IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M27/89

BEFORE; THE HON. MR. JUSTICE ORR,J
THE HON. MR. JUSTICE THEOBALDS,J
THE HON. MR. JUSTICE HARRISON,J

REGINA VS. COMMISSIONER OF POLICE

EX PARTE WARREN DOUGLAS TURNER

Arthur Kitchin for applicant
Wendell Wilkins & Patrick Foster for respondent

S.C. 5.7.89

HARRISON,J.

On the 5th day of July, 1989 the Full Court granted the order of prohibition in this matter and promised to put its reasons in writing. The reasons are hereunder stated.

This is a motion by the applicant for an order of prohibition against the disciplinary board appointed by the Commissioner of Police to prevent the said board from "further proceeding with the enquiry in respect of disciplinary charges .... against the applicant."

The grounds upon which the order was sought are, inter alia;

"(b) That the said Court of Enquiry is unlawfully constituted and is in breach of natural justice as the applicant is placed in double jeopardy.

(c) That the said Court of Enquiry has no jurisdiction and/or is acting in excess of its jurisdiction by hearing the said charges against the applicant in that the applicant

was neither requested nor permitted to state in writing any grounds upon which he relies to exculpate himself from the said charges, as is required by the said Regulation 47 as a condition precedent or prerequisite to a Court of Enquiry being constituted under Regulation No. 47 as aforesaid.

(d) .....

(e) That the applicant was not provided with copies of or allowed reasonable access to any documentary evidence relied on for the purpose of the said enquiry in breach of Regulation 36 and 45 of the Regulations aforesaid and in breach of natural justice.

(f) That the proceedings and/or findings to date of the said Court of Enquiry are unjust and null and void and contrary to law and/or Natural Justice."

The applicant, a corporal of police, was summoned to appear on the 22nd day of May, 1989, at a court of enquiry, appointed by the Commissioner of the Police and presided over by Assistant Superintendent of Police D. Jones, to answer disciplinary charges preferred against him. The charges allege acts of misconduct arising out of an incident which occured at the Mobile Reserve Guard Room at 3:00 a.m. on the 18th day of September, 1988.

The court of enquiry was appointed under the provisions of the Police Service Regulations, 1961 made under section 87 of the Jamaica (Constitution) Order in Council, 1959, preserved by Section 2 of the Jamaica (Constitution) Order in Council 1962.

The relevant provisions are:-

"45. A member against whom any disciplinary proceedings are taken shall be entitled to know the whole case against him and to have an adequate opportunity of preparing his defence.

46.- (1) .....

(2) Where -

(a) it is represented that a member below the rank of Inspector has been guilty of misconduct;...

the authorized officer may make or cause to be made an investigation into the matter in such manner as he may think proper; and if after such investigation the authorised officer..... thinks that the charge ought to be proceeded with he shall if he is not the Commissioner, report the member to the Commissioner....

47. (1) Subject to the provisions of these regulations a member may be dismissed only in accordance with the proceedings prescribed by this regulation.

(2) The following procedure shall apply.....

(a) The Commission or, in relation to a member below the rank of Inspector, the Commissioner (after consultation with the Attorney General if necessary) shall cause the member concerned to be notified in writing of the charges and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself;

(b) .....

(c) if a member below the rank of Inspector does not duly furnish such a statement as aforesaid or if he fails to exculpate himself the Commissioner shall appoint a court

of enquiry (constituted as under sub-paragraph (b)) to enquire into the matter;"

The facts relevant to this issue are as follows:

On the 2nd day of March, 1989, the applicant was served by Inspector Beresford Collins with a formal statement of charges arising out of the incident of the 18th day of September 1988.

The applicant was shown a file relevant to the said charges. He read the file, but refused to sign the pages of the said file "so as to indicate that he had read them" - as he was requested by Inspector Collins to do.

