

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL 142/2001

**BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE CLARKE, J.A. ((Ag.))**

BETWEEN: NYOKA SEGREE APPELLANT

AND: POLICE SERVICE COMMISSION RESPONDENT

**Maurice Tenn and Leslie Harper
instructed by Williams McKoy and Palmer
for the Appellant**

**John Francis Crown Counsel instructed by
Director of State Proceedings for the Respondent**

June 21, 2002 and March 11, 2005

DOWNER, J.A.

Inspector Nyoka Segree sought Judicial Review before the Full Court (Ellis, James and Beckford JJ) to quash the decision of the Police Service Commission to retire her from the Jamaica Constabulary Force in the public interest. That decision was affirmed by the Governor-General in Privy Council. The gist of her complaint was that she was not afforded a fair hearing pursuant to Regulation 26 of the Police Service Regulations 1961 which is preserved by section 2 of the Jamaica (Constitution) Order in Council 1962.

Ellis J., the Senior Puisne Judge, delivered the judgment in the Supreme Court. At page 48 of the Record the following passage forms the ratio of the Court's decision:

"The Respondent contends that a hearing and a fair hearing was afforded to the Applicant. Mr Francis contends that the Applicant was given the nature of the allegation and an opportunity was given to her to make written representations in light of the allegation. But Mr. Harper says that is not enough to constitute a hearing. He says the circumstances which culminated in the deprivation of the Applicant's public office demanded an oral hearing. He placed reliance on the following cases:

- **Ridge v Baldwin** [1963] 2 All ER
- **Tenant's Case** (1977) 15 J.L.R.
- **Ex Parte Pickering** (Unreported)
M25 & M34 of 1994

I am not convinced Mr. Harper's contention is sound. The cases on which he relied do not avail him. I say so because a hearing need not be oral. A hearing may be on written representations as it was in this case, and in accordance with Regulation 26 of the Police Service Regulations. The case of **King v Housing Appeal Tribunal** [1920] 3 K.B. 333 and particularly at page 334 is authority. Also, the case of **R v Clough** (1988) 25 J.L.R. in which Downer, J.A. cited with approval the dictum that a hearing need not be oral (pg. 304). It is to be noted that in the cases cited by the Applicant there was absolutely no hearing, oral or otherwise."

The initial report against Inspector Segree dated April 19, 1999 was to the Asst. Commissioner of police in charge of Area 3 from the Superintendent of Police for Clarendon. In the report it was stated that Marva Robinson, a

school teacher, was arrested and charged for possession of cocaine, dealing with cocaine and taking preparatory steps to export cocaine.

The Report then continued thus at page 45 of the Record:

"6. Arising from this, there is unconfirmed report and circumstances which seek to link Woman Inspector Segree as the owner and Miss Robinson, a courier.

7. Among the reports are that recently Woman Inspector Segree left the island without permission with the accused and Inspr. Segree took the cocaine through the Norman Manley Airport gave it to Robinson who placed it in her body cavity and took it through an unidentified U.S. Port; further, that W/Inspr. Segree, having heard that Robinson was arrested, took from her house what is believed to be cocaine and hid it in a neighbour's yard soon after.

8. There are other incidents which, though worth mentioning would be better held in abeyance pending further investigation.

9. Woman Inspector Segree's service in the Jamaica Constabulary Force is nineteen years and eight months, having enlisted on the 27.8.89

10. Knowledge of the incident is widespread throughout the Division and she has lost the respect of citizens and police personnel. She, herself has realized this and has indicated her concern.

11. W/Inspr. Segree has outlived her effectiveness in this Division and is no longer able to command the respect of her juniors.

12. I recommend that she be immediately transferred from the parish and that the Office of Professional Responsibilities assume investigation of this aspect."

There was further investigation and one crucial aspect appears in the Record. It is the response of the Commissioner of Police to the Chief Personnel Officer concerning the points raised by the Attorneys for Inspector Segree. It reads as follows at page 43:

"2. Involvement in Drug Trafficking

We regard Ms Robinson as a witness of truth because the dates on which she asserted that Woman Inspector Segree and herself travelled to the United States of America have been confirmed.

Also, Ms. Robinson asserted that Woman Inspector Segree encashed a cheque for three thousand dollars (US\$3,000.00) at Larry's variety Store in May Pen which represented the returns from illegal drugs which they both took to the United States of America. Mr Larry Chin, proprietor of Larry's Variety Store, confirmed that he encashed a cheque for three thousand dollars (US\$3,000.00) on 22/3/99 but he has declined to say who presented the cheque for encashment."

There are two other paragraphs which are worthy of attention. They read on the same page:

"Loss of respect by citizens and police

3. The allegation of Woman Inspector Segree's involvement in drug trafficking became widespread in Clarendon as a result of which she lost the respect of citizens and police personnel in the Division. It is reported that Woman Inspector Segree herself expressed concern about the turn of events. Please see paragraph 10 of confidential report of the Superintendent of Police – Clarendon dated 19/4/99. It was a result of this development

why Woman Inspector Segree was transferred on 10/5/99.

Low morale among police personnel

4. Although Woman Inspector Segree was never the Divisional Commander of Clarendon, she is a senior supervisor and other police personnel, especially her juniors, looked to her for leadership and guidance but what was being said about her involvement in drug trafficking had a negative impact on other members of the Division, leading to low morale."

The Commissioner also found that Inspector Segree's departure from Jamaica without permission was contrary to the Rules governing the Constabulary Force.

