

- **An Enquiry Committee is only a Fact Finding Committee and not a Disciplinary Committee.**
- **The concept of fair hearing is that the officer is given a good chance to reply to charges whether it be before a Committee or in writing.**

The Appellant is posted as a Consultant in OTS at the ... Unit. He has appealed against the decision of the Respondent to uphold the decision of the Ministry of ... (hereafter referred to as the Ministry) to inflict upon him a severe reprimand.

Appellant's Case

The Appellant swore to the correctness of his grounds of appeal and explained the details of same to the Tribunal.

The Appellant averred that on or about he was informed by the Ministry that "*Following allegations of insubordination, unethical behaviour and malpractice against him during his posting at the Unit, the Ministry had set up an enquiry panel to investigate thereon*".

The date of the first sitting of the enquiry panel was set for ...at.... He stated at the hearing before the Tribunal that he was shown the letter on the eve of the meeting with the Enquiry Committee and did not have time to prepare his defence. The letter was addressed to the members of the panel of the Enquiry Committee and not to him. He did not receive a copy of the charges which had been levelled against him and was therefore not aware of the charges he would have to answer before the enquiry panel. He attended the meeting with the enquiry panel at the specified time. The Appellant was given to understand that all the witnesses and parties had been heard but he was not aware of their identity except Mr X who had made the allegations against him. He was the last one to be heard and he was not given the chance to cross-examine the witnesses, thus depriving him of a fair hearing.

When he was asked by the enquiry panel whether he was aware of the charges levelled against him, the Appellant replied that he had not even been given a copy of the charges before being convened before the enquiry panel. The Appellant stated that one member of the panel started reading the charges to him but the Chairman of the panel informed the Appellant that he would not be able to answer to the charges as he was not made aware of same. As such the enquiry panel could not hear him on that day. The Appellant was told that the Ministry would write to him and he would be given the charges after which he would be reconvened before the panel. However, the Appellant stated that he was not given a copy of the charges and was not reconvened before the panel.

On..., Mr X, posted at the material time at the Unit, requested the Appellant to submit certain explanations on charges which Mr X had levelled against him. The said letter was sent internally and the Appellant replied to the charges on ... and sent a letter of explanation to the Responsible Officer of the Ministry.

On or about ..., the Appellant received a letter from the RO of the Ministry stating *inter alia* that the “*Enquiry Committee set up to investigate in the complaints made against (the Appellant) has established the malpractices/unethical behaviour ...*”. The letter also contained more charges against the Appellant and he was requested to give his explanations thereon. He replied on the ... and explained that:

“11.1. He was never informed whether verbally or in writing about the complaints made against him by Mr X and could not be heard by the enquiry committee;

11.2. Ms Y ... was clearly unprofessional in the way she dealt with the person concerned and Mr X, to whom the letter of Ms Y was addressed, having an axe to grind against Appellant, did not hear the version of the Appellant;

11.3. He had submitted his explanations as far back as the ... to the RLHR, copied to Mr Z and the RO in a letter dated 7 January 2015;

11.4. A few charges were based on mere hearsay evidence and should not have been relied upon;

11.5. He did not attend to outsiders at the Unit and explained the circumstances of the case of the other person concerned”.

The Appellant averred that he was informed in a letter dated ... from the Ministry that he had been severely reprimanded due to his alleged unsatisfactory explanations.

The Appellant appealed to the Respondent on the ... against the decision of the Ministry.

The Respondent replied to the Appellant on ... that his appeal had been set aside and confirmed the severe reprimand inflicted by the Ministry.

In his ground 1, the Appellant found the decision of the Respondent procedurally flawed, unfair, illegal and in breach of the rules of natural justice

In his ground 2, the Appellant had questioned the fact that “severe reprimand” did not appear in the list of sanctions listed under Public Service Commission (PSC) Regulation 42(1)(a)(iv) and stated that on this count alone the decision should be quashed. It was conceded, however, that PSC Regulation 42(1)(a)(iv) did in fact relate to severe reprimand and Appellant withdrew this point.

In his ground 3, the Appellant did not agree that this Ministry should base itself solely on the version of Mr X given the bad blood between him and Mr X which he however never proved.

