

GR/8 of 2014

Notes of proceedings of a Disciplinary Committee can be provided to an Appellant who was present with his Counsel before the said Committee, as he is already privy to such proceedings and has entered his appeal.

The Appellant is a UPR at the Municipal Council of.... He is appealing against the decision of the Respondent to inflict him a severe reprimand.

Counsel for the Appellant requested that the minutes of the proceedings of the Disciplinary Committee set up to investigate his case be made available to him by the Respondent so that he could better prepare the Statement of Case of his client. Counsel for the Respondent raised an objection to this request and the matter came up for argument before the Tribunal.

Counsel relied on section 9 of the Local Government Service Commission Act which reads as follows;

“9. Privilege of communications

- (1) Subject to subsection (2), the Commission may not be compelled in any legal proceedings to produce any communication which is in its possession nor shall a member be required to give evidence regarding such a communication.*
- (2) A communication in the possession of the Commission may be produced or evidence given regarding it where the Chairperson certifies that the production of the communication or evidence is not against the public interest”*

Counsel for Respondent argued that what the Appellant wanted was not very clear as to whether he was seeking evidence for his case or whether he wanted to show that he was not given enough time to appear before the Disciplinary Committee. Counsel stated that the onus of proof before the Tribunal lies with the Appellant and that the request of the Appellant to have the minutes of proceedings of the Disciplinary Committee may amount to a fishing expedition. She stressed on the fact that the Appellant cannot bring in new matters which will be outside the grounds of his appeal as this will be against section 6 (5) of the PBAT Act. Counsel referred to previous rulings of the Tribunal where the Tribunal addressed the issue of grounds of appeal. In these cases the parties and the Tribunal knew what was aimed at as viewed by an

independent right-minded person, namely qualifications and years of experience. In the present appeal this is not clear.

Counsel for Appellant does not contest the legal basis of the objection of the Respondent. He even goes further and refers to the Constitution (Amendment) Act 2008 setting up the Tribunal which states at its section 9 (b) :

“ the Public Bodies Appeal Tribunal shall not be bound to communicate to any other person the context of any report, document or other material produced by any Commission or public body except where necessary for the purpose of making this decision, the Tribunal shall make no reference to the content of its decision thereof”

However, Counsel for Appellant maintained that there was nothing confidential about what happened at the Disciplinary Committee as both the Appellant and himself were there. Counsel referred to his request as formulated in his motion to the Tribunal where it was obvious that he was only asking for the minutes of proceedings of the Committee and not the report of the Committee itself. He stated that the Appellant already had the minutes of two of the meetings. All he wanted were the minutes of the two other meetings so that the Appellant knows exactly what he is talking about when he prepares his Statement of Case. This is in the interest of the parties, including the Tribunal itself, to know exactly what happened and thus avoid unnecessary cross-examination or wrong lines of cross-examination. Counsel denied that he is on a fishing expedition as he claimed that the grounds of appeal are very detailed.

The Tribunal has heard the arguments of the two parties. It is clear that the Tribunal will not allow itself to be drawn into the disciplinary process and provide a forum for the Appellant to attempt a second hearing which will replicate what was done and heard at the level of the Disciplinary Committee. This is not the role of the Tribunal which has been set up to adjudicate on final decisions of the Respondent. What happened at the Disciplinary Committee is peripheral to the appeal before the Tribunal. It is also not for this Tribunal to give an opinion on the decision per se. The Tribunal's role is to make sure that the Respondent has acted in a fair and reasonable manner and that the Appellant was given the opportunity to explain himself before the Disciplinary Committee as provided for under the Respondent's own regulations in accordance with the principle of natural justice.

Having said this, what is the Appellant asking? It is obvious that the Appellant is only asking for the minutes of the meetings of the Disciplinary Committee. Appellant made it clear that he was not asking for the report of the Disciplinary Committee but only the minutes of its meetings. Appellant stated that he was given the minutes of the meetings of ... and that of... . He is only now asking for the minutes of the remaining meetings so that he can get the materials for preparing the Statement of Case in the present appeal. Is this a fair request? Can it cause prejudice to the Respondent if it agrees to provide these documents?

The Tribunal is of the view that the request is not an unreasonable one. The Appellant is seeking the information that was shared at the meetings of the Disciplinary Committee. At these meetings both the Appellant and the Counsel representing him in this appeal were there and they are privy to what was said. There is no confidential information which Appellant is seeking nor is Appellant on a fishing expedition. The Appellant is only genuinely trying to refresh his memory and get the background information for his appeal. In fact, the Tribunal finds it strange that the minutes of the meetings had not been provided to the Appellant by the Disciplinary Committee and same were not sought by the Appellant from the Disciplinary Committee.

The Tribunal, therefore, invites the Respondent to accede to the request of the Appellant to provide to him the remaining minutes of the meetings of the Disciplinary Committee to allow the Appellant to prepare his Statement of Case.

The Appellant must understand that the documents are provided to him to prepare the background to his Statement of Case and not to be used in such a way as to lead the Tribunal into the shoes of the Disciplinary Committee. The Appellant will also not be able to travel outside his grounds of appeal.