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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**SUKHWINDER SINGH**

Grievor

and

**TREASURY BOARD**  
**(Public Works and Government Services Canada)**

Employer

***Before:*** [Joseph W. Potter, Deputy Chairperson](#)

***For the Grievor:*** [J.R. Hazeldean, Professional Institute of the  
Public Service of Canada](#)

***For the Employer:*** [André Garneau, Q.C.](#)

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Heard at Ottawa, Ontario,  
March 22 and 23, 2000.

## DECISION

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[1] This grievance concerns the termination of employment of Ms. Sukhwinder Singh. At the time of her termination, Ms. Singh was employed as a procurement officer at Public Works and Government Services Canada (PWGSC), and was classified at the PG-04 level.

[2] The reason for her termination was stated in a letter to Ms. Singh from the Deputy Minister, Mr. R.A. Quail, dated October 18, 1999 (Exhibit E-3). Ms. Singh was unable to obtain the necessary “secret” security designation required for her position; consequently, she was deemed to be incapable of performing her duties.

[3] The employer filed a total of 11 exhibits; the grievor’s representative filed 5 exhibits.

### Background

[4] Ms. Singh came to Canada from India in 1971 and began her federal Public Service career in 1991 with the Office of the Superintendent of Financial Institutions. In 1991, she went to PWGSC as a financial analyst (Exhibit E-5, page 3).

[5] Ms. Singh’s area of responsibility at PWGSC was to provide financial support to the Aerospace, Marine and Electronic Systems Sector (AMES) headed up by Mr. Jean Roy. Her position, however, resided in the financial section, which was not part of AMES.

[6] In October 1997, Mr. Roy was reorganizing his area, which was responsible for looking after major procurements for government departments. One of his clients was the Department of National Defence (DND).

[7] Ms. Singh was approached by a manager who worked for Mr. Roy and was asked if she was interested in joining AMES. She was told her duties would not change significantly from what she was currently doing. She agreed to the move, provided she could be trained as a project manager.

[8] Ms. Singh was seconded to AMES on a part-time basis on December 15, 1997, and spent half of her time in AMES and the remainder of the time back in her position as a financial analyst, training her replacement.

[9] When Ms. Singh arrived in AMES on December 15, 1997, she was told that all employees on the floor had a “secret” clearance and she should apply for one. She possessed an “enhanced reliability” clearance, which is one level below “secret”.

[10] The screening request was filled out by Ms. Singh on December 15, 1997, seeking a secret clearance (Exhibit E-5).

[11] Mr. Roy testified the employees in AMES are required to obtain a secret clearance because of the sensitive and classified projects they work on, particularly for DND.

[12] In this instance, because Mr. Roy was setting up a new organizational structure, there was an immediate need to put together an in-house budget. Ms. Singh was asked to do this task in the expectation that, by April 1998, she would obtain her secret classification and could then function as a procurement officer.

[13] The job description of a procurement officer is attached to Exhibit G-1. It was not materially in dispute that these were not the duties Ms. Singh performed when she first came over.

[14] On April 1, 1998, Ms. Singh was offered the position of procurement officer at the PG-03 level (Exhibit E-7). She accepted the offer. Nowhere in the letter of offer is there any mention of the security requirements of the position.

[15] In order to be able to appoint Ms. Singh into the position, it was necessary for PWGSC to lower the security requirements from secret to enhanced reliability and this was done on April 1, 1998 (see Exhibit E-6).

[16] Towards the end of April 1998, Ms. Singh received a telephone call from an employee of the Canadian Security Intelligence Service (CSIS) who said he wanted to interview her for the secret clearance, as CSIS processes all such requests. Ms. Singh went to see Mr. Roy to inform him about this meeting and to request time off. Mr. Roy inquired as to why Ms. Singh needed a secret clearance, but agreed to allow her the necessary time off for the interview.

[17] Ms. Singh went to the office of the CSIS employee for the interview on April 29, 1998. She heard nothing further about her security clearance until August 1999.

[18] In the interim, Ms. Singh continued to work on the budget for AMES. She received a "Performance Management and Feedback Report" in June 1998 setting out her objectives for the fiscal year 1998-99 (Exhibit G-5). This shows Ms. Singh was working on budgeting issues but was to be trained to understand the procurement process (see Exhibit G-5, page 2, point number 5).

