

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2020-02285

BETWEEN

VERNON SOOKOO

Claimant

AND

THE CHIEF OF DEFENCE STAFF

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery 29 June 2022

APPEARANCES

Mr Ronald Simon Attorney at Law for the Claimant

Mr Ebo Jones instructed by Mr Ryan Grant Attorneys at law for the Defendant

JUDGMENT

1. The facts in this action are from the Affidavit of the Claimant¹ (“the Claimant’s Affidavit”) and the Claimant’s Supplemental Affidavit² (“the Claimant’s Supplemental Affidavit”) as the Defendant did not file any affidavits.
2. According to the Claimant’s Affidavit and the Claimant’s Supplemental Affidavit, the Claimant was a member of the Trinidad and Tobago Defence Force (“TTDF”) for twenty-one (21) years 220 days until 11 February 2020, when he was discharged at the rank of Corporal. During the Claimant’s term

¹ Filed 13 August 2020

² Filed 25 August 2020

of engagement within the TTDF he was posted as a Medic to the Support and Service Battalion, Medical Inspection Room for approximately fifteen (15) years.

3. The Claimant successfully participated in the Cadre Junior Basic Cadre 0502 during the period of 22 August 2005 to 25 November 2005 and was placed 30th on the Seniority List within the TTDF.
4. On 9 March 2011, the Claimant was placed on Officer Commanding orders, seven (7) charges were read to him and the matter was referred for Commanding Officer orders. Thereafter, 10476 Private Tyrell T, 11658 Private Clarke K and 12018 Private Williams O were all called to give evidence in the matter.
5. On 4 November 2011, the Claimant saw OC 0154 Captain K.O.P. Francis and he was given permission to attend the Cadre on 7 November 2011, where he was informed by Chief Instructor 0146 Captain J.P Roachford to return to the Unit as he was a reserve under the Military Branch System.
6. The Claimant, 9727 Lance Corporal Suchit D and 9674 Lance Corporal Mc Knight G attended the Junior Advance Branch Cadre 1201. The said soldiers were promoted with effect on 30 September 2012 and adjustments were made to their seniority. However, the Claimant was not promoted and no adjustment was made to his seniority.
7. By letter dated 11 February 2016, the Claimant formally wrote to the TTDF requesting an adjustment in his seniority, however, no action was taken in relation to his request. In January 2017, the Claimant applied for resettlement training (“the Resettlement Training Application”) at Walden University to pursue a Masters Degree in Public Health at the cost of Two Hundred and Ten Thousand (\$210,000.00) Dollars.

8. On 6 February 2017, the Claimant was interviewed by Officer Commanding, 0174 Captain F. Modeste-Gibbs who acknowledged the Resettlement Training Application and informed the Claimant that the permitted amount for resettlement training cost was Sixty Thousand (\$60,000.00) Dollars.
9. The Claimant was made aware on 22 June 2017, that there were administrative delays which were cleared up by Commanding Officer, 0110 Lieutenant Colonel P.B. Ganesh who signed the Resettlement Training Application submitted by the Claimant and it had been forwarded to the Trinidad and Tobago Regimental Headquarters.
10. On 30 January 2019, the Claimant appeared before the Commanding Officer, 0126 Major J. Mclean for the seven (7) charges laid against him and referred for Commanding Officer orders on 9 March 2011. On the said day the said charges were dismissed against him.
11. The Claimant was nominated to attend the Senior Non-Commission Officer Professional Development Course 1901 ("SNPDC 1901") from 28 January 2019 to 25 April 2019, which he completed successfully but was not promoted with his peers. On 17 May 2019, the Claimant was interviewed by Officer Commanding, 0170 Captain A.D.J Booker ("Captain Booker") who informed him that he would not be recommend for promotion based on his Pulheems Classification of Based Everywhere (BE).
12. By letter dated 7 June 2019, the Claimant presented an updated medical report to Captain Booker, which indicated that he was suffering from a medical disposition. Captain Booker then wrote to the Commanding Officer recommending the Claimant's promotion to the acting rank of Sergeant.
13. On 19 November 2019, the Claimant sought an interview with the Commanding Officer through the Officer Commanding, 0180 Captain B.

