

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2014-01289

BETWEEN

ALLAN RAMAI

Claimant

AND

THE COMMISSIONER OF POLICE

Defendant

Before the Honourable Mr. Justice Seepersad

Appearances:

1. Mr. Ulric Skerritt instructed by Ms. Safiya Charles for the Claimant.
2. Ms. Mary Davis for the Defendant.

Dated the 23rd September, 2014

DECISION

1. On the 14th April 2014, the Claimant applied for and was subsequently granted leave to file for judicial review against the Commissioner of Police seeking the following reliefs:

- (i) A declaration that the decision by the Respondent to not promote the Claimant to the rank of Assistant Superintendent was irrational, unfair and unreasonable.

- (ii) A declaration that the Claimant had a legitimate expectation that he would have been promoted based on his success at the promotional assessment. Having undertaken the promotional assessment he had a legitimate expectation that he would be promoted to the rank of Assistant Superintendent if he was successful, and fell into the range of officers to be promoted based on the existing vacancy.

- (iii) A declaration that the Claimant had a legitimate expectation that he would have been promoted based on the promise and reassurance given by the Respondent that although he had a pending matter before the Court, if the said matter was determined in his favour he would be promoted retroactively to the date when he became eligible for promotion.

- (iv) A declaration that the Claimant having attained the ranking of 55th, had a legitimate expectation that he would be so promoted being among the top 60 officers who were promoted to the rank of Assistant Superintendent.
- (v) A declaration that the Claimant had a legitimate expectation based on the settled and established practice by the Commissioner of Police to recall and promote police officers after the mandatory retirement age of 55 years.
- (vi) An order that the Respondent should promote the Claimant to the rank of Assistant Superintendent retroactively.
- (vii) Damages.
- (viii) Costs.
- (ix) Such further relief that the Honourable Court considers just.

2. The Claimant relied on the affidavit filed by him on the 14th April 2014 and indicated that the reliefs sought were based on the following grounds :

- a. The Claimant had a legitimate expectation that he would have been promoted based on his success at the promotional assessment , having undertaken the said promotional assessment he had the expectation that he would have been promoted to the rank of Assistant Superintendent if he was successful, since he fell into the range of officers to be promoted based on the existing vacancy.

- b. The Claimant having attained the ranking of 55th , had a legitimate expectation that he would be so promoted, since he was among the top 60 officers who were promoted to the rank of Assistant Superintendent.

- c. The Claimant had a legitimate expectation that he would have been promoted given the express promise and reassurance by the Respondent that although he had a pending matter before the Court, if the said matter was determined in his favour, he would be promoted retroactively to the date when he became eligible for promotion. Further, he was promised and assured by the Respondent that a position would be reserved for him as Assistant Superintendent pending the outcome of the matter.

- d. The Claimant had a legitimate expectation based on the regular and established practice in the police service where the Commissioner of Police would recall and promote police officers after the mandatory age of 55 years. Some of the police officers who were recalled are Bandsman

Enrique Moore, Superintendent Valdez, Superintendent Samlal, Superintendent Waldrop and Assistant Superintendent Griffith.

- e. Based on the promises and assurances by the Respondent that should the charge against him be determined in his favour he would have been promoted retroactively, when the charge was dismissed against him on the 16th day of January, 2014 the Claimant had a legitimate expectation that he would be promoted retroactively pursuant to the promise and reassurance of the Acting Commissioner of Police.
- f. The Respondent acted unreasonably and unfairly in his failure and/or refusal to promote the Claimant retroactively pursuant to the express promise and reassurance by the Respondent that when the matter against was determined in his favour that the Claimant would be promoted retroactively.
- g. The Respondent acted unreasonably and unfairly in his failure and/or refusal to promote the Claimant retroactively pursuant to the settled practice within the police service whereby the Commissioner of Police would recall and promote police officers who have reached the mandatory retirement age of 55 years.

3. The Respondent filed an affidavit in Reply on the 21st July 2014 and both parties filed written submissions pursuant to an order of this court.