[19] Ms. Singh also received a Feedback Report for the period April 1, 1998 to March 31, 1999, showing her to have "...demonstrated effective interpersonal skills, tact, discretion and sound judgement" (Exhibit G-3).

[20] The departmental security officer is Mr. Brent Kereliuk and in July 1998 he received a telephone call from CSIS asking for further background information on Ms. Singh. Specifically, CSIS wanted a copy of Ms. Singh's job description, together with verification she required a secret security clearance.

[21] A letter was sent to CSIS on July 3, 1998 from PWGSC, confirming that Ms. Singh did indeed need a secret clearance, together with a copy of a job description for a position titled "Procurement Officer, Costing" (Exhibit G-1).

[22] In September 1998, CSIS advised Mr. Kereliuk that there would be a further delay in the security clearance until they (CSIS) could forward some recommendations. Mr. Kereliuk then met with Mr. Roy and stated that, until the clearance was completed, Mr. Roy was to control the activities of Ms. Singh to protect classified information.

[23] Mr. Roy replied that that should not present any difficulty, as Ms. Singh's area of responsibility was the budget process and did not involve a review of classified DND material.

[24] In October 1998, there was a national reclassification of all PG positions and Ms. Singh was told her position would increase to a level 4 (Exhibit E-8). Once again, this letter did not state anything about the security requirements of the position.

[25] Ms. Singh stated that her duties did not change at all as a result of the reclassification.

[26] On or about March 5, 1999, Mr. Roy contacted Mr. Kereliuk to inquire about the security clearance for Ms. Singh. Mr. Kereliuk contacted CSIS and was told a report was expected by the end of that month.

[27] On April 9, 1999, Mr. Kereliuk received the CSIS report (Exhibit E-9; edited version removing all references to issues of national security) and on April 16, CSIS reviewed the unedited report with him. Mr. Kereliuk was told that CSIS had serious concerns about the loyalty and reliability of Ms. Singh.

[28] Mr. Kereliuk spoke to both the labour relations and legal sections before briefing the Deputy Minister on July 13, 1999. Mr. Kereliuk stated there were three options which the Department could consider:

- (1) maintaining the *status quo*;
- (2) assimilate Ms. Singh into the workforce in another position not requiring a secret security clearance;
- (3) terminating her employment.

[29] Mr. Kereliuk had prepared a document outlining the difficulties with respect to option two above (Exhibit E-10). Mr. Kereliuk testified, in cross-examination, that he looked at other positions within the Branch only, as possible placements for Ms. Singh.

[30] Mr. Kereliuk recommended that the Deputy Minister consult with the Privy Council Office and with the Treasury Board concerning the above three options.

[31] In return, the Deputy Minister requested more information on option number three.

[32] No decision on a final course of action was made at that July 1999 meeting. The same individuals met again on October 4, 1999, and the Deputy Minister was given the details as to what would happen if termination was selected. Again, no final decision was made on the matter and Mr. Kereliuk was asked to put together an action plan in the event Ms. Singh's employment was terminated.

[33] Meanwhile, Ms. Singh was continuing with the performance of her financial duties and went to review her personnel file on August 29, 1999. She wanted to update her résumé so she sought a copy from her personnel file and noted what looked like an E-mail. This document stated simply that there was no update from CSIS on this case, and Ms. Singh wondered why it was on her file.

[34] She sought out Mr. Roy to inquire about it and was informed her security clearance had not yet come through. Ms. Singh asked whether or not there were any further developments and was told to contact Mr. Kereliuk in security.

[35] After unsuccessfully trying to contact one another, Ms. Singh spoke to Mr. Kereliuk on October 14, 1999 to ask about her security status. He told Ms. Singh that CSIS had recommended her security clearance be denied.

[36] Ms. Singh inquired as to the next step for the Department, and she testified Mr. Kereliuk told her the Deputy Minister would call her for a meeting. After the meeting, the Deputy Minister would decide whether or not to follow the CSIS recommendation.

[37] Ms. Singh further testified that Mr. Kereliuk told her not to worry, as the Department would find her another job that needed a lower level of clearance.

[38] Mr. Kereliuk suggested Ms. Singh meet with him before she met with the Deputy Minister.

