

GR/ 5 of 2014

The 21 days mandatory delay for an appellant to lodge an appeal runs from the date a final decision is communicated to him.

The Appellant has lodged an appeal before this Tribunal on the ground that he has been wrongfully dismissed by the Respondent from his post of RECOR at the Municipal Council of....

The Respondent has raised a preliminary objection in law to the effect that the appeal has been lodged after the mandatory period of 21 days for an appeal before the Tribunal in breach of section 3(2) of the Public Bodies Appeal Tribunal Act.

The chronology of events is as follows:

- On.... , the Chief Executive of the Municipal Council of ... (hereafter referred to as Responsible Officer) wrote to the Appellant to inform him that “....*after taking note of your conviction before the District Court of ..., on ..., under the following charges : ...*

and in view of the fact that you were sentenced to undergo 60 hours of community service order plus Rs 100 as costs, has in exercise of the powers vested in it by the section 4 (1)(b) of the LGSC Act 1975 and in accordance with the provisions of regulation 36 of the LGSC Regulations 1984 decided to dismiss you forthwith from your post of ... at the Municipality of ...

- On... , the Appellant wrote to the Secretary of the Local Government Service Commission to reconsider the above decision as he was facing serious difficulties. He wrote “I should be grateful if you could reconsider your decision of dismissing me from the post of RECOR on **humanitarian ground**” (emphasis ours)

- On... , the Responsible Officer referred the letter of ... to the Respondent for the latter's consideration.
- On... , the Respondent wrote to the RO to inform him that the request of the Appellant could not be acceded to,
- On..., the Responsible Officer wrote to the Appellant, on advice tendered by the Respondent, to inform him that "*your request cannot be acceded to*"
- The Appellant lodged his appeal before this Tribunal on.....

Counsel for Respondent averred that since the decision to dismiss Appellant was communicated to him on ... , the mandatory period for appealing to the Tribunal started as from that date. Since the Appellant lodged his appeal on ... this was well beyond the 21 days allowed for by the PBAT Act. Counsel argued that the LGSC has no power to review its own decision. There is nothing in the LGSC Act and the LGSC Regulations 1984 which gives power to the LGSC to do so.

The appeal made by the Appellant in his letter of ...served no purpose as the decision to dismiss was final and the Respondent could not go back and review its own decision. Counsel referred to section 30 of the LGSC regulations which says that:

"The Commission shall not exercise its powers in connection with the dismissal, the disciplinary punishment or the termination of appointment otherwise than by way of dismissal of an officer in the local government service except in accordance with the provisions of these regulations or such other regulations as may be made from time to time by the Commission under the Act"

Accordingly, regard must be had to the procedures applicable and criteria to be satisfied as set out in those regulations when the LGSC is exercising its powers and duties.

The Respondent also submitted that it would not be legally valid to seek an actual subjective notification of the Appellant. Firstly, the application of regulation 47 of the LGSC Regulations and section 40 of the Interpretation and General Clauses Act was clear. Secondly, there was nothing in the PBAT Act to support

this interpretation. Respondent mentioned that “the Employment Rights Act was amended to specifically insert such notification so that it could be reasonably argued that the previous general drafting (as the PBAT Act) did not convey such a subjective actual meaning.” Respondent averred that should the appellant seek to argue that the appeal could be entertained outside such statutory delay, this would not be possible because no such motion had been made before the Tribunal. The Appellant’s position was that his appeal was within the set delay. Counsel averred that the Appellant received his notification letter dated He also wrote his letter dated... . The Appellant did not give any explanation as to why he did not lodge an appeal when he could have done so.

Counsel submits that the Appellant has not shown good cause for his application and the appeal is outside the statutory delay.

Counsel for the Appellant argues as follows:

1. *Regulation 30, more specifically part IV, of the Local Government Service Commission Regulations 1984 is limited only to the procedure that must be adopted in dealing with disciplinary matters prior to a dismissal. It does not deal with post dismissal issues and consequently regulation 30 does not (expressly or impliedly) provide that the LGSC cannot deal with a request for a review after a dismissal. Similarly nowhere in the LGSC Act 1975 or its Regulations is it specifically provided that the LGSC cannot review its decision.*
2. *On the other hand regulation, **Regulation 44(2)** of the Local Government Service Commission Regulations 1984 provides that where disciplinary proceedings are instituted against a local government officer under this Part, the responsible officer shall ensure that at each stage of the proceedings the Secretary is informed of the action taken, and the Commission may, if it thinks fit in any particular case, provide for or discontinue disciplinary proceedings against a local government officer. This in fact confers a certain amount of*

discretion on the Commission thereby leaving scope for a request for review rather than removing powers of review altogether from the hand of the Commission.

