

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-01689

IN THE MATTER OF AN APPLICATION BY WINSTON SPRINGER FOR JUDICIAL
REVIEW UNDER THE JUDICIAL REVIEW ACT CHAPTER 7:08

AND

IN THE MATTER OF THE FAILURE OF THE DEFENCE COUNCIL (ESTABLISHED UNDER SECTION 7 OF THE
DEFENCE ACT CHAPTER 14:01) TO COMPLY WITH THE PROVISION SECTIONS 194 OF THE DEFENCE ACT
CHAPTER 14:01

BETWEEN

WINSTON SPRINGER

CLAIMANT

AND

THE DEFENCE COUNCIL

DEFENDANT

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. G. Ramdeen for the Claimant

Ms. T. Gibbons-Glenn and Ms. L. Thompson for the Defendant

Decision on Preliminary Point

1. Two preliminary points were raised by Attorney for the Defendant as follows:
 - i. That the Defendant is not a proper party to this claim and as such the claim against the Defendant should be struck out; and
 - ii. The claim constitutes an abuse of process since the Claimant is well outside the time limits for a Judicial Review action.

2. In relation to the first point, the Defendant's submission is that the Claimant would have not availed himself of the proper process in that section 194 of the Defence Act Chap. 14:01 ("the Defence Act") while providing an avenue for complaints, is not the provision that deals with the issue of promotions. In so saying the Defendant submits that the real issue which the Claimant has raised is one of promotion which is governed by sections 11, 12 and 14(1) of the Defence Act. In that case, they allege that the Claimant ought to have had recourse by way of an appeal to the Commissions Board and not a complaint to the Defence Council. They rely on the authority of **Ramdeo Ramtahal v Defence Council** CV2008-03436, a decision of Justice Pemberton.

3. In relation to the second point, this court ruled on the issue of delay on the 24th May 2016 at the hearing of the application for leave. Present in court on that day was Attorney-at-law for the Intended Claimant at the time and Attorney-at-law for the Intended Defendant who indicated that she was applying to the court to be heard amicus. This court had previously instructed attorneys for the Intended Claimant to serve the application for leave on the Intended Defendant so that the Intended Defendant could appear and be heard on the application for leave. In submissions before the court at the leave hearing, attorney for the Intended Claimant spoke of a conversation which he had with an attorney at law who he alleged was acting for the Intended Defendant and stated that he was informed that the Intended Defendant would be appearing at the leave hearing to take submit that leave should not be granted because of delay on the part of the Intended Claimant.

4. At the leave hearing, the court heard the parties on the issue of delay and granted leave. In so doing the court ruled that there was no delay as the alleged failure by the Intended Defendant to make a decision was a continuing one. Further, the court found that the reasons provided for no action on the part of the Intended Claimant until the date of the leave application were good reasons having regard to what appeared to be the duty on the part of the Defendant, the fact that no prejudice to the Intended Defendant was reasonably foreseeable and having considered the court's duty pursuant to the overriding objective of the CPR. Further, the court agreed with the submissions of the Intended Claimant that this court ought not to take too technical an approach to the issue of delay. In so doing the court considered the well-known cases of *Patrick Manning & Ors v Sharma* PC Appeal No. 22 of 2008 and *Abzal Mohammed v Police Service Commission* Civil Appeal No. 53 of 2009 (the very case relied on by the Defendant in support of the second point on this occasion). The Defendant submitted however that should the court rule in its favour on the First point, the issue of delay would then have to be revisited as the facts and circumstances surrounding that issue would now take on a different complexion, the date for appeal of the decision of the Commissions Board having long expired.

