

Nothing in the PSC Regulations shall prevent a responsible officer or a head of department, without reference to the Commission, from administering a warning in his Ministry or Department on the ground of unsatisfactory work or conduct

The Appellant has lodged an appeal before the PBAT on the following grounds:

“I, Mr ..., am a SOTD posted to the SO Section at I am appealing against the decision of ..., Acting RNLC, to administer me a warning on ... which is not in order for the following reasons:

- (i) The reasons for administering a warning to me has not been stated;*
- (ii), Acting RNLC has no right to administer me a warning breaching regulation 42(3)(a) of the PSC Regulation;*
- (iii) The PSC has delegated the power to take disciplinary action to the Responsible Officer only....has, therefore, no legitimate right to take disciplinary action against any officer.”*

Appellant’s Case

On the day of hearing, he swore as to the correctness of his grounds of appeal and Statement of Case. In the Statement of Case he expatiated on his grounds as follows:

- “1. I aver that I am applicant in this case.*
- 2. I aver that I am a SOTD posted to the SO Section of the ... of the Ministry of*
- 3. I aver that my Responsible Officer is the Senior Chief Executive of the Ministry of....*
- 4. I aver that the Public Service commission Regulations 1967 has vested the power to exercise disciplinary action over public officers to the Responsible Officer only.*

5. *I aver that the Acting RNLC of ... is not the Responsible Officer of the Ministry of ... and therefore, by virtue of the Public Service Commission (PSC) Regulations 1967, he has not right to exercise disciplinary action over any public officer.*
6. *I further aver that regulation 41(2) of the Public Service Commission (PSC) Regulation 1967, as amended, stipulates that **“No punishment shall be inflicted on any public officer which would be contrary to any enactment”***
7. *I aver that regulation 42(3)(b) of the PSC Regulations 1967, stipulates that **“the intention to administer a warning shall be communicated to the officer in writing, and he shall be given an opportunity to reply”***
8. *I aver that I was not communicated of the intention of the **Responsible Officer** to administer me a warning under regulation 42(3)(b) of the PSC Regulations 1967.*
9. *I aver that the charges mentioned in the letter bearing reference ... dated ... addressed to me by the Acting RNLC are too vague, i.e., the dates on which the offences have been committed have not been specified and are, therefore, not clear.*
10. *I aver that regulation 42(3)(a) of the PSC Regulations 1967 stipulates that **“Nothing in these regulations shall prevent a responsible officer, without reference to the Commission, from administering a warning to any officer in his Ministry or department on the ground of unsatisfactory work or conduct”***
11. *I further aver that the letter bearing reference ... dated ..., addressed to me by the Acting RNLC does not mention the reason to support his decision to administering (sic) me a warning (whether on ground of unsatisfactory work or conduct) which is a breach of regulation 42(3) of the PSC Regulations 1967.*
12. *I further aver that the procedures to administer a warning to me was not followed and the punishment inflicted on me is not legally in order which is a breach of regulations 41(2) and 42(3) (a) of the Public Service Commission Regulations 1967.*

PRAYER

13. *I therefore pray to the Tribunal to quash the decision of the Acting RNLC of ... of the Ministry of ... who acted in breach of regulations 41(2) and 42(3) of the PSC Regulations 1967 to administer me a warning and in a discriminatory manner, having regard to the fact that the process of exercising disciplinary action against me was not respected and was unfair which tantamount to having modified regulations 41(2) and 42(3) of the PSC Regulations 1967, without giving due consideration of the prejudice caused to me.”*

He questioned the right of ... to inflict him a warning as according to him, only the Responsible Officer (RO) was mandated to do so.

Under cross examination, he stated having a Supervisor as superior.

He stated not being aware that a RNLC was in charge of all sections in Mauritius, stating he was in charge only of his region.

He was not aware that a RNLC could give him a warning as he was of the view only a Senior Chief Executive or Permanent Secretary could do so.

He was not aware of the two circulars that were issued and which gave the RNLC the possibility to inflict a warning. Referring to a letter dated ..., the Appellant stated that he had seen the letter and it was not clear why disciplinary action was being taken against him.

Referring to the delay of 14 days in the letter to object, the Appellant stated being aware of the said delay.

However, Appellant did not agree that all procedures had been respected.

Respondent's Case

Respondent, through its representative, stated that the Ministry of ..., through delegated power inflicted the warning according to the reports available. No disciplinary committee was provided as the warning was inflicted under Regulation 42(3)(a).