George to get an update on his promotion and resettlement training. On 9 January 2020, the Claimant had an interview with the Commanding Officer, where she indicated that promotion is not based on the Professional Development Course but guided by the Regimental Standing Orders (Section 12- Promotion). She also informed the Claimant that she would make a recommendation to the Commanding Officer of the Trinidad and Tobago Regiment that the Claimant be promoted to the rank of Sergeant. The Claimant was sent on terminal leave from the TTDF on 16 January 2020.

14. On 12 February 2020, the Claimant was officially discharged from the TTDF on the ground of "Completion of Service". The Claimant was then sent on privilege leave for the period 15 October 2019 to 14 January 2020 and Terminal Leave for the period 15 January 2020 to 11 February 2020 pursuant to the Discharge Order dated 9 December 2019.
15. Based on the aforesaid facts, the Claimant filed the instant action where he has sought the following orders:
 - a. A declaration that the discharge of the Claimant by the Chief of Defence Staff on 11 February, 2020 is a breach of the Claimant's rights to natural justice and is therefore unfair, unreasonable, null and void and of no effect;
 - b. An order of certiorari to quash the decision of the Chief of Defence Staff made on 11 February, 2020 to discharge the Claimant and communicated to him on 11 February, 2020 that the Claimant is discharged from duty on the grounds of "Completion of Service" with effect from 12 February, 2020;
 - c. An order of mandamus to compel the Defendant to immediately reinstate the Claimant to duty in the TTDF and to advance him to the

rank of Sergeant with effect from 25 June 2019 having treated him differently from other officers similarly circumstanced;

- d. A declaration that the failure of the Chief of Defence Staff (which is continuing) to promote/ advance the Claimant to the rank of Sergeant on or before his run off date (retirement date) on 11 February, 2020 is in breach of the Claimant's right to legitimate expectation on the principles of fairness, natural justice and reasonableness;
- e. A declaration that the failure of the Chief of Defence Staff (which is continuing) to not afford the Claimant the opportunity to proceed on two (2) years resettlement training, prior to his run off date (retirement date) on 11 February, 2020 is in breach of the Claimant's right to legitimate expectation on the principles of fairness, natural justice and reasonableness;
- f. A declaration that the said decisions/ omissions by the Chief of Defence Staff were unreasonable, irregular, irrational or an improper exercise of discretion and in breach of the Claimant's right to legitimate expectation and the rules of natural justice and has caused the Claimant's career to be shortened and terminated prematurely;
- g. An order for monetary compensation, including aggravated and/ or exemplary damages for distress, inconvenience and loss suffered by the Claimant as a result of the breach of the principles of natural justice;
- h. Cost;

- i. Such further or other relief, including all such orders, writs and directions as may be appropriate for enforcing or securing the enforcement of the rights as the nature and justice of the case may require.

16. The parties identified various issues from the respective submissions which were filed. However, one of the challenges in identifying the issues in this matter is due to the lack of any affidavit from the Defendant responding to the Claimant's case. In my opinion, the issues which would determine if the Claimant is entitled to any of the orders which he has sought are:

- (a) Whether the action should be struck out as an abuse of process as the Claimant had an alternative remedy?
- (b) Whether the failure by the Defendant to promote the Claimant to the rank of Sergeant on or before his run off date (retirement date) on 11 February 2020 was in breach of the Claimant's right to legitimate expectation, the principles of natural justice, reasonableness and fairness?
- (c) Whether the failure by the Defendant not to afford the Claimant the opportunity to proceed on two (2) years resettlement training prior to his run off date (retirement date) on 11 February 2020 was in breach of the Claimant's right to legitimate expectation, the principles of natural justice, reasonableness and fairness?
- (d) Whether the Claimant is entitled to damages?

WHETHER THE INSTANT ACTION OUGHT TO BE STRUCK OUT AS AN ABUSE OF PROCESS AS THE CLAIMANT HAD AN ALTERNATIVE REMEDY?

