

Ruling 02 of 2016

When an officer has been heard by a Disciplinary Committee and has been given the chance to defend himself, he cannot be heard to say that the RO had to write to him to seek his views before sanctioning him.

The Appellant, an ICOR at the Municipal Council of ..., has lodged an appeal before this Tribunal concerning “*the warning against me following disciplinary proceedings*”.

Counsel for the Appellant intimated at the very beginning of the Hearing that the appeal will focus only on the fact that the Appellant was issued a warning by his Responsible Officer (RO) but the latter had not given the Appellant any notice that such a warning will be issued to him to allow him to file a defence.

Counsel for Appellant elaborated on the two sections of Regulation 42 of the Local Government Service Commission (LGSC) Regulations which are as follows:

(2) Subject the paragraph (3), nothing in these regulations shall prevent a responsible officer, without reference to the Commission, from administering a warning to any officer in the service of his local authority on the ground of unsatisfactory work or conduct and such warning shall be entered in the officer’s personal file and the officer shall be so informed.

(3) The intention to administer a warning shall be communicated to the officer in writing and he shall be given an opportunity to reply

Counsel for Appellant argued that in the issuance of the warning to an officer, the Respondent has nothing to do as the onus falls squarely on the shoulders of the RO. The regulation says clearly that the RO will do so without referring the matter to the Respondent. In the present case, the Appellant was not notified of the shortcoming and the warning just fell on him without the opportunity for him to defend himself.

Counsel for Respondent conceded that the RO is fully habilitated to issue a warning without having recourse to the Respondent. However, he stated that the Appellant was put before a Disciplinary Committee and he had the opportunity to give his version on the matter; he was given the opportunity to defend himself.

The Tribunal has listened carefully to the points of the parties. It is a fact that the RO has full powers to give a warning to an officer in his Local Authority. Before he does so, he has to observe the principle of natural justice and its *audi alteram partem* rule which provides for giving the chance to a party to defend himself. The LGSC regulation says clearly that this must be given in writing and cannot be an oral communication and that the RO must await the officer's reply before the warning is issued.

In the present case, the Appellant was heard by a full-fledged Disciplinary Committee on He was duly assisted by Counsel. He had the chance to explain his case on the facts and could have raised any point in law. The Appellant cannot, therefore, claim that he was not aware of the disciplinary proceedings, the more so that he stated bluntly in his appeal that the warning was "following disciplinary proceedings".

The question then is whether the Appellant must again be told of the intention of the RO to give him a warning. The answer is NO. The RO was fully involved with the setting up of the Disciplinary Committee. The report of that Committee was submitted to him and he in turn transmitted the report to the Respondent with his recommendation. He is fully aware of the case against the Appellant. The Appellant, on the other hand, knows what is reproached of him and he had the opportunity to put his case. He was aware of the legal implications as he was assisted by Counsel. Both parties, therefore, are fully implicated in the disciplinary proceedings and it is futile for the RO to again write to the Appellant when the response of the Appellant will not be as extensive as what was said and argued in the full-fledged Disciplinary Committee.

Lord Bridge in the House of Lords said that "*the so-called rules of natural justice are not engraved on tablets of stone.*"(Lloyd v McMahon [1987] AC 625). It is equally correct to say that the rules of natural justice must not be stretched too far and put shackles on the public body in the exercise of discipline.

The Appellant was heard by the Disciplinary Committee and the RO cannot be expected to go over the drill again before he issues a warning which is only a cautionary measure and not a punishment contained in the list at section 41 of LGSC Regulation.

The appeal is set aside.