

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2011-03149**

**BETWEEN**

**JOHN RAMDEEN**

**CLAIMANT**

**AND**

**THE COMMISSIONER OF POLICE**

**DEFENDANT**

**BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH**

**Appearances:**

**Ms. Dana Seetahal SC instructed by Ms. K. Berkeley for the Claimant**

**Ms Fournillier holding for Ms J. Baptiste-Mohammed and Ms K. Mark for the  
Defendant**

**Dated: 25 September 2012**

### **JUDGMENT**

1. This is a claim for judicial review by which the claimant is challenging the decision of the Commissioner of Police to not promote him to the rank of Assistant Superintendent. The claimant retired from the Police Service on 6 May 2011 having reached the mandatory retirement age of 55 years for Second Division officers.

2. The claimant was granted permission to file this claim on 21 November 2011 and duly filed his Claim Form together with a supporting affidavit on 5 December 2011. The Defendant filed an affidavit in reply on 9 January 2012.
3. By his affidavit the claimant states the following among his grounds for relief:
  - (i) He had undertaken the promotional assessment having been given assurances that his retirement age, which fell after the assessment process was to be completed, would not impact on his eligibility for promotion. This he says created a legitimate expectation as to his eligibility for promotion on condition of performance at the promotional assessment.
  - (ii) He had a legitimate expectation that he would be promoted based on his success at the promotional assessment.
  - (iii) Having attained the ranking of 57<sup>th</sup> he also had a legitimate expectation that he would be so promoted being among the top 60 officers who were promoted to the rank of Assistant Superintendent.
  - (iv) Despite his eligibility and success at the promotional assessments he was bypassed/ deselected for promotion and others, although ranked lower than him, were selected and in fact promoted.

### **Claimant's Evidence**

4. The claimant's evidence is that while on vacation leave in January 2011 he was informed by one of his colleagues that there were books assigned to him to collect at the Human Resources Department of the Police Service to prepare for a promotional examination. At this time, the claimant was a Police Inspector in the

Second Division of the Police Service. He says he spoke by telephone to one Ms Maria Joseph, an employee of the Human Resources Department, and told her that he was approaching his retirement age for Second Division Officers on 6 May, 2011. He says Ms Joseph stated and reassured him despite his reservations that **the entire assessment process would be completed before his birthday, and so should he be successful and appear on the merit list, he will be eligible for promotion.**

5. A couple weeks later, he collected the material which included a letter dated 13 January 2011, signed by Ms Joseph on behalf of the Commissioner of Police. This letter informed the claimant, among other things, that he was **eligible to engage in the assessment exercise for promotion to and within the First Division.** The claimant says he began studying with the material provided and duly attended the familiarisation session on 26 January 2011. At this session they were told that the assessment will be arranged in two examinable sessions, one written and the other oral.
6. The claimant says he undertook the first stage written examination around 29 March 2011. By letter dated 14 April 2011 from the Trinidad and Tobago Police Service (TTPS), signed by the Commissioner of Police, the claimant was notified that he was successful at the written examination stage and that he will be going forward to the oral phase of the process on 2 May 2011.
7. He says he completed the oral phase on 2 May 2011. A few weeks later on 19 May 2011, a Merit List of the promotional assessment was published in which the claimant placed 57<sup>th</sup>. The claimant says he found out that the top 60 officers from the list, including the three officers ranked below him, were promoted to the rank of Assistant Superintendent, but he was not although ranked 57<sup>th</sup>.

8. In these circumstances the claimant says the decision/ failure to promote him was unlawful and unreasonable and seeks an order from the court compelling the defendant to do so.