Inspector Collins, in his affidavit dated the 28th day of June 1989, stated, inter alia,

"4.....the applicant did not request me to give him any copies of the statements or reports or other documents on the file. Nor did he at any time ask me if he could reply in writing to the said charges. I did not at any time inform him that it was not necessary for him to reply in writing to the charges nor that it was not necessary for him to get copies of the said charges.

5. That the applicant said to me that he did not see his own statement in reply to the charges on the file and I told him that he had fourteen days in which to reply to the charges.

6. That I subsequently deputed Sergeant Vincent Jarrett to attend on the applicant at Area 4 Police Headquarters to get the applicant to read the relevant statements, reports

and charges on file and for him to signify in writing that he had read same."

On the 19th day of March 1989, Sergeant Vincent Jarrett again showed the applicant the said file and requested him to read and sign it. The applicant did not sign the document as he was requested.

Sergeant Jarrett's statement dated the 19th day of March, 1989, reads inter alia,

"On Monday the 19th of March 1989 ..... I went to Area 4 Headquarters where I spoke to Corporal Turner W.

I showed him Headquarters file A19/T359. I instructed him to read through the said file and sign each page as proof as having done so.

He refused saying that he was advised not to do so."

Subsequently, the applicant was advised of the fact that a court of enquiry would assemble, and then he was advised of the enquiry to be held on the 22nd day of May 1989. The applicant attended.

At the hearing the attorney for the applicant objected to the holding of the court of enquiry on grounds similar to those recited before this Full Court.

Mr. Kitchin for the applicant argued that the court of enquiry exceeded its jurisdiction in not affording the applicant an opportunity to state his defence and to exculpate himself, as provided by regulation 47; nor was the applicant given access to the documents to prepare his defence as provided by regulation 36. He further argued that failure to follow the said procedure amounted to a procedural impropriety and therefore a breach of natural justice. He cited in respect of his arguments, inter alia, Re application by John Ewart

Langhorne [1969] 14 WIR 353, Ridge v. Baldwin [1963] 2 AER 66, Annamunthodo vs. Oilfields Workers' Trade Union [1961] 3 AER 621 and Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation [1947] 2 AER 680.

Mr. Wilkins for the respondent replied that the mere fact that the applicant was not called upon to exculpate himself, though it was a breach of the regulation was not a breach of natural justice. He conceded that a denial of a right to be heard is a breach of natural justice. He continued however, that though, on the evidence the applicant was told, imprecisely, by Inspector Collins "14 days" on one date and by Sergeant Jarrett "14 days" on a different date, such variations and imprecise observance of the regulations were not sufficient to be regarded as a breach of natural justice.

A court of enquiry appointed under the said Police service Regulations, 1961, to hear disciplinary charges against a member of the Jamaica Constabulary Force is an administrative body performing quasi judicial functions. Such a body is accordingly subject to the principles of natural justice. Any breach of such principles by the said body would therefore be subject to judicial review, vide Ridge vs. Baldwin etal [1963] ALL ER 66.

In the instant case the enquiry was being held "with a view to dismissal ...", as provided by paragraph 47(2) of the said Regulations. It therefore affected the applicant with an extreme degree of finality in respect of his employment and livelihood, and therefore a fortiori the said rules of natural justice should be scrupulously applied.

Paragraph 47 governs the procedure to be followed

if it is sought to dismiss a member following an investigation into charges of misconduct.

Paragraph 47(2) (a) provides, "....the Commissioner .....shall cause the member concerned to be notified in writing of the charges...." This was done and so no complaint is made by the applicant in this respect,

The said paragraph continuing, provides "..... and (shall cause the member) to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself."

Paragraph 47 (2) (b) reads,

"if a member ..... does not duly furnish such a statement aforesaid or if he fails to exculpate himself the Commissioner shall appoint a court of enquiry ..... to enquiry into the matter."

