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When there is a disciplinary hearing, it is of the utmost importance that a low grade worker be (i) explained what sanctions can be taken against him and ii) be given the chance to explain his personal circumstances and iii) that the whole procedure as well as the notes of meeting be in creole.

The Appellant has lodged an appeal before this Tribunal on the ground that he has been wrongfully dismissed by the Respondent from his post of …at the Municipal Council of …

The Respondent has raised a preliminary objection in law to the effect that the appeal has been lodged after the mandatory period of 21 days for an appeal before the Tribunal in breach of section 3(2) of the Public Bodies Appeal Tribunal Act 2008. The Tribunal has ruled that, since the Appellant appealed to the Respondent to reconsider the punishment inflicted upon him, and that the latter wrote to him to inform him that it did not accede to his request, time started running after that reply, which was the final decision of Respondent. The Tribunal ruled and allowed the appeal to proceed on the merits.

The Appellant's Case

- On …, the Chief Executive of the Municipal Council of … (hereafter referred to as the Responsible Officer) (RO) wrote to the Appellant to inform him that he was dismissed forthwith because*"….the Commission, after taking note of your conviction before the District Court of…, on …, and in view of the fact that you were sentenced to undergo 60 hours of community service order plus Rs 100 as costs, has in exercise of the powers vested in it by the section 4 (1)(b) of the LGSC Act 1975 and in accordance with the provisions of regulation 36 of the LGSC Regulations 1984 decided to dismiss you forthwith from your post of RCR at the Municipal Council of …"*

In this present appeal, the Appellant is basing himself on the following grounds:

1) "That the LGSC came to the conclusion to dismiss the Appellant without looking at the circumstances of the case.
2) That in all the circumstances of the case, the decision to dismiss the Appellant is manifestly harsh/excessive and against the principle of proportionality.
3) That the Appellant was not given a hearing, which is against the basic rules of natural justice;
4) That the Appellant was not requested at any time to furnish at least written explanations as to the circumstances leading to his conviction."

In his Statement of Case the Appellant, "basing himself on the Local Government Service Commission Regulation 1984", referred to the procedure that must be followed concerning cases of criminal conviction of local government officers. He stated that the procedures were not followed.

The Appellant denied having been called before a Disciplinary Board for the matters mentioned by the Respondent. He admitted that he was called twice, on, but each time it was concerning his conjugal problems. He admitted having been called before the District Court of … 3 to 4 times but maintained that each time it was concerning his wife. Regarding the other cases he chose to say that he did not remember or that he did not commit the offences. Several documents were produced including the letters sent to the LGSC, one of which contained a note signed by his wife who supported his request to review the decision to dismiss him.

The Respondent's Case

Before swearing to the correctness of its Statement of Defence, the Respondent moved to add a subparagraph to the effect that on …, the Director of Public Prosecutions had advised prosecution against Appellant for before …District Court. Appellant's counsel did not object and the Tribunal accepted the amendment. The Appellant however stated that this case had been dismissed.

The Respondent denied grounds 1,2 and 3 and averred that it has fully complied with regulation 36 of the LGSC Regulations. It also denied "that its decision can be reasonably considered as being harsh and excessive or disproportionate given the circumstances of the case, including the record of the Appellant who pleaded not guilty on

charges (i) and (ii) and was found guilty and was sentenced on … to two weeks imprisonment plus costs". It was averred that, following a social enquiry, the court substituted 60 hours of community service for the term of imprisonment. Further, Respondent averred that Appellant also pleaded guilty to two counts of … and was ordered to pay a fine of Rs ... plus costs on each count. Over and above these cases, the District Court of ... had sentenced Appellant to pay two fines of Rs ... plus costs after he had pleaded guilty to a charge of… in 1994 and in 2003. Following this last case, he had been given a severe reprimand under LGSC Regulation 36, whereas following the ... case he had been advised to adopt an appropriate behaviour, failing which he could be liable to disciplinary action. In…, he had also been given a severe reprimand under Regulation 42 for …

Respondent denied ground 3 and averred that the Appellant was given the opportunity to appear before a Board on … and he made no complaint concerning this hearing which was compliant with LGSC Circular no 9 of 2008.

Regarding ground 4, Respondent averred that the procedure set out under Regulation 36 does not require it to seek any written explanations. Concerning charges 1 and 2, Respondent averred that though Appellant pleaded not guilty, he did not lodge any appeal when he was found guilty. Respondent moved that the Appeal be set aside as it had no merit.

The Representative of the Respondent explained that there were two hearings concerning both cases, that he was informed by a letter and that he came alone each time and made no complaint regarding the hearing. The Panels were the same for both hearings. Then the Chief Executive sent the notes of meeting and all relevant documents to the Respondent together with his recommendations.

On being cross-examined, the Representative of Respondent conceded that Appellant was not given the opportunity of explaining the circumstances of each incident. Regarding the problem with his wife, he was asked if it was affecting him in his work and he replied that he was coming to work regularly. She also admitted that he had not been asked whether he understood what the hearing actually implied for him, in particular that sanctions could be taken against him. She also admitted that only what was said to Appellant was translated in creole, and not the whole procedure. She explained that the members of the panel did not sign the minutes of proceedings but merely the finding of

the Board, which was a separate document. She stated that the recommendation of the CEO was suspension from work for a period of ... days but the LGSC chose dismissal based on “the previous record of offences and the seriousness of the cases and the fact that he had been sentenced to ... weeks imprisonment converted to 60 hours of community service.” She added that when there is imprisonment, it leads to a dismissal.