[39] On October 18, Mr. Kereliuk met with the Deputy Minister and inquired if he had decided on the matter of Ms. Singh and he replied he had. He signed the letter of termination at that point (Exhibit E-3), as well as a letter informing Ms. Singh that her secret security clearance application was denied (Exhibit E-4).

[40] Following this, Mr. Roy wrote to personnel with instructions to reclassify Ms. Singh's position back to its original secret level (Exhibit E-11).

[41] At about 2:00 p.m. on October 18, Mr. Roy asked Ms. Singh to attend a meeting with him and Mr. Kereliuk. The meeting was set for 3:30 p.m. that day, and Ms. Singh testified she thought it was the meeting Mr. Kereliuk had referred to the previous week.

[42] At the meeting, Mr. Kereliuk explained that the Deputy Minister had decided to deny the security clearance and, at that point, Ms. Singh testified she was not too concerned because of the assurance given to her of finding her another job.

[43] Mr. Kereliuk then read the termination letter to Ms. Singh, which stated her services were being terminated immediately (Exhibit E-3).

[44] Ms. Singh explained to Mr. Kereliuk that he had told her she would meet with the Deputy Minister before any final decision was made and if the clearance was denied, another position would be found for her.

[45] Mr. Kereliuk denied making those assurances to Ms. Singh. In cross-examination, Ms. Singh agreed that Mr. Kereliuk did not guarantee her another job but rather he discussed the procedures or options that could be followed once the CSIS recommendation was made.

[46] In any event, Ms. Singh was escorted back to her office to pick up her personal belongings and escorted out of the building.

[47] Ms. Singh then filed her grievance, which is the subject of this decision.

### Arguments

#### For the Employer

[48] The employer's counsel stated the only issue which can be determined here is whether or not it was reasonable for the employer to conclude that the grievor was incapable of holding onto the position which she occupied at the time of termination.

[49] Ms. Singh was denied a security clearance pursuant to the government policy on security. The *Canadian Security Intelligence Service Act* governs this and any review of this action is to be done by the Security Intelligence Review Committee (SIRC). This was told to Ms. Singh by way of a letter dated October 18, 1999 (Exhibit E-4).

[50] The Federal Court of Appeal judgements in *Mohammed et al. v. Canada*, 181 D.L.R. (4th) 590 (1999); *Cooper v. Canada*, [1974] 2 F.C. 407; and *Byers Transport Ltd. v. Kosanovich*, [1995] 3 F.C. 354, all stand for the proposition that, where a remedy is dealt with elsewhere, the matter can not be adjudicated. Since the matter of reviewing a recommendation on security clearances is available by the SIRC, an adjudicator cannot review it.

[51] In order to obtain a secret security clearance, CSIS conducts an investigation and forwards its recommendation to the Deputy Minister. This recommendation may or may not be accepted and the final decision of the Deputy Minister cannot be

challenged (see Supreme Court of Canada judgement in *Thompson v. Canada (Deputy Minister of Agriculture)*, 89 D.L.R. (4th) 218 (1992).

[52] Mr. Garneau argued that the decision of the Deputy Minister, Mr. R.A. Quail, in this case is not reviewable by an adjudicator. The Deputy Minister has sole jurisdiction of either approving or denying a security clearance; this is not a matter which can be adjudicated upon. (See *Thompson v. Canada (Deputy Minister of Agriculture)* (*supra*).)

[53] Mr. Kereliuk stated that, after the report recommended the denial of a secret security clearance, he examined several options. These options ranged from the *status quo* to termination. Also reviewed was the possibility of putting Ms. Singh into another position.

[54] The results of the latter option are outlined in Exhibit E-10, and the conclusion was that loyalty and reliability issues prevented the granting of the secret security clearance. Controls would be needed if she was placed elsewhere and the Department did not want to put these controls on her. This meant no job in the Department would be considered.

[55] In *Ahmad v. Canada (Public Service Commission Appeal Board)*, [1974] 2 F.C. 644, the grievor was terminated for incompetence. The Court stated, at page 647:

...

*...a board of review established under section 31 would not be justified in deciding that a deputy head's recommendation should not be acted upon unless it had before it material that satisfied it, as a matter of fact, that the deputy head was wrong in forming the opinion that the person in question was "incompetent in performing the duties of the position he occupies".*

...

[56] This was a case before the Public Service Commission Appeal Board and the process now calls for adjudicators to review the matter. However, the same principle should apply to the case at hand.

