

Issue of Jurisdiction: The Tribunal does have jurisdiction if an Appellant has appealed to a Public Body within the prescribed delay and his appeal has not succeeded. He has 21 days from the date the decision to reject his appeal was communicated to him. But he can also apply directly to the PBAT but he must respect the delay of 21 days from the date of the original decision of the Public Body.

Appellant has lodged an appeal before the Public Bodies Appeal Tribunal on the following grounds:

- *“ The reprimand inflicted upon me – the main reason being that my appeal was not submitted within the prescribed delay.”*

He further added:

- *“ I am not satisfied with all the proceedings right from the start.*
- *There should have been at least one hearing in the Office of ...*
- *All people involved in this issue should have been convened and heard on the same day and same time.*
- *My supervisor did not receive any letter to explain everything.*
- *I have always tried to explain, verbally, everything before any decision could be taken.*
- *“Le dialogue doit primer”.*
- *Mr X now working as ..., was at one time employed by the PSC.*
- *I joined service in July 1974, out of a competition, and have always delivered the goods properly with respect, diligence and loyalty. I have never been under report.*
- *It's all foul play and unfairness if not an abuse of the power and the apparatus of authority – sort of one way ticket.”*

In the present case, the Responsible Officer of the Ministry took disciplinary action against Appellant. The latter appealed against the disciplinary sanction to the PSC, in accordance with section 42B of the PSC Regulations. The Respondent refused to review the decision of the RO who stated in his letter to Appellant that *“ I am directed by the Public Service Commission to inform you that the Commission has considered the appeal made by you and has decided that it cannot be entertained as it was not submitted within the prescribed delay.”*

Clearly that is a final decision which the Respondent has taken and that decision concerned a refusal to entertain an appeal not submitted within a mandatory delay of 21 days. It is not directly pointing at the reprimand itself. However, Appellant is saying that he was not given a chance to be heard by his supervisors and the RO which would have given him a chance to exculpate himself.

The fact that he appealed to Respondent out of time cannot be questioned. Therefore the reprimand inflicted on Appellant cannot be brought before this Tribunal as the Tribunal cannot make a non-compliant appeal compliant.

At the hearing, Respondent raised two main preliminary issues to the effect that the jurisdiction of the Tribunal was ousted inasmuch as the decision was not that of the Respondent and that any appeal against the decision of the PSC not to entertain the appeal of Appellant had to be by way of judicial review before the Supreme Court.

In support of her first contention that the Tribunal has no jurisdiction to hear the present appeal as the decision to take disciplinary action was not that of the PSC, Counsel for the Respondent relied on Section 3 (1) of the Public Bodies Appeal Tribunal Act which empowers the Tribunal to hear any appeal against a decision of the Public Service Commission to appoint public officers or in relation to disciplinary action against public officers who are at fault. According to her, the Respondent was not a party to the decision to reprimand Appellant as it was the RO acting in accordance with Regulations 42(1) (a) and 42B(1) of the Public Service Commission Regulations who inflicted the reprimand.

She further submitted that, since it was apparent that the Appellant wished to contest the decision of the Respondent not to entertain his appeal, he should go to the Supreme Court by way of Judicial Review of the decision of the PSC.

Counsel for Appellant, submitted that, according to section 89 (1) (2) of the Constitution, the PSC is the only body entitled to take disciplinary action against a public officer. Thus, according to Counsel, should an RO take a disciplinary action against an officer, he is doing so under the aegis of the PSC and the decision taken is therefore deemed to be that of the PSC.

He strongly disagreed with the views of Counsel for Respondent that the Appellant should have proceeded to the Supreme Court by way of judicial review since that would be against the spirit and the very purpose of the PBAT Act which aims at ensuring expedient justice to the Appellants.

He finally submitted that the Appellant was appealing both against the decision of the PSC not to entertain his appeal and against the reprimand inflicted against him.

Findings

The first issue to be decided by this Tribunal is whether the Tribunal has jurisdiction to hear an appeal from the decision of the RO as opposed to that of the PSC. It is apposite here to refer to the following section of the Constitution:

Section 89 (1) and (2) (a) of the Constitution is as follows:

89. Appointment of public officers

- (1) *Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting such offices and to remove such persons from office shall vest in the Public Service Commission.*
- (2) (a) *The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any Commissioner of the Commission or to any public officer.*

A cursory look at the above section clearly indicates that the only body empowered to inflict a disciplinary sanction is the PSC and that any other person or body can only do so under delegated powers by the PSC.