17. It was submitted on behalf of the Defendant that the instant action is an abuse of process, as the Claimant had a parallel remedy under section 195 of the **Defence Act**³ and the **Trinidad and Tobago Regiment Standing Orders**.
18. The Claimant's position was that section 195 of the **Defence Act** was not an available remedy to him, as prior to the date of his discharge he had no complaints and he only realised that he would not be advanced in rank when he was discharged from the TTDF, by which time he could not avail himself of any remedy under that section.
19. Section 195 of the **Defence Act** provides:
- “195. (1) If an other rank thinks himself wronged in any matter by any officer other than his commanding officer or by any other rank, he may make a complaint with respect to that matter to his commanding officer.
- (2) If an other rank thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint with respect thereto to the Council.
- (3) The Council or the commanding officer shall investigate any complaint received by him under this section and shall take such steps as he may consider necessary for redressing the matters complained of.”
20. It was not in contention from the submissions that the Claimant fell into the category of officers known as “other rank”.

³ Chapter 14:01

21. The Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Dion Samuel**⁴ explained the nature of the remedy which section 195 of the **Defence Act** provides. At paragraph 55, Mendoca JA who delivered the judgment stated:

“It seems to me that in so far as the section provides for an other rank who thinks himself wronged by his commanding officer for the reason that he was not given satisfactory redress on a complaint under 195 (1), the intention of the section is to allow for a complaint to the Defence Council when the complaint is one that could properly have been made under 195(1). In so far as Section 195(1) does not allow for complaints in respect of wrongs by the other ranks’s commanding officer or the Chief of Defence Staff the section would not apply in the circumstances of this case”.

22. Mendonca JA continued at paragraphs 56 and 57 as follows:

“With respect to Section 195(2) which allows for complaints to the Defence Council in respect of wrongs by the commanding officer “for any other reason”, here again that applies where the other rank thinks himself wronged by his commanding officer and would not apply to the actions of the Chief of Defence Staff who approved the Respondent’s discharge from the Force and who was not the Respondent’s commanding officer”.

In the circumstances neither Section 195 nor Section 118 of the Defence Act provide any or any effective or proper remedy for the unfair and unlawful treatment of the Respondent”.

⁴ CV2012-03170

23. In the High Court judgment of **Russell Joseph vs The Chief of Defence Staff**⁵ Smith J (as he then was) opined at page 16 that after a service man or service woman is discharged from the service, that person “can no longer claim to be an other rank so as to be able to avail himself of Section 195 of the Act.... The section, therefore, does not provide an alternative remedy for the Applicant”.
24. It seems to me that section 195 of the **Defence Act** does not provide any alternative remedy for the Claimant who had no reason to believe that prior to his retirement he would not have been promoted. Indeed, as late as 9 January 2020, his Commanding Officer indicated to him that she would make a recommendation to the Commanding Officer of the Trinidad and Tobago Regiment that he be promoted to the rank of Sergeant. By the time he realised he would not be promoted he was no longer an officer of other rank. Further, the Claimant had no reason to believe that he was wronged by the Commanding Officer to seek any redress, as he was told that a recommendation was made for his promotion to the rank of Sergeant.
25. Similarly, the Claimant had no alternative remedy under the Trinidad and Tobago Regiment Standing Orders. Section 4-Discipline, 430 states:

“Complaints

If an individual considers himself unfairly treated at any time, or wronged in any way by an order given to him, he will first obey the order, and then afterwards make his complaint through the CSM to his Company Commander:

- a. Commander, he may apply to see his Commanding Officer and lay his complaint before him.

⁵ HCA No. 1500 of 1997

- b. If he considers that his complaint has NOT been addressed by his Commanding Officer he may apply to see the Chief of Defence of Staff (CDS) and lay his complaint before him.
 - c. If he considers that his complaint has NOT been redressed by the CD he may apply to have his complaint laid before the Defence Council.”
26. In my opinion, the aforesaid Standing Orders relate to orders given to an officer who feels aggrieved. In the instant case there was no such allegation made by the Claimant.
27. For these reasons, I am not of the opinion that the instant action should be struck out as an abuse of process.

WHETHER THE FAILURE BY THE DEFENDANT TO PROMOTE THE CLAIMANT TO THE RANK OF SERGEANT ON OR BEFORE HIS RUN OFF DATE (RETIREMENT DATE) WAS IN BREACH OF HIS RIGHT TO LEGITIMATE EXPECTATION, THE PRINCIPLES OF NATURAL JUSTICE, REASONABLENESS AND FAIRNESS?

