

- **The Local Government Service Commission cannot apply a sanction which does not exist in its own Regulations.**
- **Sanctions must be reasonable and be more akin to restorative justice so that the offender learns to improve his behavior.**

This is a case concerning a decision of the Local Government Service Commission to sanction an officer under Regulation 36 of the Local Government Service Commission Regulations 1984.

The Appellant's Case

The Appellant based his appeal on the ground that "*the decision of the LGSC is illegal and ultra vires as the criminal conviction is not related at all to my employment*".

In his Statement of Case, Appellant, who was posted as LIAT at the Municipal Council of..., averred that he was involved in a case of Assault before the District Court of.... It was his sister in law who was declarant. He was found guilty and was fined. Appellant was called by the Municipal Council of ... before a Committee and he explained that this incident was due to a family problem and had nothing to do with his employment. He averred at the Hearing that it was a discussion between him and his brother which degenerated.

Despite this, he was given a sanction under the Local Government Service Commission Regulation 41(1)(c) i.e. he was reduced in rank and was transferred from the post of LIAT to that of RECR. Further he was disqualified from any appointment or promotion for the next three years.

He maintained that this does not fall under the Local Government Service Commission Regulation 36 as it was not related to his employment. Further he stated that the alleged victim his own brother also paid a fine.

The Respondent's Case

In its Statement of Defence, Respondent averred that Appellant joined service at the Municipality of ...on ... as RECR and was appointed as LIAT on...

Respondent referred to the Court case. Appellant was prosecuted on two counts for the offence of Assault, pleaded not guilty but was found guilty by the Court and fined Rs... and Rs... plus costs.

The Respondent took note of the averment of Appellant that this was due to a family problem but averred that *"a local government officer is expected to behave in a civilised and peaceful manner, be it within his working hours or after working hours. Such violent character reflects poorly on the image of the local government service and of its officers"*.

This was explained to him at the hearing committee when he was also told that *"his conviction will entail sanctions against him, to which Appellant did not object."*

The Respondent averred that the Responsible Officer (RO) referred the matter to it and recommended that Appellant *"be suspended from work without pay for a period of four working days."*

However *"in view of the gravity and seriousness of the offence and in order to preserve the dignity and integrity of the local government service and set an example for other officers, Respondent decided, in the exercise of the powers vested in it, to reduce Appellant in rank from his post of LIAT to that of RECR (Roster) and to disqualify him from any appointment or promotion for the next three years."*

Submission of Counsel for Appellant

Referring to the case of Rishiraj BOODHUN v LGSC (2016 SCJ 511), Counsel asked whether a simple assault case between two brothers was a serious offence? He submitted that if we accepted that, then the floodgates would be opened.

He stated that the incident happened on a *"droit de passage"* and not *"in public"* Counsel maintained that Appellant should not have been sanctioned at all.

Submission of Counsel for Respondent

Counsel agreed that it was a minor offence without aggravating circumstances. He said that the LGSC did not proceed under Regulation 36(3) but 36(2). Counsel did not wish to submit on the second part of the punishment while saying that the LGSC Regulation 41(1) does provide for reduction in rank.

Determination

The Local Government Service Commission Regulation 36 provides that:

“36. Procedure on criminal conviction

(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”.

Amended by [GN No. 83 of 1989]

The Tribunal must therefore determine if Appellant was right in averring that the Local Government Service Commission Regulation 36(3) should apply in this case as the criminal case was due to a family problem, it was a minor offence and was not related to his employment.

Though he knew that he could bring a Counsel it must be noted that he was not assisted when he appeared before the Committee of the Municipality.

The Tribunal had a copy of the hearing which was very brief. It was put very vaguely to Appellant that he was going to be sanctioned and he was told that he had to behave properly at work and also outside work. The said hearing did not look at his

record nor personal circumstances at all. All the evidence brought was already available to the Municipality and the hearing did NOT add anything.

When the PBAT deals with such cases it is important to see not only whether the sanction inflicted was legal as per the LGSC Regulations but also whether it was not Wednesbury unreasonable.

Regarding LGSC Regulation 36, it is in three sub parts. Subsection 1 is general and concerns the procedure to be adopted by the RO. In this case we have on record that the RO did respect the subsection.

Subsection 2 relates to the sanction i.e dismissal, termination of employment in the public interest or some other disciplinary punishment.

Subsection 3 relates to exceptions i.e that if it is a minor offence under the Road Traffic Act or minor offence not entailing fraud and dishonesty and not related to an officer's employment, there should be no disciplinary proceedings.

Appellant has maintained throughout that the offences committed by him fall under subsection 3.

We will therefore apply the test of reasonableness i.e. would a reasonable person think that the said offence deserved a sanction and, if so, was the sanction imposed reasonable?

Our test can also be based on what the RO, who knows Appellant best, recommended i.e suspension of four days without pay.

The Respondent does not have to follow the recommendation of the RO, even though we may see him as being a reasonable person. But the difference between the recommendation of the RO and the sanction imposed is so far apart that we cannot but come to the conclusion that Respondent was being totally harsh and unreasonable. The more so as the second part of the sanction is totally inexistent in the LGSC Regulation 41(1) which does not provide for any such "*disqualification from appointment or promotion for the next three years.*" We do not find this sanction provided for

anywhere and Counsel for Respondent chose not to submit on this. We therefore consider this as being illegal and an abuse of power. We cannot put shackles on a free man and deprive him of his aspirations.

The Tribunal of course agrees that officers must behave in a “*civilized and peaceful manner.*” But a “military” approach will not serve the purpose of reaching such an ideal. People must be judged in context. We cannot expect the same behaviour from a highly educated officer and one who has not had the chance of growing up in an ideal environment and pursue his studies long enough to gain the kind of “civilized” manner referred to.

Moreover we have asked and received a document from Respondent regarding similar offences in local authorities in the past. Nowhere did we find this kind of excessive “*punishment*”.

There must be uniformity in the kind of sanction given. Other methods are also available in terms of maintaining discipline. Modern trends now provide for restorative justice and not blind and harsh punishment which will not make of the offender a better person. He must be sanctioned to know that he was wrong and be made to feel that he must improve his behavior rather than be humiliated and be debarred from making any progress for three years. The Criminal Court has already done a substantial part of this by imposing two fines on him.

The Tribunal therefore quashes the decision of Respondent to sanction Appellant so severely and remits the matter back to the Respondent.