

It is for the Respondent to decide upon which Regulation it intends to take disciplinary action provided the provision of the said regulation is complied with.

The Appellant is challenging the decision of the Respondent to approve the punishment of severe reprimand inflicted upon him by the Responsible Officer under Regulation 42 B(1)(b) of the Public Service Commission Regulations (PSC).

Case of Appellant

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

His GOA were as follows:

- “1. Harassment made against me by an Assistant ... Officer, an Acting Assistant ... and the Govt*
- 2. False and Malicious Allegations to harm me and Avoid me my Right to explain me as a Trade Union Leader and spokesperson of the workers.*
- 3. The PSC has never listen any of my arguments.” SIC*

In his SOC, he reiterated his GOA and averred that he made an appeal before the PSC on 2 February 2021 and the latter took 7 months to inform him that it has approved the punishment of the severe reprimand inflicted upon him without listening to any of his arguments.

The Respondent raised preliminary objections which read as follows:

Respondent moves that the present appeal be set aside, in as much as,

- a) The grounds of appeal set out in the Statement of Case of Appellant are “not concisely and precisely” set out thus being in breach of Section 6(1) of the Public Bodies Appeal Tribunal Act;

- b) The grounds of appeal (Grounds 1 and 2) as couched do not constitute valid grounds of appeal as they seek to delve into matters which do not pertain to the decision subject matter of this present appeal;
- c) The grounds of appeal (Grounds 1 and 2) as couched are not valid grounds of appeal as they eventually seek to have the Tribunal step into the shoes of the Responsible Officer, whose decision has already been subject to an appeal and a subsequent decision.

However, on the day the matter was fixed to be heard, Respondent decided to take the preliminary objections under the merits. Consequently, the Appellant was cross-examined.

Appellant agreed that his Ground of Appeal No 1 is not precise and concise and is too vague. However, he said that he kept all evidences to be adduced before the Tribunal. He also agreed that he has been given several opportunities in writing to give his explanations but maintained that he has done nothing wrong. He even admitted that he did not give a proper explanation in writing but simply wrote that he had no comment to make in one of his explanations. He also stated that he was not aware that the Tribunal has no jurisdiction to enquire about the allegations made against him as a decision was already taken by the Responsible Officer after all procedures were followed.

He opined that the Regulation 42 of the Public Service Commission Regulations was unjust and unfair and that Regulation 38 should have been applied. He also stated that no hearing was given to him by Respondent.

Case of Respondent

The representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence (SOD) which was filed in the present appeal.

In the SOD, the Respondent averred that the Appellant misbehaved and acted disrespectfully towards senior officers by allegedly intimidating and threatening them on an issue of providing toilet papers to be handed over to officers for the months falling within confinement period whilst the officers were not working during that period.

It also averred that the allegations made against the Appellant were thoroughly examined and considered. The Appellant was given the opportunity to defend himself in as much as;

1. By way of letter dated 23rd November 2020, the Appellant was requested to submit his explanations with respect to the allegations made against him and by way of letter dated the 30th November 2020, the Appellant informed that he had no comment to submit.
2. By way of letter dated the 3rd December 2020, the Responsible Officer of the Department once again sought the explanations of the Appellant. He was thus given a further opportunity to provide his explanations within 14 days. Following the said letter on the 7th December 2020, the Appellant submitted his explanations and denied all allegations levelled against him.
3. By way of letter dated 13th January 2021, the Appellant was informed that his explanations were carefully examined and found not to be satisfactory and that in accordance with regulation 42(1(a)(iv) of the Public Service Commission Regulations 1967, a decision was taken to administer him with a severe reprimand. He was however requested to show cause in writing as to why such a severe reprimand should not be administered to him.
4. The explanations in reply of the Appellant by way of letter dated 15th January 2021 to the Responsible Officer were examined but were found not to be satisfactory and consequently, the Appellant was administered a severe reprimand and he was duly informed that he may appeal to the Respondent under Regulation 42B(1)(a) of the Public Service Commission Regulations within 21 days of the severe reprimand.
5. On appeal made by the Appellant dated 2nd February 2021 the Respondent by way of letter dated 16th August 2021, approved the punishment of severe reprimand inflicted by the Responsible Officer upon the Appellant.

Under cross examination, the representative of the Respondent maintained that the Respondent was satisfied that all procedures according to the regulations were

complied with. She admitted that a store form was not sent to the Respondent for verification but this was a matter for internal management at the level of Government Department as it has nothing to do with the present appeal. The more so nothing as such was included in the GOA. She submitted copy of a summon issued against the Responsible Officer by the Public Body following a complaint by the Appellant. The latter declared that the matter is still under consideration by the relevant Office.

Determination

The Tribunal has given due consideration to the grounds of appeal as well as the defence of the Respondent.

Under ground 1

The Appellant admitted that ground 1 is not precise and concise. Section 6(1)(a) of the Public Bodies Appeal Tribunal Act 2008 specifically provides that the grounds of appeal shall be precise and concise. For clarification purposes, Section 6(1)(a) is being reproduced as follows:

“6. Procedure and powers of Tribunal

(1) *Subject to subsection (5), an appeal made under section 3 –*

(a) *shall set out concisely and precisely the grounds on which the appellant seeks to have the decision of a public body quashed or dealt with otherwise; and...*”

This ground is not related at all to the decision of the Respondent which is subject to the present appeal. As such the Tribunal does not have jurisdiction to enquire about allegations of harassment. Ground 1 is set aside.

Under Ground 2.

As explained earlier, the Appellant had already made a complaint to the Labour Office and the latter is still enquiring into the matter as this implies industrial relations and it is not within the mandate of the Tribunal to probe into. This ground also failed.

Under Ground 3.

From evidence on record it has been found that the disciplinary action was taken under Regulation 42(1)(a)(iv) of the Public Service Regulations which provides that the

Responsible Officer may without reference to the Public Service Commission inflict upon a public officer any punishment mentioned therein.

It is for the Respondent to decide upon which Regulation it intends to take any disciplinary action provided all the procedures as laid down in the said regulation are strictly complied with. The Appellant was given ample opportunities to give his explanations and there was no obligation under Regulation 42 for the Respondent to hold a hearing. Hence there is no merit under this ground as well.

All grounds having failed, the Appeal is therefore set aside.