

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2017-04451

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS RULES, 1998
AND PURSUANT TO SECTION 6(1) OF THE JUDICIAL REVIEW ACT, CHAPTER 7:08**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION 14
OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR THE
VIOLATION OF FUNDAMENTAL RIGHTS GUARANTEED UNDER SECTION 4**

Between

RAMDATH PHILLIP

Claimant

And

THE COMMISSIONER OF POLICE

First defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: October 1, 2019

Appearances:

Claimant: Ms. C. Stewart instructed by Mr. R. Abdool-Mitchell

Defendants: Mr. R. Ramcharitar instructed by Ms. L. Persad

REASONS

1. On December 14, 2018 the court gave the following order;
 - i. It is declared that the decision of the defendant to refuse to grant to the claimant an exemption from writing the promotion examination and to refuse to award to him thirty five points on the basis that the time for an application to be made by him had expired without first notifying him of the intended change in policy is unfair, irrational and done in breach of his right to natural justice.
 - ii. It is declared that the claimant is entitled to the said exemption and to the award of thirty five points to his overall score upon consideration for promotion within the police service.
 - iii. An order of mandamus is granted compelling the Promotion Advisory Board to immediately add thirty five points to the claimant's overall score and consider the promotion of the claimant in the circumstances of the addition of those points.
 - iv. The claims for relief pursuant to the provisions of the Constitution are dismissed.
 - v. The defendant shall pay to the claimant eighty percent (80%) of the costs of the claim to be assessed by a Registrar in default of agreement.

2. The following are the reasons for this decision.

THE EVIDENCE

3. The evidence of the claimant comprised three affidavits sworn to by the claimant and filed on December 8, 2017; January 15, 2008 and May 24,

2018. The defendants' evidence was contained in the affidavit of Vernon Roberts, Ag. Senior Superintendent of Police sworn to and filed on May 15, 2018.

BACKGROUND

4. The claimant is a police constable in the Trinidad and Tobago Police Service ("TTPS") having been enlisted in the police service since February 3, 2003. He has been serving within the service for approximately fifteen years. In or about October, 2007 the claimant obtained his Bachelor of Laws Degree with Second Class Honours from the University of London. In or about October, 2010 the claimant was called to the Bar. He was at the material time performing duties as a Legal Officer in the Southern Division of the police service.
5. The criteria for promotion in the Second Division of the TTPS (that is promotions to the rank of Corporal, Sergeant and Inspector) are a qualifying examination, a performance appraisal and an interview.
6. The first defendant ("the Commissioner") published and circulated a Departmental Order No. 211 of 2007 dated November 20, 2007 ("D.O. 211 of 2007") which established that police officers holding a Bachelor of Laws Degree ("LLB") from an accredited institution were entitled to be granted an exemption from writing the qualifying examination for promotion in the Second Division. Under paragraph 3:9:1 of D.O. 211 of 2007 headed "Exemption" the following was stated;

"An officer who is the holder of a Bachelor of Laws Degree ("LLB") from an institution recognized by the Accreditation Council of Trinidad and Tobago

shall be exempted from writing the qualifying examination for promotion in the Second Division and shall be awarded thirty-five points in accordance with the criteria set out at 3:5.”

7. By application dated January 4, 2011 the claimant applied to be exempted from writing the qualifying examination for promotion in the Second Division and to be accordingly awarded the thirty-five points outlined as the maximum points awarded under the examination criteria. By letter dated January 18, 2011 the claimant was informed that the Police Service Examination Board at its meeting on January 13, 2011 considered his application to be exempted from writing any further qualifying examinations for promotion in the Police Service (Second Division) and the Board decided as follows;

“(i) Police Officers in possession of the LLB or Professional qualification in Law, may apply to the Police Service Examination Board for exemption from writing the Law component of the Police Promotion Examination (Second Division);

(ii) you are now exempted from writing the Law component of the Police Promotion Examinations (Second Division); and

(iii) you would be required to write the English Language and Police Duties components at the next scheduled Police Promotion Examination (Second Division).”

