



IN THE PUBLIC SERVICE DISCIPLINARY TRIBUNAL
AT SUVA

PSDT CASE No. 06 of 2024

BETWEEN : THE MINISTRY OF AGRICULTURE AND WATERWAYS

EMPLOYER

AND : ABISHEK CHAND

EMPLOYEE

Appearances

For the Employer : Mr. Nawaikula (Attorney General's Chamber)

For the Employee : Mr. Chand (Fiji Public Service Association)

Date of Hearing : 21st February 2025

Date of Ruling : 14th March 2025

RULING ON REINSTATEMENT OF SALARY

BACKGROUND

1. Mr. Abishek Chand ("**Employee**") has been employed at the Ministry of Agriculture & Waterways ("**Ministry**") as a Research Officer (Program Coordinator - KRS) since 2017.
2. He was suspended by the Ministry on the 30th of September 2024.
3. Immediately following his suspension, the Permanent Secretary referred the matter to the Public Service Disciplinary Tribunal as per Regulation 23 sub-regulation (5) of the Civil Service (General) Regulations 1999 and section 127 (7) and 120 (9) (b) of the Constitution. That referral was made on the **1st October of 2024.**

4. The referral to the Tribunal was accompanied by the suspension of the Employee's salary as per Regulation 23 (6) of the Civil Service (General) Regulations 1999.
5. However, on the 29th of November 2024, the Tribunal dismissed this referral. The Tribunal did so because the Ministry had preferred no charges at all against the Employee.
6. The Ministry, via a Memorandum by the Permanent Secretary dated the 16th of December 2024, requested the Tribunal to reinstate the disciplinary charges. This Memorandum had, annexed to it, a Notification to the Employee which sets out the disciplinary charges which are now being preferred by the Ministry.

CHARGES

7. The Notification preferred the following allegations against the Employee:

ALLEGATION 1

That you, Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division, has (sic) allowed your involvement with certain companies like WOW builders to be awarded multiple contracts at the Research Division.

Charge 1

Statement of Offence

Part 2 Section 6 (1) of the Civil Service Act 1999, "An employee must behave honestly and with integrity in the course of employment in the public service"

That you, Mr. Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division and being a Member of the Ministry of Agriculture Technical Evaluation Committee, was (sic) dishonest by not declaring in the Confidentiality and Conflict of Interest Declaration Form that you had prior knowledge of Wow Builders Company information. Secondly, you did not express strong views of the company's past performance during the Technical Evaluation Committee meeting held on 27th May 2020. By doing so, you have breached Section 6 (8) of the Civil Service Act 1999, which constitutes a ground for disciplinary action under Section 7 of the same Act.

Charge 2

Statement of Offence

Part 2 Section 6 (2) of the Civil Service Act 1999, "An employee must act with care and diligence in the course of employment in the public service"

That you, Mr. Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division and being a Member of the Ministry of Agriculture Technical Evaluation Committee, was (sic) dishonest by not declaring in the Confidentiality and Conflict of Interest Declaration Form that you had prior knowledge of Wow Builders Company information. Secondly, you did not express strong views of the company's past performance during the Technical Evaluation Committee meeting held on 27th May 2020. By doing so, you have breached Section 6 (8) of the Civil Service Act 1999, which constitutes a ground for disciplinary action under Section 7 of the same Act.

Charge 3

Statement of Offence

Part 2 Section 6 (7) of the Civil Service Act 1999, "An employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with employment in the public service"

That you, Mr. Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division and being a Member of the Ministry of Agriculture Technical Evaluation Committee, was (sic) dishonest by failing to disclose and discuss with the Technical Evaluation Committee members at its meeting held on 27th May 2020 that Wow Builders was previously awarded with a similar work and the work was not completed to an acceptable standard and did not provide value for money. By doing so, you have breached Section 6 (8) of Civil Service Act 1999, which constitutes a ground for disciplinary action under Section 7 of the same Act.

ALLEGATION 2

That you, Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division issued payment for the catering of the Head of Sections meeting to Lovers Point Restaurant (Nausori).