Undisputed facts

4. The Claimant received a letter dated 19th October, 2009, from the Commissioner of Police stating that he was suspended from duty pending the determination of the charge of unlawfully assaulting another police officer, Police Constable Nathan # 9877 on 9th April, 2009. This charge against him was subsequently dismissed on 16th January, 2014.
5. During the Claimant's suspension, he was on 17th January, 2011, served with two letters signed by the Ms Maria Joseph, one dated 13th January, 2011 which stated that he was eligible to attend an assessment as a means of promotion to the First Division: and the other letter dated 15th April, 2011, stated that he was eligible for advancement and was required to attend a written assessment on 29th March, 2011.
6. The Claimant subsequently wrote the examination and was successful. He also attended the oral phase of the assessment on 2nd May, 2011. Following this, the Commissioner of Police published a Merit List by virtue of Departmental Order No. 95 dated 19th May, 2011 and the Claimant was placed in the 55th position to be promoted to the rank of Assistant Superintendent. At this time, the said charge

- pending against the Claimant was not dismissed and the Claimant was still on suspension.
7. The Claimant was bypassed for promotion by officers who ranked below him on the Merit List and who were ranked in the 56th, 57th, 58th, 59th and 60th positions.
 8. The Claimant contends that he made enquiries on 19th May, 2011 to the *Deputy Commissioner of Police* (now Acting Commissioner of Police) Mr. Stephen Williams, as to the reason why he was not promoted and a response was given to him.
 9. By letter dated 30th January, 2013, the Claimant was informed by the Commissioner of Police that he would attain the compulsory retirement age of fifty five (55) years and he was entitled to proceed on retirement from the Police Service as the order of suspension that was imposed on him had been lifted.
 10. The said pending court matter was dismissed against the Claimant on 16th January, 2014, almost one year subsequent to his retirement on 31st January, 2014.

Facts in Dispute

11. In the affidavit filed on the 21st July 2014, the Respondent accepted that the information contained at paragraphs 4-11 of the Claimant's affidavit was

accurate. At paragraph 6 thereof he said that he represented to the Claimant that if as a serving officer, his court matter was favourably determined his promotion would be retroactive, as the position was reserved for him.

12. At paragraph 10 of the affidavit the Respondent stated that there is no established practice for the Commissioner of Police to recall persons, for promotion, after they have attained the age of retirement and further stated that since the assent of the Constitution Amendment Act 2006, to the best of his knowledge, the Commissioner of Police has never recalled and promoted retired individuals. He also stated that the persons referred to by the Claimant were promoted by the Police Service Commission and not the Commissioner of Police. At paragraph 17 the Respondent denied giving a 'guarantee' of promotion to the Claimant.

13. The Claimant in his affidavit contended that the then Deputy Commissioner of Police as at the 19th May 2011, (the present Respondent) had indicated to him that he was not promoted due to the pending court matter, and he was promised that if the pending matter was dismissed, the position of Assistant Superintendant would be reserved for him and he would be promoted retroactively to the date when he was eligible for promotion.

14. The Claimant also stated that he was aware of a settled practice whereby the Commissioner of Police recalled and promoted police officers to the rank of First Division after they had attained the retirement age of fifty-five (55) years and he

referred to the names of those officers. As a result, the Claimant said that he expected that he would be afforded the same treatment as the officers who were recalled after attaining the retirement age, and based on the promises of the now Acting Commissioner of Police, he should be promoted.

The issues to be determined in this matter are as follows:

i Whether there has been a settled practice to promote retroactively and whether a guarantee of such treatment was given to the Claimant thereby giving him a legitimate expectation that he would be promoted retroactively to the Rank of Assistant Superintendant.

ii Whether the decision by the Respondent not to promote the Claimant to the rank of Assistant Superintendant was unreasonable, unfair and irrational.

Resolution of the Issues

Issue 1 - Whether there has been a settled practice to promote retroactively and whether a guarantee of such treatment was given to the Claimant thereby giving him a legitimate expectation that he would be promoted retroactively to the Rank of Assistant Superintendant.

