

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2009-04403

BETWEEN

**No. 11175 SGT. KEN CHARLES
No. 10582 SGT. JOHN TRIM
No. 11467 SGT. SEEMUNGAL RAMPERSAD
No. 11138 SGT. JUDE WORRELL
No. 11122 SGT. DANIEL MOORE
No. 11100 SGT. ROBERT PHILLIP
No. 11060 SGT. WINSTON SYLVESTER
No. 11401 SGT. YUSUFF GAFFAR**

CLAIMANTS

And

**THE COMMISSIONER OF POLICE
INTENDED RESPONDENT**

Before the Honourable Madame Justice C. Pemberton

Appearances:

For the Claimants: Ms. C. Charles instructing Mr. B. Charles

For the Intended Respondent: Ms Z. Haynes Instructing Ms. M. Smith

REASONS

[1] This matter came up for hearing oral submissions on March 9, 2010. Written submissions were reviewed prior to this hearing. Both the Claimants and the Intended Respondent maintained their previously submitted written positions. I therefore find:

1. There is no evidence provided by the Claimants that the rescission of the Order of Merit List by the Commissioner of Police, equates to the Commissioner of Police stopping promotions.
2. There is no evidence of a legitimate expectation created in favour of the Claimants.
3. The effective date of the decision to be reviewed is June 29, 2009.
4. The application for leave to apply for Judicial Review was not made in a timely manner.
5. The Application for leave to file Judicial Review Proceedings is refused.

Rescission of Merit List:

[2] The Claimants furnished no evidence that the Police Service Commission or the Commissioner has stopped the promotion of Officers. Therefore I cannot do as Mr. Charles has asked me, which is to allow him to challenge the alleged “decision” to stop the promotion of Officers based on the rescission of the Order of Merit List by the Commissioner of Police, contained in the Departmental Order dated June 29, 2009.

[3] I refer to **GILLETTE MARINA V. PORT AUTHORITY OF TRINIDAD AND TOBAGO, Civ. App. No. 106/2003** in which The Honourable Mr. Justice of Appeal Kangaloo stated:

“The expectation must be induced by the decision maker either expressly-by means of a promise or undertaking or implicitly –by means of settled past conduct or practice...the representation must be clear, unambiguous and devoid of relevant qualification”

[4] **Legitimate Expectation:**

The Claimants have not supplied any evidence of legitimate expectation in the form of an express promise made to them by the Commissioner of

Police regarding their promotions or of any settled past conduct or practice. Their evidence is that the Commissioner made a televised statement, which was then reduced to print in a Newspaper published by a third party. Not even this printed evidence has been supplied.

Pre-existing Legal Right:

- [5] The Claimants have provided me with no evidence of a pre-existing legal right to promotion. A mere allegation was made “supported” by law. I cannot agree with Mr. Charles that the Claimants were denied a pre-existing legal right to be considered for promotion.

Effective Date of Decision Under Challenge:

- [6] “K.C. 2”, the Departmental Order containing the decision to be challenged, carried the date June 29, 2009. The Presumption of Regularity would lead to the conclusion that publication of the decision was done on the date mentioned. This has not been displaced by any evidence provided by the Claimants.

The Claimants allege that the Departmental Order was published on August 25, 2009 and was “backdated” to June 29, 2009. In the absence of any evidence, the date on the Order is presumed to be the intended date of the decision contained therein.

Further, the Claimants do not share with the Court how the Departmental Order came to their knowledge on August 25, 2009. The evidence is that on July 2, 2009, a printed statement by the General Secretary of the Police and Social Welfare Association, Sgt. Fredericks, stated that the Intended Respondent had stopped promotions of persons from the rank of Sergeant to Inspector. The evidence also shows that on July 3, 2009 the Commissioner of Police and the Chairman of the Promotion Advisory Board, Mr. Maurice Pigott, responded in the negative.

[7] Even if we accept that the date of knowledge was July 3, 2009, the latest date mentioned in their affidavits regarding this matter, previous to August 25, 2009, then the timing of the application cannot bear up under scrutiny. I must find that the decision to be challenged was contained in the Departmental Order of June 29, 2009 annexed at “K.C. 2” and that the date June 29, 2009 is the effective date.

Timing of Filing of Application for Leave for Judicial Review:

[8] Since I have determined that the effective date of the Departmental Order containing the decision that is under challenge was **June 29, 2009**, the Claimants have exceeded the three month limitation period in which they must make this application for leave.

Pre-Action Protocol:

[9] In the matter of **DENNIS GRAHAM V. THE POLICE SERVICE COMMISSION AND THE MINISTRY OF NATIONAL SECURITY**¹, the Claimant’s Attorney at law dispatched a purported Pre Action Protocol letter in similar circumstances, and containing error with respect to response time.

I noted there that the pre-action protocol letter to the Commissioner of Police, did not conform to the requirements of the **CPR 1998**, in this case, the letter of 15th September 2009 at paragraph 10 states:

The Supreme Court of Judicature Practice Direction – Pre-action Protocols requires that you acknowledge this letter within seven (7) days of your receipt thereof followed by a full response within fourteen (14) days stating whether you are willing to immediately resolve this matter without proceeding to litigation.

¹ CV 2007-00828 DENNIS GRAHAM V. THE POLICE SERVICE COMMISSION AND THE MINISTRY OF NATIONAL SECURITY

Appendix D, Pre-action Protocol for Administrative Orders, Part 3.1 provides that:

*Defendants should normally respond within 30 days using the standard format at Annex B. Failure to do so will be taken into account by the court in exercising its discretion pursuant to **Part 26** or **Part 66** of the CPR.*

It is therefore obvious that the Claimants have not complied with the requirements of the **CPR 1998**. This issue does not assist the Claimants in succeeding with this application.

[10] I must put on record that any proceedings brought before the Court in which serious allegations of nefarious conduct are alleged, **must** contain clear and cogent evidence to support them. Parties are disallowed from penning allegations with no proof, and then hope to put the other side on defensive. This is especially so in the current climate of openness in litigation rather than trial by ambush. I did explain to Counsel the absence of evidence at the hearing, and its detrimental effect on the application. I gave time for consideration of a different course. These overtures were soundly rejected.

CONCLUSION:

In conclusion, I find that I cannot permit the Claimants to apply for Judicial Review.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Application for leave to apply for Judicial Review filed on November 24, 2009 be and is hereby refused.

2. The Claimants to pay the Intended Respondent's costs.
3. Statement of costs is to be filed and served on or before March 25, 2010.
4. The hearing of the assessment of costs be heard on April 15, 2010 at 1:30pm in POS 17.

Dated this 10th day of March 2010.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE