

Article 12(1)



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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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எனது இல. }
My No. }

ඔබේ අංකය }
உமது இல. }
Your No. }

දිනය }
திகதி } 01-03-2018
Date }

M.H. Sarath, 14/7,
Kreedanganaya Road,
Makuluduwa, Piliyandala.

Complainant

Complaint Number : **HRC/3950/11**

Vs.

1. Chairperson, National Water Supply and Drainage Board, Galle Road, Ratmalana.
2. General Manager, National Water Supply and Drainage Board, Galle Road, Ratmalana.

Respondents

The Complaint

The Complainant states as follows:

- Since 2001 he had been attached to the Moratuwa Water Board.
- 50% of the water dispensed by the Water Board had been going to waste and by the Complainant's efforts, the Water Board was able to earn 8 million rupees as he apprehended large-scale industries who were taking water illegally.
- He was also able to discover frauds of some officers within the Water Board.

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இல 14, அர்த்த.அ.த. மலர் மாவட்டம், கொழும்பு - 08

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பிரதான அலுவலகம் }
Head Office }
165, කිංසි පාර, කොළඹ - 08.
165, கிளசிய வீதி, கொழும்பு - 08.
165, Kynsey Road, Colombo - 08.

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தவிசாளர் }
Chairman }
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மின்னஞ்சல் }
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- A new Officer in Charge was appointed to the Board and he brought false allegations against the Complainant and attempted to transfer him several times.
- He has not been able to obtain any promotions as a result of this.

The Respondent's Reply

The Respondent in their submissions dated 03.01.2012 and 29.05.2012 stated as follows:

- That the Complainant had been working at the Respondent institution from 02.11.1991 to 02.09.2011 at the Moratuwa Maintenance Division. He had received transfer orders in 2005 and 2008 and the Complainant had the transfers cancelled by writing of his difficulties.
- In 2011 he was placed in a Special Operations Division which was attached to the Moratuwa Maintenance Division. He was appointed as the Executive Officer.
- However, it was decided that he had to be transferred as he was working beyond his powers without control.
- He was thereby transferred on 03.10.2011 to Deputy General Manager (Colombo Central) on a service requirement. However, Division Head rejected this transfer and he was retransferred as Regional Engineer (Moratuwa).
- While there, he had written to the Head Office in order to be transferred and he was therefore transferred to the Head Office on 02.12.2011. Although the Division Head refused to accept the transfer, he allowed the Complainant to work there. This office is close to Moratuwa.
- The Complainant was not treated unfairly in this process.

The Complainant's further submissions

- That although the Respondents stated that he was initially transferred on a service requirement this was not mentioned in his transfer order.
- Further, in the transfer letter addressed to the General Manager of central Colombo there is mention that the Complainant be put to a place that needs his services (පුරප්පංඬු ඇති ස්ථානයක් වෙත අනුයුක්ත කිරීමට). Therefore, there was no service requirement in existence.
- He was informed two days later by the General Manager that there was no service need.

- His transfer letter was therefore amended and in the 2nd transfer letter dated 20.10.2011 he was to be transferred to the Greater Colombo Sewage Division. There is no mention of a service need in this letter.
- He received a third transfer letter to the Moratuwa Regional Engineer Office. There is no mention of a service need in this letter.
- Thereafter the Complainant met with the General Manager and requested to be transferred to the Head Office until the time of annual transfers. The Head of the Division however had notified the higher officers that there were no responsibilities to give the Complainant.

Observations

- According to Chapter 7 of the Public Service Commission Procedural Rules, Transfers occur in the following ways:
 - i. Annual transfers
 - ii. Service requirements
 - iii. Disciplinary reasons
 - iv. Mutual transfers at the request of the public servant

The Respondents claim that the Complainant was transferred on service requirements.
- Under the Procedural Rules regarding transfers on service requirements Section 218 states that the service requirements occur
 - i. When the services of the public servant is not required in his current duty station.
 - ii. When services are required to fill a service gap in another duty station.
 - iii. When for administrative reasons the services of the public servant are no longer relevant at the current duty station.
- The Respondents mention that the Complainant was conducted affairs beyond the powers given to him and they therefore decided to transfer him. This could be interpreted to mean that he was not required at his current duty station.
- In Section 219 of the Procedural Rules, it is specified that there must be an actual service requirement that is so urgent as to effect the transfer before the annual transfers. The Respondents have not made submissions on this urgency.
- Section 221 further states that when a public servant is to be transferred on service requirements the appointing officer must record all reasons for the transfer and inform these reasons to the public servant. There is no evidence presented as to the reasons for his transfer being communicated to the Complainant.

- Further, if the Respondents required a transfer, it is their responsibility to ensure suitable employment for the Complainant. Two Heads of the Divisions that the Complainant was transferred to had rejected the transfer due to none existence of a service need at the particular duty stations.

Conclusion

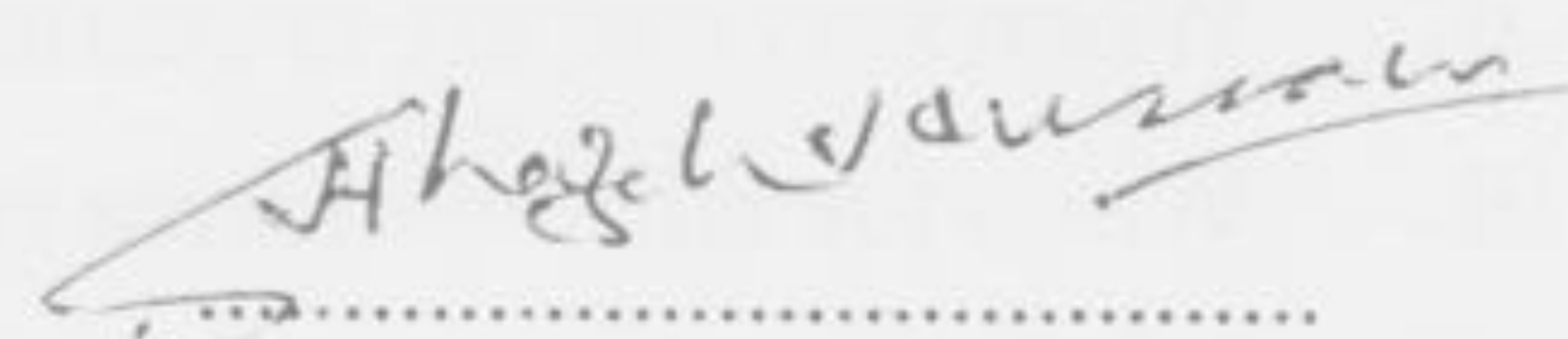
In the above circumstances, it is concluded that the Respondents **have violated** the Fundamental Rights of the Complainant guaranteed under Article 12 (1) of the Constitution.

Recommendation

- In terms of the provisions in Section 15 (4) (a) of the HRC Act, the Commission recommends the Respondents to annul the transfers made to the Complainant before the Complainant's annual transfer and provide the Complainant a suitable employment.
- In terms of the provisions in section 11 (g) of the HRC Act, the Commission recommends that the Respondents pay the Complainants a suitable sum as costs incurred by them for the complaint made.
- In terms of the provisions in Section 15(7) of the HRC Act, the Commission hereby require the respondent to report to the Commission the action taken to implement the recommendation on or before.....01-05-2018.....


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Saliya Pieris PC,
Commissioner
Human Rights Commission of Sri Lanka


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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka

1. Copy to -Secretary to the Ministry of City Planning and Water Supply

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.

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