

**Repeated absence and failure to provide explanations or attend Disciplinary Committee meetings cannot be condoned by any employer.**

This is an appeal lodged by the Appellant, a HEIR of the ...Council of ..., against the Respondent for its decision to retire him in the public interest.

**Appellant's case**

Respondent, through its letter of..., informed the Appellant that it was not satisfied with his attendance, which had not improved in spite of a number of warnings of the risk of disciplinary action against him. It had therefore decided to retire him in the public interest with effect from....

Appellant's Grounds of Appeal (GOA) were as follows:

- "- The Council, through its chief executive, exceeded its powers under s 4(3)(1) (b) of the LGSC Act 1975 and regulation 39 of the LGSC Reg 84. (sic)*
- The Respondent has not fairly exercise its powers.(sic)*
- The Respondent failed to take account all the facts and circumstances of my case."*

The Appellant further stated that:

- (i) The decision was taken without providing him with an adequate opportunity to lay out his case and the reasoning leading to the decision was flawed;
- (ii) The letter dated ... reference ... reveals that he was given insufficient time to submit his defence and the contents thereof imputed guilt at the outset;
- (iii) The figures as to absences are wrongly computed;
- (iv) The contents of that letter are in breach of natural justice and unconstitutional in that it does not give him a fair hearing;

- (v) Appellant was not given the opportunity to advance mitigating circumstances in particular his “long track record” nor to present testimony
- (vi) The sanction imposed by the Respondent is excessive, harsh, and disproportionate.
- (vii) The sanction imposed on Appellant was unwarranted in the present circumstances.

He expatiated on these grounds in a Statement of Case (SOC) in which he maintained that the computation of his absence was wrong and was either authorised or he had a valid ground to be absent.

On being cross examined by Counsel for Respondent, Appellant admitted that since,,,, he had had ample opportunity to explain his absences. As regards his averment that he was not given sufficient time to present his case, he also admitted that he was informed on ...of the reasons for contemplating his retirement in the public interest and was given up to ...to send his explanations. He did so only on ...(after the date of expiry).

Appellant filed a certificate from his Human Resource (HR) Department, to the effect that his work and conduct had been satisfactory and he expressed his surprise that this had not been considered by the Responsible Officer when he made his recommendation to the Respondent.

He averred that his personal and family circumstances were not taken into consideration, and that he can continue to discharge his job effectively as he had done in the past. To this effect he produced a list of all his previous postings and work effected.

It is, to say the least surprising, that the Responsible Officer (RO) should have issued a certificate of satisfactory work and conduct to an officer whom they are about to retire on grounds of excessive absences. Still the certificate is in stark contradiction with the GOA and the Statement of Defence (SOD) of the Respondent. Mr ..., of the HR department of the ... Council stated that the Appellant applied for the certificate of character like all employees on their retirement from the service.

Appellant also averred that he had asked, in vain, for a transfer nearer home. When asked by the tribunal how he was coping now, he replied that now he had a companion who was helping him. But previous to that, as he had the custody of his two very young daughters, he had difficulty to cope.

Dr, ..., witness for Appellant, was sworn in and stated that he was the private treating doctor of Appellant and he stated that he was competent to pronounce himself on the depressive state of Appellant. He had found Appellant under constant pressure and depressive as a result of his sick daughter and his divorce. He could, therefore, not attend work regularly.

### **Respondent's Case**

The representative of Respondent swore to the correctness of the SOD which stated that:

- (1) Appellant failed to attend a Disciplinary Committee on ...without valid reasons and was administered a Severe Reprimand under the LGSC Regulations.
- (2) Appellant again failed to attend a Disciplinary Committee on ...without valid reasons so his increment was deferred under the above Regulations.
- (3) In the years ...to ..., Appellant suffered salary deductions for unauthorized absences.
- (4) On ...Appellant was convened before a Medical Board and was found fit to discharge his duties. The Responsible Officer (RO) warned him to be regular in his attendance but Appellant failed to improve.
- (5) On ... Respondent warned Appellant that it proposed to initiate action to retire him in the public interest and asked him to say why this should not be done. In his reply dated... , Appellant promised to amend.
- (6) Despite everything, Appellant continued to absent himself from work without authorization.
- (7) On ... the RO again wrote to Appellant noting its concern that Appellant had continued absenting himself without authorization and informed him that it was proceeding with action for his retirement in the public interest pursuant

to Regulation 39 (1) of the Local Government Service Commission Regulations. Appellant was again asked to explain by..., why the Respondent should not do so.

- (8) On..., Appellant offered explanations which did not satisfy the RO.
- (9) The RO wrote to Respondent with a report of the case, Appellant's reply and his recommendation for Appellant's retirement in the public interest in pursuance of regulation 39(1) of the Local Government Service Regulations.

The representative of Respondent stated that the disciplinary action taken against Appellant was justified. He had been given ample opportunity to improve but he did not and Respondent had followed the procedure as per the Local Government Service Commission Regulations.

### **Determination**

The Tribunal is occasionally faced with an Appeal against dismissal or retirement in the public interest. This is a very sensitive issue as one of the parties may, if his appeal is dismissed, lose his means of livelihood. However, the Tribunal can only scrutinize the decision making process of the Respondent to see whether the principles of natural justice such as fairness and justice have been observed. It cannot substitute itself for the Respondent, however much it sympathises with an Appellant's plight. In the present case, Appellant has been caught in a series of unfortunate events from which he has not been able to extricate himself.

Since the year..., Appellant has had a bad record of attendance. In ... he failed to attend a Disciplinary Committee and as a result, he was severely reprimanded in accordance with regulation 42 of the LGSC Regulations. Again in..., on his failure to attend a Disciplinary Committee with regard to his unauthorised absences, his increment was deferred for a period of three months in accordance with the regulation cited above. Later his salary was subject to deductions for his unauthorized absences in the years ... to ...again in accordance with the same Regulations.

However, life must run its course and every person has to look after his own interests. Appellant has since the year ... turned a deaf ear to repeated threats of disciplinary action. He was administered a severe reprimand, his increment was

deferred, he suffered deductions from his salaries in four consecutive years, threats of retirement hang upon his head but he would not budge. The Tribunal feels sorry for him but he has himself to blame. Could the situation have been avoided if there had been a sound counselling service in the ... Council or if Appellant had been transferred nearer home, are questions to which we have no answers. At the end of the day an organization's effectiveness depends on the regular presence of its employees at the site of work. The Appellant's absences must have unduly interfered with the proper running of services where he was posted.

The Human Resource Management Officer ... deponed in a straightforward manner and explained what was considered unauthorised leave and how Appellant was given several occasions to provide explanations.

Section 7(3) of the Public Bodies Appeal Tribunal Act 2008 provides that

*"In an appeal before the Tribunal, the onus of proof shall rest with the appellant."*

The Appellant has not been able to prove any of the averments made in his Grounds of Appeal.

The Tribunal has sifted the evidence on both sides and sees no ground to disturb the Respondent's decision.

The appeal is dismissed.