3. *The Appellant reiterates the case of **R v Stratford – on – Avon District Council, ex p Jackson [1985] 1 WLR 1319** where it was held that the delay during which the claimant was making an approach to the Secretary of State could not be described as unreasonable even though the prospect of the Secretary of State intervening was remote. Therefore even if we were to accept that the LGSC could not have possibly reviewed its decision, as application for review could still potentially stop the clock for limitation purposes in spite of the LGSC's inability to review its decision pursuant to the abovementioned case.*
4. *Notification under Regulation 48 of the Local Government Services Commission Regulations 1984, by registered letter comes into operation where it is not possible to effect service upon a local government officer **personally**. The Appellant has not been evading service and consequently the said regulation does not apply.*
5. *The PBAT is not bound by the strict rules of procedure and is required to exercise fairness (vide **Section 7(5) & (6) of the Public Bodies Appeal Tribunal 2008**). Hence in exercising its functions, the Tribunal can proprio motu extend the time delay for appealing without the need for a motion to be made if fairness so requires.*
6. *In **Margaret Toumany and John Mullegadoo V Mardaynaiken Veerasamy [2012] UKPC 13**, the Judicial Committee of the Privy Council urged the courts in Mauritius not “to be unduly technical”. The mere absence of an express verbal motion to extend the time delay does not bar the Tribunal from using its discretion to extend same. In fact, in the Appellant's written submissions (vide para 16 – 23), arguments in the alternative were submitted inviting the Tribunal to use*

its discretion to extend the time delay if needed. The Respondent had ample opportunity to respond and show cause as to why the Tribunal should not use its discretion but has failed to do so.

7. *Under the given circumstances, it is humbly prayed that the preliminary objection raised by the Respondent be set aside.*

Ruling

The Appellant was informed about his dismissal by way of a letter dated The Appellant claimed that he did not know the content of the letter as his wife took the letter on the..., albeit in his presence. The representative of the Respondent confirmed that the signature of the person who took the letter was that of the spouse of the Appellant as it was similar to signatures that appeared in other documents signed by the spouse of Appellant. If the date of, or even the when the letter reached the Appellant's address, is taken as the starting date for an appeal, then the date of when the appeal reached the Tribunal would have been outside the statutory time limit.

However, there was a new dimension in this case. The Appellant made an appeal to the Respondent on the ... to reconsider its decision on humanitarian grounds. On the..., the RO communicated to the Appellant the decision of the Respondent not to accede to his request.

The question then is whether the decision of is considered as the final decision and whether the Appellant has a right of appeal to the Respondent in the first place.

Counsel for the Respondent says no, the Respondent cannot review its decision. This is not provided for in the LGSC Act or the LGSC Regulations 1984. Counsel also referred to advice tendered to the Respondent by the State Law Office in a letter ... which said that "As the Commission is a quasi-judicial body, it cannot rescind its own decision to dismiss a worker unless the dismissal was erroneous in law and discovered reasonably soon after it was taken".

The Tribunal has found that the LGSC Regulations are silent as regards review of Respondent's decision. This is not the case for the Public Service Commission Regulations where at its section 42 B(1) it says that

- (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 the Civil Service to inflict upon him a punishment other than dismissal or retirement in the interest of the public service pursuant to regulation 42 a, 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.”*

At least in the case of the PSC the parameters for appeal are clearly set. In the case of the LGSC, there is nothing to cling to except the advice of the State Law Office mentioned earlier to the effect that the LGSC cannot review its decision. But the letter from the State Law Office clearly states also that “The Commission may, if it so wishes, re-employ the worker on a fresh contract. Whether it is advisable to do so is for the Commission to decide.” While, therefore, the Commission cannot review its decision it can still find other remedies that can alter the outcome of its original decision. In other words the dismissal can be followed by a re-employment under a fresh contract at the discretion of the Respondent.

In this present appeal, the Appellant is not contesting the facts of his case in Court where he was found guilty. He is only making an appeal to the Respondent to reconsider the punishment inflicted on him on humanitarian grounds as he claimed he was going through difficult times. Was the Respondent in a position to do something for the Appellant? The Tribunal is also of the opinion that the only discretion the Respondent had was to resort to other actions such as re-employment.

However, the Responsible Officer did not reject the appeal outright and waited for advice from the Respondent. This is an indication that the appeal of the Appellant was still open until the Respondent took the decision not to accede to his request. The Respondent did not say that the appeal could not be entertained because it would be against the law.

The Tribunal finds that the decision communicated to the Appellant by the RO on the ... is the final decision of the Respondent.

Since the appeal was lodged in the Tribunal on ... , it is within the 21 days mandatory delay of that final decision.

Counsel for Appellant had made a case for flexibility by the Tribunal for the extension of the time limit when considering an appeal where circumstances demand that such extension be granted on grounds of fairness. The Tribunal has adhered strictly to the requirements of the PBAT Act. It only allows extension if the 21 days limit falls on a week-end or public holiday in which case the appeal is extended to the next day which is not a public holiday as per Section 38 of the Interpretation and General Clauses Act.

The appeal will be heard on merits.