It was against this background that proceedings were instituted against Inspector Segree. The formal charge was as follows at page 9 of the Record:

"TO: Nyoka Y. Segree
 Woman Inspector of Police
 C/o Office of the Commissioner of Police
 101-105 Old Hope Road
 Kingston 6

TAKE NOTICE THAT PURSUANT TO REGULATION 26(1), and acting on the report of the Commissioner of Police, it has been decided by the Police Service Commission that you be required to retire from the Jamaica Constabulary Force in the public interest.

AND FURTHER TAKE NOTICE that the grounds on which the Police Service Commission intends to rely are as follows:

"Your departure from the Island to the United States without prior permission with an individual who was subsequently arrested on drug charges

and who implicated you in the trafficking of cocaine to the United States, coupled with your failure to give the kind of leadership required of an officer of your seniority and experience. Your inability to command the confidence and respect of other police officers and the public and the low morale among Police Officers in your Division, having regard to all the circumstances, confidence in your ability to discharge your functions as a Police Officer has been lost, that your further usefulness to the Force has been considerably impaired and that you should be retired from the Constabulary Force in the Public Interest under Regulation 26 of the Police Service Regulations 1961.

FURTHER TAKE NOTICE that you have fourteen (14) days in which to reply to this NOTICE setting out the grounds (if you so wish) on which you intend to rely to exculpate yourself.

DATED 17TH DAY OF APRIL, 2000."

The basis of the charges formulated by the Police Service Commission (The "Commission") was contained in a letter dated December 20, 1999, from the Commissioner of Police. It reads in part as follows at pages 32-33 of the Record:

"Inspector Segree is alleged to be involved in drug trafficking of Cocaine to the United States of America. The revelation of Woman Inspector Segree's involvement came to light on April 16, 1999, when her friend Miss Marcia Robinson, a Teacher of Bushy Park, Clarendon, was arrested for:

- 1) Possession of cocaine
- 2) Dealing in Cocaine, and
- 3) Taking steps to export Cocaine

Miss Robinson after her arrest gave a statement implicating Woman Inspector Segree.

Subsequent investigation revealed that this Sub-Officer departed the Island to the United States on two (2) occasions without prior approval or permission, one on March 5, 1999 and the other on March 22, 1999.

A copy of the passenger manifest dated March 5, 1999, from the Norman Manley International Airport revealed that Woman Inspector Segree and Miss Robinson actually shared adjoining seats on leaving Jamaica destined for Miami as related by Miss Robinson.

Woman Inspector Segree in a statement has admitted that she travelled with Miss Robinson to the United States on two (2) occasions, but denied carrying any drugs.

Whilst there is not sufficient evidence to charge Woman Inspector Segree criminally, there is enough circumstantial and documentary evidence to support Miss Robinson's statement that Inspector Segree took drugs to the United States of America on two (2) occasions.

Woman Inspector Segree was born on September 25, 1955, and has therefore attained the age of forty four (44) years.

She enlisted in the Force on August 28, 1979.

This Sub-Officer by her conduct and alleged involvement in criminal acts, has created a very ugly image for herself and the Force.

There is a total lack of confidence and respect for her by seniors, juniors and the public alike, which has rendered her totally useless in discharging her duties as a Sub-Officer in the Force.

In the circumstances it is recommended that Woman Inspector Segree be retired from the Jamaica Constabulary Force in the Public Interest.

Attached for information are:

- 1) Particulars of Service
- 2) Copy case file."

It was in this context that the Commission by letter dated 17th April, 2000 at page 7 of the Record asked that she should respond to the charge through the Commissioner of Police within fourteen days of receipt of the notice.

Regulation 26 was the provision relied on to institute proceedings against Inspector Segree. It reads:

"26.-(1) Notwithstanding the provisions of regulation 46 or regulation 47 where it is represented to the Commission or the Commission considers it desirable in the public interest that any member ought to be required to retire from the Force on grounds which cannot suitably be dealt with by the procedure prescribed by regulation 46 or regulation 47 it shall require the Commissioner to submit a full report.

(2) If after considering the report of the Commissioner and giving the member an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the Force, the usefulness of the member thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the member be required to retire on such date as the Commission may recommend."

Regulation 26 provides the appropriate procedure where a prior decision has been taken that it is desirable for an officer to be retired in the public interest. It is applicable where the matter requires a speedy disposal in the public interest.

Furthermore by according the officer an "opportunity of submitting a reply" the Regulations satisfy the test of "procedural fairness" acceptable to the Courts. In **Ridge v Baldwin** [1963] 2 All ER 66 Lord Reid at page 81, Lord Morris at pp 94-104 and Lord Hodson at pp 112-117 said the regulations then in issue did satisfy the test of procedural fairness but they were not applied.

Was Regulation 26 applied in this case, particularly in connection with the provision for procedural fairness?

The notice forwarded to Inspector Segree was worded with sufficient particulars to enable Inspector Segree to set out the grounds (if she so wished) on which she intended to reply, so as to exculpate herself.

Inspector Segree retained the services of Williams, McKoy and Palmer Attorneys-at-Law to respond on her behalf. This is the response dated May 2, 2001 at page 12 of the Record:

"In relation to 1(a) we are not aware that there is any provision in the laws, rules or regulations that a member of the force who is off duty and intends to travel abroad, and not seeking leave to do so, is required to obtain permission to leave the island.

If such provision exist our client is unaware of its existence and regrets being in breach.

In relation to 1 (b) we are unable to detect any impropriety in the action of our client unless it is

being alleged that she knew that the individual was involved in drugs and that there was complicity between them. In relation to any statement alleged to have been made by the individual our client would welcome the opportunity to test the credibility of the individual and/or the person to whom it is being alleged that the statement was made.

In relation to ii et sec. our client would need particulars or examples on the basis of the allegations in order to respond meaningfully to them.

