

IN THE HIGH COURT OF FIJI
AT SUVA

Judicial Review No: HBJ 12 of 2015

IN THE MATTER of the PUBLIC SERVICE
DISCIPLINARY TRIBUNAL.

AND

IN THE MATTER of an application by
the PERMANENT SECRETARY FOR
MINISTRY OF DEFENCE, NATIONAL
SECURITY AND IMMIGRATION for a
Judicial Review and with other reliefs
including an Order of Certiorari to
quash the decision made by the Public
Service Disciplinary Tribunal (the
Tribunal).

STATE V PUBLIC SERVICE DISCIPLINARY TRIBUNAL

Respondent

EX PARTE : THE PERMANENT SECRETARY FOR MINISTRY OF
DEFENCE, NATIONAL SECURITY AND
IMMIGRATION

Applicant

INTERESTED PARTY : PITA TURAGANIVALU

CORAM : The Hon. Mr Justice David Alfred

Counsel : Ms T Sharma for the Applicant

Appearance : Mr S. Sharma for the Respondent
The Interested Party in Person

Date of Hearing : 13 April 2015

Date of Judgment : 6 June 2017

JUDGMENT

1. I have before me an Inter-Partes Notice of Motion (Motion) wherein the Applicant seeks the following relief:
 - (1) An order of Certiorari to remove the decision of the Respondent (Decision) dated 4 September 2014 whereby the Respondent (Tribunal) had ordered that the Interested Party (officer) be given 50% of his salary from 26 May 2011 until he receives his termination letter from the Permanent Secretary.
 - (2) An order of Prohibition prohibiting the Tribunal from giving effect to the decision of the Tribunal wherein the Tribunal had directed the Ministry of Defence, National Security and Immigration to pay the officer.
 - (3) A Declaration that the Decision is unreasonable.

2. By a Ruling of the High Court (Seneviratne J) on 14 July 2016, the following Orders were granted:
 - (1) Leave was granted to apply for judicial review of the Decision.
 - (2) Leave was also granted to file the application out of time.
 - (3) The implementation of the order of the Tribunal was stayed until the final determination of the application for judicial review.

3. At the hearing before me Counsel for the Applicant submitted the Tribunal had paid too much attention to the delay in the laying of charges against the officer. They were appealing against the award of 50% of the officer's salary.

4. He had been found guilty of misappropriating \$7,000 of money belonging to the Ministry. Criminal charges were filed against him, but Counsel did not know their outcome. She said the Tribunal paid heed to irrelevant matters.
5. In spite of the officer taking taxpayers' money, the Tribunal ordered 50% of his salary to be paid from 26 May 2011 to the date he received the termination letter on 6 March 2015. The termination was based on his contract which was for 3 years from 28 June 2010. She said the advice of the Solicitor-General (SG) was required under para 11.2 of the PSDT Circular No.2/2014 (Circular), but his advice was not sought by the Tribunal.
6. The Respondent's representative submitted the SG's advice had been sought and given. The Tribunal's decision was the officer be paid 50% of his salary from 26 May 2011 to the date he receives his termination letter from the Permanent Secretary of the Ministry. This power is vested with it says the Tribunal.
7. The officer said he was suspended on 25 February 2011. The Public Service Commission was awaiting the decision in the criminal case. He supported the Tribunal's decision.
8. The Applicant's Counsel in her reply said the affidavit of the Chairman of the Tribunal opposes this application for judicial review. She said he should not have brought into the public domain, the confidential advice of the SG.

9. At the conclusion of the arguments I informed I would take time for consideration. Having done so, I now proceed to deliver my judgment.
10. The grounds on which Judicial Review may be granted, are set out lucidly and succinctly in the Supreme Court Practice 1995 volume 1 (the White Book), as follows:
 - (1) If a Tribunal charged with a public duty has acted without jurisdiction or exceeded its jurisdiction, judicial review will lie.
 - (2) Where there is an error of law on the face of the record, judicial review will lie.
 - (3) Where the rules of natural justice have not been complied with, judicial review will lie.
 - (4) If the decision is such that no body properly directing itself on the law and acting reasonably could have reached it (Wednesbury Principle) it will be liable to be quashed.
 - (5) Finally the Court has a discretion whether to grant any of the orders available in judicial review.
11. The issue before the Court is quite straight forward, and is this. Should the Court order the proceedings to be removed for the purpose of quashing the Decision. This requires me to peruse the grounds upon which the Applicant is seeking the relief.
12. Those are contained in the Application for leave to apply for judicial review pursuant to Order 53 Rule 3(2) of the Rules of the High Court, and are appended below:

- (1) The Respondent failed to consider the relevant factors that the officer had been found guilty of misappropriating \$7,000, which was a substantial loss to the Ministry.
 - (2) The Respondent took into account irrelevant factors when it incorrectly based its decision on the fact that the disciplinary action was considerably delayed thus the payment of 50% of salary from 26 May 2011.
 - (3) The Respondent's decision directing the Applicant to pay 50% of the officer's salary is unreasonable and irrational as the Ministry would have to pay out to an employee who created substantial losses for the Ministry.
 - (4) The Respondent's decision is arbitrary and improperly made as it took into account irrelevant factors that the matter was considerably delayed and failed to consider relevant factors, that the officer had misappropriated \$7,000 which belonged to the Ministry.
13. The Circular lays down the disciplinary procedures applicable which include the following:
- (a) Para 4.0. requires the principles of natural justice to be complied with.
 - (b) Para 8.0 requires the assistance from the SG in the preparation of the charges which must be specific and must identify each element of the breach of the code of conduct.
 - (c) Para 11.2 states "On the advice of the Solicitor-General, the appropriate authority to determine payment of quantum of salary is the Public Service Disciplinary Tribunal".

14. I have carefully perused the Decision. It appears to me to be essentially an acceptance of a plea in mitigation for the officer which seems to suggest that because of a long delay in the proceedings he is to be compensated by ordering an award of 50% of his salary from 26 May 2011 till he receives his termination letter. It is precisely this that the Applicant is challenging.
15. But, Counsel for the Applicant cannot challenge the Decision on the ground that the SG's advice was not sought, because in my view his advice was not needed here. Para 11.2 makes this crystal clear.
16. So, the question that I need to ask here, is "Could a decision-maker acting reasonably have reached this decision?", per Lord Lowry in : *Brind v Secretary of State* [1991] 1 All ER at page 738.
17. The Constitution in section 123 lays down that the values and principles of State service include "integrity". This is defined in the Oxford Dictionary as the "quality of being honest and upright in character". This should be the hallmark of every one, both great and small, in the public service of this country. Consequently any falling away from this standard cannot be condoned under any circumstances.
18. To my mind, the Tribunal has made a decision which no body properly directing itself on the law and acting reasonably could have reached, for here is an officer who has been found guilty of misappropriation of public moneys, which is a breach of his stewardship as a public servant. It goes against the grain if an erroneous impression should be created by the Tribunal's rationale

for the Decision that sympathetic grounds may override the public interest in deterring wrong doing by public servants.

19. The Tribunal's Decision cannot stand. I therefore grant an order of Certiorari that the Decision be removed to this Court and quashed. There shall be no order as to costs.
20. It therefore follows there is no requirement for the Court to grant any of the other reliefs sought.

Delivered at Suva this 6th day of June 2017.



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DAVID ALFRED

JUDGE of the High Court of Fiji