Legitimate Expectation

15. It is established, that where an expectation founded upon a reasonable assumption that is capable of being protected in public law has arisen, such an expectation though not necessarily amounting to a legal right, can enable a citizen to challenge any decision that purports to deprive him of that expectation.

16. In the **Council of Civil Service Unions and Others v Minister for Civil Service** (1985) AC 374 at 401, Lord Fraser of Tullybelton said,

“Legitimate or reasonable expectation may arise either from an express promise on behalf of a public authority or from the existence of a regular practice which the Claimant can reasonably expect to continue.”

17. In **R (on the applicant of Bibi) v Newham LBC** (2002) 1 WLR237, Schiemann L.J opined as follows:

“In all legitimate expectation cases, whether substantial or procedural, three practical questions arise. The first question is to what has the public authority, whether by practice or by promise, committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the Court should do.”

Analysis of the Evidence and application of the law

18. The Claimant at paragraph 16 of his affidavit, stated the Commissioner of Police had in the past recalled and promoted officers retroactively to the rank of First Division after they had attained the mandatory age of fifty five (55) years. The Claimant however failed to lead any probative evidence of any comparator (s) who was promoted retroactively. There is no evidence before the Court that the Claimant has been treated differently from other similarly circumstanced person or persons and although the Claimant mentioned the names of individuals who he claims were promoted retroactively, none of their information and their material circumstances were put before this Court, so as to enable the Court, to determine whether they were similarly circumstanced to the Claimant.

19. There is therefore no evidence before this Court that enables it to find that there is in existence, a regular practice of recall from retirement and promotion to the rank of First Division by the Commissioner of Police.

20. The Court must now determine whether the Claimant was given an express promise or guarantee that he would be promoted even after attaining the age of fifty five (55) once the pending charges against him were favourably determined.

21. In the text **Judicial Review of Administrative Actions**- Desmith, Woolf and Jowell, 5th ed at paragraph 13-030 it is stated under the rubric “Lawful representation and substantive legitimate expectation”-:

“To qualify for protection to be ‘legitimate’ – the expectation of the substantive benefit of advantage must contain the following qualities:

- a. The expectation must be induced by the decision-maker either expressly-by means of a promise or undertaking, or implicitly-by means of settled past conduct of practice.
- b. An express promise or undertaking can take the form of (a) a general representation, issued either to ‘the world’ or to a class of beneficiaries; (b) a specific representation addressed to a particular individual or individuals.
- c. A general representation may take various forms, including that of a circular letter or other statement of policy...A person who seeks to rely upon a representation must be one of the class to whom it may reasonably be expected to apply.... Whether a general representation will be held to give rise to a legitimate expectation does not depend upon the intention of the decision-maker. The question is where the representation may reasonably induce a person within the class to rely on it. The context of the representation is therefore important...
- d. A specific representation may take the form of a letter, or another considered assurance, undertaking or promise of a benefit of advantage or course of action which the authority intends to follow. To be binding, the representation must fulfill the following conditions:
 - a. The representation must be based on full disclosure...

- b. The representation must be made by a person with actual or ostensible authority to make the representation....
- c. The representation must be “clear, unambiguous and devoid of relevant qualification.”

Despite dicta to the contrary, it is not necessary for a person to have changed his position or to have to his detriment in order to obtain the benefit of a legitimate expectation....”

22. In **Francis Paponette** v **The Attorney General**, Privy Council Appeal No 9 of 2010, the dicta of Lord Woolf MR in *R .v. North and East Devon Health Authority, Exp Coughlan* (2001) *QB* 213 was referred to at paragraph 34 where he said:

“Where the Court considers that a lawful promise or practice has induced a legitimate expectation of a *benefit which is substantive*, not simply procedural, authority now establishes that here too the Court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the Court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.”