Charge 1

Statement of Offence

Part 2 Section 6 (1) of the Civil Service Act 1999, "An employee must behave honestly and with integrity in the course of employment in the public service"

That you, Mr. Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division communicated directly with the business owner of Lovers Point Restaurant, 2nd Floor Colonial Bank Building, Nausori and prepared an invoice so that the Ministry of Agriculture can process payment for the catering services provided during the Research 2nd Quarterly meeting held at Koronivia Research Station on 22/02/2023. By doing so, you have breached Section 6(8) of the Civil Service Act 1999, which constitutes a ground for disciplinary action under Section 7 of the same Act.

Charge 2

Statement of Offence

Part 2 Section 6 (2) of the Civil Service Act 1999, "An employee must act with care and diligence in the course of employment in the public service"

That you, Mr. Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division communicated directly with the business owner of Lovers Point Restaurant, 2nd Floor Colonial Bank Building, Nausori and prepared an invoice so that the Ministry of Agriculture can process payment for the catering services provided during the Research 2nd Quarterly meeting held at Koronivia Research Station on 22/02/2023. By doing so, you have breached Section 6(8) of the Civil Service Act 1999, which constitutes a ground for disciplinary action under Section 7 of the same Act.

Charge 3

Statement of Offence

Part 2 Section 6 (4) of the Civil Service Act 1999, "An employee, when acting in the course of employment in the public service, must comply with all applicable Acts and subordinate legislation"

That you, Mr. Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division communicated directly with the business owner of Lovers Point Restaurant, 2nd Floor Colonial Bank Building, Nausori and prepared an invoice so that the Ministry of Agriculture can process payment for the catering services provided during the Research 2nd Quarterly meeting held at Koronivia Research Station on 22/02/2023. By doing so, you have breached Section 6(8) of the Civil Service Act 1999, which constitutes a ground for disciplinary action under Section 7 of the same Act.

Charge 4

Statement of Offence

Part 2 Section 6 (7) of the Civil Service Act 1999, "An employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with employment in the public service"

That you, Mr. Abishek Chand (EDP 96380), whilst employed as a Research Officer (Program Coordinator) at the Crop Research Division communicated directly with the business owner of Lovers Point Restaurant, 2nd Floor Colonial Bank Building, Nausori and prepared an invoice so that the Ministry of Agriculture can process payment for the catering services provided during the Research 2nd Quarterly meeting held at Koronivia Research Station on 22/02/2023. By doing so, you have breached Section 6(8) of the Civil Service Act 1999, which constitutes a ground for disciplinary action under Section 7 of the same Act.

APPLICATION TO REINSTATE SALARY

8. The Employee now requests the Tribunal to reinstate all pays which were suspended between the 1st of October 2024 to the 10th of January 2025.
9. The request was sought verbally on the 10th of January 2025 before the Tribunal.
10. Mr. Abishek Chand via his Union representative, supplemented his request via written submissions. These submissions are supported *inter alia* by:
 - (i) Payslip;
 - (ii) Statements from BSP (Easycard Account) for Abishek Chand;
 - (iii) Statements from Bred Bank Fiji for Abishek Chand;
 - (iv) A statement from Finance Hub;
 - (v) Tax Invoice for Third Party Motor Vehicle Cover;
 - (vi) A statement from LICF;
 - (vii) Statements from Vodafone on m-paisa transactions for Abishek Chand; and
 - (viii) A statement from BSP (Easycard Account) for Sound of Pacific

11. The Ministry filed a reply to the Employee's submissions on the 7th of February 2025. The Ministry's submissions are supplemented by two further submissions filed by the Attorney General's Chambers on the 21st and 28th of February 2025.

SUBMISSIONS

Employee

12. The Employee's written submissions were supplemented by oral submissions presented by his representative.
13. The gist of the submissions are as follows:
- (i) the initial referral to the Tribunal which resulted in the suspension of his salary from 1st October 2024 was erroneous considering the Tribunal's dismissal of the referral on the 29th of November 2024.
 - (ii) the second referral which incorporated disciplinary allegations and filed on 18th December 2024 was only served to him on 10th January 2025.
 - (iii) he was now facing financial hardship as a result of the suspension of his salary considering his commitments as a sole bread winner with one child, paying for a land loan, paying for a motor vehicle loan, paying for a loan to Bred Bank, paying for a loan to Finance Hub, Insurance policy payments and the anticipated burden of looking after his elderly parents in the event of his father's retirement.
 - (iv) the supplementary source of income via his Business has been affected and has been forced to stop operations temporarily.