8. By an undated letter, the claimant wrote to the Chairman of the Police Service Examination Board relative to his application dated January 4, 2011 and the Board’s decision encapsulated in letter dated January 18, 2011. In that undated letter, the claimant sought clarification on the Board’s position with regards to the holders of LLB degrees and the corresponding exemption from writing police promotion examination (second division).

The claimant further sought the justification for the difference in the decisions regarding the exemptions between himself and his colleague's.

9. By letter dated May 19, 2014 the claimant was informed that the Police Service Examination Board at its meeting on May 16, 2014 considered his request to be exempted from writing any further qualifying examinations for promotion in the Police Service (Second Division) and that the board decided as follows;

“(i) at its meeting of 29th July, 2010, the Board decided that “Police Officers in possession of the LLB or Professional qualification in Law, may apply to the Police Service Examination Board for exemption from writing the Law component of the Police Promotion Examinations (Second Division)” with immediate effect;

(ii) that Police Officers who had attained an LLB or Professional qualification in Law, prior to 29th July, 2010 and had applied for an exemption, the Board acceded to their request for an exemption from writing any further qualifying examinations for Promotion in the Police Service (Second Division);

(iii) you had provided evidence that you had attained an LLB from the University of London in 2007, however you did not apply for an exemption from writing any further qualifying examinations for Promotion in the Police Service (Second Division) until the 4th January, 2011 which was long after the decision of the Board on 29th July, 2010;

(iv) it could not acceded to your request for an exemption from writing any further qualifying examinations for Promotion in the Police Service (Second Division). You would be exempted from writing the Law component and is expected to sit the Police Duties and English Language components of the Police Service Promotion Examinations (Second Division).”

10. By his affidavit, the claimant deposed that the aforementioned policy of the examinations board was never made known to police officers. That it was never published in any departmental order. As such, the claimant testified that he was treated unfairly as he was penalized for the late submission of an application for exemption in circumstances where he was never aware that he was expected to do so. That he was further unaware that there was a deadline by which such applications would no longer receive favourable consideration.
11. The claimant sat the police duties component of the examinations to the rank of Corporal out of an abundance of caution. He was not required to write the English component in accordance with departmental order dated May 1, 1997 in which the Police Service Commission decided that constables and corporals in the police service who had obtained a General Certificate of Education 'O' level pass in English Language are exempted from the English language component of the qualifying examination for promotion to the ranks of corporal and sergeant.
12. In or about June or July, 2017 the claimant became aware of the judgment delivered in **Ramdeo Sookdeo Corporal #16157 v The Commissioner of Police**¹. At paragraph 6 of the judgment, Justice Seepersad highlighted the defendant's concession that the thirty-five points awarded in the examination category *"should have been automatically added to his score by virtue of his attainment of a Bachelors of Laws Degree and that the addition of same would have improved his placement on the Order of Merit List and would have entitled him to a promotion."*

¹ CV2016-02467

13. According to the claimant, the facts of *Ramdeo Sookdeo* supra in which the concession was made were similar to his and consequently gave rise to a prima facie case of unequal and unfair treatment in breach of his right under section 4(d) of the Constitution.

14. The claimant testified that had he been treated equally and fairly, he would have been justly awarded the thirty-five examination points by virtue of the attainment of his LLB in 2007 and entitled to be placed before the last interview board which was convened in 2009. He would have then been awarded points based on that interview and upon the calculation of same, be placed in the appropriate position on the order of merit list and thereafter moved up as vacancies arose.

15. The claimant further testified that he obtained the maximum points attainable in the category of performance appraisals for the periods of 2012 leading up to 2017. That the Commissioner's failure to properly and rightfully award him the thirty-five marks by virtue of his attainment of his LLB fundamentally flawed the methodology used to calculate his scores.

