years starting from 22.11.1992, the Applicant had no reply.

The Applicant further admitted his annual salary increments were stopped for 6 months as the management was not satisfied regarding his service.

He further said it was due to be found corrupt activities of then General Manager. The Applicant admitted according to R 1a his salary was calculated at a rate of Rs. 400/= per day and paid monthly.

According to the letter of appointment A 1, the Applicant was suggested that his initial appointment was a temporary one and thereafter he was given permanent appointment marked A 03. The Applicant the heading of the R 03 is "Application for the Security Officer Grade 5", accordingly he accepted the Letter of Appointment marked A 03.

The Applicant admitted that he did not mentioned to Industrial Development Board that he has worked in Police Department since 1976.

The Applicant admitted according to R 6 he has mentioned that he joined the Police Department on 27.08.1978. The information was contradictory. The Applicant said in 2012 he was sent on compulsory retirement and his appeal he was reinstated.

In R 9, the Applicant was called for an interview to be Junior Manager (JM 1 - 10 Applicant stated he submitted R 10, covering letter and R 10 (a), Application for him to be placed on Junior Manager, J. M. 11 Post under internal promotion scheme.

During Re Examination, the Applicant stated as follows:

He said he worked in Police Department for a period of 16 years including his service as a reserve Police Constable.

When R 9 was issued the Applicant was holding post of Chief Security Officer, Indika Kolombage Arachchi, Administrative Officer, in his evidence has stated as follows:

The Witness said as per the Management Service Circular No. 30 (R 13) & R 13 A the Security Officer Post was categorized under JM 1 1 and there was no Chief Security Officer Post.

The witness further shown as advertisement appeared in Daily News in 2001 calling for applications for the Post of Security Officer.

According to R 3, the Applicant Rambukwella has applied for the Post of Grade 5, Security Officer.

The Witness further said since the Applicant has not fulfilled the necessary qualification laid down by the advertisement, the Applicant has violated the recruitment procedure.

According to R 3, the Applicant has submitted his application for the Post of Security Officer, Executive Grade 5.

According to R 13 submitted by the Respondent Industrial Development Board to the Management Service Department, the Post of Chief Security Officer was categorized under JM 1-1.

The witness further said, the Post of Chief Security Officer was established under direction of Management Service Department as segment MA-2, limited to the person who held the post, after him relinquishing the duty, the Post was automatically cancelled.

The witness further said when the Applicant was selected to the Post of Security Officer, JM 1-1, he was holding the Post of Chief Security Officer (MA 5-2) as per the letter dated 30.03.2012 of the Management Service Department (The said post was only applicable to the Applicant.)

During Cross Examination, witness Indika Kolamba Arachchi, Administrative Officer stated as follows:

- (i) The Applicant's letter of Appointment dated 10.04.2001, as Chief Security Officer was signed by the Chairman. (A 1)
- (ii) All salary slips produced for the years 2009/2010/2011 issued to the Applicant was designated as Chief Security Officer.
- (iii) A 03, letter of Appointment issued to the Applicant dated 29.08.2001 issued to the Applicant was designated as Chief Security Officer. (Grade 5)
- (iv) Marked as A 04, letter of confirmation by the Deputy General Manager dated 06.10.2004 of the above post.
- (v) Marked as A 10 letter dated 18.03.2004 issued placing the Applicant on new salary scale as per Public Administration Circular 15/2003
- (vi) The witness stated that salary of the Applicant was paid on the basis, that he was the Chief Security Officer.
- (vii) The witness stated in Cross Examination the Applicant has rejected the letter appointment dated 1st July 2014 (A16) by his letter dated 02.07.2014 (A 17). If the Applicant accepted A 16 since he was not placed in Executive Grade IV, he will be losing his salary increments.
- (viii) The witness stated A 19 was issued to retire the Applicant at the Age of 57 but it was not implemented and the Applicant retired at the age of 60 years.

In overall analysis of evidence I have come to following conclusions:

- (i) The Applicant was appointed as Chief Security Officer, (Casual) Executive Grade 5 as per letter of appointment dated 10.04.2001. (A 1)
- (ii) By letter dated 29th August 2001, the Applicant was appointed to the Post of Chief Security Officer, Executive Grade 5. (A 3)
- (iii) By letter dated 6th October 2004 the Applicant was confirmed to his Post. (A 04)
- (iv) By letter dated 06.03.2001, the Applicant was called for the interview for the Post of Chief Security Officer. (A 24)
- (v) The Applicant states by his letter dated 23rd November 2009, though he has worked 8 years as the Chief Security Officer he was denied Executive Grade IV entitled to him.
- (vi) The Applicant was issued letter of appointment dated 24.06.2014 (A 16) placing him on the salary scale (JM 1-1) which was rejected by the Applicant due to following reasons:
 - I. The Applicant was denied the promotion to Grade IV, although it has been 7 years since confirmed to the Post of Chief Security Officer.
 - II. He was absorbed to Grade JM 1-1 and placed on a lower salary scale subject to a probationary period and also lowered his position as to the Security Officer.
 - III. Altogether the applicant has worked 12 years as the Chief Security Officer after taking into totality of evidence, I have come to following conclusion:

- (a) The Respondent has acted unfairly and maliciously towards the Applicant denying him promotion to Executive Grade IV.
- (b) The Respondent has acted maliciously towards the Applicant placing him lower as the Security Officer, subject to a probationary period.

In the circumstances, I wish to quote majority decision of the Supreme Court in *State Bank in India vs. Edirisinghe* (1991) that the arbitrator has to make an award which is just and equitable, he is not tied down and fettered by the terms of the contract of employment. He can create new rights and introduce new obligations between the parties. The effect of the award is to introduce terms which become implied terms of the contract. It was pointed out that as industrial arbitrator creates a new contract for the future in contrast to a judge who enforces rights and liabilities arising out of an existing contract. An industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contrast to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the Respondent Industrial Development Board, (party of the second part) has caused injustice to the Applicant, M. W. A. S. B. Rambukwella. (party of the First part).

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part:

- (i) be paid a sum of Rupees Forty Four Thousand (Rs. 44,000/=) being arrears due on gratuity. (calculated as per A 22)
- (ii) be paid further some of Rupees Nine Hundred Forty Three Thousand Five Hundred Fifty and centst Forty One (Rs. 9,43,550.41) being financial loss to the Applicant not promoting him to the respective grade with effect from 03.09.2008 (calculated as per A 22(1)).

And the aforesaid money should be deposited by the Party of the Second Part at the office of the Assistant Commissioner of Labour, Colombo South.

I further make order that his award should be implemented within 21 days of the publication in the Government *Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award is just and equitable.

15th April 2020.

KAPILA M. SARATHCHANDRA,
Arbitrator.