The Ministry

14. The Ministry opposes the application. It notes that the Tribunal has powers under Regulation 23 (7) of the Civil Service (General) Regulations to reinstate the pay of an employee.

15. The Ministry relies on the decision of the Tribunal in **Public Service Commission v Atelaite Rokosuka** (PSDT No. 05 of 2024) and the High Court in **State v Public Service Disciplinary Tribunal, Ex parte Turaganivalu** [2017] FJHC 434; Judicial Review HBJ 12 of 2015 (6 June 2017).
16. The above decisions were relied upon to form the view that the nature of the allegations were such that it did not warrant a reinstatement of salary.
17. The Ministry highlights in its submissions that the Employee had refused service following the reinitiation of the allegations but only accepted service on the day the reinitiated charge was first called before the tribunal on 10th January 2025.

OBSERVATIONS

18. As this Tribunal has stated in **Atelaite Rokosuka (supra)**, Regulation 23 sub regulations (4), (5) and (6) when read together, have the following effect:
 - (i) an employee in the civil service may be put on suspension while he or she is under investigation.
 - (ii) the investigation may be carried out either by the Ministry or the PSC.
 - (iii) upon completing investigation, the Ministry or the PSC may decide to institute disciplinary proceedings by referring the case to the Tribunal.
 - (iv) upon a referral to the Tribunal, the employee shall be on suspension with no pay.
 - (v) however, Regulation 23 (7) gives the Tribunal a discretion to reinstate the employee's salary following a request by the employee.
19. In this case, the Permanent Secretary, as stated, made the decision to suspend the Employee. He then referred the matter

to the Tribunal on **01 October 2024**. Upon that referral, the Employee's salary was then suspended effective from the date of referral as per **Regulation 23 (6)**. On the 29th of November 2024, the Tribunal dismissed the charges. This was done on account of the fact that the Ministry had preferred no charges against the Employee. The Ministry finally filed proper charges on the 16th of December 2024. These were served on the Employee on 10th January 2025

DISCUSSION

20. The main question is whether or not the original referral to the Tribunal by the Permanent Secretary on the 1st of October 2024 was a valid referral. If it was not a valid referral, the question which then arises is whether the suspension of salary was then unlawful?

21. Regulation 23 sub-regulation (5) of the Civil Service (General) Regulations 1999 provides:

(5) Upon completing investigation, the Permanent Secretary of the relevant Ministry or the Commission may decide to institute disciplinary action by referring the case to the Public Service Disciplinary Tribunal.

22. What is referred to the Tribunal is a "**case**". The referral of a case as such signifies that the Ministry or the Commission has made the decision to institute disciplinary action. It follows that what the Ministry or the Commission is actually referring to the Tribunal is a "**disciplinary case**".

23. Section 120 (9) of the Constitution describes a disciplinary case instituted by the Commission or by the Permanent Secretary (etc) and referred to the Tribunal, as a "**disciplinary action**".

24. The Tribunal's function is to **hear and determine** such a case:

(9) In addition to such other functions as may be conferred by written law, the Tribunal shall have the function of hearing and determining **disciplinary action** instituted by-

(a) the Public Service Commission-against any permanent secretary; or

(b) a permanent secretary, the Solicitor-General, the Director of Public Prosecutions or the Secretary-General to Parliament-against any person employed in their respective ministries or offices.

25. A disciplinary case or action, in order to be valid, must contain clear unambiguous allegations. In State v Public Service Commission, Ex parte Laladidi [1995] FJHC 127; Hbj0017j.1992s (19 July 1995), Mr. Justice Byrnes said:

It is a guiding principle of our law that alleged offences should be made specific and that it is only when the evidence available shows that a person fits fairly and squarely within a specific offence that they should even be charged, let alone convicted.

The Applicant complains that the decision to discipline and demote him is null and void as it is based upon a charge which fails to identify with precision the provisions of Regulation 36 which the Applicant is alleged to have breached and that it also fails to state without ambiguity the precise nature of the charge and the facts which constitute it.

With these complaints I agree and for that reason alone I hold that the decision to discipline the Applicant based on the charge which lacks the vital matters I have just mentioned must be regarded as a nullity and therefore quashed.