16. Consequently, by Fixed Date Claim Form filed on January 15, 2018 the claimant sought the following relief;
 - i. A declaration that the defendant's failure to automatically award the claimant the thirty-five points outlined as the maximum points awarded under the examination criteria is unfair, irrational and illegal;
 - ii. A declaration that the claimant is entitled to be automatically awarded 35 points to his overall score by virtue of his attainment of a Bachelor of Laws Degree;

- iii. A declaration that the claimant was treated unfairly contrary to the principles of natural justice pursuant to section 20 of the Judicial Review Act Chapter 7:08 (“JRA”);
- iv. An order of mandamus to compel the first defendant to convene the Promotion Advisory Board to facilitate the claimant’s interview pursuant to the award of the thirty-five examinations points; and/or
- v. A declaration that there has been a violation of the claimant’s right to equality of treatment from a public authority in the exercise of its functions under section 4(d) of the Constitution;
- vi. Damages including vindictory damages for the breach of the aforesaid constitutional right;
- vii. Costs; and
- viii. Such further and/or other relief as the court may deem just and appropriate in the circumstances of the case.

ISSUES

17. The agreed issues between the parties were as follows;

- i. Whether the claimant was entitled to be automatically awarded the thirty-five points outlined as the maximum points under the examination criteria having obtained his LLB. Sub-issues flowing therefrom;
 - a) Any implied revocation of D.O. 211 of 2007 by D.O. 174 of 2010; and
 - b) The interpretation of D.O. 174 of 2010 as it relates to the Police Service Examination Board’s meeting of July 29, 2010.

- ii. Whether the claimant was treated unfairly contrary to the principles of natural justice pursuant to section 20 of the JRA;
- iii. Whether there has been a violation of the claimant's right to equality of treatment from a public authority in the exercise of its functions under section 4(d) of the Constitution; and
- iv. If the answer to (iii) is yes, whether the claimant is entitled to damages including vindicatory damages for the breach.

ISSUE 1 – *whether the claimant was entitled to be automatically awarded the thirty-five points outlined as the maximum points under the examination criteria having obtained his Bachelor of Laws Degree*

18. Under paragraph 3:9:1 of D.O. 211 of 2007 headed "Exemption" the following was stated;

"An officer who is the holder of a Bachelor of Laws Degree ("LLB") from an institution recognized by the Accreditation Council of Trinidad and Tobago shall be exempted from writing the qualifying examination for promotion in the Second Division and shall be awarded thirty-five points in accordance with the criteria set out at 3:5."

19. Under item 2 of D.O. 174 of 2010 the following was stated;

"Police Officers in possession of the LLB or Professional qualification in Law may apply to the Police Service Examination Board for exemption from writing the Law component of the Police Promotion Examinations (Second Division).

The officers will be required with immediate effect to apply to write the Police Duties component for the upcoming Police Promotion Examinations (Second Division)."

20. The crux of the defendants' case for not awarding the claimant the 35 points outlined as the maximum points under the examination criteria was that at the time of the claimant's application of January 4, 2011 for full exemption, D.O. 274 of 2010 was already in effect and would have applied to the claimant. According to the defendants, although there was no express repeal of D.O. 211 of 2007 same was impliedly revoked by the terms of D.O. 174 of 2010. In so submitting the defendants relied on the case of **Francis Chattie v Commissioner of Police**² wherein Seepersad J had the following to say at paragraphs 14 & 15;

"14. Item 2 of Order 174 of 2010 is pellucid in its intent and by virtue of same, the Second Division officers who were in possession of law degrees became entitled to apply for an exemption with respect to the law component of the promotional exam. This represented a distinct policy change from the one which was articulated under Order 211 of 2007, although there was no express repeal of same. In Cranes of Legislation 8th ed, at paragraph 14.4.4, the learned authors opined as follows:

"Where a provision of an Act is inconsistent with a provision of earlier legislation, the earlier provision is impliedly repealed by the later"

15. Order 174 of 2010 effectively curtailed the ambit of the exemption previously afforded to holders of law degrees in relation to the promotion requirements within the Second Division and in effect, impliedly repealed Order 211 of 2007 as both cannot mutually subsist since that are inconsistent with each other."