In his ground 4, he stated that the Ministry relied on hearsay evidence to say that the charges had been established.

In his ground 5, the Appellant had stated that Mr X had conveyed his complaints directly to the Responsible Officer without going through the RLHR. However, this point was not canvassed further as the latter went through the RLHR.

The Appellant contested the decision of the Respondent to uphold the decision of the Ministry without giving the reasons for its stance and stated that there was a duty on Respondent as an appellate body to explain on what considerations it based itself.

Respondent’s Case

The Respondent averred that the Appellant was a ...in the field of POTS. As he reached the salary point of Rs ... he became a Consultant as per the Pay Research Bureau Report 2016.

Following a letter from Mr X to the Ministry through the Acting RLHR reporting insubordination, unethical and malpractice of medicine against the Appellant an Enquiry Committee was set up by the Ministry to investigate thereon.

In a letter dated ..., the Responsible Officer informed the members of the Enquiry Committee that the investigating team would meet on ... and requested the Ag. RLHR of the Unit to inform the Appellant and Mr X so that they are present for the enquiry.

Respondent stated that the Appellant was given a copy of the letter dated ... and in that letter mention was made of allegations of insubordination, unethical and malpractice of ... against the Appellant. The Appellant did not contest this apart from the fact that he was not given the details of the charges. The Respondent averred that the allegations were read to him but the Appellant denied this.

The Appellant was given an opportunity to consult the relevant files but he systematically refused to provide any explanation and requested a copy of Mr X's letter. The request was not acceded to.

The Respondent averred that the purpose of the Enquiry Committee was to investigate into the allegations against the Appellant and whether these were founded. The other members of staff were interviewed and the relevant files were scrutinized.

On ..., Mr X sent a letter to the Appellant through the Ag. RLHR and requested Appellant to submit explanations on five additional allegations made against him. The Appellant replied on ... in a letter addressed to the Ag. RLHR through Mr X.

On..., the RO informed the Appellant that the Enquiry Committee had established malpractice/unethical behaviour in relation to charges (i) to (vi), a copy of which was annexed to the said letter. The Respondent also averred that in the said letter the five additional charges in Mr X's letter to Appellant as well as the complaint of Ms Y were mentioned.

The Appellant was informed that the above matters were viewed with much concern and that it was proposed to initiate disciplinary action against him under PSC Regulation 42. Appellant was requested to submit his explanations in writing

through the Ag. RLHR within 14 days of receipt of the letter. Appellant submitted his explanations on....

On ... the Appellant was told that his explanations were examined and were not found satisfactory and thus the sanction was inflicted under PSC Regulation 42(1)(a)(iv).

The Appellant appealed to Respondent but the decision of the Ministry was approved. The Respondent had informed the RO of the Ministry that it had taken into account all the facts and circumstances of the case, including the issues raised by the Appellant in his appeal before reaching its decision and that it had acted in accordance with the provisions of the law.

The Appellant chose not to give explanations before the Enquiry Committee despite having been verbally informed of the allegations against him and been given the opportunity to consult the relevant files.

The Respondent averred that it had acted fairly with the Appellant. Following the report of the Enquiry Committee, the Appellant was given the opportunity to provide his explanations to the established charges and the additional charges made against him and the complaint of Ms Y. The explanations of the Appellant were not found satisfactory.

The Respondent submitted that the Appellant was given ample opportunity to defend himself before the Enquiry Committee but he chose not to defend himself. The Respondent relied on documentary evidence and interviews of witnesses to establish the charges retained against the Appellant.

The Respondent averred that the appeal had no merit and moved that it be set aside.

Evidence from Witnesses

Mr T, who chaired the Inquiry Committee deponed before the Tribunal. He confirmed that the Appellant came before the Committee but he was not heard as the Appellant said that he was not aware of the charges and wanted to have a copy of the letter of Mr X. He said that Mr X was heard by the Committee, amongst others who came before the Enquiry Committee. He stated that in the report of the Enquiry

Committee there was a recommendation that the Appellant should be asked explanations concerning the alleged allegations made against him.

