



**CONCILIATION, MEDIATION AND ARBITRATION COMMISSION**  
**(CMAC)**

**HELD AT MBABANE**

**DSPT 1195/04**

In the matter between :-

**SIBUSISO T. DLAMINI**

Applicant

And

**ACCOUNTANT GENERAL**

1<sup>st</sup> Respondent

**PRINCIPAL SECRETARY – MINISTRY OF  
PUBLIC SERVICE & INFORMATION**

2<sup>nd</sup> Respondent

**THE SECRETARY – CIVIL SERVICE  
BOARD**

3<sup>rd</sup> Respondent

**ATTORNEY – GENERAL**

4<sup>th</sup> Respondent

**CORAM**

**ARBITRATOR**

**: Aaron M. Dlamini**

**FOR APPLICANT**

**: Mlungisi Simelane –  
Mandla Mkhwanazi &  
Associates**

**FOR THE 1<sup>ST</sup> RESPONDENT : Elliot Sihlongonyane**

**FOR THE 2<sup>ND</sup> RESPONDENT : Siphiwe Mhlanga**

**FOR THE 3<sup>RD</sup> RESPONDENT : Nhlanhla Vilakati**

**FOR THE 4<sup>TH</sup> RESPONDENT : Makhosonke Simelane**

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**ARBITRATION AWARD**

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**VENUE : CMAC – Mbabane**

**DATE OF ARBITRATION : 14<sup>th</sup> March 2005**

**RE: ALLEGED UNFAIR TREATMENT ON PROMOTION OPPORTUNITIES**

## **1. PARTIES AND HEARING**

1.1. The Applicant Mr. Sibusiso T. Dlamini was represented by Mlungisi Simelane from Mkhwanazi & Associates law firm. I shall refer to Sibusiso Dlamini either as Applicant, employee or just Mr. S.T. Dlamini as circumstances dictates.

The Respondents were represented in the following manner; Accountant General, by Elliot Sihlongonyane, the Accountant General himself; P.S. Ministry of Public Service and Information was represented by Ms Siphwe Mhlanga; The Secretary – Civil Service Board was not represented on this date; Attorney General was represented by Makhosonke Simelane a crown counselor. I shall refer to the Respondents as 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents or the Swaziland Government as and when circumstances dictates.

2.1 The parties convened the meeting on the 9<sup>th</sup> March 2005 for a pre – arbitration meeting in which the parties identified common cause issues namely that:-

1.2.1.Applicant was employed in April 1993

1.2.2.That Applicant was appointed to the position of storeman on engagement/ appointment.

1.2.3.That Respondent promoted Applicant to the position of storekeeper Grade 7 in or about 15<sup>th</sup> October 2004.

1.3. The parties further identified the issues which were in dispute which would need to be canvassed during the arbitration meeting namely:-

1.3.1 Whether Applicant hold the position of storeman or that of storekeeper.

1.3.2 Whether Applicant was initially promoted to Grade 7 on or about 19<sup>th</sup> January 2000 or not as claimed by Applicant.

1.3.3 Payment of all benefits in accordance with the alleged promotion retrospective from 19<sup>th</sup> January 2000.

2. The parties to the dispute agreed to share documents that would be used during the arbitration and such documents were to be delivered to each party not later than Friday 11<sup>th</sup> March 2005 at 10:00 hours with the proviso to introduce relevant documents even during the hearing itself to assist the arbitration process come to an informed decision.

3. On or about the 14<sup>th</sup> March 2005 the arbitration meeting commenced with all the parties present. The Applicant counsel applied for liberty to raise a point in limine in respect of developments that had occurred since the pre – arbitration meeting on 9<sup>th</sup> March 2005.

3.1. The arbitrator and the Respondents counsel did not have any objection to this application by Applicant counsel.

- 3.2. Applicant counsel submitted that he and his client had reconsidered their position in respect of discovery for relevant documentation to be used as evidence for the claimed promotion of 2000. Applicant was finding it difficult if not impossible to produce an original copy of the alleged letter of promotion dated 19<sup>th</sup> January 2000. Hence Applicant counsel applied that if it pleases the arbitrator that Applicant had considered abandoning the claim of alleged promotion of 19<sup>th</sup> January 2000 and that the parties concentrate on the issue that was not in dispute.
- 3.3. Further that if the Respondent counsel so agree that the arbitrator issues the award in accordance with the parties' common understanding.
- 3.4. The Respondent's counsel submitted that there was no objection in setting aside the issue of alleged promotion for 2000 for Applicant and concentrating on the logistics of the October 15<sup>th</sup> 2004 promotion. However, the Respondent's counsel submitted that their instruction was that the October 2004 promotion was not in dispute and hence is a matter that should be dealt with internally or outside the scope of this arbitration.

- 3.5. The Respondents counsel further submitted that what was not common cause though was the effective date of the promotion following that Mr. Dlamini, Applicant, had not resumed duties in compliance with the said October 2004 promotion. In the event the parties agree on the effective date of the said promotion of October 2004 there would be no reason to refer the matter back to CMAC.
- 3.6. Applicant counsel applied that the order by the arbitrator should include the fact that the promotion effective date be retrospective to October 2004.
- 3.7. Respondent counsel argued that the effective date was never part of the dispute and if the arbitrator would be asked to include that in the agreed award that would be acting ultra vires of what this arbitration set itself to achieve.
- 3.8. Following the above arguments the parties in the dispute agreed to have the award to read as follows as a means by which the dispute may be settled.

### **THE AWARD**

- 3.8.1 *That it is ordered that the Applicant abandon by consent the Applicant's initial claim for the alleged promotion dated 19<sup>th</sup> January 2000 but instead the parties accept the promotion as offered dated 15<sup>th</sup> October 2004.*

3.8.2 *That the issue of the effective dated shall be discussed by the parties internally.*

3.8.3 *That in the event the parties would not be able to get common ground on the effective date of the latter promotion the disadvantaged party would seek redress in the normal way.*

**3.9. The arbitrator has no reason to order any otherwise other than to order accordingly as stated above.**

**DATED AT MBABANE ON THIS ..... DAY OF MARCH  
2005.**

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**Aaron M. Dlamini**

**ARBITRATOR**