21. The defendants further submitted that it was incorrect that the change in policy was only communicated to the claimant by letter dated May 19,

² CV2016-04352

2014. That letter dated May 19, 2014 simply indicated the date of the decision regarding the policy change. According to the defendants, although the decision was to take effect immediately (that is from July 29, 2010), the change in policy was actually effected and communicated to all police officers by way of D.O. 174 of 2010 dated September 16, 2010. As such, the defendants submitted that the claimant should have been aware of the contents of D.O. 174 of 2010 since at least September, 2010. The defendants annexed a copy of the said order but failed to lead any evidence of its circulation. That evidence would have been crucial to this case and the defendants would have been aware of the need for such evidence having regard to the issues enjoined between the parties from the time the claim was instituted. Therefore the court accepted the evidence of the claimant wherein he testified that he was unaware of the 2010 order same having not been communicated to him.

22. On the other hand, the claimant submitted that he fell squarely within the policy established within D.O. 211 of 2007. That D.O. 211 of 2007 provided no other qualification save and except the acquisition of a LLB to enable an officer to be entitled to the exemption. The claimant further submitted that notwithstanding the aforementioned, the benefit of the exemption as well as the full 35 examination points was not awarded to him because of the imposition of an exemption application deadline of July 29, 2010 which was dilatory communicated to him in May, 2014.

23. The claimant submitted that D.O. 174 of 2010 provided no sanctuary for the issue of an implied revocation of D.O. 211 of 2007 far less for an express one. That it was evident that the practice, policy and procedure in relation to revoking departmental orders is by means of an express revocation.

24. Moreover, the claimant submitted that it was not established anywhere in the defendants' evidence, the basis upon which derogation from D.O. 211 of 2007 was communicated. That the defendant outlined that the change in policy was derived from meetings held in July, 2010 but failed to depose and/or exhibit the minutes of the meeting and to establish where and/or how was the outcome of the said meeting properly conveyed to the police service.

Discussion

25. The court found that by virtue of D.O. 211 of 2007, the claimant having obtained his LLB was automatically entitled to the 35 points outlined as the maximum points under the examination criteria. That the process of applying for the exemption was merely a method or procedure by which the defendant was notified that the applicant was entitled to the exemption. The court further found that there was neither any evidence of refusals of like applications nor evidence of any criteria for acceptance or refusal of such applications so that in substance the application was a mere formality. It followed that once the order was issued, as an LLB degree holder the claimant was entitled to the exemption from writing the exam and to the award of the 35 points.

26. Further, the court accepted the argument of the claimant that D.O. 211 of 2007 was not time specific and that a change in policy as regards the cut-off date for applications could have only affected the claimant, who obtained an entitlement under that Order, if reasonable notice of the new order and the change of policy was given to the claimant. The court found that no such notice was given to the claimant and in any event, it was clear that the letters written to the claimant could not be considered reasonable

notice of the impending change as they were all written after the change of policy in 2010.

27. The case of **Francis Chattie** supra was appealed.³ At paragraphs 56 to 58, Rajkumar J.A. had the following to say;

“56. The trial judge found that the 2010 DO impliedly repealed the 2007 DO, “as both cannot mutually subsist since they are inconsistent with each other”. However the 2010 D.O would only be inconsistent with the 2007 departmental order if it were considered to have retrospective effect. If the 2010 DO is construed to have prospective effect only, leaving intact and unaffected any exemptions to LL.B holders which had crystallised prior to 2010 (on the basis of the 2007 DO), there would be no need for the application of the concept of implied repeal.

57. This is especially so when a. there was no demonstrated reason for the 2010 departmental order to have been interpreted or applied with retrospective effect, (as opposed to prospective effect with effect from 2010), and b. when there is evidence that the 2010 departmental order was not consistently applied and even persons who attained an LL.B post 2010 were the beneficiaries of complete exemptions. (see DO 28/2016 in relation to Corporal Nathaniel and Corporal Hosein).

58. As a matter of construction it was not necessary to construe the 2010 DO in a manner which abrogated crystallised rights, because a prospective construction of the 2010 DO would have left intact rights to exemption acquired prior thereto. In fact there is a presumption against retrospectivity.”