The Representative of the Ministry then deponed and explained that the Appellant was a SOTD.

She maintained that two circulars issued by the Ministry gave delegated power to the RNLC to take disciplinary action for small and minor offences as there was a bottleneck at the Ministry and there was a need to reduce the number of layers in Human Resources (HR) related operations before a decision was taken.

Under cross examination, the representative explained that the RNLC signed on behalf of the Senior Chief Executive of the Ministry as it was normal practice to do so.

It was put to the Respondent that in the letter dated ...sent to the Appellant, he should have been given an opportunity to explain himself. However, the Representative maintained that his shortcomings were given in a letter dated... to the Appellant and the letter of ... made reference to that letter.

Referring to the Circular of ..., regarding the delayering of activities in the HR Section, it was stated that discipline was administered depending on the gravity of the offence and the status of the defaulter and fell in the categories of 'simple', 'moderate' and 'complex'. Simple offences justifying a warning fell in the "simple" category and could be dealt with by the RNLC on behalf of the RO.

The Respondent maintained that the procedures had been followed and the appeal be set aside.

Determination

The Appellants had three grounds of appeal. These will be addressed in turn.

Ground 1: "The reasons for administering a warning to me have not been stated."

It is true that the reasons for the warning had not been spelt out in detail in the letter of warning dated ... to the Appellant. The Appellant must not be oblivious of the fact that the letter started by making reference to "this office letter dated ... and your

explanations letter dated ...”. In the letter of ..., the Ministry of ... drew the attention of the Appellant that

“You arrive office late and leave office early on a regular basis;

At times you do not sign the departure time; in some instance, you do not record the exact time of arrival/departure in the Attendance register;

Your time of arrival/departure are not legible; and

You have signed your departure on red lines”

It is obvious that the attention of the Appellant was drawn to his shortcomings and he was given 14 days to reply. The Appellant, therefore, cannot claim that he was not aware why the disciplinary action was taken against him or that he was not given the chance to explain. However, “Your explanations have been examined but has (sic) not been found to be satisfactory” as was said in the letter of ... to him.

The Appellant referred to PSC regulation 42(3)(c) which provides that “The intention to administer a warning shall be communicated to the officer in writing and he shall be given an opportunity to reply”. Appellant opined that the Respondent should have issued a letter to him to inform him about the forthcoming warning or such other disciplinary action that could be taken against him. This, however, is stretching the principle of natural justice too far. The attention of the Appellant was drawn to his shortcomings in the letter of ... This letter can be construed as an intimation that action would be taken against him if he failed to exonerate himself. His letter of ... was his reply. This concluded the requirement of regulation 42(3)(c).

Ground 2: “..., Acting RNLC has no right to administer me a warning breaching regulation 42(3)(a) of the PSC Regulations.”

The said regulation reads as follows:

Regulation 42(3)(a) *“Nothing in these regulations shall prevent a responsible officer or a head of department, without reference to the Commission, from*

administering a warning in his Ministry or Department on the ground of unsatisfactory work or conduct”.

The argument of the Appellant was that the RNLC was not head of a department and could not administer a warning. This point would hold if the RNLC had signed the letter to the Appellant in his personal capacity. It was clear, however, ... had signed the letter and had put under his name “for Senior Chief Executive”. In other words, he was conveying the decision of the SCE and this was in conformity with the regulation under reference. Even for other disciplinary actions the RNLC would not have been able to act on his own as the powers delegated to the RO by the Respondent cannot be sub-delegated to the RNLC or any other person. It is also apposite to note that a warning does not form part of the list of punishments, ranging from a simple reprimand to dismissal, contained under regulation 41 of the PSC Regulations. But Appellant did not raise this point as a ground of appeal.

The Appellant stated that he was not aware of the circular of ... regarding the layering of responsibilities, which allowed the RNLC to sign on behalf of the RO. This was not important as it was a purely administrative arrangement which did not take the power of decision from the RO.

Ground 3 “The PSC has delegated the power to take disciplinary action to the Responsible Officer only. The Acting RNLC has, therefore, no legitimate right to take disciplinary action against any officer”.

This ground of appeal does not hold following the explanation given for Ground 2, namely that ... signed on behalf of the SCE and the decision was, therefore, that of the SCE.

The appeal has no merits and is set aside.