

**INTERNAL LETTER
NATIONAL SAVINGS BANK**

**From: Acting Deputy General
Manager (P & A)**

**Thro: General Manager
To : Chairman**

Interview for the Post of Regional Security Officer

I refer to the Chairman's minute dated 03.03.1995 on the above.

The Chairman has queried as to how interview panel gave 20 marks out of 25 marks to Mr. Wijesuriya for performance when he is having 3 adverse reports against him.

Mr. Wijesuriya was given 20 marks out of 25 marks for performance as he is doing very satisfactory work as a Security Officer, having being attached to Head Office and he also acts for the Security Manager when he is on leave or in the absence of the Security Manager.

Even responsible-wise, (re) whatever job is entrusted to him, he has done very satisfactory work during the past years and the Security Manager informed us that during the curfew days he was continuously in office when some others were not willing to take the responsibility, and he worked during night and day.

Considering these, he was given 20 marks out of 25 marks.

As regards the adverse reports, he has been severely warned on 11.08.1992. This is in relation to an incident that took place on 25.07.1992 when an outsider has come to the main gate in his car and there had been some cross-talk between the outsider and Security Guard – Mr. W. L. Kottearachchi when the Security Guard wanted to check his car.

Mr. Wijesuriya had been severely warned for trying to cover up the incident that took place between the outsider and the Security Guard – Mr. Kottearachchi.

Severe warning on 30.07.92 was on account of delaying a preliminary investigation report.

The suspension of increment by three months was also on this account. This increment has been subsequently paid.

For these adverse reports we have deducted 5 marks from the total marks.

He has been commended by the General Manager when two robbers tried to steal parts from a motor cycle which was parked just in front of the Bank. Mr. Wijesuriya had single handedly caught these 2 robbers and had taken them to the Police Station and a case had been filed against these two robbers and the case is pending.

In the case of Mr. N. D. N. Q. Perera, he has been commended by the Security Manager, when he found one of the workers working for a contractor who has undertaken some work in the premises of the Bank and when leaving the Bank after work and when Mr. Neville Perera did a routine check he had found that this workman trying to take away a bundle of wire about 100 metres in length out of the premises of the Bank.

Therefore the commendation given to Mr. Wijesuriya had been given in our opinion was for a more bravery act than for what Mr. Neville Perera had been commended.

Therefore Mr. Neville Perera was given only 5 marks out of the 10 marks ...

I seek your approval ... to promote the four security officers as Regional Security Officers accordingly.

Sgd.
Acting Deputy General Manager
(Personnel and Administration)

9th March 1995.

However the 7th respondent made the following order thereon, dated 14/3/95:-

*G.M.

I find it difficult to accept the explanation offered.

Therefore, I am reluctantly compelled to reject the recommendation of the interview Board.

I am taking action to appoint a fresh Interview Board with a Senior Official from the Ministry of Finance as Chairman."

The 7th respondent gave no reasons for rejecting the 2nd respondent's explanation.

It must be noted that, even if the 7th respondent's criticism was completely justified, yet the consequence was that, in regard to the petitioner, (a) the Board should have deducted 10 marks (instead of 5) for "adverse reports", and (b) the Board should have given him only 5 marks (instead of 10) for "commendations". If so, the petitioner would have had a total of 67 marks (instead of 77) and would still have been placed first (jointly) with the 5th respondent.

Regarding the question of adverse reports and punishments, the petitioner stated that the 3rd respondent had been given a warning on 27.12.94, for not being present at his duty point, and also for making false entries, and that he (3rd respondent) had also been found guilty for the offense of absenting himself from work without informing his office, for which offence he was placed on no-pay leave (p7. p7B, p7C).

With regard to the 4th respondent, the petitioner states that the 4th respondent's increments had been deferred for 6 months (P8A), and that the 4th respondent had also had a warning issued against him for failure to perform his duties and for the negligent manner in handling the tasks allocated to him (P8B).