For example, our client is not aware of any occasion on which she failed to give the kind of leadership required of her or that she has not always command the confidence and respect of other police officers and the public or that she could be in any way responsible for any perceived low morale among police officers in her division as she has never had divisional command.

In any case, we feel strongly that the provisions of Regulation 26(1) should only be used where the public interest would be adversely affected by a hearing under Regulation 47 of the Police Service Regulations, 1961."

The Commission gave sufficient particulars for Inspector Segree to put her defence. She, however, was content to contend that there was no requirement for her to seek permission to travel abroad when she was not on duty. Further, she sought to say that the Commission's discretion should have been exercised pursuant to Regulation 47 instead of Regulation 26.

With respect to the issue of departure from the Island without permission, the Commission had Rule 4.11 of the Book of Rules for Guidance and General Direction of the Jamaica Constabulary Force together with a statement from the Superintendent of Police, Kenneth Wade who stated that

there was no application from Inspector Segree to be absent from duty on 5th March 1999. She was granted leave to be spent within Jamaica from 19th – 22nd of March. She requested a further two days on 23rd March and was told to submit her application. The inference is that this was not done. The investigation revealed that she departed from Jamaica on 23rd March.

There is no merit in the complaint that proceedings were wrongly instituted pursuant to Regulation 26. As for the complaint concerning the wish to cross-examine Ms. Marva Robinson, the school teacher in whose company Inspector Segree left Jamaica, this was not granted, but such denial did not mean that the enquiry by the Commission was unfair.

It was against this background that the Secretary to the Commission in her affidavit of 9th November, 2001 at page 30 of the Record stated:

"11. On the 24th day of July 2000, the Commission met and considered the documents submitted to it and recommended that the process should be continued for the Applicant to be retired in the public interest."

This is how the matter was referred to the Commissioner of Police at page 24 of the Record:

"2000-10-02

Commissioner of Police

With reference to the correspondence ending with your memorandum dated 20th September 2000, and the subsequent application by Woman Inspector Nyoka Y. Segree for a reference of her case to the Privy Council, I am directed to inform you that the Police Service Commission has agreed that she should

be suspended from duty with immediate effect in accordance with Regulation 42 and 43 of the Police Service Regulations, 1961, and Section 131 (4) of the Constitution of Jamaica.

The date of her suspension should be reported to this Office."

The Privy Council dismissed her appeal and the memorandum communicating that to the Commissioner of Police is to be found at page 26 of the Record. It reads in part:

"2001-03-14

Commissioner of Police

With reference to the correspondence ending with your memorandum dated 9th May 2000, regarding the appeal of Woman Inspector Nyoka Segree, against the decision for her to retire from the Jamaica Constabulary Force in the Public Interest, I am directed to inform you that the Privy Council has ordered that the appeal should be dismissed."

Grounds of Appeal

The grounds of Appeal may conveniently be summarized under two heads. Firstly, that the Commission exercised its discretion wrongly by proceeding under Regulation 26 instead of Regulation 47. These grounds were argued by Mr. Harper. As was previously stated they were without merit.

With respect to the second ground of Appeal argued by Mr. Tenn it was stated thus at page 4 of the Record:

- "5. The Full Court erred in holding that a reference of the matter to the Privy Council constituted an appeal which could have barred the Full Court from hearing the Application."

The basis of the complaint on this ground was the following passage in the judgment of Ellis J which ran thus at pp 48-49 of the Record:

"In the light of the reasoning above, the court is constrained to dismiss the application. That would be the end of the matter but there is another aspect of this case which if this court is wrong in the conclusion above would be of relevance. Assuming that there was no hearing and that there was a breach of natural justice does the fact that the Applicant's appeal to the Privy Council have the effect of curing the defect? There are several cases which say that an appeal in such circumstances has curative effect. They are:

- **Deverteuil v Knaggs** [1918] A.C. 557
- **Le Pointe v Carr** [1980] A.C. 574
- **Lloyd v McMahon** [1987] 1 All ER 1118

It is to be noted that all these cases with exception of **Lloyd v McMahon** are decisions of the Judicial Committee of the Privy Council."

There is an alternative way to approach this issue. Even if there had been no fair hearing by the Commission, so that the decision would have to be quashed, Inspector Segree still would have been bound by the decision of the Privy Council which accepted the advice of the Police Service Commission.

At page 15 of the Record the following letter from the Governor-General's Secretary appears:

"August 4, 2000

Woman Inspector Nyoka Y Segree
C/O Commissioner of Police

Dear Inspector Segree:

The Police Service Commission has advised His Excellency The Governor-General that you should be retired from the Jamaica Constabulary Force under Regulation 26 of the Police Service Regulations, 1961.

This has arisen out of a report made on your alleged involvement in drug trafficking to the United States of America and that by your conduct, you have created a very ugly image for yourself and the Force.

However, before His Excellency acts on this advice, you may apply to him for your case to be referred to the Privy Council for its consideration and recommendation to His Excellency.

If you choose to do so, you must do so within two weeks of your receiving this letter and you must state the grounds on which you make the application.

Failure to comply with these requirements will lead to His Excellency acting on the Police Service Commission's advice without further recourse to you.

I must advise you too that in the event that you apply for your case to be referred to the Privy Council, you will be suspended from duty pending the determination of your application.

Yours sincerely

Geoff Madden
Governor-General's Secretary."

This letter was forwarded to Inspector Segree in accordance with section 125 (3) and section 130 of the Constitution.