The Regulations therefore contemplate a procedure as a condition precedent to the appointment of the court of enquiry. This is in the nature of a preliminary opportunity given to the applicant to seek to exculpate himself. The applicant should have been told at the time that charges were served on him that he had the right to state in writing "before a specified date", that is, a date specifically named by the person serving the summons or the person issuing the summons, his reasons, sufficiently cogent, to excuse his alleged blameworthy conduct. If such explanation in writing was sufficiently excusable, the Commissioner, would presumably refrain from appointing a court of enquiry. However, by paragraph (2) (c), if a member "..... does not duly furnish such a statement as aforesaid or if he

fails to exculpate himself the Commissioner shall appoint a court of enquiry ....."

In the instant case, when the applicant was served with a statement of the charges on the 2nd of March 1989, he should then have been told of his right to this preliminary exculpatory procedure and given a specified date prior to which specified date he should state his reasons for his conduct, in writing. Inspector Collins did not follow this procedure and his statement in paragraph 5 of his affidavit dated the 28th day of June 1989 that

> "the applicant said to me that he did not see his own statement in reply to the charges on the file and I told him that he had fourteen days in which to reply to the charges."

is unlikely.

The applicant could hardly have expected to see "his own statement in reply to the charges on the file", because the charges were being disclosed to him then for the first time. In addition, a directive that the applicant "had fourteen days in which to reply to the charges" does not satisfy the statutory requirement of a "specified date." Furthermore, the statement of Sergeant Jarrett dated the 19th March 1989 discloses a mere instruction to the applicant "..... to read through the said file and sign each page as proof....". The statutory procedure was not alluded to. The said Sergeant's affidavit dated the 28th day of June, 1989 that he "on or about March 1989 ..... went ..... to see Corporal Warren Turner ..... (and) ..... instructed him to submit in writing within fourteen days the grounds upon which he will be relying upon to exculpate himself from the said charges aforesaid", is in conflict with and an

expansion of his earlier statement, and seems to be an afterthought, to say the least.

In Re Langhorne, supra, Luckhoo, C, observed,

> "Administrative action will not be invalidated merely by reason of an ostensibly trivial departure from the rules governing procedure and form, unless it is shown ..... that the error has caused the individual affected to suffer substantial detriment."

Certiorari was however refused in that case because any prejudice allegedly caused to the public officer due to the non-access to the documentary evidence prior to the start of the hearing was cured by the full participation of his counsel.

In the instant case, the said Regulations contemplate a two-tier procedure. This procedure is formulated in order to ensure fairness to all parties concerned, and more so to one who runs the risk of the penalty of loss of office or employment. The Regulations must be a dhered to.

Where one performs an administrative function simpliciter which is in the nature of a quasi-judicial act, such function takes unto itself the character of judicial proceedings and thereafter attracts the strictures of the necessity that the principles of natural justice should be observed.

When the Commissioner of Police on the 14th day of April, 1989 ordered the assembly of a court of enquiry into the preferred charges against the applicant, he did so on the basis that the pre-condition under paragraph 2(c) of regulation 47 had been satisfied - the quasi-judicial act. In this case, the pre-condition was that the applicant had been told of his right to seek to

exculpate himself in writing, and he did "not duly furnish such a statement". No such basis existed. The applicant was denied the opportunity of a preliminary review by the Commissioner of Police of his exculpatory statement, if any. This created a breach of the said Regulations and consequently a breach of natural justice.

Accordingly, the court of enquiry which was subsequently assembled on this premise, was not in accordance with the Regulations. The order of prohibition must issue.

This Court recommends that the following practice be adopted. At the time of serving the statement of "approved charges" on an offending police officer, a footnote should be attached thereto with the provision contained in the said paragraph 2(c) reciting the officer's right to submit in writing his statement with a view to exculpate himself. The footnote should also state a specific date by which the said statement ought to be submitted. The order of prohibition is granted with costs to the applicant.

ORR,J.

I have had the opportunity to read the Judgment of Harrison, J and I concur therewith.

THEOBALDS,J.

I have had the opportunity to read the Judgment of Harrison, J and I concur therewith.