With regard to the 5th respondent, the petitioner states that the 5th respondent had been warned by letter dated 5.2.81 (P9B) for not acting with responsibility and causing damage to motor bicycle 82 Sri 9069. The 5th respondent had also been severely reprimanded on 7.7.81 on being found guilty under Section 7(f) of the National Savings Bank Disciplinary Rules (P9). He (5th respondent) had also been warned for neglect of duty on 29.8.81 under Section 6(a) of the National Savings Bank Disciplinary Rules for failure to supervise the mounting and dismounting of guards at 23.59 hours. The petitioner makes no mention of any adverse reports or punishments against the 6th respondent.

The petitioner further states that he had authority to approve leave applications submitted by Security Officers, Assistant Security Officers and Security Guards; that he exercised the function of recommending the annual increments of Security Guards attached to the Head Office and that he was vested with the duty of preparing rosters in respect of the other security officers attached to the Head Office. The petitioner adds that the 3rd to the 6th respondents were vested with no such duties and had no experience in performing such functions. He states that taking all these factors into consideration, he was the most suitable candidate to be appointed to the post of Regional Security Officer.

The other matter the petitioner complains of is that for the purpose of the 2nd interview the 1st, 2nd and 7th respondents had changed the selection criteria and/or the scheme for awarding marks without prior notice to him.

The petitioner states that it was generally known in the 1st respondent Bank, that the basis for the giving of marks at the interview would be as follows:-

Years of service in the Bank	-	25	marks
Duties performed/work experience	-	25	marks
Work performance	-	10	marks
Educational Qualifications	-	10	marks
Performance at the Interview	-	15	marks
Personality	-	15	marks
		100	marks
Adverse remarks	-	less 10	marks

In reply, the 7th respondent sets out, (in para. 7 of his affidavit), the original scheme of marking used for the first interview as follows:

Service	-	25	marks
Performance as a Security Officer	-	25	marks
Personality	-	15	marks
Higher Educational Qualifications	-	10	marks
Commendations	-	10	marks
Adverse Reports	-	10	marks (minus)
Interview	-	15	marks
		100	marks

This same scheme is set out in document 7R1 which is the report of the panel which held the 1st Interview which was chaired by the 2nd respondent.

The scheme for awarding marks as set out by the petitioner is almost identical with that set out by the 7th respondent, except for one category, viz: where the petitioner mentions a possible maximum of 10 marks for "work performance"; whereas the 7th respondent mentions a possible maximum of 10 marks for "commendations."

However, what is important is that, as regards the first interview, the petitioner was certainly aware of the scheme and the basis of awarding marks.

This notwithstanding, when it came to the 2nd interview, the 7th respondent states as follows in paragraph 10 of his affidavit:-

"Answering further, I state that the 2nd interview was conducted on a pre-determined criteria of a marking scheme. The basis on which marks were awarded were as follows:-

Service	-	20	marks
Educational Qualifications	-	10	marks
Sports	-	10	marks
Special Investigations carried out	-	10	marks
Annual grading for the past 3 years	-	10	marks
Commendations	-	10	marks
Interview including-personality	-	30	marks
Adverse reports	-	10	marks (minus)

This scheme is set out in detail in the document 7R6 produced by the 7th respondent. The 7th respondent does not deny the petitioner's averment that this scheme was never published, and that he did not have any notice of it.

Thus, on his own showing, the 7th respondent has himself demonstrated the significant differences between the scheme adopted for the 1st interview (which the petitioner was aware of) and the new scheme adopted for the 2nd interview (which the petitioner was unaware of).

On a comparison of the two schemes, it appears that several new criteria had been introduced into the new scheme for the 2nd interview, viz: (i) Sports,
(ii) Special Investigations carried out, and
(iii) Annual grading for the past 3 years.

The petitioner states that he had no prior notice or knowledge of these new criteria, and in this context, with reference to the second interview, states in paragraph 17 of his affidavit:

"I was not questioned on matters pertaining to security management or problems and solutions pertaining to the security of the Bank. I was asked many irrelevant questions such as whether I have played Cricket etc.,"

Judging by the categories in the scheme of marking as he knew and understood it, these questions on Cricket would indeed have seemed irrelevant to the petitioner, for he was never told that the criterion of "Sports" was relevant.