Then to reiterate on page 22 of the Record the Chief Personnel Officer wrote to the Commissioner of Police as follows:

"2001-03-14

Commissioner of Police

With reference to the correspondence ending with your memorandum dated 9th May 2000, regarding the appeal of Woman Inspector Nyoka Y Segree, against the decision for her to retire from the Jamaica Constabulary Force in the Public Interest, I am directed to inform you that the Privy Council has ordered that the appeal should be dismissed."

It would have been appropriate to have exhibited the decision of the Governor-General after his reference of the matter to the Privy Council.

Section 33 of the Constitution would then be applicable. It reads:

"33. The Governor-General shall keep and use the Broad Seal for sealing all the things whatever that shall pass under the said seal."

The Attorneys, Williams McKoy and Palmer on behalf of Inspector Segree acknowledged in their representation of August 21, 2000 that the Police Service Commission had advised the Governor-General that Inspector Segree be retired from the Jamaica Constabulary Force and that they were instructed to appeal to the Privy Council on her behalf. Further, they stated that "In the circumstances we ask that the particulars set out in this letter together with our letter of May 2, 2000, be considered as her appeal to the Privy Council. It is significant that neither in the original representations before the Police Service Commission nor in the reference to the Governor-General in Privy Council was there a personal statement by Inspector Segree.

Section 125 of the Constitution dealing with the Public Service states:

"125.-(1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission.

(2) Before the Public Service Commission advises the appointment to any public office of any person holding or acting in any office power to make appointments to which is vested by this Constitution in the Governor-General acting on the advice of the Judicial Service Commission or the Police Service Commission, it shall consult with the Judicial Service Commission or the Police Service Commission, as the case may be.

(3) Before the Governor-General acts in accordance with the advice of the Public Service Commission that any public officer should be removed or that any penalty should be imposed on him by way of disciplinary control, he shall inform the officer of that advice and if the officer then applies for the case to be referred to the Privy Council, the Governor-General shall not act in accordance with the advice but shall refer the case to the Privy Council accordingly:

Provided that the Governor-General, acting on the advice of the Commission, may nevertheless suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council."

Then in section 130 there is a reference to section 125 thus:

"130. Section 125 of this Constitution (with the substitution therein of the words "the Police Service Commission" for the words "the Public Service Commission" wherever the same occur and of the words "the Public Service Commission" for the words "the Police Service Commission" in subsection (2) thereof) shall apply in relation to police officers as it applies in relation to other public officers."

So Inspector Segree was suspended and dismissed pursuant to these powers. It follows that even if the order of the Police Service Commission were to be quashed, since there was a reference to the Privy Council and that body had decided to confirm the advice of the Police Service Commission, the order of the Governor-General in Privy Council would still stand. It might have been impossible to question the dismissal in such circumstances in view of section 32 (4) of the Constitution which reads:

"(4) Where the Governor-General is directed to exercise any function in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, or on the representation of, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court."

If the Broad Seal provided for in section 33 of the Constitution was affixed to the record containing the decision of the Governor-General in Privy Council it is arguable that the decision could not have been questioned in any court.

It is for all the foregoing reasons that I concurred with my brothers that the appeal should be dismissed, the order of the court affirmed, and the appellant pay the costs of the appeal.

PANTON, J.A.

On June 21, 2002, I agreed with the dismissal of this appeal which was from a decision of the Full Court made on the 16th November, 2001. The appellant had been granted leave to apply for an order of certiorari to quash:

- " (1) Police Service Commission letter dated the 14th day of March, 2001, ordering Woman Inspector Nyoka Segree to be retired from (the) Jamaica Constabulary Force;
- (2) Police Service Commission letter dated the 2nd October, 2000, ordering Woman Inspector Nyoka Segree to be suspended from the Jamaica Constabulary Force".

From what is recorded at pages 48 and 49 of the record, the Full Court dismissed the appellant's motion on the basis that her claim that she had not been afforded a hearing was baseless. She had been given full details of the Police Commissioner's complaint to the Police Service Commission about her conduct, and had been allowed to answer the complaint in writing. Indeed, she made representations to the Commission through her attorneys-at-law. The Commission gave its advice to the Governor-General who, through his Secretary, communicated the nature of the advice to the appellant and invited her to indicate whether she wished the matter to be referred to the Privy Council. The appellant took advantage of the suggested course. However, the Privy Council concurred with the advice of the Police Service Commission that she should be

retired in accordance with the provisions of Regulation 26 of the Police Service Regulations, 1961.

By a letter dated 17th April, 2000, the Police Service Commission informed the appellant that it had been decided to retire her in the public interest based on a report sent to the Commission by the Commissioner of Police. The grounds were stated thus to her:

"Your departure from the island to the United States without prior permission with an individual who was subsequently arrested on drugs charges and who implicated you in the trafficking of cocaine to the United States coupled with your failure to give the kind of leadership required of an officer of your seniority and experience, your inability to command the confidence and respect of other police officers and the public and the low morale among police officers in your Division, having regard to all the circumstances, confidence in your ability to discharge your functions as a police officer has been lost, that your further usefulness to the Force has been considerably impaired and that you should be retired from the Constabulary Force in the public interest under regulation 26 of the Police Service Regulations, 1961."

She was advised in this letter that she had fourteen days within which to reply setting out the grounds on which she intended to rely to exculpate herself. As stated earlier, she responded through her attorneys-at-law, Williams, McKoy and Palmer. In that response, dated May 2, 2000, the attorneys said that they were unable to detect any impropriety in the conduct of the appellant, and sought an opportunity to test the credibility of the person making the allegation. They also said that they felt strongly that regulation 26(1) should only be used

where the public interest would be adversely affected by a hearing under regulation 47. By a letter dated August 4, 2000, the Governor-General's Secretary invited the appellant to apply to the Governor-General requesting him to refer the matter to the Privy Council. This she did through her attorneys-at-law by letter dated August 21, 2000. By letter dated March 14, 2001, the Chief Personnel Officer advised the Commissioner of Police that the appeal to the Privy Council had been dismissed.

