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IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 53 of 1981

BETWEEN:

FIJI PUBLIC SERVICE APPEAL BOARD Appellant

- and -

MAHENDRA SINGH Respondent  
s/o Daulat Singh

A. Rabo for Appellant  
D.C. Maharaj & D.K. Jannadas for the Respondent

Date of Hearing: 29th March, 1982  
Delivery of Judgment: 2nd April, 1982

JUDGMENT OF MARSACK, J.A.

Having had the advantage of reading the full and careful judgment of my brother Henry I agree with him, for the reasons he has set out in detail, that the appeal must be allowed. The matter in my view must be determined strictly in accordance with the relevant statutory provisions, under which many of the principles normally associated with master and servant problems cease to have any application. These provisions are set out in my learned brother's judgment, and I do not need to repeat them. The first point to note is that appellant's appointment as Principal Collector of Customs was provisional only, as laid down in regulation 15(1) of the Public Service Constitution Regulations; a definite appointment to the

position depending upon the decision of the Appeal Board upon any appeal lodged under section 14 of the Public Service Act. Under section 14(8) (b) a provisional appointee - the appellant in this case - is entitled to be heard as if he were a respondent "in such manner as the Board thinks fit". When Nanji Velji's appeal was heard the present appellant was also heard by the Board. His complaint that he was not present when L.J. Gardner and Uttam Chandra gave evidence, and had no opportunity to cross-examine them, cannot be sustained in view of the section already quoted that he is entitled to be heard only in such manner as the Board thinks fit. He was therefore not entitled to claim the right of hearing and cross-examining the witnesses in that case. Section 14(11) of the Public Service Act provides that no decision of the Appeal Board shall be challenged or quashed in any Court except on the ground of lack of jurisdiction. The learned trial Judge held that the Appeal Board had not given appellant a fair hearing, and this amounted to a lack of jurisdiction. With respect I am unable to agree. As I see it, the Appeal Board gave appellant the hearing he was entitled to under provisions of the relevant statutes and accordingly they did not act from a lack of jurisdiction.

For these reasons I fully concur with the judgment of Sir Trevor Henry.

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 Judge of Appeal