How this affected the petitioner is shown when the 7th respondent further stated in paragraph 10 of his affidavit: "Answering further, I state that the petitioner had only the minimum educational qualification at the G.C.E. (Ord. Level) Examination **and had no sports qualifications**" (Emphasis added).

In answer to this averment by the 7th respondent, the petitioner states in paragraph 3(h) of his counter-affidavit, that it was quite incorrect for the 7th respondent to state that he had "no sports qualifications", because his certificates marked P13A and P13B had been produced when he first joined the 1st respondent Bank and were filed in his personal file. P13A is the school leaving certificate from the Principal of his school, Isipatana Maha Vidyalaya, which *inter alia*, sets out his sports activities as follows:

Athletics – Captain, College Athletics Team, 1972
Captain Milton House Athletics Team, 1970
Participated from 1966 to 1972 with colours in 1970
Adjudged under 16 champion, Colombo South
Meet in 1970

- Hockey – First X1, 1972
- Basketball– 1972
- Rugby Football – Second XV, 1971
- Cricket – Under 16, 1968
- Soccer – Member, Milton House Soccer Team, 1969
- Swimming– Member, Swimming Association.

Document P13B is a certificate from the Senior Cadet Master of his school, which, besides his cadeting activities, where he started as a Junior Cadet in 1969 and ended up as Warrant Officer II (Regimental Quarter-Master Sergeant) in the Senior Cadet Corps, sets out the fact that the Senior Cadet Platoon with the petitioner as its Sergeant, had won first place in the "Five Star Athletics Championship" in 1972. This certificate also states that the petitioner was the school's Athletics Captain, besides being a member of the Hockey and Basketball Teams.

The petitioner states that this remark of the 7th respondent that he had "no sports qualifications" only shows that the Interview Board for the second interview had not even perused his personal file.

The petitioner further states that if he knew that 10 marks were to be awarded for "sports", he would have submitted his other certificates in regard to Athletics, which he now produces with his counter-affidavit marked P13(c) (i) and (ii), P13D and P13E(1) and (ii). The petitioner says that he would also have submitted a certificate from the 3rd Battalion of the Sri Lanka Cadet Corps to the effect that he was placed first in the Marathon and also first in Firing. He has produced this certificate with his counter-affidavit, marked P14.

Further, the petitioner states that although the 2nd Interview Board had deducted 10 marks for "Adverse reports" from the petitioner (i.e. the maximum), only 7 marks had been deducted from the 3rd respondent whose Adverse Reports were of a more serious nature. The petitioner adds that despite the warnings he received, he was paid bonus for the year 1992 (P17).

Another complaint the petitioner makes is that whereas the 2nd Interview Board had given him only 3 marks out of a possible 10 for his two commendations (P10A and P10B), the 3rd respondent was also given 3 marks for his single commendation.

The petitioner further complains that the fact that during times when a curfew was imposed he reported for work and attended to his duties (7R2) even going to the extent of procuring the services of a cook from Panadura and providing meals for the other security personnel, seems to have been ignored in the process of awarding marks, whereas, on the contrary, the 3rd respondent who was in fact appointed, did not co-operate with the Management and did not even report for duty during the period the curfew was imposed, for which he was punished with a warning together with a day's salary cut and the non-payment of his bonus.

The petitioner pleads that his performance as a Security Officer was excellent; that he was the most senior Security Officer in the 1st respondent Bank, and that he was in fact performing additional duties for which he was paid an additional Rs. 100/- per month (P11). The petitioner even states that when the Head of his Division, R. G. Gunaratne who was the Security Manager was on leave, he (the petitioner) was assigned the task of performing the said Security Manager's duties (P12(a) and (b)).