### **Defendant's Evidence**

9. The defendant's evidence is contained in an affidavit deposed to by Deputy Commissioner of Police, Mr Stephen Williams. The defendant essentially contends:
  - The promotional assessment process was completed when the results were sent to the Commissioner on 18 May 2011 and then published on 19 May 2011;
  - At the time the promotional assessment commenced the claimant was a serving police officer and was therefore **eligible to participate in the promotional assessment process**. However, **having retired from the Service on 5 May 2011**, the claimant was **no longer eligible to be considered for promotion** and was not bypassed for promotion.
  - Ms Joseph was not authorised to speak on behalf of the Defendant **in determining that the Claimant would be successful in relation to the promotional assessment process**, and that the Commissioner is the only person to make decisions in relation to promotions. Accordingly, the claimant cannot rely on the utterances of someone not authorised to make promises for promotions.
10. On the evidence a number of facts and assertions are undisputed or unchallenged:

- (i) The claimant was told by Ms Joseph that (a) the promotional assessment process would be completed before his retirement age and; (b) once he was successful he would be eligible for promotion.
- (ii) The claimant underwent the promotional assessment process on the invitation of the Defendant (letter of 13 January 2011).
- (iii) The claimant was eligible to engage/ participate in the promotional assessment process (letter of 13 January 2011).
- (iv) The claimant was successful in the first stage/ written examination of the assessment process and notified of the second/ oral phase by letter of 14 April 2011.
- (v) The claimant completed the second / oral assessment phase on 2 May 2011.
- (vi) The claimant was ranked 57<sup>th</sup> among the candidates for promotion to Assistant Superintendent by Order of Merit list published on 19 May 2011.
- (vii) The claimant was among the top 60 candidates all of who were promoted apart from himself.

11. The issues in contention therefore are:

- Was Maria Joseph authorized to make the representations that she did?
- When was the ‘assessment process’ completed? Was the claimant eligible for promotion, he having been retired on 6 May 2011?

- Was there a legitimate expectation on the part of the claimant that he would be promoted?

**Was Maria Joseph authorised to make the representations that she did?**

12. It is significant that the defendant's contention at paragraph 7 of the Williams affidavit is that Ms Joseph was not authorised to speak on behalf of the Commissioner **"in determining that the Claimant would be successful in relation to the promotional assessment process"**. The defendant says the claimant therefore cannot rely on any "promises of promotion" made by Ms Joseph.
13. These contentions are however simply not borne out on the facts. What the claimant contends is that Ms Joseph assured and represented to him that (a) the promotional assessment process would be completed before his mandatory retirement age and; (b) he would be eligible for promotion once he was successful and appears on the Merit List. This he says created a legitimate expectation as to **his eligibility for promotion on condition of performance** at the promotional assessment.
14. On the evidence before me, I cannot find that Ms Joseph made any unauthorised 'promises of promotion' to the claimant. The oral assurances and statements alleged to have been made by her were to the effect that the claimant was eligible for promotion; not that he would be promoted or that he would be successful in the process. The statements therefore remain uncontradicted and I accept that they were made.

15. As to her authority, the defendant has not successfully refuted that Ms Joseph, as an agent of the defendant and employee of the Human Resources Department, had no authority to make the statements she did. Her letter to the claimant of 13 January 2011, signed on behalf of the Commissioner, only reinforces that she had such authority to communicate with the claimant on the matter of the promotional assessment. It is also of note that the defendant has not disputed Ms Joseph's authority to write this letter.

**When was the assessment process completed? Was the claimant eligible for promotion?**

16. The claimant submits the assessment process was completed when he underwent and completed his oral examination on 2 May 2011. The defendant, on the other hand, contends that the publication of the results is the date by which the process was then completed. By that date, 19 May 2011, the defendant says the claimant was no longer eligible for promotion having retired on 5 May 2011.

17. What comprises the promotional assessment process is set out in **Regulation 19** of the **Police Service Regulations, 2007**. In particular Regulation 19 (5) states:

**“The promotional assessment process shall comprise of two stages as follows:**

*(a)* stage one shall require every qualifying officer to write a qualifying examination, from which only the top performing candidates as determined by the person shall proceed to stage two; and

*(b)* stage two shall be a suitability assessment process.”