The Claim

5. The Claimant is a Commissioned Officer ("Lieutenant") in the Trinidad and Tobago Defence Force ("Regiment"). He claims that his appointment as a Special Service Commissioned Officer was gazetted on the 24th May, 2011 with an effective date of the 15th June, 2005. However, he was informed via his military chain of command that seniority dates as a Lieutenant will be effective from the 25th July, 2011 rather than the 15th June, 2005.
6. Subsequently, the Claimant wrote on several occasions to his chain of command, the Commandant, Defence Headquarters requesting information on the position of his promotion. The dates of those letters were the 2nd January, 2014, the 13th March, 2014,

and the 20th March, 2014. By letter dated the 5th June, 2014 (“the complaint/petition”), the Claimant referred to his previous correspondence and pursuant to Section 194(1) of the Defence Act Chap. 14:01 (“the Defence Act”) asked that a formal application be made to the Defence Council to investigate his complaint and grant him redress. Additionally, he asked that disciplinary action be taken against anyone who was culpable for the situation which he claimed has adversely affected him.

7. The Claimant claimed that to date there has been no acknowledgement and/or response from the Commandant and/or the formal military chain of command and he is now nearing his compulsory run off date without a decision from the Defendant.
8. On the 28th April, 2016, a Pre-action protocol letter together with the complaint/petition was dispatched to the office of the Defendant.
9. It is the case of the Claimant that to date the Defence Council has failed, refused and/or neglected to make a decision in respect of his complaint/petition and as such claims inter alia the following relief:
 - i. A declaration that the Claimant is entitled to a decision due to him in accordance with section 194 of the Defence Act Chapter 14:01 with respect to his complaint/petition dated the 5th day of June, 2014.
 - ii. A declaration that there has been unreasonable delay on the part of the Defendant in making a decision on the Claimant’s complaint/petition dated the 5th day of June, 2014.
 - iii. A declaration that the failure of the Defendant, which failure is continuing, to make a decision with respect to the Claimant’s complaint/petition dated the 5th day of June, 2014 is unreasonable, unlawful and illegal.
 - iv. An order of mandamus to compel the Defendant to make a decision with respect to the Claimant’s complaint/petition for redress of grievance within seven (7) days hereof pursuant to section 194 of the Defence Act.
 - v. A declaration that the failure of the Defence Council to make a decision pursuant to section 194(2) of the Defence Act on the complaint of the Claimant is in breach

of the Claimant's right to the protection of the law guaranteed under section 4(b) of the Constitution which right is better particularized under section 5(2)(c) of the Constitution.

Issue one

10. The relevant sections of the Defence Act are as follows:

- i. **Section 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.”*
- ii. **Section 13**: *“In making appointments or promotions under this Act, the President shall act in accordance with the advice given by the Board under section 11 or by the Minister under section 12, as the case may be.”*
- iii. **Section 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.”*
- iv. **Section 194**: *“(1) If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Council. (2) On receiving any such complaint the Council shall investigate the complaint and may grant any redress it thinks necessary or where so required by the complainant the Council shall make a report on the complaint to the President in order to receive his directions.”*

11. Attorney for the Claimant submitted that the **Ramtahal** case supra can be distinguished from the present case since in that case the subject of the challenge was a decision of the Defendant. The Claimant submitted that the matter that is the subject of review in the present case is the continuing breach and/or failure and/or unreasonable delay on the part of the Defendant to perform its statutory obligation in accordance with section 194 of the

Defence Act, namely, to make a decision with respect to the Claimant's complaint. Further, that the Claimant is also seeking to challenge the decision of his Commanding Officer to adjust his seniority date and promotion and not seeking to challenge a decision of the Board.