Thus we see a curious situation:- On 24.2.95 one interview was held for four posts of Regional Security Officer bases on a known scheme of marking, and conducted by a Board consisting of Acting Deputy General Manager (Personnel and Administration) as Chairman, the Assistant General Manager (Inspection) and the Security Manager; at which marks were awarded as follows, and recommendations made accordingly:

The petitioner	-	77 marks
5th respondent	-	67 marks
4th respondent	-	63 marks
6th respondent	-	63 marks

This recommendation was not given effect to because the Chairman of the Bank felt that the interview had not been held in a fair and impartial manner.

Thereafter on 10.4.95 a 2nd interview was held for the selfsame four posts, but now based on a scheme of marking containing three new categories of which the petitioner says he had no prior notice. This interview was conducted by an entirely different Board

consisting of a Senior Assistant Secretary of the Ministry of Finance, the Deputy General Manager (Internal Audit) and a different Assistant General Manager (Inspection), at which interview marks were awarded as follows, and recommendations made accordingly:-

4th respondent	-	49 marks
6th respondent	-	48 marks
3rd respondent	-	46 marks
5th respondent	-	43 marks

The 7th respondent says that at this 2nd interview the petitioner was placed 8th in order of merit with a total of only 33 marks.

This recommendation of the 2nd Interview Board was not faulted in any way by the 7th respondent, who directed that the 3rd to 6th respondents who were selected by that Board be appointed with effect from 1.5.95.

The topsy-turvy nature of the second interview could be highlighted thus. The 4th and 6th respondents who were originally placed third (jointly), came first and second; the 3rd respondent who was originally not placed at all, came third; the 5th respondent who was originally placed second, came fourth; and the petitioner who was originally placed first, came eighth: a drastic inversion of the original result. What is more, while the 4th and 6th respondents scored about 24% less at the second interview, the 5th respondent scored 36% less. The petitioner, however, scored 57% less. Whilst differences in assessment by two Boards are reasonably possible, in this instance, the extent of the differences suggests a grave flaw.

It is noteworthy that although the 7th respondent found fault with the original Board of Interview for not conducting the first interview in a fair and impartial manner, no action whatsoever seems to have been taken against any of the Members of that Board for their alleged transgression.

In any event, the petitioner states that the only result produced by the 2nd interview was that he (the petitioner) was replaced by the 3rd respondent. The other three candidates who were selected at the first interview were selected once again at the second interview.

I have taken pains to enumerate the facts in some detail and also to analyse them, placing them in their proper context, so that the situation becomes self-evident. As stated earlier, the petitioner complains of a violation of his fundamental right to equality and discriminatory application of the law, and on a consideration of the totality of the material placed before us, I cannot help but see that the picture that emerges is one where the petitioner has been singled out for discriminatory and unequal treatment.

The pivotal factor is the unwarranted cancellation of the first interview at which the petitioner was placed first in order of merit and recommended for appointment by the Board of Interview which consisted of high ranking officers of the 1st respondent Bank who were knowledgeable in the area of activity in respect of which the appointments were to be made and had all the necessary material before them to enable proper assessment to be made.

The 7th respondent however, overrules the recommendation made by the 1st Interview Board on the hazy subjective ground that he felt that interview was not conducted in a fair and impartial manner, and cancels it.

The 7th respondent thereafter appoints a fresh Board of Interview consisting of at least two members (out of three) who are quite unfamiliar with the area of work in question. One of them is a total outsider from the Ministry of Finance. But, this aspect, the important fact here, which adversely affected the petitioner, was that the scheme of marking which was to be applied by the second Board of Interview was different to the scheme earlier adopted by the first Board. Most significantly, although the applicants had notice of and knew the contents of the original scheme of marking, the new scheme of marking adopted by the second Board was not so notified, and the petitioner had no knowledge or intimation of the categories contained therein. It appears that the first time this new scheme came to be known was when the 7th respondent mentioned its contents in his affidavit in which affidavit the 7th respondent highlighted the fact that the petitioner "had no sports qualifications". It transpired that "sports" was a new criterion which, together with two other criteria, had been added to the new scheme for the awarding of marks, and that this fact was not made known to the

petitioner. This provoked the petitioner to produce all the material relating to his achievements in the field of sports in his counter-affidavit, and to state that, had he known of it before hand, he would have produced all the material before the 2nd Board of Interview. He says that by the non-disclosure of the new scheme of marking he was deprived unjustly of the opportunity of presenting his qualifications before the second Board, which, of course, enured to his detriment. The petitioner goes further and says that even the material regarding his sports activities contained in his school leaving certificate given by the Principal of his school and a second certificate given by his Cadet Master, both of which were available in his personal file were either seen and ignored or not looked at at all.