28. It was contended on behalf of the Claimant that the Defendant acted unreasonably and irrationally by failing to act upon the recommendation of the Commanding Officer Lieutenant Colonel J Mc Lean to promote him to the rank of Sergeant before his run off date on 11 February 2020. In this regard, Counsel for the Claimant argued that the Claimant had met all the criteria in accordance with the Defence Act and the Standing Orders to be promoted and the Defendant has not produced evidence or further criteria if any, that the Claimant was required to meet for promotion to the rank of Sergeant.

29. Counsel for the Claimant also submitted that the Claimant had a legitimate expectation whilst participating in the Professional Development Course that he would have been promoted to the rank of Sergeant upon successfully completing it. This legitimate expectation was strengthened when the Claimant's Commanding Officer recommended his promotion in January 2020 and the Defendant has not given any reasons to explain the frustration of the Claimant's expectation.
30. In response, the Defendant's position was that the Claimant's argument that he had a legitimate expectation to be promoted is misconceived, as there is no automatic right to promotion as promotions within the TTDF are governed by sections 11 and 14(1) of the Defence Act. Counsel for the Defendant also argued that there was no representation or promise made by the Defendant, that the Claimant would be promoted to the rank of Sergeant which was not adhered to and which was acted upon to the Claimant's detriment.
31. It was further submitted on behalf of the Defendant that he did not breach any duty to investigate the complaint, as the Claimant had not made any complaint regarding not being promoted to the rank of Sergeant. Counsel argued that the only complaint made by the Claimant was in the letter dated 11 February 2016, seeking an adjustment to his seniority within the TTDF.
32. I will deal with the claim based on legitimate expectation first. Lord Neuberger in the Privy Council decision of **United Policyholders Group v The Attorney General of Trinidad and Tobago**⁶ repeated the principles of legitimate expectation. He stated at paragraphs 37 and 38:

“In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it

⁶ [2016] UKPC 17

will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be "clear, unambiguous and devoid of relevant qualification", according to Bingham LJ in *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569, cited with approval by Lord Hoffmann in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] AC 453, para 60 ...

Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty — see e.g. *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629, 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement."

33. The burden of proving the legitimacy of the expectation initially rests on the Claimant. Once the Claimant has proven the elements, the onus is shifted to the Defendant to justify the frustration of the legitimate expectation. The

Privy Council judgment in **Francis Paponette v The Attorney General**⁷ described the position at paragraph 37 as :

“The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest.”

34. At paragraphs 38 and 42 in **Francis Paponette** the Board said:

“38. If the authority does not place material before the court to justify its frustration of the expectation, it runs the risk that the court will conclude that there is no sufficient public interest and that in consequence its conduct is so unfair as to amount to an abuse of power...”

42. It follows that, unless an authority provides evidence to explain why it has acted in breach of a representation or promise made to an applicant, it is unlikely to be able to establish any overriding public interest to defeat the applicant’s legitimate expectation. Without evidence, the court is unlikely to be willing to draw an inference in

⁷ (2010) UKPC 32

favour of the authority. This is no mere technical point. The breach of a representation or promise on which an applicant has relied often, though not necessarily, to his detriment is a serious matter. Fairness, as well as the principle of good administration, demands that it needs to be justified...If it wishes to justify its act by reference to some overriding public interest, it must provide the material on which it relies.” (Emphasis added)

35. I have understood the Claimant’s case to be that he had a legitimate expectation to be promoted to the rank of Sergeant, as he had successfully completed the Professional Development Course and his Commanding Officer told him in January 2020 that she would make a recommendation to the Commanding Officer of the Trinidad and Tobago Regiment for him to be promoted to the rank of Sergeant.

36. Sections 11 and 12 of the **Defence Act** deal with the respective body, which is responsible for promotion of officers of different rank in the TTDF. Section 11 provides:

“11. The Board shall advise the President through the Minister on appointments to commissions and promotions in the Force up to the rank of Major/Lieutenant Commander”

37. Section 12 provides:

“12. The Minister, after consultation with the Prime Minister, shall advise the President on appointments to commissions and promotions in the Force above the rank referred to in section 11.”

38. Section 14 of the **Defence Act** sets out the procedure for an officer who is aggrieved on the issue of promotion. It states:

“14. (1) A member of the Force who is aggrieved by the failure of the Board to recommend him for an appointment to a commission or a promotion may appeal to the Council through the Board.

(2) The Board shall act in conformity with any finding or determination of the Council in respect of an appeal.”

