

Det 29 of 2019

- Regulation 42(3) of the Public Service Commission Regulations provides that a Responsible Officer may administer a warning to any officer of his Department on the grounds of unsatisfactory work or conduct.
- The intention to administer a warning must be given to the officer in writing and he must be given an opportunity to reply.

The Appellant has lodged an appeal before this Tribunal contesting the decision of the Respondent to administer a warning to him on the ground of unsatisfactory service.

The Appellant is an OIA at the ACI.

Appellant's Case

The Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and his Statement of Case (SOC).

In his Grounds of Appeal (GOA), he averred that he provided explanations to the Director ACI of who queried him through a letter dated ...about a mistake which according to him "*occurred inadvertently and was not deliberate*". He also referred to a "small confusion". He further averred as follows:

- *"However, following the rules and procedure, I presented the file and the draft letter with 95% of the work already done in compliance to templates to my senior officer who checked, verified and cleared the letter without any amendments. He also advised that there is no need to seek further clearance.*
- *The same scenario occurred prior to issuing ... clearance after approval was obtained from the Ministry for the operations from ASR.*
- *What is intriguing is that the senior officer's explanations are found to be satisfactory despite that he admitted that it was an omission on his part for not doing an in-depth check and also mentioned the heavy workloads*

and the number of applications being treated at the ... Clearance Office and my explanations are not and I am administered a warning". SIC

He averred that Regulation 42(3)(b) of the Public Service Commission (PSC) Regulations had been violated as *"the ACI did not issue any letter of intention to administer a warning to me nor the opportunity to further explain"*. He protested against this injustice and non-compliance of regulations.

He averred that in a letter dated... , he was informed that his arguments were not acceptable.

He added that *"it is only now that I am requested to submit further explanation as to why I should not be administered a warning"*.(SIC)

He averred being victimised after having recently been refused study and vacation leaves.

He requested the PBAT to waive off the warning.

In his Statement of Case (SOC), the Appellant gave the details of the incident which was in issue and averred that that decision of the Respondent *"is unfair, unjustified and unwarranted in as much as it is not proportional, in nature and consequence, to the mistake"*. SIC and he gave the details of the incident which was in issue:

- *"On the... , the Appellant processed a clearance request from ASRL company clearances in connection with the conveyance of people of the ASR.*
- *Upon receiving the clearance request, the Appellant mistakenly inserted a different place as departure point while the request stated that the departure point was ..., before directing the request to the authority for approval.*
- *This mistake in relation to the departure point was, however, given an internal clearance by the Appellant's direct hierarchical supervising officer*

prior to the Appellant dealing with and directing the request as explained above.

- *The mistake was rectified a few days later and an amended letter was sent to the authority and approval was again received.*
- *The scheduled plan did not suffer from any consequences resulting from the Appellant's initial mistake”.*

Appellant submitted several documents.

The sequence of events was clear as per the exchange of letters between the Appellant and the ACI.

On ..., the ACI wrote to the Appellant and stated *inter alia* that Appellant had acknowledged that the mistake skipped his attention and that this might have had serious consequences. The Appellant was therefore trying to justify a serious mistake committed in his duties. The ACI denied that the mistake could be put on the increasing workload and pressure prevailing in the relevant office since the office was staffed by 80 % of its workforce. However, the ACI invited the Appellant to submit further explanations to him as to why he should not be administered a warning within one week of the date of the letter.

On ..., the Appellant wrote to the ACI to express his confusion in interpreting the warning issued to him on ..., i.e. whether that warning was still in force. In the light of a clarification on the issue and in order to allow him to make an informed reply, he requested for an extension for the submission of necessary further explanations to the office accordingly.

On ..., the ACI wrote to the Appellant and gave him a final one week delay to submit further explanations. He stressed on the fact that in case Appellant failed to do so, the decision taken in the office letter of ... would be maintained.

The Appellant did not write back to the ACI but instead, he decided to lodge the present appeal to the Tribunal.

Appellant maintained that the decision was *ultra vires* and he again reiterated that it had been taken without the Appellant being communicated with the written intention to issue him a warning, in breach of Regulation 42(3)(b) of the ... Regulations. The Appellant was not given an opportunity to provide explanations as required under that Regulation.

The decision of the Respondent would have a negative impact on his record as a public officer as such a warning had been entered in his personal file.

The Appellant prayed the Tribunal for an order requiring the Respondent to remove or cause to be removed the warning administered on him.

Respondent's case

The Respondent solemnly affirmed as to the correctness of its Statement of Defence (SOD), in which it averred that the appeal was premature as "*the case of issue of warning to the Appellant has not yet been finalised at the Department of ...*".

The Respondent further averred that under Regulation 42(3) of the PSC Regulations, the ACI had been delegated authority to administer a warning to any officer of his Department on the ground of unsatisfactory work or conduct. In a letter of ..., the Appellant was administered a warning for unsatisfactory service.

On..., when the mistake was committed, the Appellant was working with two other OIAs. They were responsible for processing applications for ... clearance from operators. The procedures and process flowchart were well documented in the CF Office. The Appellant did not pay due attention to the request made by the company and has committed a serious mistake due to his negligence and that the decision to administer a warning to him was justified.

The Respondent averred that, according to internal procedures, the direct Supervisor of the Appellant had to give instructions before the letter was dispatched.