The appellant had travelled twice during March, 1999, to the United States in the company of one Marva Robinson, a teacher, who was herself arrested on the 17th April, 1999, and charged with possession of, dealing in, and taking preparatory steps to export, cocaine. The appellant later told the Superintendent of Police that she had been spoken to by Miss Robinson about the parcel of cocaine, the subject of the charge, and had told her to bring it to her (the appellant), at the latter's home. Miss Robinson asserted that the appellant had received and encashed a cheque for US\$3,000 at Larry's Variety Store in May Pen, and that this sum represented the appellant's return from the trafficking of drugs by both the appellant and herself. The proprietor of Larry's Variety Store has confirmed the encashment of the cheque, but has declined to identify the individual who presented it to him. These facts are all in the record of appeal prepared by the appellant.

The appellant challenged the Full Court's decision on six grounds which may be summarized thus:

1. The proceedings should have been under regulation 47 instead of 26(1) of the Police Service Regulations, 1961;
2. The Commission having decided to proceed under regulation 26(1) should have given reasons for not proceeding under regulation 47;
3. The appellant was entitled to more particulars of the allegation against her which constituted misconduct; and
4. There was a breach of the rules of natural justice.

Although the grounds of appeal make no mention of regulation 46, the appellant in written as well as oral submissions before this Court advanced the idea that the proper procedure to have been adopted by the Commission was that provided under regulations 46 and 47. It should be immediately noted that regulation 46 provides for "proceedings for misconduct not warranting dismissal", whereas 47 provides for "proceedings for dismissal".

Regulation 46(1) reads thus:

"Where-

- (a) it is represented to the Commission that a member of or above the rank of Inspector has been guilty of misconduct; and
 - (b) the Commission is of opinion that the misconduct alleged is not so serious as to warrant proceedings under regulation 47 with a view to dismissal,
- the Commission may cause an investigation to be made into the matter in such manner as it may think proper; and if the Commission is of opinion that the

allegation is proved it may recommend such punishment other than dismissal as may seem just."

Regulation 47 provides for dismissal in accordance with a procedure set out therein. This procedure involves the following:

- (a) written notification of the charges to the member;
- (b) written response by the member within a stated period of time;
- (c) setting up of a court of enquiry if the member has failed in the response to exculpate himself or herself;
- (d) formal hearing by the court of enquiry;
- (e) representation of the member before the court of enquiry;
- (f) furnishing of the report of the court of enquiry to the Commission; and
- (g) the recommendation of the Commission to the Governor-General.

The Commission's recommendation may be for dismissal, some punishment other than dismissal, or for the removal of the member from the Force in the public interest. The latter power is contained in regulation 47(2)(f) which reads thus:

"If the Commission is of opinion that the member does not deserve to be dismissed by reason of the charges alleged, but that the proceedings disclose other grounds for removing him from the Force in the public interest, it may recommend to the Governor-General that an order be made accordingly, without recourse to the procedure prescribed by regulation 26."

Due to the stance adopted by the appellant, it is necessary to set out the provisions of regulation 26:

"(1) Notwithstanding the provisions of regulation 46 or regulation 47 where it is represented to the Commission or the Commission considers it desirable in the public interest that any member ought to be required to retire from the Force on grounds which cannot suitably be dealt with by the procedure prescribed by regulation 46 or regulation 47 it shall require the Commissioner to submit a full report.

(2) If after considering the report of the Commissioner and giving the member an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and, having regard to the conditions of the Force, the usefulness of the member thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the member be required to retire on such date as the Commission may recommend."

The submissions by Mr. Tenn and Mr. Harper, on behalf of the appellant, were predicated on the right of the appellant to determine the procedure to be adopted in dealing with her miscreant behaviour. Neither attorney-at-law was able to refer to any authority which gives the appellant such a right. That they were not so able to do was not surprising as there is none. In any event, they apparently overlooked the fact that regulation 47(2)(1) provides for the making of a recommendation by the Commission to the Governor-General for the removal of a member of the Force in the public interest where

"the Commission is of the opinion that the member does not deserve to be dismissed by reason of the charges alleged, but that the proceedings disclose other grounds for removing him".

It is obvious that the appellant is of the view that unless there is a viva voce hearing, there has not been a hearing. Indeed, he sought reliance on the case **R. v. Commissioner of Police, ex parte Tennant** (1977) 26 WIR 457. The facts of that case indicate that Mr. Tennant, a corporal in the Special Constabulary Force with twelve years' service was accused on November 3, 1976, by the Commandant of the Force of being responsible for the distribution of a pamphlet and informed him that he would be dismissed as of November 5, 1976. The corporal denied the accusation. Although there was no form of an enquiry into the allegation, the corporal's dismissal was published in the Force Orders without any reason being given for the dismissal. The Full Court granted the application for an order of certiorari to quash the Commissioner's order of dismissal as the regulations did not give the Commissioner of Police a peremptory right of dismissal.

This case does not assist the appellant as the facts are very different from the instant case. Whereas Mr. Tennant received no hearing whatsoever, the same cannot be said of the appellant.