12. The Claimant agrees that Section 14 of the Defence Act provides the procedure for a statutory right of appeal. However, the Claimant submitted that the ambit of Section 194 of the Defence Act is much broader in its application. It is the submission of the Claimant that Section 194 includes any matter other than the appeal mechanism contemplated under section 14 and any matter relating to promotion and or/seniority so that any officer who is aggrieved by a decision can invoke the jurisdiction of the Defendant: See **Ronnie Lasaldo v Chief of Defence CV 2013-05238, paragraph 18**. Further, that this position is made clear when one considers carefully section 14 and the very limited circumstances in which an appeal from a decision of the Board is allowed. That this is even more apparent in relation to Non-Commissioned Officers who are not subject to the jurisdiction of the Board.
13. Attorney for the Claimant submitted that it is worthy to note that the subject complaint in the instant case is not only restricted to issues relating to promotion and/or seniority since the Claimant has also made allegations of the possibility of wrongdoing and has also raised concerns over his non-selection for military professional education and training.
14. The Claimant relied on the case of **Neil Hugo Osbert Benneth v Defence Council CV2009-01581**. That case involved a Commissioned Officer of the Trinidad and Tobago Defence Force who challenged his non-promotion and non-selection to attend a foreign military course. The Claimant in that case sought various relief and challenged the failure of the Council to investigate his petition submitted to the Defence Council in accordance with section 194 of the Defence Act. On the 26th April, 2010, his Lordship, Justice Rajkumar declared that the failure or neglect of the Defence Council to investigate the Claimant's complaint relative to his non-selection to attend an overseas command post and the failure of the Chief of Defence staff to recommend him for promotion was illegal, irrational and procedurally improper.

15. As such, having regard to the aforementioned, the Claimant submitted that the Defendant is a proper party to this action and in the circumstances the claim ought not to be struck out.

Discussion and decision

16. An examination of the substance of the complaint is pivotal to a determination as to whether the Defendant is a proper party before this court. In examining the correspondence, the court wishes to make it clear that the truth of the contents of the evidence in support of the claim is presumed only for the purpose of making a decision on the issue before this court. The court makes no finding of fact as evidence from the Defendant has not yet been heard. In any event, as a matter of practicality and reasonableness, it appears hardly likely that the authenticity of the items of correspondence will be disputed having regard to the issues in this case.

17. The first letter of complaint was made by letter of the 2nd January, 2014 and is apparently addressed to the Commandant as are all subsequent letters. It is headed **“REQUEST FOR INFORMATION ON THE POSITION OF PROMOTION-0203 LT WA SPRINGER”** and contains two short paragraphs. The first paragraph reads as follows; *“Sir, I humbly (sic) I would like to enquire my position in reference to promotion since I was commissioned w.e.f. 15 Jun 05”*. The second paragraph indicates that the letter is submitted for information and action. The second letter is dated the 13th March, 2014 and contains the same heading. It similarly contains two short paragraphs the first of which states *that “a response from your office is still outstanding as I submitted a request on 02 Jan 14”*. The second states that it submitted for information and attention.

18. The third letter of the 20th March, 2014 is more detailed. The heading is the same and it references the previous two letters. For present purpose it is not necessary that the full contents of the letter be repeated. Suffice it to say that the letter treats solely with the issue of the date of appointment of the Claimant to a Short Service/Special Commission in the rank of Lieutenant. As stated by the Claimant, his appointment was made in

accordance with section 11 of the Defence Act, the decision to so appoint him having been made by the Commissions Board, they having advised His Excellency the President accordingly. The essence of the complaint is that having been so appointed, his appointment was subsequently gazetted on the 24th May, 2011 with effect from the date of his appointment namely the 15th June 2005. However, by way of a Report dated the 30th January 2013, the Claimant was informed that his seniority date as Lieutenant would be effective from the 25th July, 2011 and not the 15th June, 2005 as was to be expected.