39. Paragraphs 1206 and 1209 of the Trinidad and Tobago Regiment Standing Orders details the criteria to be considered for promotion. Paragraph 1206 states that:

a. All initial promotion (except promotion governed by time) will be to acting rank.

b. Selection for acting rank will be made by the Commanding Officer and will be based on:

i. Seniority

ii. Efficiency

iii. Qualifications under paragraph 1214.

40. Paragraph 1209 states that promotion to the substantive rank will be made by the Commanding Officer after a qualifying period in the acting rank; provided the necessary qualifications as laid down in paragraph 1214 are held and the promotion will be made within the establishment.

41. Paragraph 1214 deals with local rank and appointments. It states that :

“1214.

a. Local rank will NOT be granted except when the Commanding Officer deems it necessary to exceed temporarily, for purposes of

training or prestige, the number of ranks or appointments authorised or to provide a higher rank than that allow.

b. Local rank will carry NO entitlement to pay, allowances or pension rights.

c. LCpl will be appointed by the Commanding Officer in accordance with the establishment. Under normal circumstances soldiers will NOT be appointed LCpl until they have passed a Junior NCOs Cadre.”

42. In my opinion, the provisions of the **Defence Act** and the Trinidad and Tobago Regiment Standing Orders do not make promotion of the other ranks automatic. It is clear from those provisions that promotion was within the discretion of his Commanding Officer to recommend an officer of other rank for promotion once certain criterias had been met. According to the Claimant’s evidence, his Commanding Officer told him that a recommendation would be made for him to be promoted to the rank of Sergeant. However, this cannot be equated with a clear and unambiguous promise by the Defendant.

43. In this regard, the Claimant did not demonstrate that there was a clear and unambiguous promise that he would be promoted to the rank of Sergeant by the body which had the authority to do so, as there was no evidence from the Claimant that any person on the Board made such a promise to him. The Claimant also did not point out any statutory basis which caused him to form the view that once he successfully completed the Professional Development Course he had a right to be promoted. For these reasons, the Claimant did not shift the burden to the Defendant to justify his actions.

44. With respect to the Claimant’s contention that he was not treated fairly,

paragraph 6.04 of the text **Judicial Review Principles and Procedures** by Auburn, Moffett and Sharland described one of the core requirements of fairness as:

“At the core of the duty to act fairly, and the minimum requirement of fairness, is the need to ensure that a person affected by a decision has an effective opportunity to make representations before it is taken, so that he or she has the chance to influence it. This is sometimes described as the ‘right to be heard’. However, fairness does not always require an oral hearing. For that reason the right is more appropriately characterised as a right ‘to make representations’.

45. At paragraph 6.67 the learned authors continued:

“If, however, an individual’s representation are duly submitted to the decision-maker, but the decision-maker fails to have regard to them, whether deliberately or through inadvertence, that is almost certain to amount to a breach of the requirements of fairness, and to a breach of the decision-maker’s duty to take into account relevant considerations.”

46. Lord Mustill in **R v Secretary of State for the Home Department, ex p. Doody**⁸ explained the concept of fairness as :

“From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the

⁸ [1994] 1 AC 531, p. 560

passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

47. The role of the Court was explained by Lord Reed in the UK Supreme Court decision of **R (Osborn) v Parole Board**⁹ at paragraph 65 which stated:

“...The court must determine for itself whether a fair procedure was followed (Gillies v Secretary of State for Work and Pensions [2006] UKHL 2; 2006 SC (HL) 71; [2006] 1 WLR 781, para 6 per Lord Hope of Craighead). Its function is not merely to review the reasonableness of the decision-maker’s judgment of what fairness required.” (Emphasis added)

48. In **Osborn**, Lord Reed noted at paragraphs 68 to 71 that fairness serves the

⁹ [2013] UKSC 61

twin purposes of ensuring that decisions are of a better quality, promotes the Rule of Law and also ensures that persons affected by decisions do not feel a sense of injustice.

49. The challenge the Claimant has to overcome is to demonstrate that the Defendant was the sole body responsible for promoting him to the rank of Sergeant and the latter failed to do so. However, according to sections 11 to 14 of the Defence Act, the decision maker for the promotion of an officer to the rank to Sergeant was not the Defendant but the Board. In my opinion, even if the Defendant was in receipt of the recommendation from the Commanding Officer of the Claimant, the decision did not reside with him. Therefore, the Claimant has failed to demonstrate that he was treated unfairly by the Defendant.