³ See C.A. No. S377 of 2017

28. The very rationale applies in this case as the claimant would have secured his entitlement prior to the 2010 change of policy. It followed that his right to the exemption had crystallised in law and so could not have been affected by the change of policy unless the policy was specifically expressed to have retrospective effect. In this case the presumption against retrospectivity remained in place.

ISSUE 2 - *whether the claimant was treated unfairly contrary to the principles of natural justice pursuant to section 20 of the JRA*

29. In **Ceron Richards v The Public Service Commission and The Attorney General of Trinidad and Tobago**,⁴ this court summarized the principles of natural justice at paragraphs 70-71 as follows;

“70. The rules of natural justice require that the decision maker approaches the decision making process with 'fairness'. What is fair in relation to a particular case may differ. As pointed out by Lord Steyn in Lloyd v McMahon [1987] AC 625, the rules of natural justice are not engraved on tablets of stone. The duty of fairness ought not to be restricted by artificial barriers or confined by inflexible categories. The duty admits of the following according to the authors of the Principles of Judicial Review by De Smith, Woolf and Jowell;

a) Whenever a public function is being performed there is an inference in the absence of an express requirement to the contrary, that the function is required to be performed fairly. Mahon v New Zealand Ltd (1984) A.C. 808.

b) The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has a

⁴ CV2016-04291

legitimate expectation of being fairly treated. The requirement of a fair hearing will not apply to all situations of perceived or actual detriment. There are clearly some situations where the interest affected will be too insignificant, or too speculative or too remote to qualify for a fair hearing. This will depend on the circumstances.

71. In delivering the decision in Feroza Ramjohn v Patrick Manning [2011] UKPC 20 Their Lordships made it abundantly clear that what is fair in any given circumstance is entirely dependent of the facts of the particular case. This is what the court said at paragraph 39. "As is trite law, the requirements of fairness in any given case depend crucially upon the particular circumstances – see, for example, R v Secretary of State for the Home Department Ex p Doody [1994] 1 AC 531, 560. Almost always, however, if a decision is to be taken against someone on the basis of an allegation such as that made here, fairness will demand that they be given an opportunity to meet it. A characteristically illuminating statement of the law appearing in Bingham LJ's judgment in R v Chief Constable of the Thames Valley Police Ex p Cotton [1990] IR LR 344 (para 60) deserves to be more widely known: "While cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:

- 1. Unless the subject of the decision has had an opportunity to put his case it may not be easy to know what case he could or would have put if he had had the chance."*

30. It must be noted that while the case above was overturned on appeal, the dicta set out in the paragraph above remains good law.

31. The defendants submitted that there was nothing unfair, arbitrary or irrational about the Commissioner's decision to change its policy or the application of same to the claimant. That the defendants' evidence was that in 2010 as a result of meetings and consultations with various stakeholders, the Board decided that the policy as regards the outright exemption for officers in possession of law degrees from writing the qualifying examination for promotion in the Second Division be reviewed. According to the defendants, a decision was taken at the Board's meeting of July 29, 2010 which led to the issuing of D.O. 174 of 2010 by which the new policy was implemented.

32. The defendants submitted that the claimant's complaint really centers on the alleged non-communication of the policy change to him until the letter of May 19, 2014 by which he stated he was informed for the first time of the deadline of July 29, 2010 for the submission of his application for full exemption. According to the defendants, the evidence showed that although the decision was taken on July 29, 2010 the policy change actually took effect on the issuance of D.O. 174 of 2010 on September 16, 2010 which communicated the new policy to all police officers. As such, the defendants submitted that at the time of his application in January, 2011 the Board properly applied the new policy to him which had come into effect by way of D.O. 174 of 2010.

