

The test concerning whether dismissal is an appropriate sanction or not is whether the offence committed is a minor one or not and whether it will have a negative impact on the working environment.

The Appellant was an ETC at the Municipality of.... He pleaded guilty before the District Court on ... on two charges of "*Possession of Cannabis*" and "*Smoking Cannabis*" and was fined. He was then dismissed by the Respondent in a letter given to him by the Chief Executive (the Responsible Officer) (RO) dated ...

Appellant's Case

The Appellant in his grounds of appeal considered his dismissal to be harsh, unfair and unjust. He only paid fines for the offences for which he had pleaded guilty on the advice of his Counsel.

He was not interdicted. He continued working with devotion and was not under report. He apologized for his act.

He averred that he had under his responsibility his old retired father and an unmarried sister. He was badly indebted for loans which he had taken but he admitted that this had not been pleaded in mitigation by his Counsel at the hearing stage.

The Appellant did not submit a Statement of Case and relied only on his grounds of appeal filed with the Tribunal.

Respondent's Case

The Respondent averred that the Appellant pleaded guilty to the two charges and paid a fine of Rs2,000 plus Rs100 as costs under each count.

Before making his recommendations to the Respondent, the Responsible Officer (RO) gave a chance to the Appellant, in all fairness, to give his explanations. However,

the explanations sought were not part of a disciplinary process. In the present case the Appellant was convened before a committee comprising officers of the Municipal Council of.... He was asked whether he was represented by a lawyer or a Trade Union representative. He replied in the negative. He explained his case at the hearing and when asked whether he had anything to add he said that he did not. He was told that it was for the Respondent to decide on the sanction to be meted against him but the Respondent may decide to terminate his employment at the Municipal Council. The Appellant was, therefore, given a hearing as per the LGSC Circular 9 of 2008.

Pursuant to regulation 36(1) of the LGSC Regulations, the RO forwarded to the Respondent a copy of the ... charges and the proceedings relating thereto, together with his own recommendations. The RO recommended that the Appellant be severely reprimanded.

Respondent considered the criminal charge against Appellant and his conviction on both counts. Respondent viewed Appellant's conviction seriously and decided that in the circumstances, it was fair, just and reasonable to dismiss him. Respondent's decision was also motivated by the need to preserve the integrity of the service and deter other employees from indulging in such activities.

As regards the averment of the Appellant that he was not interdicted after his conviction, Respondent averred that interdiction was the prerogative of the RO who, under Regulation 31 of the LGSC Regulations, would decide, in the public interest, whether to interdict an officer or not. Interdiction being on full pay, the RO had to exercise great care and caution before resorting to such a measure.

However, pursuant to Regulation 36, it was for the Respondent to determine the sanction to be meted out to the Appellant in view of his criminal conviction and it decided that he should be dismissed.

The Respondent further averred that the punishment meted out to Appellant was reasonable and proportionate in the circumstances. Respondent had scrupulously followed all procedures.

Determination

The Appellant had pleaded guilty to the two charges against him. He tendered his apologies to the Court for what he did. He was fined by the Court.

Following such conviction by a Court, the Respondent normally takes action against the officer under regulation 36 of the LGSC Regulations which reads as follows:

“36 (1) Where a local government officer is found guilty of a criminal charge likely to warrant disciplinary proceedings, the responsible officer shall forthwith forward to the Secretary a copy of the charge and the proceedings relating thereto together with his own recommendation.

(2) The Commission shall determine whether an officer to whom paragraph (1) relates should be dismissed or subjected to some disciplinary punishment other than dismissal or whether his service should be terminated in the public interest if the proceedings disclose grounds for doing so, without any of the proceedings prescribed in regulation 37, 38 or 39 being instituted.

(3) Disciplinary proceedings subsequently to a conviction shall not normally be taken in respect of minor offences under the Road Traffic Act, and of minor offences not entailing fraud or dishonesty and not related to an officer’s employment.”

The Respondent had issued Circular No 9 of 2008 where the Respondent advised the Responsible Officers of Local Authorities that they should *“henceforth give a hearing to employees who have been convicted by a court of law before making a recommendation as regards the punishment to be inflicted upon them in accordance with Regulation 36 of the LGSC Regulations 1984”*. Thus, while Regulation 36 states that action is taken *“without any of the proceedings prescribed in Regulation 37, 38 or 39 being instituted”*, a hearing was requested. In other words, the hearing will not be a disciplinary committee as required under Regulation 37.

The question then is whether the decision of the Respondent is harsh. For this, the Tribunal will lean on the judgment of the Supreme Court in the case of Local Government Service Commission v/s The Public Bodies Appeal Tribunal i.p.o R. Boodhun (2016 SCJ 511) where the Tribunal had quashed the decision of the LGSC and remitted the matter to the LGSC “for any appropriate decision” in a case where R. Boodhun was dismissed after being convicted by the Intermediate Court for “*Cultivating cannabis*” and “*smoking cannabis*”.

The Supreme Court found that the decision to dismiss was in order on the grounds that R. Boodhun was given a fair hearing before the decision was taken. Above all, the Supreme Court referred to the seriousness of the offences under the Dangerous Drugs Act and the distinction between drug-dealing offences and offences involving the use or consumption of drugs only. The Supreme Court said that “whilst it is likely that an offence of *smoking cannabis* would fall within the category of “minor offences”, the same cannot be said of a drug-dealing offence”

In this present case, the Appellant has not only been convicted of a charge of smoking cannabis but he was also convicted on a higher charge of “*Possession of cannabis*”. The Respondent’s decision was to preserve the integrity of the service and to deter other employees from indulging in such activities.

The Respondent referred to the judgement of the Supreme Court (Compagnie Sucriere de Bel Ombre v/s Shyam Purmessur 2015 SCJ 449) where the employee of the company was found guilty of a drug offence. The police found cannabis leaves and seeds in his bag while returning from abroad He was fined and following this the company terminated his employment. He seized the Industrial Court for unjustified termination of his employment and he won his case. The employer appealed to the Supreme Court which upheld the decision of the company as the situation created by the employee was likely to generate “*un trouble objectif caracterisé au sein de l’entreprise.*”

In the light of the above judgements of the Supreme Court, the Tribunal finds no fault in the decision of the LGSC to dismiss the Appellant and the appeal is therefore set aside.