WHETHER THE FAILURE BY THE DEFENDANT TO NOT AFFORD THE CLAIMANT THE OPPORTUNITY TO PROCEED ON TWO (2) YEARS RESETTLEMENT TRAINING PRIOR TO HIS RUN OFF DATE (RETIREMENT DATE) WAS IN BREACH OF HIS RIGHT TO LEGITIMATE EXPECTATION, THE PRINCIPLES OF NATURAL JUSTICE, REASONABLENESS AND FAIRNESS?

50. The Claimant contended that the Resettlement Training Policy for the Trinidad and Tobago Defence Force (2009) ("the Resettlement Policy") is a clear and unambiguous statement which provides that all members of the TTDF who have completed twelve (12) years uninterrupted years of regular service is eligible for resettlement training; under the Resettlement Policy there is no duty placed on an officer who qualified to access this benefit to make any application; the Claimant took steps to access this training by submitting the Resettlement Training Application; the Education and Resettlement Officer, who is an agent of the Defendant failed and omitted to ensure that the Claimant's application for resettlement training was approved

prior to his discharge; and this failure or omission has deprived the Claimant of a facility to which he was legally entitled to. He, therefore, contended that the failure by the Defendant to grant the Claimant the two (2) year period of resettlement training which he was entitled to, as he had attained twelve (12) uninterrupted years of regular service was unfair, unreasonable and in breach of natural justice.

51. Counsel for the Defendant did not specifically address the Claimant's claim with respect to his resettlement training.
52. Paragraph 1 (a) of the **Resettlement Training Policy for the Trinidad and Tobago Defence Force** dated January, 2009 stated:

“All members of the Defence Force should be provided with planned resettlement training as an aspect of their career development while in service. This training should be optional and, if required, should be introduced as soon as possible after completion of basic military training and not later than five (5) years before the expected date of compulsory retirement of each member of the Defence Force”.

53. Notably, the aforesaid policy did not state that any application is to be made to access the said facility.
54. Section 2 of the Standing Orders of the Trinidad and Tobago Regiment provides for the appointment of all officers in the Trinidad and Tobago Regiment. Paragraph 216(a)(10) stipulates that the Education and Resettlement Officer is “to ensure that approved benefits and allowances are made available to soldiers on resettlement training according to their entitlement.” Paragraph 216 (a)(11) stipulates that the Education and Resettlement Officer is required to “assist in the final resettlement of soldiers,

as far as possible, by arranging interviews for civilian jobs suited to their skills”.

55. According to the Claimant, in January, 2017 in anticipation of his retirement, he applied for resettlement training at Walden University to pursue a Masters Degree in Public Health. The cost of the course was Two Hundred and Ten Thousand (\$210,000.00) Dollars and he was willing to pay the difference from what was allocated from his resettlement training. On 6 February 2017, he was interviewed by Officer Commanding, 0174 Captain F. Modeste-Gibbs who acknowledged the Resettlement Training Application and instructed him that he would be allowed to access the sum of Sixty Thousand (\$60,000.00) Dollars for resettlement training. On 22 June 2017, delays based on administrative issues were cleared up and Commanding Officer, 0110 Lieutenant Colonel P.B. Ganesh signed the resettlement training forms and it was forwarded to the Trinidad and Tobago Regimental Headquarters.
56. The Claimant was contacted by the Education and Resettlement Officer Lieutenant Dawn Hackshaw via telephone on 7 December 2017, seeking permission from him to contact Walden University to verify his enrollment. The Claimant complied with her instructions and emails were sent giving her authorization via the FERPA form. Thereafter, the Claimant submitted further resettlement forms to the TTDF in 2018, 2019 and again on 9 January 2020 when he met Commanding Officer, McLean J. However, when the Claimant was sent on terminal leave on 16 January 2020, he was not given an update nor did he get any opportunity to get clarity or finality on his resettlement training and he was discharged on 12 February 2020.
57. In my opinion, the Resettlement Policy is a clear promise to officers who attained twelve (12) uninterrupted years of regular service that they would obtain the benefit, if they chose to access it, of planned resettlement training

