

**When an officer is reverted to his previous posting, this is clearly a disciplinary sanction unless it is based on an administrative error. The Tribunal therefore has jurisdiction in such an appeal.**

The Appellant has appealed against the termination of his appointment as Regional HTH Director in a temporary capacity.

His grounds of appeal are as follows:

*“1. The aforesaid impugned summary termination of the appellant’s temporary appointment as Regional HTH Director is wrong, is unlawful, is erroneous in point of law, especially as the pending disciplinary proceedings under the relevant Act had not yet run their course. The Commission has illegally and prematurely acted on the basis of a confidential communication emanating from the (relevant) Tribunal which did not contain any determination as such and was merely meant for the consideration of the relevant Council, not of the relevant Commission.*

*2. Further, or alternatively the PSC was wrong to have acted on the confidential report of the Tribunal, which is not a juridical determination as such, which determination may only be made by the Council pursuant to section ...of the Act after consideration of the Tribunal’s report and record communicated to the Council pursuant to section ... of the Act.*

*3. The summary termination of the appellant’s temporary appointment is in breach of paragraph 3 of the instrument of appointment dated ... and in breach of the rules of natural justice, especially as the report of the Tribunal related to events which had occurred prior to ... upon which the Council has not yet made any determination, as yet.”*

The Respondent has raised a Preliminary Objection in law to the effect that the Public Bodies Appeal Tribunal *“has no jurisdiction to entertain the present appeal.”*

Counsel for Appellant and Counsel for Respondent argued the Preliminary Objection in Law.

### **Appellant's stand**

Counsel for Appellant referred to the letter of appointment of Appellant which expressly provides for termination of appointment on specified grounds of "*incompetence, misconduct or insubordination,*" all of which can only be dealt with under Public Service Commission Regulations regarding discipline.

Counsel for Appellant referred us to the letter of ... and which stated that "*in the light of the findings of the (relevant) Disciplinary Tribunal and given that the Commission was not informed that the case of medical negligence against you had been finalised, it has been decided that your appointment as Regional HTH Director in a temporary capacity in the Ministry of ... be terminated forthwith*" (underlining ours).

Counsel stated also that the case of M.M. Jolicoeur and Ors v. Public Bodies Appeal Tribunal ipo Public Service Commission (2015 SCJ 73) (Record No.109262) was different from this case. In that case the General Workers in Rodrigues were employed on a month to month basis for a period of up to 12 months and were liable to termination by one month notice on either side.

Counsel referred to Part IV of the Public Service Commission Regulations namely Regulations 30 and 41 and to section ... of the (relevant) Act 1999 and stated clearly that he was not at all arguing on the appointment exercise but insisting that the termination of his client's appointment was a disciplinary action.

### **Respondent's stand**

Counsel for Respondent basing herself on the Preliminary Objection in law, submitted that it is the temporary appointment which has been terminated by virtue of paragraph 3 of the letter of appointment. She maintained that it does not pertain to a disciplinary action. She invited the Representative of the Public Service Commission to enlighten the Tribunal on the issue of why the Public Service Commission terminated the appointment of Appellant. The latter stated that "*since the charge was proved before the (relevant) Disciplinary Tribunal and was ratified by the relevant Council, the Public Service Commission had to take disciplinary action against the Appellant. Then we had no alternative than to revert him to his substantive post....*".

Counsel said that in part IV (a) of PSC Regulations termination of temporary appointment is not provided for. Section 41 provides for other sanctions.

Counsel for Appellant replied that Regulation 30 provides that

*“the Commission shall not exercise its powers in connection with the disciplinary punishment of any officer in the public service except in accordance with these regulations or such other regulations as may be made by the Commission.”*

### **Ruling**

Having considered the submissions of both Counsel, the Tribunal is of the view that the termination of the temporary appointment of Appellant by Respondent is clearly a disciplinary action as provided for in Section 3(1) of the Public Bodies Appeal Tribunal Act 2008. This is so since the Representative of the Respondent herself said clearly, several times, that it was because of the findings of the relevant Disciplinary Tribunal that Respondent had no alternative than *“to take disciplinary action”* against the Appellant. True it is that the Respondent did not have recourse to PSC Regulation 41 which does not provide for this kind of sanction. But the PBAT Act does not specify that disciplinary action means only those taken under PSC Regulations but *“or such other regulations as may be made by the Commission”* as the Public Service Commission Regulation 30 specifies.

The Respondent appointed the Appellant in a temporary capacity and this appointment is subject to confirmation. This fits the definition of appointment in the PSC Regulations 1967. The Respondent then decided that this temporary appointment must not culminate to a confirmation to the post for a cause, namely the issue of discipline and suitability. Suitability itself was added to PSC Regulation 14 in the revised PSC Regulations 2010. The matter then drops squarely into the category of disciplinary actions.

If Respondent sanctions an officer by reverting him to his previous posting and that this is based not on an administrative error, it is clearly disciplinary. In this case we have it on record that it was indeed disciplinary. The powers of the Tribunal should not be ousted because of a conservative appreciation of what amounts to disciplinary action. Otherwise recourse to the Tribunal is limited. The Tribunal was created to hear

appeals from aggrieved public officers so that public officers do not have to face lengthy and costly proceedings before the Supreme Court.

The case of Jolicoeur is not relevant in this matter as there was no issue of discipline. The employees were not employed in the same fashion with a view to be appointed in a substantive capacity in the post in which they were temporarily appointed. They were on a contract, on a month to month basis.

The Tribunal therefore rules that it has jurisdiction and will hear the case on the merits.