

No. D/13 of 2020

A Head of Department is perfectly entitled to take a disciplinary action against an employee who left a training course on a false pretence and who lies about the incident.

The Appellant, a MERP at the ... Department (GPD), is challenging the decision of the Respondent to inflict upon him a suspension from work without pay for a period of two days under Public Service Commission (PSC) Regulation 42(1)(a)(iii).

Appellant's Case

At the very beginning of proceedings, Counsel for Appellant raised a point to the effect that a letter from the Head of the Department dated ... made reference to an incident which occurred on Counsel argued that since the incident occurred one month before and not on ... the Appellant had no case to answer. He also argued that Respondent could not now be allowed to make any amendment. Invited by the Tribunal for her stand the Respondent's Counsel explained that it was merely a typing error in the second letter since the first letter did mention the relevant date.

The Tribunal ruled immediately that it would hear the case and the issue can be raised at the time of submission, the more so as Appellant clearly understood what was the relevant date.

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

His grounds of appeal read as follows:

- (i) The PSC Reg 42 (a)(1)(iii) application shall be voided "*null and non avenue*";
- (ii) The Reasons for such punishments are baseless, irrelevant and contain discrepancies on occurrence.

- (iii) No reports or mail from ... the Training Centre (TC) or any extract from their reports have been made known to me.
- (iv) I have duly received "Award of Certificate" for Training without any remarks from the TC.
- (v) I have not seen nor talked to any TC officer nor requesting any kind of permission on ... as I was attending training on
- (vi) Permission going to my place of work to collect my wife was an opportunity for a female staff of the training centre to hand over certificates (bundles) in envelop to the Registry of my place work.
- (vii) The Registry Office comprises of three distinct rooms- Main with records, sub Mrs P and Mr S and the HR section which was found at another corridor.
- (viii) Sufficient time could have been given to me to contrast, to confront the act of lying of any. There are no evidence of lying from my behalf.
- (ix) I have not been given sufficient days to make appeal to resist the decision as letter is dated ... and application on ... of same year.

The Appellant expatiated on his GOA in a SOC in which he stated that he sought permission to leave the training at the TC as his wife had health problems and he had to go to the office where she also works. He was asked to carry a bundle of certificates to hand over to the Office which he did. When he arrived at the office he saw Mrs P, who was then the Office Management Assistant there. The latter was angry and shouted at him and enquired why he left the training earlier. She insisted that Appellant's family responsibilities were not sufficient grounds for leaving training earlier. He explained the situation to the Ag Head of the Department in a letter when he received a letter dated ... seeking his explanations for having left the training early.

He received a second letter from the Head of the Department dated ... stating that his explanations "*have been carefully examined and have not been found to be satisfactory ...*"

He averred that it was considered that he left training on.... *“on the ground of having to return back to work at the Government Printing Department”*. He denied that that he ever mentioned that he would report back to work or meet Mrs P.

He averred that there was no adverse report against him from the TC and he was awarded the certificate for the said training course without any adverse mention at all.

He did not accept that he lied or that he was malingering. He was aggrieved by the penalty inflicted on him in spite of his explanations.

Respondent's Case

The representative of the Respondent solemnly affirmed to the correctness of Respondent's Statement of Defence (SOD) in which Respondent averred that the Department had received two mails from TC dated ... stating that Appellant had requested to leave the training earlier on ... on the ground that he had to return to work. Respondent, upon becoming aware that the Appellant had left the training at 2.00 p.m. on the ground stated by him, when in fact he was not required for work at the Department, had issued a letter dated ...requesting him for explanations.

The Appellant gave his explanations by way of a letter dated...

By way of a letter dated..., the Respondent had informed the Appellant that his explanations had been carefully examined and were found to be unsatisfactory and to show cause in writing within 14 days of the date of receipt of the letter why he should not be suspended from work without pay for two days.

Respondent conceded that there was a mistake regarding the date of the training session and it should read ... and not...

Respondent averred that the award of the certificate was not relevant to the present matter.

There were different disciplinary issues against the Appellant and these were treated separately. Respondent moved that the appeal be set aside.

The Head of the Department was called to depose and she stated that action was taken against Appellant as he lied as to the reason why he left the training course earlier and that was why action was taken against him

The Respondent brought two witnesses at the Hearing. The first witness, Mrs R. from the TC confirmed what she wrote in the letter dated ... to Mrs P, the second witness, of the Department, namely that Appellant told her that "*he will leave the training session around 2 pm as he has to report back to work. During lunch time, he again mentioned that he will leave at 2 pm and that he was going to see you. So I gave him the batch of Certificates to be handed over to you*". Mrs P. stated that she saw the Appellant in the Registry on that day and she asked him why he was not at the training session. Appellant was angry and raised his voice saying "*mo zanfan passé avant mo travail*". Appellant had then already remitted the bundle of certificates to an officer in the Registry.

Determination

The case concerns the fact that Appellant left the training course at the TC earlier on.... There was a mistake in one of the letters to the Appellant mentioning the date of ... which Respondent has corrected. Counsel for Appellant was of the view that since nothing happened on the ... there was no case against the Appellant. However, it was not denied that the incident for which action was taken against the Appellant referred to the ... There is no reason for the *lapsus calami* to prevent the case to proceed and be heard, the more so as Appellant knew full well which was the relevant date and replied as regards that date.

The reason why action was taken against the Appellant was that he told the TC officer that he had to leave the training course earlier as he had to go to work at the Department. The Department had sought confirmation from the TC that this was the reason given and obtained a positive reply from the TC. At the hearing Mrs R. again confirmed that this was so.

Mrs P. also deposed and said that she was surprised to see Appellant when he should have been at the training course. The reply of Appellant to Mrs P. points to the reason why he left the course and this was not for work at the office.

The Appellant brought the bundle of certificates and left it at the Registry. This was only incidental to his coming to the office which was in the first instance to pick his wife, according to him.

The Head of the Department pointed out at the hearing that action was taken because the Appellant gave false pretence to leave the training course earlier and had lied. The Head of the Department and the two officers who deposed proved to be truthful witnesses. On a balance of probabilities, the version of the Respondent stood the credibility test.

The Tribunal finds that the Respondent has acted fairly before taking disciplinary action. Respondent sought confirmation from the Training Centre on the reason put forward by Appellant to leave the training course earlier. Appellant was given a chance to explain and was subsequently asked why he should not be suspended from work for two days. Respondent has satisfied the *audi alteram partem* limb of natural justice.

The appeal is set aside.