18. The principles of selection for promotion to and within the First Division are set out in sub regulations (2) and (9):

“19 (2) The points awarded to a police officer based on his performance appraisal report shall represent twenty-five per cent and the results of the promotional assessment process shall represent seventy-five per cent of his final grade as stated in the Order of Merit List mentioned in subregulation (9)....

(9) Subject to subregulation (2), **every officer considered for promotion shall be rated** according to the results of the promotional assessment process specified in this regulation\_together with the points awarded to him based on his performance\_appraisal report and **be placed on an Order of Merit List.**”

19. Sub-regulation (10) states:

“(10) The person shall, as soon as the promotional assessment process is completed, submit the Order of Merit List to the Commissioner, who shall immediately cause it to be published in a Departmental Order.”

20. **Sections 16 and 17** of the **Police Service Act** also set out in relation to the basis of promotion and the promotional assessment process that:

“16. (1) In the exercise of the powers vested in him by section 123A(2)(a) of the Constitution, the Commissioner shall take into account—  
(a) in the case of promotion to and within the First Division, the results of the promotional assessment process; ....

(2) A police officer shall not be considered for promotion to and within the First Division unless he has attained the prescribed points.

17. Subject to section 16(2), promotions to and within the First Division shall be made by the Commissioner only on the basis of the results of a promotional assessment process.

17A.

(2) The person shall conduct the promotional assessment process to determine the suitability for promotion to and within the First Division to the next higher rank of a police officer from the rank of Inspector through



to Senior Superintendent and shall submit its results, taking into account the points attained by the officer under section 16(2), in the form of an Order of Merit List to the Commissioner in relation to his functions under section 123A(2)(a) of the Constitution.

(3) A police officer shall not be appointed to an office in the First Division if the Commissioner objects to the appointment of that officer to that office.”

21. First, it is clear from the above provisions that the promotional assessment process is a two-stage process: **regulation 19(5)**. It is also clear that the ‘assessment process’ and the ‘results of the assessment process’ are two separate things. The collating of points and publication of the results in my view is not part of the two-stage assessment process set out in regulation 19 (5).

22. It is also clear on the facts that stage two of the process was the ‘oral phase’ referred to in the defendant’s letter of 14 April 2011 and which the claimant undertook and completed on 2 May 2011. At paragraph 6 of Mr Williams’ affidavit, the defendant states that this ‘interview part’ of the promotional assessment process was concluded on 6 May 2011. However no evidence is provided in support of this assertion – either from the defendant or by Penn State University which conducted the process.

23. The court accepts that for this claimant, he completed the second and final stage of the promotional assessment process on 2 May 2011. The claimant would have therefore completed both parts of the assessment process before his retirement age. The defendant does not dispute that the claimant in fact completed the oral phase on this date. Even if the collating of the results is considered part of the process, there is no indication as to when this process was completed for the claimant or at all. Based on regulation 19 (10) however, I accept that the

submission of the Merit List to the Commissioner and its publication is sufficient evidence of the completion of the assessment process.

24. More importantly, however, is the effect of regulation 9 (9) which states “... **every officer considered for promotion shall be rated according to the results of the promotional assessment process** specified in this regulation together with the points awarded to him based on his performance appraisal report and **be placed on an Order of Merit List.**”

25. It is not in dispute that the claimant appeared on the Merit List published on 19 May 2011 at No. 57. Although having retired from the Service on 5 May 2011, the claimant was still therefore “**considered for promotion**”, **rated, and placed** on the Order of Merit List in accordance with regulation 9 (9). To my mind, a relevant factor would have undoubtedly been that the claimant had in fact completed the second and final stage of the assessment process since 2 May 2011. In my view therefore, notwithstanding his retirement date and when the results were issued, the claimant was clearly considered eligible for promotion. No reason has been advanced for his unsuitability for promotion other than his attaining the retirement age. The Commissioner would have been liable to account on grounds of irrationality if the merit list and the interview were disregarded.