as part of their career development. In the instant case, the Claimant chose to access this benefit in 2017 and he took the appropriate steps of making the Resettlement Training Application in a timely manner, following it up and even providing any information to the appropriate officers when requested to do so. However, he was deprived of this benefit without being given any explanation prior to his run off date. The Claimant demonstrated that he had a legitimate expectation to obtain the benefit of the resettlement training he applied for and which was actively being worked on by the Defendant, which he was deprived of by the actions of the servants and or agents of the Defendant. Having shifted the burden to the Defendant to provide an explanation for the frustration of this expectation, there was no such explanation as the Defendant has not filed any evidence in this action. In this regard, the actions by the Defendant not to afford the Claimant the opportunity to proceed on two (2) years resettlement training prior to his run off date was in breach of his legitimate expectation.

58. The Defendant's actions were also unreasonable, unfair and in breach of the principles of natural justice as he was deprived of a benefit which was expressly set out in the Resettlement Policy, without being given any opportunity to be heard before he was deprived of the benefit.

WHETHER THE CLAIMANT IS ENTITLED TO DAMAGES?

59. The Claimant contended that he is entitled to damages for restitution and/or recovery of the sum of \$408,810.50 representing salaries, benefits and terminal grant for the period 11 February 2020 to 11 February 2022 at the rank of Sergeant, as a result of the Defendant's unreasonable exercise of his discretion.
60. The Defendant's position is that the Claimant is not entitled to damages, as he did not establish that he had a right to be promoted to the rank of Sergeant

and as such he is not entitled to a loss of earning for the loss of opportunity to be promoted to the rank of Sergeant and the associated pension on retirement.

61. Section 8(4) of the **Judicial Review Act**¹⁰ provides that a Court may make an award for damages to an applicant if: (a) he has included in the application a claim for damages arising from any matter to which the application relates; and (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages.
62. The Claimant has made a claim for damages. With respect to subsection 8(4) (b) the position on the Claimant's claim for damages turns on the outcome of the orders he has sought.
63. The Claimant's evidence was that if he was promoted to the rank of Sergeant before his retirement in 2020, he would have retired at the age of forty seven (47) years instead of forty five (45) years and as such he has suffered a loss of earnings, special allowances and terminal benefits which he outlined at paragraphs 24 to 26 of the Claimant's Affidavit.
64. In my opinion, the Claimant is not entitled to any loss associated with not being promoted to the rank of Sergeant, as he failed to establish that the Defendant acted unreasonably, unfairly and in breach of the principles of natural justice and legitimate expectation.
65. On the other hand, the Claimant has succeeded in proving that he was not treated fairly with respect to not being afforded resettlement training prior to his run off date. In my opinion, if the Claimant had brought an action at

¹⁰ Chapter 7:08

that time he would have been entitled to the loss of not being afforded the benefit of his resettlement training. The Claimant's evidence was that the maximum sum which is permitted for resettlement training is Sixty Thousand Dollars (\$60,000.00). The failure by the Defendant to file any evidence means that this sum is undisputed. In my opinion, the Claimant is entitled to the benefit of this sum and I therefore award him this sum.

66. According to the Claimant, the actions of the TTDF has caused him and his family grave embarrassment, hardship and distress and that he is ridiculed by his neighbours and other persons in the community who have learnt of the manner in which he was discharged by the TTDF. While the Claimant's evidence is unchallenged, Counsel for the Claimant did not make any submissions to quantify this alleged loss. For this reason I make no award.

COSTS

67. I have decided to order the Defendant to pay the Claimant 50% of the costs of the action to be assessed by the Registrar in default of agreement, as assessed costs is the appropriate basis to be applied for a claim in judicial review and the Claimant was only successful in obtaining his relief with respect to the resettlement training issue which was one of the two substantive claims.

ORDER

68. It is declared that the failure of the Chief of Defence Staff not to afford the Claimant the opportunity to proceed on two (2) years resettlement training, prior to his run off date (retirement date) on 11 February 2020 is in breach of the Claimant's right to legitimate expectation on the principles of fairness, natural justice and reasonableness.

69. The Defendant is to pay to the Claimant damages in the sum of Sixty Thousand Dollars (\$60,000.00) as the cost for his resettlement training.
70. The Defendant is to pay the Claimant 50% of the costs of the action to be assessed by the Registrar in default of agreement.

/s/ Margaret Y Mohammed
Judge