33. The claimant submitted that there was no dissention that the defendants are allowed to change policies but that same ought not to be implemented by arbitrary measures amounting to unfairness. According to the claimant, the exemption granted to him was absolute in nature and in the same manner, created an absolute expectation that was subsequently revoked. The claimant submitted that nowhere in the affidavit evidence of the

defendants, did it stipulate that the exemption was only applicable to and for a specific time period. That the exemption policy was in fact kept alive up to the May dates as evidenced in the letter addressed to the claimant. As such, the claimant submitted that it was therefore clear that the exemption was absolute and unconditional in nature, rendering the defendants' revocation, unjustifiable.

Discussion

34. The court found that the claimant was treated unfairly in that he was not provided with notice of the change of policy in relation to a benefit which he was automatically entitled to by virtue of obtaining his LLB. That prior to D.O. 174 of 2010 coming into effect, fairness in the circumstances of this case demanded that sufficient notice be given to all serving members of the TTPS that the policy was about to change and that their entitlement was about to be altered in an effort to have them elect whether to make the necessary application for the exemption prior to the order taking effect. Further, the unfairness may have been assuaged should the change of policy have been made to apply from a specific date in the future thereby also providing the opportunity to those who were entitled to apply to avail themselves of the opportunity to so do. Fairness demanded nothing less.

35. The court further found that the claimant was entitled to rely on D.O. 211 of 2007 and that he was virtually ambushed in 2011 when he was informed that the policy had changed in 2010. That the actions of the defendants in not notifying the claimant was arbitrary and breached the right of the claimant to natural justice.

ISSUE 3 - *whether there has been a violation of the claimant's right to equality of treatment from a public authority in the exercise of its functions under section 4(d) of the Constitution*

36. Section 4(1)(d) of the Constitution enshrines the right of the individual to equality of treatment by public authorities. In **Mohanlal Bhagwandeem v The Attorney General of Trinidad and Tobago**,⁵ Lord Carswell stated as follows at paragraph 18;

"A claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced person or persons, described by Lord Hutton in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] 2 All ER 26 at paragraph 71 as actual or hypothetical comparators. The phrase which is common to the anti-discrimination provisions in the legislation of the United Kingdom is that the comparison must be such that the relevant circumstances in the one case are the same, or not materially different, in the other..."

37. In **Central Broadcasting Services Ltd. and Sanatan Dharma Maha Sabha of Trinidad and Tobago v The Attorney General of Trinidad and Tobago**,⁶ Justice of Appeal Hamel Smith (as he then was) had the following to say at paragraph 20;

"[20] The constitutional right under s. 4(d) is a right to equality of treatment from a public authority in the exercise of its functions. The purpose of the right is to protect citizens from the arbitrary use of power by a public official. Lord Carswell in Bhagwandeem, stated that anyone who alleges

⁵ [2004] UKPC 21, Privy Council Appeal No. 45 of 2003

⁶ Cv. A. No. 16 of 2004

inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would have been treated differently from some other similarly circumstanced person or persons. The treatment, it seems, will occur when a person who is entitled to a particular benefit or service from a public authority is deprived of it while others, similarly circumstanced, receive it without any reasonable or justifiable explanation being given for the denial.”

38. In the Privy Council case of **Annissa Webster and Ors. v The Attorney General of Trinidad and Tobago**,⁷ Lady Hale had the following to say at paragraph 24;

“The current approach to section 4(d) of the Constitution of Trinidad and Tobago may therefore be summarised as follows:

(1) The situations must be comparable, analogous, or broadly similar, but need not be identical. Any differences between them must be material to the difference in treatment. (2) Once such broad comparability is shown, it is for the public authority to explain and justify the difference in treatment.

(3) To be justified, the difference in treatment must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

(4) Weighty reasons will be required to justify differences in treatment based upon the personal characteristics mentioned at the outset of section 4: race, origin, colour, religion or sex.

(5) It is not necessary to prove mala fides on the part of the public authority in question (unless of course this is specifically alleged).”