It has been held more than once, that it is imperative that candidates at interviews must be afforded equal opportunity of presenting their cases when facing Boards of Interview and that one of the ways of achieving this end, is to make known in advance the criteria to be adopted and the schemes of marking, especially when a significant change is made.

What was done in this case was against all canons of fairplay, where, not only was a competent Board found fault with and the interview cancelled for no objectively valid reasons, but a new Board was appointed to conduct an interview basing itself upon a changed scheme of marking; which new scheme was not notified and was not within the knowledge of the petitioner.

Upon the evidence in this case, the entire responsibility for this situation especially on his own admission in his affidavit, lies on the 7th respondent, and I have no hesitation in holding that the 7th respondent has been responsible for the violation of the petitioner's fundamental right enshrined in Article 12(1) of the Constitution, insasmuch as he has been singled out of the treatment set out above.

The 3rd and 4th respondents have also filed affidavits which I have considered; but, they do not alter the situation or mitigate the gravity of the violation.

I would summarise my findings as follows: The first interview was duly held, except for two defects alleged by the 7th respondent; those allegations were fully and satisfactorily explained by the 2nd respondent, and so, there was no valid reason to cancel the results of

that interview. Second, even if it were assumed that there were these defects, they were of no significance in the circumstances of this case, because they would have resulted in reducing the petitioner's aggregate by not more than 10 marks, and he would still have been the first. Third, if the 7th respondent's real concern was that that interview had not been conducted "in a just and impartial manner", there was no justification for an unpublished alteration of the criteria for the second interview, and that alteration suggests an improper motive. Fourth, apart from the serious defect in introducing new criteria, those criteria were not fairly and properly applied at the second interview: not only was the petitioner denied the opportunity of producing information regarding the criteria of "Sports" – because he was not told of its relevance – but even the information available in the petitioner's personal file was ignored. Similarly, the criteria in regard to "commendations" and "adverse reports" were not uniformly applied as between the petitioner and the 3rd respondent, to the advantage of the latter.

Thus, the second interview was fatally flawed, and must be quashed. The first interview was duly held, and the 7th respondent misused his discretion and acted arbitrarily and unreasonably in cancelling it; that order cannot stand.

While it is true that a Board of Interview generally lacks the authority to make appointments, yet its findings cannot be arbitrarily set aside. Consequently, the assessment and recommendation of the first Board of Interview must stand, and the 1st and 7th respondents must give effect to it. I make order accordingly, and also declare the second interview to be invalid and of no effect. The appointments of the 3rd, 4th, 5th and 6th respondents made by the 7th respondent in consequence of such second interview are also invalid and are hereby cancelled.

I make order that the petitioner be compensated in a sum of Rs. 10,000/- and also be paid his costs in a sum of Rs. 2,500/- by the 1st respondent.

FERNANDO, J. – I agree.

WIJETUNGA J. – I agree.

Relief granted.

ERRATA

(1997) 1 SRI L.R. – PART 4

**SUPERINTENDENT OF PUSSELLA STATE PLANTATION, PARAKADUWA
v. SRI LANKA NIDAHAS SEVAKA SANGAMAYA – SC 86/95**

Page 109 – Line 2

“G. P. S. de Silva C.J.” should read as “Kulatunga, J.”

Page 109, 111 – Header

“G. P. S. de Silva C.J.” should read as “Kulatunga, J.”

Page 112 – Line 32

“Kulatunga, J.” should read as “G. P. S. de Silva C.J.”