It is also appropriate to quote section 3(1) of the Public Bodies Appeal Tribunal Act 2008 which deals with the jurisdiction of the Tribunal:

3. Jurisdiction of Tribunal

- (1) *Subject to subsections (2) and (3), the Tribunal shall hear and determine an appeal made by any public officer, or any local government officer, against any decision of the Public Service Commission or the Local Government Service Commission, as the case may be, pertaining to an appointment exercise or to a disciplinary action taken against that officer.*

The above section clearly limits the jurisdiction of the Tribunal to decisions taken by the PSC and LGSC.

Section 42 (B) of the Public Service Commission Regulations (Amended GN 76/03, Reprint No.2 of 2003) reads as follows:

- 42B (1) (a) *A public officer aggrieved by the decision of a responsible officer to inflict upon him a punishment under regulation 38(14) or 42 (1)(a), or by the decision of the Secretary to the Cabinet and Head of Civil Service to inflict upon him a punishment other than dismissal or retirement in the interest of the public service pursuant to regulation 42A, may appeal to the Commission.*
- (b) *The Commission may approve, vary or remit the punishment provided that the appeal is so made in writing within 21 days of the notification of the punishment.*
- (2) *A public officer aggrieved by the decision of the Commission to inflict upon him a punishment under regulation 37, 38(15) or 39 may appeal to the Commission for a review of its decision provided this is done within 21days of the notification of the punishment and new arguments are put forward to support his appeal.*

Bearing in mind the above relevant legislation, the Tribunal has considered whether the RO's decision to inflict the reprimand was solely that of the RO or whether it was that of the PSC.

Since the PSC has the exclusive power to exercise disciplinary control and to remove persons from office and that it is entitled to delegate its powers, we find that the powers to exercise disciplinary control have here been delegated to the RO and that it is exercised on behalf of the PSC. Any decision taken under delegated power therefore remains that of the PSC. Consequently, the jurisdiction of the Tribunal is not ousted *per se*.

That being said, the Appellant appealed to the PSC to have its decision reviewed after the delay of 21 days and therefore his appeal was not entertained. Counsel for Respondent submitted that any appeal against the decision of the PSC not to entertain an appeal outside time limit is not within the purview of the Tribunal. Indeed section 3(1), as cited above, only refers to appeals against any decision "*pertaining to an appointment exercise or a disciplinary action*" and does not include anything else. We agree that the Tribunal is not the right forum to appeal against the decision of the PSC not to entertain an appeal under section 42B of the PSC Regulations and that the Appellant should have had recourse to other avenues instead.

The Tribunal is of the view that the Appellant could have applied directly to the PBAT against the decision of the RO to reprimand him and which was communicated to him on the 31 March 2010. However, since the appeal in this case was lodged on the 16 September 2010, the Tribunal cannot unfortunately entertain an appeal against the decision of the RO as the appeal is clearly outside the delay of 21 days stipulated in section 3(2)(a) of the PBAT Act, which is a mandatory section of the Act.

The Tribunal however wants to put on record that, when someone appeals to a Public Body, the question of appealing thereafter to the PBAT should not constitute a hurdle. Logically the 21 days for lodging his appeal would then only run from the date that the appeal is rejected by the Public Body. Otherwise he would be out of time by trying to respect the law which gives him a right of appeal to the Public Body. But he should also be able to exercise his right under the PBAT Act which is a more recent piece of legislation whether he does so directly or after appealing to the Public Body. This point would deserve to be looked at by our legislators in due course. It

may be noted that the PSC Regulations dates back to the year 1967 and that part of the Regulations has not been amended, whereas the PBAT Act was voted in 2008.

In this case Appellant was unfortunately outside the delay of 21 days both for his appeal to the PSC and that to the PBAT as regards the reprimand.

The objection raised by Respondent regarding the lack of jurisdiction of the Tribunal to adjudicate on the rejection of the appeal by the PSC within the prescribed delay is therefore upheld and the appeal is set aside.