

In the High Court of Fiji  
at Suva  
Civil Jurisdiction

Judicial Review No.07 of 2018

In the matter of the decision made by the Public Service  
Disciplinary Tribunal of 31<sup>st</sup> July, 2018

State v Public Service Disciplinary Tribunal  
Respondent  
Ex parte: Mohammed Faiyaz  
Applicant

Counsel: Mr N. Sharma with Mr D. Nair for the applicant  
The respondent was represented by Ms S. Lata, Secretary  
Date of hearing: 13<sup>th</sup> March, 2019  
Date of Ruling: 24<sup>th</sup> May, 2019

**RULING**

1. The applicant, seeks leave to apply for judicial review of a decision of the respondent of 31<sup>st</sup> July, 2018 finding him guilty of disciplinary charges of breach of the Public Service Code of Conduct, of storing illicit material on his desktop. The applicant states that he joined the Civil service as an IT officer on 17<sup>th</sup> January, 2000 and was promoted as a Systems Analyst Programmer at the Ministry of Finance on 24<sup>th</sup> May, 2007.
2. The grounds upon which the applicant seeks relief are as follows:
  - a) *That the Respondent acted unfairly and unreasonably by failing to uphold that the five charges laid against the applicant lacked the fundamental elements of the date the alleged misconduct was committed.*
  - b) *That the Respondent exceeded its jurisdiction and further abused its powers by providing bias finding of guilt on the defective charges.*
  - c) *That the Respondent exceeded its jurisdiction by contradicting its policy the PSDT Circular No. 2 dated 30<sup>th</sup> April, 2014 which at clause 9.0 adopted a time frame of three months in the finalization of the disciplinary action which is consistent with section 15(3) of the Constitution of the Republic of Fiji.*

- d) That the Respondent acted irrationally by shifting the burden of proof upon the applicant when the onus vested upon the prosecution who was prosecuting on behalf of the Ministry of Economy.
  - e) That the applicant was denied the due process of natural justice when the investigation report and the documentary evidence which the Respondent relied upon was not disclosed prior to the hearing of the charges.
  - f) That the Respondent acted contrary to the legitimate expectation of the applicant by not being independent and impartial.
  - g) That the irregular decision making process of the Respondent and its subsequent decision is susceptible to Judicial Review as there is no further right of remedy and the consequences of the original decision is of considerable seriousness to the Applicant, that only the inherent jurisdiction of the High Court can provide the appropriate relief.
3. The applicant, in his affidavit in support complains that that the particulars of the charges lacked the date and identity of the computer where the “alleged” illicit materials were stored. The respondent acted unreasonably, unfairly and irrationally by finding him guilty of committing an offence without identifying the legislation and unfairly shifted the burden of proof on him, when the burden was on the Ministry for Economy. The reasons given by the respondent are “*fundamentally inconsistent*” with the oral evidence.
4. The process was biased, *most unreasonable*”, unfair and in bad faith with contradictory conclusions, in the absence of any credible evidence to prove when and how the alleged illicit materials were uploaded. He was denied the due process of natural justice. The decision lacked independence and impartiality. The respondent exceeded its jurisdiction and acted contrary to his legitimate expectation when it disregarded the timeframe of three months for disposal of disciplinary matters. He was suspended on 13<sup>th</sup> May,2016. The disciplinary process was concluded on 31<sup>st</sup> July,2018. He was not questioned in the course of investigation. The “*purported investigation report*” considered by the respondent was undated and did not state the person who prepared the same. An enlarged picture was considered at the hearing, which did not resemble any of the disclosures in the investigation report. There was no evidence tendered that it was retrieved from his computer. The affidavit concludes that the respondent disregarded relevant matters and took into account irrelevant matters.
5. The respondent did not file affidavit in opposition.

6. Mr Nair, counsel for the applicant cited the case of *PSC v Kotobalavu*, (Civil Appeal no. ABU0031 of 2004S) for the proposition that particulars of charges must be given. It was further submitted that there was no conclusive evidence that the applicant stored the material, as the computer was shared and others had access. The conclusion that the room was locked is an error of law. The rules of evidence apply.
7. The applicant meets the requirement of sufficient interest to bring this application. The question is whether the applicant has presented an arguable case.
8. The applicant complains that he was denied the due process of natural justice. The decision making process was unreasonable, unfair and in bad faith, in the absence of any credible evidence to prove when and how the alleged illicit materials were uploaded in the computer. He argues that a "*purported investigation report*" and an enlarged picture were considered by the respondent, which did not resemble any of the disclosures in the investigation report and no evidence was tendered that it was retrieved from his computer. Finally, it is contended that the respondent disregarded relevant matters and took into account irrelevant factors.
9. Lord Diplock in *Inland Revenue Commission v National Federation of Self Employed and Small Businesses Ltd*, [1982] AC 617 stated:

*The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into matter at any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him, leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which is it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.*



10. In *Fiji Airline Pilots Association v The Permanent Secretary for Labour and Industrial Relations*, [1998] FJHC14; Civil Appeal No. ABU0059u.97s(27 February, 1998)4 of 1997S (High Court Judicial Review No. HBJ 15 of 1997) the Court of Appeal stated as follows:-

*The basic principle is that the Judge is only required to be satisfied that the material available disclose what might on further consideration, turn out to be an arguable case in favour of granting the relief. If it does, he or she should grant the application per Lord Diplock in *Inland Revenue Commission v National Federation of Self Employed* [1982] AC 617 of 644. This principle was applied by this Court in *National Farmers Union v Sugar Industry Tribunal and Others* (CA 8/1990, 7 June 1990). In *R v Secretary of State for the Home Department ex p Rukshanda Begum* [1990] COD107 (referred to in 1 *Supreme Court Practice 1997* at pp 865 and 868) Lord Donaldson MR accepted that an intermediate category of cases existed when it was unclear on papers whether or not leave should be granted, in which event a brief hearing might assist, but it should not become anything remotely like the hearing would ensue if the parties were granted leave (page 9).*

11. I am satisfied the grounds raised by the applicant on the breach of natural justice and that the decision was improper, irrational and unreasonable raise an arguable case which needs to be investigated at the substantive hearing of the judicial review application.

12. **Order**

- (a) The application for leave to apply for judicial review is granted. The motion for judicial review shall be entered within 14 days.
- (b) I make no order as to costs.



*A.L.B. Brito-Mutunayagam*  
A.L.B. Brito-Mutunayagam  
Judge  
24<sup>th</sup> May, 2019