[57] These same principles are also stated in *Kampman v. Canada (Treasury Board)*, [1996] 2 F.C. 798, and *MacNeil v. Canada (Attorney General)*, [1994] 3 F.C. 261.

[58] The Federal Court decision in *Attorney General of Canada v. Loisel*, [1981] 2 F.C. 203, stands for the proposition that deputy ministers can exercise their discretion in appointments and, if exercised in a proper fashion, an adjudicator can not overturn it.

[59] This is reinforced in *The Queen v. Larsen*, [1981] 2 F.C. 199, at page 202, where it states:

...

*... A further consequence of this interpretation would be that where the board ordered that an incompetent employee be transferred rather than released, this employee would, despite his incompetence, retain his position as long as no other position had been found for him.*

...

[60] In this case, the Deputy Minister has the sole discretion to decide whether Ms. Singh should be appointed to another position and he decided not to exercise that discretion. An adjudicator has no jurisdiction to usurp that decision.

[61] Ms. Singh was appointed to her new position and therefore left her old job. No rights exist with respect to her entitlement to her old position and an adjudicator has no jurisdiction to order that an employee be transferred to another position.

[62] Based on the above, counsel argued that there is only one question to be decided and that is, should Ms. Singh be reinstated to the job from which she was terminated. The answer to that question is clear, according to counsel's argument.

[63] The job in question has a secret security designation. That designation was lowered to enhanced reliability while Ms. Singh sought the appropriate security clearance and that administrative action has been made only to facilitate her commencing her duties.

[64] However, once the process was completed and the Deputy Minister decided she should not be granted the secret security clearance, the decision was made to terminate Ms. Singh's employment. That decision was, properly, the Deputy Minister's to make and cannot be altered.

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For the Grievor

[65] For the grievor, Mr. Hazeldean stated that the issue of a security clearance is, indeed, a separate issue. Mr. Hazeldean acknowledged the employer's right to classify positions, including the right to allocate a security classification to each position.

[66] The issue here, according to Mr. Hazeldean, is spelled out in the grievance itself. The grievor is requesting reinstatement to a position in the Public Service which is commensurate with her experience and qualifications.

[67] The grievor's representative stated at the outset that he did not challenge the right of the Deputy Minister to establish the security level of the position. However, the challenge was made to the decision not to appoint Ms. Singh to another position.

[68] Initially, the security requirement for Ms. Singh's position was downgraded for the convenience of staffing the position only (see Exhibit E-6). When the initial secondment terminated on March 31, 1998, the security clearance had not been delivered; the security requirements of the position therefore remained downgraded. This was done in spite of the Treasury Board Manual on Personnel Security (Exhibit E-2). That document states, at article 2.11:

***2.11 Making an appointment or deployment***

...

*Employees being deployed pursuant to the [Public Service Employment Act] must meet the security requirements of the position to which they are being deployed.*

[69] In order to fill a number of positions, including Ms. Singh's, the security requirements of these positions were downgraded (Exhibit G-2). However, no one ever told Ms. Singh that was what the Department was doing.

[70] The letter of offer should have stated to Ms. Singh that if she failed to meet the conditions attached to the position, there would be repercussions. There was no such caution provided to her, and indeed the Department did not do anything until the afternoon of October 18, 1999.

[71] The employer's own personnel security standard is instructive in situations involving the revocation of a security clearance (see Exhibit E-2, at article 5). The applicable portion states:

## 5. Revocation

...

*In the event of a revocation, individuals must be informed of their rights of review or redress and prohibited from access to sensitive information and assets.*

*If the individual concerned is an employee, consideration must be given to reassignment or appointment to a less sensitive position at an equivalent level. Should no such position be available, appointment to a position at a lower level must be considered. Termination of employment may be considered only in exceptional circumstances and only when all other options have been exhausted.*

...

[72] Mr. Hazeldean argued that no real effort was made to comply with that section. The evidence indicated that the security officer prepared a document outlining the difficulties in appointing Ms. Singh to another position (Exhibit E-10). However, it has not been established that it was necessary to meet all the conditions in Exhibit E-10 in order to secure another position. Furthermore, a search for alternate employment was restricted to the Branch where the grievor worked.

[73] The Department failed to follow the direction of the Treasury Board policy.

