

The Tribunal has no jurisdiction to hear a case which concerns a decision not to appoint someone in a substantive capacity and to revert him back to his previous post as it is neither an issue of appointment nor of a disciplinary action as per section 3(1) of the PBAT Act 2008

A Preliminary Objection in Law to the effect that “the Tribunal has no jurisdiction to entertain the present appeal as it is contrary to Section 3(1) of the Public Bodies Appeal Tribunal Act” was raised by Counsel for Respondent who moved that the

Counsel for the Appellant moved for certain particulars as to the objection raised by the Respondent which were furnished. The objection raised read as follows:

“The decision by the Public Service Commission to terminate the temporary appointment of the Appellant is not a decision pertaining to a disciplinary action taken against the Appellant as referred to in Section 3(1) of the Public Bodies Appeal Tribunal Act”.

Section 3(1) of the Act delimits the jurisdiction of this Tribunal and provides as follows:

“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.”

This Section therefore delimits the Jurisdiction of the Tribunal to hear and determine appeals against any decision of the Public Service Commission pertaining (i) to an appointment exercise or (ii) to a disciplinary action against a public officer.

Learned Counsel for the Respondent submitted that there was no disciplinary action taken against the Appellant in the present appeal; he cannot therefore challenge the decision of the Public Service Commission to terminate his appointment and

reverting him to his former post. Further, learned Counsel for the Respondent referred the Tribunal to the appointment letter. It is therein expressly stated that the Appellant's appointment as ... was in

- (i) a temporary capacity;
- (ii) for a period of six months;
- (iii) and if favourably reported upon, consideration will be given to him being appointed as Secretary in a substantive capacity.

It is also therein mentioned that the Appellant's temporary appointment "may be terminated at any time in the event of incompetence, misconduct or insubordination and you will be reverted to your substantive post of Administrative Manager at the National Transport Authority".

Learned Counsel also referred us to the Privy Council Cases of

- (i) D. Panday v/s The Judicial and Legal Service Commission (No.33 of 2007) and
- (ii) S. Gokool and Ors v/s the Permanent Secretary of the Ministry of Health (No.84 of 2007)

Counsel for the Appellant, submitted that, even though the decision of the Public Service Commission does not pertain to a disciplinary action taken against the Appellant, there has been an "appointment exercise" and hence the Appellant is relying on section 3(1) of the Act, and is appealing against the decision of the Public Service Commission to terminate his appointment as Temporary Secretary to the Ombudsperson for Children's Office.

The admitted facts of this case

The Appellant was offered employment as ... following an advertisement for suitable candidates published in Public Service Commission Circular Note... His letter of appointment ... stipulates the terms and conditions of his temporary appointment. He assumed duty on... The appointment was extended

- (a) for a first period of six months..., followed by another period of six months up to ..., a period of one year with effect from and a last period of six months up to ...
- (b) During the course of his temporary appointment his explanations were sought on certain allegations made against him and which he did provide...
- (c) His temporary appointment was terminated by letter from on or about ...
- (d) There has been no Hearing in respect of any disciplinary proceedings taken against him.
- (e) There is a set procedure to be followed where there is such a Hearing (*vide* Public Service Commission Regulations GN. 76/77).

Section 3(1) of the Act is clear on the jurisdictional aspect of any appeal brought before this Tribunal. The Appeal has to be against any decision of the Public Service Commission pertaining to an appointment exercise, or to a disciplinary action taken against the Appellant as a public officer.

It remains to be seen whether the “non-appointment” of the Appellant to the post in a substantive capacity is an “appointment exercise” within the purview of Section 3(1) of the Act. First the Appellant cannot contest his own appointment in a temporary capacity. His appointment was duly made following an advertisement published as per Circular Note... There has been a proper appointment exercise in his favour. It was only in ... that his temporary appointment was terminated and his subsequent reversion to his substantive post occurred.

With reference to the two Privy Council cases placed before us by learned Counsel for the Respondent, the Tribunal had this to say:-

These two cases have no direct bearing on the preliminary objection presently raised. But it is opportune to quote from the Judgement of the Lords of the Judicial Committee at paragraph 15:-

“In so far as the first ground rested on a verbal distinction between the ‘temporary employment’ for which the Magistrate was engaged and ‘appointment proper’ to which

the Regulations could apply, the Board would not accept the reasoning (and in any event notes that no such distinction could be drawn in this case, where Mr Panday was given a “temporary appointment”). Circumstances may arise in relation to temporary Magistrates which could call for the operation of the disciplinary regulations. One example would be a suspected incident of corruption in the course of a Magistrate’s duties, where this was the only suggested basis for termination of his appointment. But the temporary nature of an appointment permits removal for reasonable cause, of which the Commission is the Judge: Thomas v/s Attorney General of Trinidad and Tobago (1982) AC 113, 126H, per Lord Diplock. So it is open to the Commission, providing it follows a proper procedure, to form a view that the appointment should be brought to an end because of unsuitability for permanent appointment not involving any conclusion of misconduct.”

In line with the observation of their Lordships, we have to conclude that his temporary appointment was terminated following a proper procedure laid down in the letter to the Appellant appointing him to the post in a temporary capacity.

The Commission decided not to appoint the Appellant as ... for reason(s) placed before it. It is our view that the Public Service Commission is the sole Judge in a case of ‘temporary appointment’.

It is our considered view that the Appellant has not been “sanctioned” in the sense that he has been punished and hence reverted back to this post. Again there have been no disciplinary proceedings taken against him following a proper Hearing as per the Public Service Commission Regulations GN 76/77. Had there been such proceedings and a proper hearing, he could have appealed against his reversion to this Tribunal and, if still dissatisfied, by way of Judicial Review before the Supreme Court of the land.

We have considered the submission of learned Counsel for the parties on the objection raised. It is our view that the objection is well taken and is accordingly upheld.

The appeal is thus set aside.