It is surprising that at this stage of our jurisprudential development, it is being thought that to be heard means that evidence has to be taken viva voce. This Court has said on several occasions, for example in respect of disciplinary proceedings such as the instant matter as well as in relation to applications for licences, that the right to be heard is not confined or restricted to a viva voce hearing. The management of public affairs in this regard would be too

hamstrung if all proceedings of this nature had to be done completely viva voce. The unbridled fact is that the appellant was given ample information as to what was being alleged, and was given generous opportunities to respond. She responded in a selective way, in that to date there has not been any response disclosed in the record in relation to her receipt and encashment of a cheque for United States dollars which her travelling companion said was her reward for her role in the trafficking of drugs between Jamaica and the United States of America. To my mind, this was the single most damaging aspect of her involvement in what appears to have been sordid behaviour by someone sworn to uphold and enforce the laws of this country. The Full Court was clearly right in upholding the decision to retire her in the public interest.

CLARKE, J.A. (Ag):

This appeal raises a point of some importance as to the scope of Regulation 26 of the Police Service Regulations, 1961 and as to whether the requirements for procedural propriety or fairness were observed in the procedure by which the decision was made that, in the public interest, the appellant be required to retire from the Jamaica Constabulary Force in which she had risen to the rank of Inspector of Police.

The respondent contends that the decision was made on the footing that the provisions of Regulation 26 were appropriate having regard to all the circumstances of the case. Regulation 26 will be examined later in this judgment, but it is useful at this stage to look at the circumstances that informed the decision.

On December 21, 1999 by a memorandum dated December 20, 1999 Mrs. Jacqueline Hinkson, the Secretary of the Police Service Commission ("the Commission") received a representation from the Commissioner of Police recommending that the appellant be retired in the public interest. On January 31, 2002 the Commission met and examined the Commissioner's representation.

Here are the terms of the Commissioner's representation:

"Approval is hereby sought for Woman Inspector Nyoka Y. Segree to be retired from the Jamaica Constabulary Force in the public interest.

Inspector Segree is alleged to be involved in drug trafficking of cocaine to the United States of America. The revelation of Woman Inspector Segree's involvement came to light on April 16, 1999, when her friend Miss Marcia Robinson, a Teacher of Bushy Park, Clarendon, was arrested for:

- (1) Possession of cocaine
- (2) Dealing in cocaine; and
- (3) Taking steps to export cocaine

Miss Robinson after her arrest gave a statement implicating Woman Inspector Segree.

Subsequent investigation revealed that this Sub-Officer departed the Island to the United States on two (2) occasions without prior approval or permission, one on March 5, 1999 and the other on March 22, 1999.

A copy of the passenger manifest dated March 5, 1999, from the Norman Manley International Airport revealed that Woman Inspector Segree and Miss Robinson actually shared adjoining seats on leaving Jamaica destined for Miami as related by Miss Robinson.

Woman Inspector Segree in a statement has admitted that she travelled with Miss Robinson to the United States on two (2) occasions, but denied carrying any drugs.

Whilst there is not sufficient evidence to charge Woman Inspector Segree criminally, there is enough circumstantial and documentary evidence to support Miss Robinson's statement that Inspector Segree took drugs to the United States of America on two (2) occasions.

Woman Inspector Segree was born on September 25, 1955, and has therefore attained the age of forty four (44) years.

She was enlisted in the Force on August 28, 1979.

This Sub-Officer by her conduct and alleged involvement in criminal acts, has created a very ugly image for herself and the Force.

There is a total lack of confidence and respect for her by seniors, juniors and the public alike, which has rendered her totally useless in discharging her duties as Sub-Officer in the Force.

In the circumstances it is recommended that Woman Inspector Segree be retired from the Jamaica Constabulary Force in the Public Interest".

By letter dated April 17, 2000, Mrs. Hinkson informed the appellant that the Commission had agreed that steps should be taken to have her retired from the Jamaica Constabulary Force, in accordance with Regulation 26(1) of the Police Service Regulations, 1961. The letter enclosed a statement setting out the grounds on which the appellant's retirement was contemplated and she was asked to submit a specific reply to these grounds within three weeks of her receipt of the letter and statement.

The following is the statement of the grounds sent to her:

"Your departure from the Island to the United States without prior permission, with an individual who was subsequently arrested on drug charges and who implicated you in the trafficking of cocaine to the United States, coupled with your failure to give the kind of leadership required of an officer of your seniority and experience, your inability to command the confidence and

respect of other police officers and the public and the low morale among Police Officers in your division, having regard to all the circumstances, confidence in your ability to discharge your functions as a Police Officer has been lost, that your further usefulness to the Force has been considerably impaired and that you should be retired from the Constabulary force in the Public Interest under Regulation 26 of the Police Service Regulations, 1961."

How did the appellant avail herself of the opportunity afforded her to reply to those grounds? By letter dated May 2, 2000 from her attorneys-at-law they replied on her behalf in this way:

"In accordance with our instructions we submit the following on behalf of Miss Segree in response to the grounds listed above.

In relation to 1(a) we are not aware that there is any provision in the laws, rules or Regulations that a member of the force who is off duty and intends to travel abroad, and not seeking leave to do so, is required to obtain permission to leave the island. If such provision exist our client is unaware of its existence and regrets being in breach.

In relation to 1(b) we are unable to detect any impropriety in the action of our client unless it is being alleged that she knew that the individual was involved in drugs and that there was complicity between them. In relation to any statement alleged to have been made by the individual our client would welcome the opportunity to test the credibility of the individual and/or the person to whom it is being alleged that the statement was made.

In relation to ii et sec. our client would need particulars or examples or the basis of the

allegations in order to respond meaningfully to them.

For example, our client is not aware of any occasion on which she failed to give the kind of leadership required of her or that she has not always command the confidence and respect of other police officers and the public or that she could be in any way responsible for any perceived low morale among police officers in her division as she has never had divisional command.

In any case, we feel strongly that the provisions of Regulation 26(1) should only be used where the public interest would be adversely affected by a hearing under Regulation 47 of the Police Service Regulations, 1961.