⁷ [2015] UKPC 10

39. The claimant sought to rely on an apparent concession made by the Commissioner by way of a consent order entered into on December 15, 2016 in the case of **Ramdeo Sookdeo** supra to establish a case of unequal treatment.
40. The defendants submitted that the consent order entered in **Ramdeo Sookdeo** supra was not binding on this court and that it was confined to the particular facts and circumstances of that case, which were not before this court. Secondly, the defendants submitted that it was apparent that Cpl. Sookdeo was already on an order of merit list and his place on the list was adjusted following the addition of his points. As such, the defendants submitted that the aforementioned placed Cpl. Sookdeo in a different category from the claimant herein who had never been interviewed or placed on an order of merit list.
41. Thirdly, the defendants submitted that the basis of the concession in **Ramdeo Sookdeo** supra must be viewed in light of the subsequent decision in **Francis Chattie** supra, delivered on November 30, 2017 and the undisputed evidence in this case regarding the procedure for applications for exemptions. As such, the defendants submitted that the claimant did not establish a prima facie case of unequal treatment on the basis only of the concession made in **Ramdeo Sookdeo** supra.
42. The claimant submitted that the facts of **Ramdeo Sookdeo** supra in which the concession of the Commissioner was made were remarkably similar to that of the claimant herein and that the situation was one which was comparable, analogous, or broadly similar by virtue of the following;

- i. The claimant obtained his LLB from the University of London in 2007 and Cpl. Sookdeo obtained his LLB in 2011;
- ii. The procedure for promotion for the claimant (constable to corporal) and Cpl. Sookdeo (corporal to sergeant) who are both with the police service (Second Division) is the same and is set out in D.O. 211 of 2007;
- iii. According to the published procedure and criteria in D.O. 211 of 2007, both the claimant and Cpl. Sookdeo were entitled to 35 examination points by virtue of their LLB degree;
- iv. Both the claimant and Cpl. Sookdeo were denied the 35 examination points under examination criteria for promotion in the police service (Second Division);
- v. Like the claimant, Cpl. Sookdeo neither applied for nor was granted any exemption. The Commissioner however conceded that Cpl. Sookdeo was entitled to the 35 examination points and agreed to promote him with retroactive effect;
- vi. the claimant has not been treated in a similar manner as he has not been awarded the said 35 examination points despite having his LLB and as such, remained a police constable; and
- vii. The claimant has not been interviewed before any promotion advisory board and has been denied the opportunity for promotion.

Discussion

43. The court found that there was no breach of the section 4(d) right to equality of treatment by a public authority in the exercise of its functions. In *Ramdeo Sookdeo* supra, Cpl. Sookdeo's substantive claim was that the

thirty-five points outlined as the maximum points under the examination criteria should have been automatically added to his score by virtue of his attainment of his LLB, that the addition of same would have improved his placement on the Order of Merit List and that would have entitled him to a promotion. The Commissioner conceded and awarded Cpl. Sookdeo the 35 points by virtue of his LLB Degree, Cpl. Sookdeo's place on the list was adjusted, and he was retroactively promoted to the rank of Sergeant with effect from April 22, 2016. There was also an agreement to pay to him all outstanding salaries due by virtue of the said retroactive appointment.

44. The court did not accept that the case of *Ramdeo Sookdeo* supra relied on by the claimant was a proper basis for the grounding of his argument that he was treated unfairly and unequally in breach of his right under Section 4 (d) of the Constitution as that case was compromised for reasons that lay within the bosom of the parties and may have been related to matters which are unknown to the court. Further, the merits of that case were not determined by a court of law but was a matter of a compromise between the parties. To that extent in the court's view it could not form the basis, at least in this case, for a finding that that case was a comparator.

45. As there was no other evidence of similar treatment put before the court in that regard, the court found that there was no breach of the section 4(d) right to equality of treatment by a public authority in the exercise of its functions.

ISSUE 4 - *whether the claimant is entitled to damages including vindicatory damages*

46. The court found that the claimant did not demonstrate that he suffered any damage as a consequence of the breach of the principles of natural justice. Further, as the court found that there was no constitutional breach, vindictory damages did not arise.

47. For these reasons, the court disposed of this claim in the manner set out at paragraph 1 above.

Ricky Rahim

Judge