

Even if Regulation 36 of the Local Government Service Commission Regulation provides that the RO of a Local Authority must act forthwith, the fact that he waited for a Hearing Committee is not questionable. He was merely following Respondent's Circular No 9 of 2008 which purported to give all Appellants a chance to give their version and any matters which they can raise in mitigation.

The Appellant, a DHME in the employment of the ... District Council, has lodged an appeal with this Tribunal against the decision of the Respondent to retire him in the public interest from his post with effect from This decision was conveyed to him in a letter dated ... after he was found guilty before the District Court of ... and sentenced to pay fines for two offences including one Road Traffic Offence:

Appellant's Case

The grounds of appeal were as follows:

- “(1) The responsible officer failed to act “forthwith” in breach of regulation 36(1)*
- (2) The LGSC had failed to apply regulation 36(3)*
- (3) Both criminal charges of ... were not such as to warrant disciplinary proceedings and Appellant's retirement in the public interest’.*

The Appellant challenged the decision making process under ground 1. The Appellant averred that the Responsible Officer (RO) failed to comply with the mandatory requirements of regulation 36(1). The RO failed to notify the Respondent “forthwith” of the Appellant's conviction and to submit “his own” recommendation to Respondent, as he was statutorily required to do. Further, he had wrongly resorted to a “hearing” purportedly under regulation 36 before a panel of four local government officers presumably appointed by him. This was a further breach of Regulation 36 as such procedure was not known in law and was in breach of an express requirement of

Regulation 36(1) that the RO's statutory recommendation to the Respondent should be plainly "*his own*" and not that of a third party.

The Appellant addressed his grounds 2 and 3 together. He averred that Regulation 36(1) should be read together with regulation 36(3). Disciplinary proceedings were clearly not warranted in the circumstances; especially as both counts were classified as "minor offences" which were unrelated to Appellant's employment with the ... District Council and furthermore, there were admittedly no element of fraud or dishonesty involved. The mandatory statutory criteria laid down by Regulation 36 and the legal authorities bearing on the point were not borne in mind by the Respondent and presumably, by the RO or the panel which purported to hear the Appellant.

The Appellant submitted that the Respondent's impugned decision did not fall within the scope of Regulation 36 and was therefore *ultra vires*.

The Appellant moved that the Respondent's decision be quashed. To sustain his stand Appellant's Counsel referred to the case of Rungasamy v/s PSC (1985 MR 35). In particular, Counsel cited the following "*it is not every conviction by a Court of Law that is meant to warrant a dismissal or some lesser sanction. Paragraph (2) of regulation 36 does limit the kind of offence in respect of which disciplinary proceedings may be taken...*".

He also referred to the case of Bacsoo v LGSC and Municipality of Curepipe (1990 MR1).

Respondent's Case

The Respondent averred that on ... the RO of the District Council of ... was informed by police that the Appellant had on ... been found guilty and convicted for the above mentioned offences and had been made to pay fines of 1000 rupees on count 1 and 500 rupees on count 2.

By letter dated..., the RO requested for copies of the Court Proceedings and judgment, which he received on...

The Appellant was convened to a Hearing on ... by way of a letter dated ... as per requirement of Circular letter No.... The Appellant failed to attend this hearing.

By another letter dated..., Appellant was convened to another hearing on ... where he gave his version.,

Following the hearing, the RO, by a letter dated ... sent to the Respondent, recommended that the Appellant be inflicted a Severe Reprimand. The RO also enclosed a copy of the court proceedings and judgment.

The Respondent having carefully considered all the evidence, especially the guilty plea of the Appellant and the fact that the Appellant had committed a serious misconduct as a Local Government Officer, decided to retire the Appellant in the public interest.

The Respondent stated that the offence had occurred during the course of Appellant's employment, as averred by him during the hearing of..., to the effect that he took his private car in order to seek quotations for ... for office purposes. As a DD, the Appellant was expected to be aware of and to respect the Road Traffic Regulations. There had been contradictory versions of the events which occurred by the Appellant. In his statement to the police he stated one thing, whereas during the hearing he stated something different. As such the Appellant was not found to be a reliable witness by the Respondent.

The Respondent viewed the fact that the Appellant, during the course of his employment, committed a Road Traffic Offence, but also reacted negatively towards the Officer when she intervened to stop him. This is a very serious misconduct, especially from a Local Government Officer. Appellant was also employed as DD and should abide by the Road Traffic Regulations and respect law enforcement officers. The Respondent decided to retire the Appellant.

The Respondent reiterated that the Hearing Committee submitted its report to the RO without any recommendation. The RO took cognizance of the report and forwarded his recommendation to the Respondent by letter dated ... The Appellant had been given

an opportunity at the Hearing by the Committee to put forward his case. He was informed and explained the different punishments which could be taken against him, including the possibility that he might be dismissed. He was also informed that he could be represented by Counsel or a representative of a Trade Union, which he chose not to do.

On the issue of the need for a hearing Committee Respondent referred to the case of *Matadeen V P v The Pamplemousses-Riviere du Rempart District Council* (2013 SCJ 496) "*The question is whether this general principle of fairness and justice enunciated in **Bissonauth** should not, by ricochet, apply to the provisions of regulation 36(2) of the Regulations. That is, whether before dismissing the officer the Commission should give a chance, an opportunity to the officer to say why he thinks he should not be dismissed. In other words, whether the authorities concerned, when contemplating the dismissal of an employee under regulation 36 (2) of the Regulations, should at least so inform the officer, and take into account his response*".