**Was a legitimate expectation created that the claimant would be promoted?**

26. The claimant further submits that, in any event, he had a legitimate expectation based on the assurances given by Ms Joseph that he would be considered for promotion. He says those assurances is an express promise or representation made

on behalf of the defendant creating a legitimate expectation in his mind that were he to embark on the promotion exercise:

- (i) he was eligible to do so;
- (ii) that the promotional assessment process would be completed before his mandatory retirement age;
- (iii) that it would be completed by him before his retirement age; and
- (iv) once successful he would be promoted.

27. The claimant says the defendant's actions in notifying him of his success in the written examination and scheduling his oral assessment for 2 May 2011 encouraged him to undertake the process and operated as a continuing representation creating a legitimate expectation that he would in fact complete the process before his mandatory retirement age and so remain entitled to be promoted if successful.

28. The contention of counsel for the defendant that the claimant was eligible to participate at the start of the process but upon his date of retirement was no longer eligible for promotion also bears some analysis. It begs the question of why invite the claimant to undertake a process with a view to promotion in the first place. Why have the claimant start and complete a process that, at the end of the day, would be futile and a waste of each party's time and resources? To my mind, this makes no sense. I posed this question to counsel for the defendant who understandably was unable to advance a satisfactory answer.

29. Further, as Ms Seetahal SC stated in her submissions, at no time did the defendant indicate before or after the claimant's completion of the assessment process that he may have been rendered ineligible for promotion by any means or at all. The

fact that this was never done accentuated the expectation in the claimant's mind that he was in line for promotion having successfully completed the process. These further and continued representations culminated in the placing of the claimant on the Order of Merit List at a ranking making him eligible for appointment, yet not being considered for promotion.

30. In my view therefore, having regard to all the evidence and circumstances, there was a legitimate expectation created in the mind of the claimant that he would be considered for promotion. This legitimate expectation was created by:

(1) The oral and written assurances/ representations made by Ms. Joseph to the claimant that (a) he was eligible to engage in the promotional assessment exercise with a view to promotion; (b) the process would be completed before his mandatory retirement age and; (c) he would be **eligible for promotion** once he was successful and appears on the Merit List. I accept that Ms Joseph made no promises for promotion which she had no authority to do. However, I accept she had the authority to make the representations that she made orally and by her letter of 13 January 2011.

(2) The letter of 14 April 2011, signed by the Commissioner, informing the claimant of his success in the written examination phase and inviting him to the second/ oral phase of the assessment to be held before his retirement date. I accept this would have furthered the claimant's expectation that he would complete the entire process before he was due to retire and thus remain eligible for promotion.

(3) The fact that the claimant did in fact complete the second/ oral phase of the assessment on 2 May 2011, before his retirement date. I also accept that this was the second and final stage of the two-stage assessment process set out in the regulations.

(4) The absence of any indication from the defendant between time the claimant started the assessment process to the date of publication of results that he may be rendered ineligible for promotion due to his retirement date.

(5) The claimant's success at the promotional assessment as represented by his placement on the Order of Merit List published on 19 May 2011.

31. Having undertaken and successfully completed the statutory process set out for promotion, coupled with the various representations and actions of the defendant which created and furthered a legitimate expectation, I find that the claimant was entitled to be considered for promotion. I should add that no other reason has been advanced to suggest the unsuitability of the claimant for promotion.

32. The defendant has put forward no justifiable reason as to why this claimant's legitimate expectation should be frustrated. I should add that I see no issue why the claimant could not be retroactively appointed then and the same goes for now.

## **Order**

33. I therefore find that the claimant is entitled to:

1. A declaration that the claimant was eligible for promotion on the date he completed the assessment process on 2 May 2011.
2. A declaration that the failure of the Commissioner of Police to consider the claimant for promotion to the rank of Assistant Superintendent was unlawful and / or unreasonable.

3. This matter is remitted to the Commissioner of Police to make the necessary decision to promote the claimant as of the date of the completion of the assessment process on 2 May 2011.
4. The claimant is entitled to his costs to be assessed in default of agreement.

Ronnie Boodoosingh

Judge