19. He further sets out in that letter, that in his opinion, a decision was made to adjust the seniority date to his detriment. He also sets out that he has not been selected for any military professional education and training as other Commissioned Officers. It is unclear as to whether his complaint is that his non selection for training was as a consequence of the adjustment of the seniority date. He also asks that his complaint be “tabled” before the Defence Council.
20. The court notes that the Report referred to by the Claimant has not yet been put before this court. The Defendant is yet to file affidavits in opposition and so too is the Claimant yet to file his affidavit in Reply. Whether these affidavits are filed is of course dependent on the court’s ruling on the present issues. So that the court must take the evidence provided by the Claimant at face value. At paragraph 6 of his affidavit of the 18th May, 2016, filed in support of the application for leave, the Claimant deposes that he was informed via “*my military chain of command*” that his seniority date as a Lieutenant would take effect from 25th July, 2011. No mention is made of the “Report” set out in the letter of the 20th March, 2014.
21. By letter of the 5th June 2014, the Claimant wrote referencing his previous letters and for the first time specifically relied on the provisions of section 194(1) of the Defence Act. According to the Claimant he received no response to his letters. Therefore by letter of the 28th April, 2016, his attorney wrote to the Defence Council directly, enclosing the previous letters of the Claimant and relying on section 194(1) of the Defence Act.

22. In the court's view, taking the letters for what they are at this stage, it appears that the Claimant's claim is in large majority one of a complaint that a person or entity has adjusted his date of appointment contrary to the terms of his letter of appointment as set out in the letter sent to him by the Permanent Secretary of the Ministry of National Security in May 2011. He is saying that His Excellency the President, acting in accordance with section 11 of the Defence Act quite properly set his date of appointment as June 15th, 2005. His Excellency could only have acted on the advice of the Commissions Board under section 11 or in other circumstances section 12 of the Defence Act. Further, that his appointment was properly gazette. He makes no challenge to these decisions. He does not ask for a promotion. Neither has he challenged a decision not to promote him. His simple complaint, or a large part of it, is that someone or some entity has refused to adhere to the List of Seniority by placing the effective of his date of appointment some 6 years after its lawful date. That information he says is provided either in a report, or via his chain of command, or both if the evidence eventually demonstrates that they are one and the same. It also appears that his claim may be that as a consequence of the wrongful action taken against him, he was deprived of the opportunity to attend courses and training; that he would have been entitled to attend should the effective date of his appointment not have been tampered with. It is in these circumstances that he lodged a complaint under section 194(1).

23. So that his claim is not that he is aggrieved by a decision of the Board not to promote him. He has been promoted from an effective date. His complaint is that someone or entity interfered with his effective date. This is not an issue of promotion or appointment but is a complaint about interference in the process. It follows in the court's view that the proper section to invoke was that of section 194(1) of the Defence Act and not an appeal under section 14 as there is nothing to appeal from. Essentially, the Defendant in this case has a duty under section 194(2) of the Defence Act to investigate the complaint and either Report to His Excellency or redress the complaint. This is where the gravamen of the case for the Claimant lies and it follows therefore that the Defendant is properly before this court.

24. Before leaving this issue the court must treat with the authority of **Ramdeo Ramtahal** which was heavily relied on by the Defendant. There is no doubt that the dicta of the Learned Judge in **Ramtahal** reflects the true position of the law. However, the facts and the claim in that case is easily distinguishable from the present fact scenario. Quite simply, the challenge in that case was a challenge to a decision not to promote the Claimant. The facts demonstrate quite clearly that the Claimant in that case was complaining of the process he had to undergo in order to qualify for promotion. In those circumstances, it is clear that his complaints were wrongly directed as the Defence Council is not statutorily responsible for promotions. The present case is very different as the court has demonstrated above. As a consequence the decision in **Ramtahal** can be of no assistance to the Defendant.

Issue 2 – Delay

Law

25. This court having already ruled on the issue of delay and having regard to the ruling on the first preliminary point above, can find no basis or justification for revisiting its previous decision on the issue of delay. In any event Attorney for the Defendant has accepted that the court need only re-visit the issue of delay should the court find favour with the Defendant on the first issue. As a consequence this point shall also be dismissed.
26. Directions shall be given to take the claim forward and an order shall be made for costs of the preliminary point after hearing the parties thereon.

Dated the 7th day of October 2016.

Ricky Rahim
Judge