The rules of natural justice require that a person should not be deprived of his/her job without a hearing and we are unable to detect any reason why a hearing should not be afforded in this case.

In the circumstances we respectfully ask on behalf of our client that the allegations be particularised into charges and that our client be given the opportunity of proving her innocence.

We would be grateful if the Police Service Commission respond to our request before taking further action in this matter."

That reply was then forwarded to the Commissioner for his response and report. The Commissioner's copious report and response of May 9, 2000 supported by information, characterised as confidential, refuted point by point the appellant's reply. This is how the Commissioner responded:

"I wish to respond to the points raised by Attorneys for Woman Inspector Segree as follows:

1. Departure of Woman Inspector Nyoka Segree from the Island without permission

Her Attorneys are contending that they are not aware of any law, rule or Regulation which requires a member of the Force who is on day-off and intends to travel abroad to obtain permission to leave the island.

In response I wish to state that days-off and weekends, to my mind, constitute two of the different categories of leave available to members of the Jamaica Constabulary Force. Leave, as defined by the Concise Oxford Dictionary, Ninth Edition means inter alia, permission to be absent from duty and since days-off and weekends allow members of the Jamaica Constabulary to be absent from duty, they must be classified as leave.

Rule 4.11 of the Book of Rules for Guidance and General Direction of the Jamaica Constabulary Force states 'The Commissioner may grant permission for leave, as entitled by Rules, to be spent abroad on full pay to any member with over two years service...' Hence any member on leave, of whatever sort who is desirous of leaving the island must seek the permission of the Commissioner of Police.

The records disclosed that Woman Inspector Segree left the island on 5/3/99 and returned 7/3/99 (a weekend). While it is not clear whether she was on a legitimate weekend, if she was and was desirous of travelling abroad then Rule 4.11 of the Book of Rules would apply.

Also, Woman Inspector Segree who applied for two days departmental leave from 19/3/99 to 22/3/99 inclusive, to be spent locally, left the island on 22/3/99 in contravention of Rule 4.11 of

the Book of Rules of the Jamaica Constabulary. Please see copy statement of Superintendent K.A. Wade.

2. Involvement in Drug Trafficking

We regard Ms. Robinson as a witness of truth because the dates on which she asserted that Woman Inspector Segree and herself travelled to the United States of America have been confirmed.

Also, Ms. Robinson asserted that Woman Inspector Segree encashed a cheque for three thousand dollars (US\$3,000.00) at Larry's Variety Store in May Pen which represented the returns from illegal drugs which they both took to the United States of America. Mr. Larry Chin, proprietor of Larry's Variety Store, confirmed that he encashed a cheque for three thousand dollars (US\$3,000.00) on 22/3/99 but he has declined to say who presented the cheque for encashment.

3. Loss of respect by citizens and police

The allegation of Woman Inspector Segree's involvement in drug trafficking became widespread in Clarendon as a result of which she lost the respect of citizens and police personnel in the Division. It is reported that Woman Inspector Segree herself expressed concern about the turn of events. Please see paragraph 10 of confidential report of the Superintendent of Police – Clarendon dated 19/4/99. It was a result of this development why Woman Inspector Segree was transferred on 10/5/99.

4. Low morale among police personnel

Although Woman Inspector Segree was never the Divisional Commander of Clarendon, she is a senior supervisor and other police personnel, especially her juniors, looked to her for

leadership and guidance but what was being said about her involvement in drug trafficking had a negative impact on other members of the Division leading to low morale.

5. Breach of Natural Justice

There is no breach of natural justice in this case because the process on which we have embarked to my mind constitutes a hearing because the allegations against Woman Inspector Segree have been brought to her notice and she has been allowed to respond".

Thereafter the Commissioner's representation, the grounds on which the appellant's retirement was contemplated, her reply to these grounds and the Commissioner's report, were all submitted to the Commission to determine whether to recommend that the appellant be retired from the Force in the public interest.

On July 24, 2000 the Commission met and after considering the matter recommended that the appellant be retired from the Force in the public interest.

By letter dated August 4, 2000, the appellant was advised by the Governor General's Secretary that the Commission had advised the Governor General that she be retired from the Force under Regulation 26 and that she may apply for the matter to be referred to the Privy Council for its consideration and recommendation to His Excellency.

The appellant through her attorneys applied by letter of August 21, 2000 for the matter to be referred to the Privy Council and asked that the

particulars set out in that letter and in their letter of May 2, 2000 be considered as her "appeal" to the Privy Council. She was subsequently advised by way of a letter from the Chief Personnel Officer, copied to one of her attorneys, that the Privy Council had dismissed her appeal and that approval had been given for her to be retired from the Force in accordance with the provisions of Regulation 26.

Contending in the main that she had not been afforded a fair hearing or any hearing in this matter and that she had not been supplied with particulars of any allegation against her, the appellant applied, with leave, to a Full Court of the Supreme Court for an order of **certiorari** to quash the Police Service Commission letter dated March 14, 2001 ordering that she be retired from the Jamaica Constabulary Force in accordance with the provisions of Regulation 26 of the Police Service Regulations 1961.

In delivering judgment on November 16, 2001 the Full Court (Ellis, Wesley James and Kay Beckford JJ) dismissed the application on the basis that in accordance with Regulation 26 the appellant was given a fair hearing as she made written representations to the allegations of misconduct made against her. The Full Court also held that even if there had been no hearing the appellant's appeal to the Privy Council cured the defect.