23. On the basis of the evidence presented, the Court does not find that the Claimant was given a guarantee or an express promise by Mr. Williams that he would be promoted retroactively upon the successful determination of the Court matter, even if he had, the Claimant had already attained the mandatory age of retirement, and was retired from the service.
24. At the time that the then Deputy Commissioner of Police spoke to the Claimant, the Claimant was a serving member of the Police Service. On the 19th May 2011, the then Deputy Commissioner of Police Mr. Williams (now the acting Commissioner of Police) was authorized to represent to the Claimant that his position was reserved and that he would be promoted once the pending action was determined in his favour.
25. The aforesaid representation was however made to the Claimant while he was serving member of the Police Service and there is no evidence before this Court to enable it to hold that a promise made or assurance given to the effect that the promotion would be made retroactively even if the Claimant had retired from the service having attained the age of fifty five (55).
- 26. Accordingly, the Court finds that no promise was given to the Claimant that could have induced a legitimate expectation that he would be recalled from retirement and promoted to the rank of Assistant Superintendent. The Claimant did not seek to challenge or stay his retirement at the age of fifty**

five (55) on the basis that the criminal matter was pending, and that the issue of his retirement could not be considered unless the court matter was determined, since a determination in his favour would clear the way for his promotion.

Issue II

Whether the decision by the Respondent not to promote the Claimant to the rank of Assistant Superintendant was unreasonable, unfair and irrational.

The Law

Is the decision unreasonable?

27. In **Associated Provincial Picture House Limited v Wednesbury Corporation**

1947 2ALL ER 680, Lord Greene at page 683 defined the term ‘unreasonable’ as “a decision of an authority is unreasonable if it is one that no reasonable authority could have come to it.”

28. In **CCSU v Minister for the Civil Service** (1984) 3 All ER 935, Lord Diplock

accepted that administrative decisions are subject to review when “(it) is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it’.

29. **There is no evidence before this Court to lead the Court to find, that the decision of the Commissioner of Police not to promote the Claimant**

retroactively is one that is so outrageous that it is in defiance of logic or of accepted moral standards and that no sensible person who addressed the prevailing circumstances, could have arrived at that decision.

30. The Claimant retired from the Trinidad and Tobago Police Service on the 31st January 2013 and the criminal matter was determined on the 16th January 2014, nearly one year after his retirement. In these circumstances the Court is of the view that the decision of the Commissioner of Police was reasonable and the Court cannot grant a declaration that the decision of the Commissioner was unreasonable.

Is the Commissioner's decision unfair?

31. In Gillette Marina Ltd v Port Authority of Trinidad and Tobago CV App No 106 of 2003, Kangaloo JA at paragraph 17 stated as follows:

“I have quoted extensively from Unilever to demonstrate it is not ‘mere’ unfairness which vitiates a decision of a public authority but unfairness that is ‘conspicuous’ and a public authority will be guilty of unlawful conduct if either it is illogical or immoral or both for a public authority to act with conspicuous unfairness and in that sense abuse its power.’

32. The Claimant in this matter found himself in truly unfortunate circumstances, if not for the pending criminal charge he would have been

promoted and if the charge had been dismissed before he attained the age of fifty-five (55) he would also have been promoted. Unfortunately for him, the charge was dismissed nearly one year after his retirement. While the Court is sympathetic to the Claimant's regrettable circumstance, the Court cannot be guided by subjective emotive considerations and having considered the law it cannot be said that the decision of the Commissioner of Police was a decision that was unfair or conspicuous and amounted to an abuse of power.

33. Accordingly the Court cannot grant a declaration that the decision was and is unfair.

Was that decision of the Respondent irrational?

34. In the case of **Civil Service Unions and Others** v **Minister for Civil Service** (1984) 3 ALL ER 935 at 951 A, Lord Diplock stated:

“By ‘irrationality’ I mean what can by now be succinctly referred to as “Wednesbury unreasonableness” (see **Associated Provincial Picture Houses Limited v Wednesbury corporation (1948) 1 K.B. 223**). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this

category is a question that judges by their training and experience should be well equipped to answer...”

35. The Court is of the view that in this case there is no circumstance that can lead to a finding that the Commissioner’s decision is outrageous or that it defies logic and the Court cannot issue a declaration that the Commissioner’s decision is irrational.

36. In the circumstances the Claimant’s claims are hereby dismissed, and the parties shall be heard on the issue of costs.