She added that there was an observation that “there has been decline in the general conduct of minor grade workers, that kind of behaviour cannot be tolerated”

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Determination

The Tribunal has given due consideration to all the evidence adduced by both parties in the appeal. The issues are very simple and can be summarised as follows: Did the Respondent adhere scrupulously to the law and to all its Regulations in coming to its decision to dismiss the Appellant? Did it act fairly towards him? Was the dismissal the only decision it could have reached in the circumstances?

On the face of the pleadings one can be impressed by the heavy criminal record of the Appellant over the years. However, a close look reveals that for almost 10 years, there had been no incident. Then he was charged for … for which he gave an explanation. Again, for 6 years he had no incident until ... Then things seem to have started deteriorating in his personal life …and at work, until the incident of ….

Appellant had the opportunity to give his version after taking the oath and he appeared to be somewhat confused, about all that has taken place in his dealings with others. Clearly, he had problems with his wife which he explains as being due to her extreme jealousy but he was still living with her and she supported him by signing the letter of appeal to the Respondent. It has been impossible to know exactly what happened during the hearing held by the Municipality, during which proceedings were not in creole all the time, as the Respondent did not produce the transcript of the proceedings to support whatever they averred concerning the fact that he was given a chance to explain himself. We do not know for sure what the hearings were for as the versions of parties are different.

The Respondent did lay emphasis on the fact that he had been sentenced to imprisonment but we know that, in the end, he only had to perform 60 hours of community service, after the magistrate had received a probation report on his circumstances. However, there is no evidence that the Respondent was interested to know what those circumstances were. His long years of service do not seem to have weighed in the balance. He joined service in .... Further, the Respondent departed from the recommendation of the RO, who knows his staff well, and sanctioned him severely in order to give a signal to all workers in minor grades and not because the Appellant deserved to be dismissed.

Regulation 36 provides that "where a local government officer is found guilty of a criminal charge likely to warrant disciplinary proceeding the responsible officer shall forthwith forward to the Secretary a copy of the charge and the proceedings relating thereto together with his own recommendation." LGSC Circular letter No. 9 of 2008 states that the Commission has decided that Responsible Officers should give a hearing to employees who have been convicted by a court of law before making recommendations as regards the punishment to be inflicted upon them in accordance with regulation 36. It also states that the recommendations under regulation 36 should be accompanied by a certified true copy of the hearing. What the Tribunal has to decide now is whether the LGSC had all the relevant documents in its possession and whether its decision to dismiss the Appellant was the correct one to take.

In the case of Bissoonauth v the Sugar Fund Insurance Board (2005 PRV 68), the importance of a hearing is explained as below:

"It is hard to imagine circumstances where an employee might be able to advance strong mitigating factors to his employer in order to explain why his activities which had led to a conviction, and which in the absence of those factors, might justify his dismissal, should lead his employer to conclude dismissal was not appropriate, or the only option – see section 32(1)(b)(i). In other words if, as appears to be intended from its working and from wider policy considerations, the legislature takes the view that an employee should have an opportunity to put forward a case as to why he should be permitted to remain in employment despite conduct which his employer considers may justify dismissal, it seems somewhat arbitrary that, simply because the conduct has been the subject of criminal proceedings, the employee should have no

opportunity to put forward to his employer reasons why, despite his conviction, he should not be dismissed. The employer would be unlikely to be aware of all that was said at the criminal hearing, and, even if it was, it is unlikely that all the reasons as to why the employee should not be dismissed would have been raised – even as mitigating factors in relation to his sentence".

While there has been a hearing in the present case, the extract above demonstrates that there can be mitigating factors that are to be taken into consideration and that a criminal conviction does not necessarily lead to dismissal.

The case of Matadeen v The Pamplemousses /Rivière du Rempart District Council (2012 SCJ 496) also goes along the same line:

"Therefore it stands to reason that where the guilt of the local government officer has been established by a Court of law, regulation 36 (2) provides for the dispensation of a hearing of the kind set out in regulation 37 and 38. But the Commission when applying regulation 36 (2) still has to decide on the punishment to be inflicted on the local government officer in question. The question that may arise is whether there would still be the need to ask the local government officer to say why he should not be allowed to keep his job where he has been found guilty in a serious criminal case and the misconduct is clearly relevant to the performance of the type of work that he is to undertake and where it would be clearly not desirable to keep him in the job."

The question that begs to be answered in the case under appeal is whether the charges with which the Appellant has been convicted are serious and the misconduct relevant to the performance of his work and whether it is clearly not desirable to keep him in his job.

The Tribunal feels that Appellant had not been given a fair chance by the Municipal Council to explain fully the circumstances of each charge. We have also unfortunately not been provided with the notes of the hearing. The notes of proceedings were not signed by the members of the panel. The Tribunal finds the sanction was too harsh, the more so as the Court has been more lenient towards Appellant by reducing his prison sentence to community service. He had already been punished and cannot be punished twice and more severely by withdrawing his source

of revenue, which can only be a recourse of last resort. The Appellant was nearing his age of retirement.

The Appeal is therefore allowed, the decision to dismiss Appellant is quashed. The Tribunal remits the appeal to the Respondent and invites it to review its decision and find a more appropriate sanction and report back to the Tribunal within 2 months.