Mr W, another member of the Enquiry Committee also confirmed that the Appellant was not heard by the Committee and he also referred to the recommendation contained in the report referred to by Mr T.

The representative of the Ministry stated on cross-examination by Counsel for the Appellant that the Ministry was not aware of the alleged bad blood between the Appellant and Mr X.

Determination

There are basically two main grounds to this appeal:

- (a) The Appellant averred that he was not given a fair hearing and that the stand of the Ministry was illegal as the Enquiry Committee did not even hear his defence and based itself on hearsay evidence.
- (b) The Respondent did not act according to the principle of natural justice when it did not give the reasons for confirming the decision of the RO when he appealed to the Commission, it was unfair and illegal.

The Tribunal will address the first ground by giving a chronology of events leading to the sanction as follows:

- (a) The RO issued a letter to the members of the Enquiry Committee on ... and the letter mentioned the allegations against the Appellant. The Appellant himself made reference to these allegations in his Statement of Case. There was annexed to this letter the details of these allegations. It is not denied that the letter was not addressed to the Appellant but there was a marginal note on the letter that Mr X and the Appellant should attend the meeting of the Enquiry Committee to be held on.... The Appellant was only shown the letter on the eve of the meeting.
- (b) The Appellant attended the meeting on the.... But the meeting could not be held because the Appellant had not been given the charges against him. The Appellant was aware, however, that there were three main charges against him, namely "insubordination, unethical behaviour and malpractice

of ...". The Appellant could have stayed and heard the details of the allegations and disculpate himself before the Enquiry Committee, the more so that during the meeting he was invited to consult the relevant files with which he was familiar. He refused to do so.

- (c) On..., Mr X wrote to Appellant and sought his explanations on charges against him. He replied to the charges on
- (d) On..., the Appellant received a letter from the RO informing him that the Enquiry Committee had found the allegations against him established and he was requested to give his explanations which Appellant did in a letter dated.... The Appellant stated that since the Enquiry Committee had found the allegations established he was already found guilty by the Committee. The word "established" may have been ambiguous. The role of the Enquiry Committee is to have a preliminary investigation and find whether there is a prima facie case on the allegations made so that the charges could be put before the Appellant for his explanations. In the report of the Enquiry Committee there was a recommendation that the explanations of the Appellant be sought, which the RO did in the letter under reference.
- (e) The RO was not satisfied with the explanations of the Appellant and issued the letter of sanction of ... to the Appellant.
- (f) The Appellant was in turn not satisfied with the sanction and appealed to the Respondent as provided for under the PSC Regulations.
- (g) On..., the Respondent informed the Appellant that it had decided to set aside the appeal and confirmed the decision of the RO.
- (h) The Appellant then lodged his appeal to this Tribunal on....

It is clear from the above that the decision to impose the sanction was not a one-off affair. There has been a string of events over which the explanations of the Appellant were sought and to which the Appellant replied. The Appellant cannot

claim that he had not been given a fair hearing. The procedural legitimate expectations of the Appellant have been met. It is true that the Enquiry Committee did not hear the Appellant given the circumstances explained earlier. But the Enquiry Committee is not a Disciplinary Committee as set down under PSC regulation 37. It was only a fact finding committee to set the groundwork for putting the formal charges to the Appellant.

The Tribunal dismisses the first ground.

As regards the second ground, it is a fact that the Respondent did not give reasons to the Appellant when it confirmed the sanction inflicted on him. The Appellant felt that this should have been done in the interest of natural justice. The Tribunal does not share this view. The principle of natural justice should not be stretched too far. It cannot be expected that the Respondent gives answers/ explanations to all matters coming before it. This will open the floodgate and the institution's proceedings will come to a grinding halt. Natural justice needs to be seen in a proper and reasonable context. In *Lloyd v McMahon* (1987) AC 625. Lord Bridge has this to say that "the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase that better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory framework in which it operates." In this case the Respondent was only scrutinizing the decision taken by the RO on the Respondent's own behalf. Respondent has only to ensure that the RO has respected the procedures and provided it with all the relevant documents for it to carry out its duty properly.

The Tribunal finds that the two grounds of appeal do not stand.

The Appeal is set aside.