

PUBLIC BODIES APPEAL TRIBUNAL

No. 28 of 2012

In the matter of:-

Mr P. E. E. D'Emmerez de Charmoy

(Appellant)

versus

Local Government Service Commission

(Respondent)

Ruling

Mr Paul E.E. D'emmerez de Charmoy is the Human Resource Management Officer of the Grand Port-Savanne District Council. He was suspended from work for a period of three working days by the Local Government Service Commission "after considering the report of the inquiring officer appointed under regulation 38 of the Local Government Service Commission Regulation 1984". Disciplinary proceedings took place against him on the grounds of insubordination and misconduct. There were six charges but only charges 2 and 4 were found to have been proved.

He appealed to the Public Bodies Appeal Tribunal against the decision of the LGSC as follows"

- << (i) The finding of the Commission of Enquiry whereby the Commission found the charges 2 and 4 proved
- (ii) The decision of the LGSC to suspend me from work without pay for a period of three days from the 1st June to 3rd June 2011.>>

In his elaborated grounds of appeal he added a prayer as follows:

- <<4.1 the findings of fact whereby the Committee of Enquiry found the charges 2 and 4 proved, be quashed;

4.2 In the alternative, the decision of the Respondent to suspend him from work for three working days without pay from the 1st June to the 3rd June be quashed, as manifestly severe and excessive>>.

The case was entered against the LGSC and against the Grand Port Savanne District Council as Co Respondent. In a preliminary point raised by Counsel for the Respondent, objection has been taken that the Grand Port Savanne District Council be made a Co-Respondent on the basis that the PBAT Act provides that an appeal should therefore be directed against the LGSC or the PSC only. In this matter, since the decision appealed against is one taken by the LGSC, the question of putting the Council into cause should not arise. In her submissions, Counsel for Respondent invited the Appellant to call the Council as a witness or let Respondent call the Council as witness if they wish. But she stressed on the fact that it should not be made a party to case.

Counsel for Appellant, on the other hand, submitted that his appeal was proper as the LGSC was the party against which the Appellant had entered the case as Respondent. However, given that Appellant is posted at the Grand Port Savanne District Council and that the Responsible Officer is the Chief Executive of the Council, it is only normal that he should be joined as a Co-Respondent given that it is the authority that initiated disciplinary proceedings against the Appellant and that it is therefore an interested party. Further, Counsel submitted that the Council should come and indicate its stand in the present matter. He also argued that Section 3 of the PBAT Act refers to the PSC and LGSC as being Respondents but that does not preclude any other parties directly concerned to be joined in.

After having given careful consideration to submissions made by both parties, the Tribunal finds that the LGSC is the proper party against which the Appellant should appeal and against which it has in fact appealed in this case. Section 3 is in fact very clear and determines the limited jurisdiction of the Tribunal to these two Commissions only. The Tribunal also bears in mind that the decision to sanction the Appellant has been ultimately made by the LGSC, even if it was taken after recommendation by the Council. The LGSC is the sole authority empowered to do so. True it is that the Council recommends but the LGSC is free to discard the recommendation of the

Council, or alter the sanction once a recommendation has been made by the Council and the latter does not have a say in the matter anymore. We, therefore, see no reason why the Council should be made a party to the case. Of course, the Appellant is free to call the representative of the Council to depone as witness. If the Appellant cannot secure its presence, the Tribunal can always intervene to summon the Council if it deems it necessary as per section 7(8)(a) of the PBAT Act.

For the reasons mentioned above, the case is to continue against the LGSC as Respondent and the Council is put out of cause.

S. Aumeeruddy-Cziffra (Mrs)
Chairperson

Wong So
Member

P. Balgobin-Bhojru (Mrs)
Member

Date:

Note: This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. Since the case was withdrawn, the Determination of the Tribunal stands good.