26. It follows that a disciplinary case or action referred to the Tribunal for hearing and determination, must contain a charge which:

(i) sets out in very clear terms the facts (allegations) which constitute it (i.e. what did the Employee do or not do which forms the basis of the allegation that he or she had engaged in misconduct?).

- (ii) identifies with precision the provisions of the Public Service Act (Code of Conduct) which the Employee concerned is alleged to have breached through his action(s) or inaction(s).

27. Regulation 23 (6) provides as follows:

Subject to sub regulations (7) and (8), a referral to the Public Service Disciplinary Tribunal has the effect of suspending the employee commencing from the date the case is referred and the suspension must initially be on no pay, provided however that where the employee occupies staff quarters or receives a housing allowance, then that employee continues to be entitled to occupy the staff quarters or receive the housing allowance until the determination of the disciplinary charge by the Public Service Disciplinary Tribunal.

28. A referral to the Tribunal, according to Regulation 23 (6), effects two things: (i) the automatic suspension of the Employee from the date of referral, and (ii) the suspension of pay.

29. The Tribunal is of the view that a suspension from work, and of pay, carried out pursuant to Regulation 23 (6), would be unlawful, if they are based on a "referral" to the Tribunal which does not contain a disciplinary charge.

30. It should follow as a matter of right to the Employee (rather than as a matter of the Tribunal exercising its discretion) - that the Employee in such a situation should be reimbursed salary which was withheld from him or her from the date of the initial invalid "referral" to the date of the "revised" referral.

31. Whilst noting the above discussions, a few things are abundantly clear, that is:

- (i) the salary of the Employee has been suspended since the 1st of October 2024.

- (ii) the initial referral to the Tribunal was done erroneously which resulted in the dismissal of the referral on the 29th of November 2024.
- (iii) reinitiated allegations were served on the Employee on the 10th of January 2025.
- (iv) the Employee has adduced clear evidence of his various financial commitments.
- (v) the allegations against the Employee are serious as they allege 'breach of trust'.
- (vi) pursuant to Regulation 23 (7) of the **Civil Service (General) Regulations 1999**, the Tribunal has to consider whether it is appropriate to order partial or full reinstatement.
- (vii) the Employee has denied all allegations against him and the matter is ready to be fixed for hearing at the earliest available date.

32. While the Tribunal holds no view as yet as to the viability or other wise of the Ministry's case against the Employee, the Tribunal is obliged to balance the interests of the parties to find a just solution.

Decision

33. The Tribunal, considering the above discussions, finds it just to order partial reinstatement as follows:
- i. The Ministry is ordered to pay the Employee his salary for the period between the 1st of October 2024 to the 10th of January 2025.
 - ii. the Employee's salary from the 11th of January 2025 until the conclusion of this matter shall remain suspended.

34. The matter will now be fixed for hearing at the earliest date, convenient to all parties.

Signed _____

Hon. Justice Anare Tuilevuka

[Chairman - Public Service Disciplinary Tribunal]

Date: 14/3/25

Signed _____

Resident Magistrate Deepika Prakash

[Member - Public Service Disciplinary Tribunal]

Date: 14/3/25

Signed _____

Resident Magistrate Jeremaia N.L Savou

[Member - Public Service Disciplinary Tribunal]

Date: 14/3/25



¹ The Public Service Act 1999 does not define what constitutes a "disciplinary action". The phrase however is used in sections 7, 25 (1), 25 (3) of the Act and also in Regulations 22 and 37 of the Public Service Regulations 1999.

Notably, in State v Permanent Secretary for Women, Social Welfare & Poverty Alleviation, Ex parte Naidu [2006] FJHC 140; Judicial Review HBJ 54J of 2003 (4 May 2006, Mr. Justice Jitoko noted inter alia as follows:

Finally with regards to the First Decision the Court has noted that the Applicant had not argued the issue of initiation of the charges by the First Respondent, which formed part of the First Decision. It is sufficient at this juncture to say that the laying of the charges of allegations as done by the First Respondent in this case, do not constitute disciplinary action taken against the Applicant. They merely form part of the process of investigation of the complaint of allegation prior to the Commission determining to act on the report of the investigation.

In the above case, Jitoko J (as he then was) was not dealing with a referral to the Tribunal.