The Respondent submitted that the Appellant had committed a serious misconduct and that the punishment meted out to him was proportionate to the offence.

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

Determination

This appeal rests on the interpretation and application of the Local Government Service Commission Regulation (LGSC) 36 which reads as follows:

Local Government Service Commission Regulation 36:

"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."*

The Tribunal will, in the first instance, address the issue of a hearing following an officer's conviction in court. It is true that regulation 36 says clearly that once an officer is convicted in court the RO must report the matter forthwith to the Respondent with his recommendation. Regulation 36 does not provide for the setting up of a Disciplinary Committee as per regulation 37 with strict guidelines as to its composition and *its modus operandi*. However, the Secretary of the Local Government Service Commission had issued Circular Letter No 9 of 2008 dated 20 October 2008 where he made reference to Regulation 36 and directed the RO's of Local Authorities as follows:

"2. I am directed by the Local Government Service Commission to inform you that the Commission has decided that Responsible Officers be advised that henceforth they should 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 LGSC Regulation 1984".

This hearing is in no way a Disciplinary Committee at which the officer has to exculpate himself for an offence committed by him. In the case of a conviction by the court, the officer has already been found guilty and was sentenced whether he

pleaded guilty or not. The Hearing Committee is not supposed to give a second chance to the officer to have the facts of the case heard again. In the present case there was no need for the officer to change his statement before the Hearing Committee as to the details of the case. He had already pleaded and been found guilty on the facts. The Hearing Committee was meant only to give the opportunity to the officer to explain the circumstances of the case and whether he had mitigating elements before the decision was taken to inflict a penalty on him. The Hearing given to an officer following conviction is to ensure fairness as natural justice requires.

The Tribunal finds that it was in order for the RO to give the Appellant such a Hearing, and the former had to wait for the Hearing Committee to submit his report before he could refer the matter to the Respondent. As has been stated by the Respondent, the Hearing committee did not make any recommendation as regards the penalty to be inflicted. This was the sole responsibility of the RO which he did in his letter to the Respondent.

The RO did not flout regulation 36 by not acting “forthwith” i.e. as soon as he obtained the Court proceedings and the judgment as he had to comply with Circular Letter No 9 of 2008. The Tribunal does not find that the said Circular letter goes against the LGSC Regulations as it gives Local Government employees a chance to explain their personal circumstances. But the Tribunal has said in the past that they must be fully briefed as to the charges that they face and what they risk. This was done properly in this case.

The Tribunal turns now to the disciplinary action taken against the Appellant in relation to the two counts on which he was found guilty in Court.

The main thrust of the appeal was that Appellant’s conviction was for “minor offences” unrelated to his employment and which did not involve either fraud or dishonesty so that the case would fall squarely within the scope of Regulation 36. Count

2 can be clearly disregarded as it related to a road traffic offence which attracted a fine of 500 rupees.

Count 1 can also be disregarded for the same reason. It was an offence under section 3(1) (a) of the Public Officers Protection Act 1957. The maximum penalty was a fine not exceeding 100,000 rupees and imprisonment not exceeding two years. However, only a fine of 1,000 rupees was imposed by the court following a plea of guilty. The court record showed that there was no aggravating circumstances which might have attracted a heavier penalty. The acid test which the Respondent failed to apply related to the classification of the offence.

The Appellant was of the view that the Respondent failed to assess the severity or otherwise of the offence. For there was no use of force or violence. The Respondent was adamant that the Appellant's words, directed against a law enforcement officer, was a serious offence.

Appellant was adamant that the words uttered were not violent.

However, he pleaded guilty on both counts and the Court found him guilty on both counts.

The case of a public officer is serious and not a minor offence as Appellant wants us to believe. However, Counsel for Appellant produced at the hearing copies of statements made at the Police Station by the officer concerned and two of her colleagues who were with her at the time of the incident, at the Hearing There was no mention of the Appellant threatening the officer with a sabre. In fact she and her two colleagues were clear in their statements that Appellant pointed his right finger at the officer. Further, in Appellant's own statement produced before the Court, the enquiring officer never put to him that he had used a *sabre*. The officer gave evidence before the Tribunal to the effect that her declaration and statements produced as well as those of the two other police officers who witnessed the offence were true. Had it been shown that the Appellant had a sabre it would

have been a different matter. Clearly the only mention of the sabre was in the information “template” and was never taken into consideration by the Court.

It must be highlighted also that when Appellant produced the Court Record, the criminal record of the Appellant was also annexed presumably by inadvertence.

In any case we have it that this was not before Respondent who merely based itself on the sentence of the District Court of ... but may have been influenced by the use of the word, “*sabre*” which we now know should never have been in the Information at all.

The Tribunal feels that the Appellant deserves a severe punishment. However, retirement in the public interest is too harsh as he is deprived of his livelihood and the local authority is deprived of an employee who has an unblemished record.

The Tribunal therefore quashes the decision of the Respondent and remits the matter to the Respondent for a more proportionate punishment.