The grounds of appeal relied on by the appellant are that the Full Court erred:

- (1) in not holding that the allegations of misconduct served on the appellant could have been suitably dealt with under Regulation 46;
- (2) in not holding that the Respondent was precluded by Regulation 26(1) from proceeding under that Regulation unless it was shown that the allegations could not suitably be dealt with under Regulation 47;
- (3) in not holding that the appellant having requested a hearing under Regulation 47, even if the matter could have been dealt with under Regulations 26, the appellant was entitled to be provided with :
 - (a) the reasons why the allegations could not have been dealt with under Regulation 47, and/or
 - (b) more particulars of the allegation including the particular action or actions of the appellant which constituted the misconduct alleged;
- (4) in holding that the appellant received a fair hearing;
- (5) in not holding that the action of the respondent was a breach of the rules of natural justice and that the appellant was entitled to the relief sought.

Regulation 26 provides:

"26.-- (1) Notwithstanding the provisions of Regulation 46 or Regulation 47 where it is

represented to the Commission or the Commission considers it desirable in the public interest that any member ought to be required to retire from the Force on grounds which cannot suitably be dealt with by the procedure prescribed by Regulation 46 or Regulation 47 it shall require the Commissioner to submit a full report.

(2) If after considering the report of the Commissioner and giving the member an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and, having regard to the conditions of the Force, the usefulness of the member thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the member be required to retire on such date as the Commission may recommend."

It should be observed at once that Regulation 26 does not provide the procedure for disciplinary proceedings for misconduct not warranting dismissal (Regulation 46) or for misconduct warranting dismissal (Regulation 47). Regulations 46 and 47 fall under Part V of the Police Service Regulations, headed "Discipline" and require that where charges are brought, as must be the case under Regulation 47, the member must be notified in writing of these and called upon to state in writing within a specified time the grounds on which he or she relies for exculpation. If the member fails to furnish such a statement or fails to exculpate himself or herself, a court of enquiry shall be appointed to enquire into the matter. There, such a member shall be permitted to appear and defend himself

or herself in a fully fledged hearing with most of the characteristics of a judicial trial.

On the other hand Regulation 26 sets out no such procedure and under it charges are not required to be brought. The Regulation falls under Part IV of the Regulations, headed "Probationary Service and Termination of Appointments". Procedures for retirement in two situations are provided for under Part IV: (1) premature retirement (Regulation 25) and (2) retirement in the public interest (Regulation 26). While Regulations 25, 26, 46 and 47 all contain provisions for the member concerned to have a reasonable opportunity of presenting his or her case the content of the procedures vary from an entitlement to make written representations (Regulations 25 and 26) to a right to an oral hearing akin to a trial in an ordinary court of law (Regulation 47).

The procedure sanctioned by Regulation 26 is as follows: first, a representation is made by or on behalf of the Commissioner of Police to the Police Service Commission recommending that a particular member of the Force be retired in the public interest. If the Commission considers that the contemplated retirement cannot suitably be dealt with under Regulation 46 or Regulation 47, which alone involves the laying of charges, the Commission shall require that a full report be submitted. Then, based on the report, the Commission furnishes the member with the grounds on which the member's retirement is contemplated and invites

the member to submit a reply to those grounds. A response from the Commissioner to the member's reply may then be required. Upon a consideration of all those matters including the member's reply to the grounds on which the retirement is contemplated the conditions of the Force, the usefulness of the member thereto and all the other circumstances of the case, the Commission determines whether it is satisfied that it is desirable in the public interest that the member be required to retire from the Force. If so satisfied the Commission recommends to the Governor General that the member be retired on a date recommend by the Commission.

So, by requiring that the member be given an opportunity of submitting a reply to the grounds on which that member's retirement is contemplated Regulation 26 provides expressly for the requirement **audi alteram partem**. The Regulation does not however, stipulate that as a pre-condition for proceedings to be taken thereunder the Commission must show that the allegations cannot suitably be dealt with under Regulation 47. And in any event there is no requirement for reasons to be given for so concluding.

In my judgment the real point for this Court to consider is whether procedural fairness requires that the statutory code ought to be supplemented by reason that under it the member can avail himself or herself of the opportunity to respond only after being furnished with the

grounds on which that member's retirement is contemplated. In other words, is the requirement, **audi alteram partem**, provided in Regulation 26, so imperfectly and inadequately imposed that the court should extend it? See **R v Secretary of State for Home Department exp Doody** [1994] A.C. 531, 550; **Wiseman v Borneman** [1971] A.C. 297, 308, 311, 312, 317 and 320.

The court must take into account the context in which the decision is taken and must note that although under Regulation 26 allegations must be made with sufficient particularity charges are not required to be preferred as would be the case under Regulation 47 with a view to dismissal.

The grounds on which the appellant's retirement was contemplated under Regulation 26 contained in my opinion sufficient particulars which afforded her a reasonable opportunity of presenting her case by submitting a reply to those grounds. There is therefore nothing so unfair about the procedure as would entitle the court to say that the principles of procedural fairness were not followed.

So there is no warrant to supplement the procedure laid down in the Regulation. Lord Reid's dictum in a case decided some three decades ago is, with respect, pertinent today, as it was then:

"For a long time the courts have without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this

purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation: **Wiseman v Borneman**[1971] A.C 297, 308"

Now, not only had the respondent followed the sufficient procedure laid down in Regulation 26, but the appellant availed herself of the opportunity extended to her of applying to the Governor General for her case to be referred to the Privy Council for its consideration and recommendation to His Excellency. The matter was considered by the Privy Council and her "appeal" was dismissed.

There clearly was in the result, scrupulous observance by the Respondent of the principles of procedural fairness.

It was for the foregoing reasons that I agreed that the appeal be dismissed and that the decision of the Full court be affirmed.