[74] Misconduct of the employee is not in issue in the case here. Rather, it is simply that the employee did not obtain the necessary security clearance. She has not done anything which could be deemed to be detrimental to the Department.

[75] Under normal conditions, the employee would have an opportunity to meet the employer and answer the charge. This has not been the case here, and this has led to a denial of natural justice.

[76] Finally, Mr. Hazeldean requested that the issuance of the decision be held in abeyance pending the review by the SIRC and the final answer of the Deputy Minister.

Employer's Reply

[77] Mr. Garneau stated he was not adverse to delaying the issuance of the decision if there was a reasonable expectation of some finality. However, it was not known when the SIRC would review the case.

[78] The *Personnel Security Standard* (Exhibit E-2) provides that the employer should consider alternatives. This was done. However, this document is not law, but merely policy. There is no legal authority for an adjudicator to appoint an employee to another position.

[79] The only issue to be decided is whether or not Ms. Singh's employment should have been terminated.

Reasons for Decision

[80] First, I will deal with the request to delay the issuance of this decision until a final decision is rendered following the SIRC's review.

[81] I do not see how it benefits anyone to wait for a final decision on the SIRC's review, particularly when we do not know when such a decision will be forthcoming.

[82] More importantly, however, is the fact that the Deputy Minister has the final authority to grant or deny the security clearance.

[83] In *Thompson (supra)*, CSIS recommended that a security clearance not be given to an individual and the Deputy Minister concurred with that recommendation. The employee requested the SIRC to review the decision, and this review resulted in a recommendation that the employee be granted clearance. Notwithstanding this recommendation, the Deputy Minister chose not to grant the clearance.

[84] The Supreme Court of Canada upheld the right of the Deputy Minister to make this decision.

[85] Therefore, I see little value in delaying the issuance of this decision as, ultimately, the Deputy Minister has full authority to decide whether or not to grant the requested security clearance, regardless of the recommendation of the SIRC.

[86] Mr. Hazeldean stated that it was recognized the employer has a right to classify positions, and this includes designating the security requirements of the position.

[87] The employer has stated that the position requires a secret security clearance and, while I find it would have been preferable to state such in the letter of offer (Exhibit E-7), ultimately, nothing turns on the fact this was not done.

[88] The requirements of the position Ms. Singh was offered included a secret security clearance. Ms. Singh was denied the secret security clearance; therefore, in my view, she does not meet one of the requirements for the position.

[89] On this aspect, I find the Department was well within its rights to deny Ms. Singh continuity of employment in that position.

[90] There is no obligation that I have been made aware of for the Department to alter the duties of the position such that Ms. Singh would not require a secret security clearance.

[91] I concur with counsel for the employer that it has shown Ms. Singh did not meet the requirements of the position she was appointed to, and it would be inappropriate for me to reinstate her into this position.

[92] Therefore, I find that the Department was entitled to take the action it did and I have no authority to overturn this action, nor do I have jurisdiction to reinstate her elsewhere in the Department. For this reason, the grievance must be denied.

[93] However, in my view, this is a situation that begs for review. The undisputed evidence indicated Ms. Singh was a good performer and there were no difficulties with any aspect of her work whatsoever. In fact, the opposite is true. She was sought after because of her expertise and experience in working with the individuals in AMES. They approached her to make the change, not the other way around.

[94] I believe that, if the Department had left Ms. Singh in her original position pending disposition of the security clearance, there would be no basis to terminate her employment once the secret security clearance had been denied. The reason for this is because she met all the conditions of her original position. The Department would simply have denied her the promotion.

[95] Therefore, it was only because the Department needed to expedite matters to resolve a staffing shortage issue that the situation of termination presented itself.

[96] One of the options open to the Department was to find alternate employment within the Department. Mr. Kereliuk testified he restricted his search for alternate employment to within the Branch. This, effectively, eliminated most positions from consideration, as virtually all Branch positions needed a secret security clearance.

[97] On the basis of the facts presented to me, it is my view that this is a situation where it is simply unfair not to review all positions within the Department, which correspond to Ms. Singh's area of expertise to determine if she could be placed elsewhere. As I stated above, I have no jurisdiction to order such placement, but fairness and equity here should lead the Department to offer such a review.

**Joseph W. Potter,  
Deputy Chairperson**

OTTAWA, May 4, 2000.