The Supervisor of the Appellant was also requested to provide explanations on the incident. The Supervisor was not expected to counter-verify with the operator and the onus of the correctness of the contents of the said letter rested on the OIA.

The mistake was discovered when the Director was reviewing the file in connection with a request from ASRL Company to operate commercially following which the attention of the Appellant was drawn to his mistake.

The Respondent admitted that the scheduled plan between places did not suffer any consequence. However, the mistake concerned a particular routine which would have had serious consequences. If the error had not been detected in time this would have reflected badly on the Department.

The clearance concerned three schedules which had been erroneously processed.

The Respondent averred that the Appellant accepted his mistake and the serious consequences thereof, but his explanations could not exonerate him from the serious negligence in his duty. His explanations were not satisfactory.

There were exchanges of letters which were produced and delays were given for Appellant to file his explanations. On ..., Appellant was given at his request a final delay of one week but no explanations were given, and instead the Appellant informed the Respondent that the matter had been referred to this Tribunal, notwithstanding that at the Department level, the matter had not been finalized.

The Respondent stated that the Appellant was given the opportunity to provide explanations on three occasions.

The Respondent further averred that the decision to administer the warning was not a disciplinary action of a punitive nature nor did it affect the prospect of appointment and promotion of an officer. It was only a cautionary address to an officer to perform his duties diligently.

The Respondent also denied that Appellant had applied for study or vacation leave in...

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

The issue of the jurisdiction of the Tribunal regarding the fact that the decision was not final yet was then addressed by the Tribunal. Parties were invited to argue on the issue.

The Director of ACI explained that since he agreed to give a final delay to Appellant to say why he should not be administered a warning, it was understood that there was still the possibility to waive the warning. There was therefore no need to discuss again about the status of the warning.

The Tribunal then asked Appellant whether he was still maintaining his position or whether he agrees to give a final explanation. Appellant maintained that he had nothing to add. The Director then confirmed to the Tribunal that he was maintaining the warning. That decision then became final.

The Tribunal then decided that it had jurisdiction to hear the matter on the merits.

Determination

The issue of a warning to an officer is governed by Regulation 42(3) of the PSC Regulations which reads as follows:

“(a) Nothing in these regulations shall prevent a responsible officer or a head of department, 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.

(b) The intention to administer a warning shall be communicated to the officer in writing, and he shall be given an opportunity to reply.

(c) A warning, where administered, shall be entered in the officer's personal file and the officer shall be so informed".

It is true that Respondent should have given an opportunity to Appellant to reply as to why a warning should not be administered to him before the warning is administered to him.

However, the representative of the Respondent at the Hearing was of the view that the fact that the Respondent had sent a letter to the Appellant on ... informing him of the mistake committed by him and he was given the chance to give explanations should be construed as a way to tell the Appellant that action can be initiated against him.

More important is that after the Appellant got the warning, he protested and the Respondent invited him to give the reasons as to why a warning should not be administered to him. There were exchanges of letters between the Appellant and the ACI and, as pointed out by the Respondent, the Appellant was given three occasions to explain. The Appellant himself averred that, before he lodged his case the Respondent had in fact finally asked him to state why a warning should not be administered against him. This is confirmed in the letter dated ... from the ACI to Appellant.

But during the hearing of arguments, the Appellant was asked whether he was still willing to explain why a warning should not be administered against him and he said no.

The fact remains that the Appellant failed to reply to the last letter from the ACI. The Appellant stated at the Hearing that he did not intend to reply as he did not know what else he had to tell the ACI which he had not said in his previous letters. The Director, on his part, stated that in the absence of a response to his letter, the warning would be maintained. With this statement, the warning was construed as final and the Tribunal had jurisdiction to adjudicate on the matter.

The question then before this Tribunal is whether the warning is unfair, unjust and disproportionate. There is no doubt that the Appellant had committed a mistake and

he admitted it. The Appellant stated at the hearing that the mistake was not serious. This is a point of view not shared by the Respondent to the extent that approval was sought and obtained from the Higher Office on false information and the decision was communicated to the ASRL. The Respondent is of the opinion that the warning is just a cautionary action and would not impact on the future appointments or promotions of an officer. However, this is not certain as the letter of warning will be put in the personal file of the Appellant as he has been told.

The Tribunal finds that the Appellant has faulted in his duties, even if as he averred that there was pressure of work and the mistake was not done willingly but by inadvertence. It is not, therefore, unfair or unjust or disproportionate to administer a warning to the Appellant for that type of mistake. This is just to draw the attention of the Appellant on his fault. A warning is not a punishment and does not fall in the list of punishments at Regulation 41 of the PSC Regulations which are:

- “(a) Dismissal;*
- (b) retirement in the public interest;*
- (c) reduction in rank or seniority;*
- (d) stoppage of increment;*
- (e) deferment of increment;*
- (f) suspension from work without pay for a period not less than one day and not more than 4 days;*
- (g) severe reprimand;*
- (h) reprimand’.*

If the mistake was more serious, the Respondent would have resorted to PSC Regulation 37 *et seq.* which it did not do.

The Tribunal finds that the Respondent has not been unfair or unjust to the Appellant and that the warning is not disproportionate to the mistake. The Appellant had been given ample opportunities to give explanations and also to give reasons as to why a warning should not be administered to him.

The appeal is therefore set aside.