

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-02467

Between

IAN GREEN

Claimant

AND

THE PUBLIC SERVICE COMMISSION

Defendant

Before The Honourable Mr. Justice Seepersad

Appearances:

1. Mr. K. Thompson for the Claimant
2. Mr. Martineau S.C., Ms. Nabie and Mr. R. Ramcharitar instructed by Ms. Benjamin for the Defendant

Date of delivery: 14th December, 2016

DECISION

1. By an application without notice filed on the 17th day of July, 2015, the Claimant sought and obtained leave to institute a claim for judicial review of the decision of the Public Service Commission (the Commission) made on the 2nd day of April, 2015 whereby it failed to promote him to the office of Fire Station Officer (FSO) in the Trinidad and Tobago Fire Service (the Service).

2. The instant action was instituted by Fixed Date Claim Form filed on the 31st day of July 2015 and the Claimant sought the following relief:-
 - a. A declaration that the decision of the Commission made on the 21st day of April 2015 whereby it failed to promote the Claimant to the office of Fire Station Officer but promoted to that office other officers similarly circumstanced to the Claimant, constituted a contravention of the Claimant's fundamental right to the equality of treatment from a public authority in the exercise of a public function as guaranteed by Section 4 (d) of the Constitution of Trinidad and Tobago;

 - b. A declaration that the aforesaid decision was unreasonable and contrary to the principles of natural justice;

 - c. A declaration that in arriving at the aforesaid decision, the Commission took into account irrelevant considerations and excluded from its bind relevant considerations;

 - d. A declaration that the aforesaid decision was in conflict with the policy of the Public Service Commission (Amendment) (No. 2) Regulations 1998 in effecting the promotion of the fire officers on the basis of merit;

 - e. An order requiring the Commission to consider in favour of the Claimant for the contravention of his aforesaid constitution right;

 - g. Damages;

 - h. Interest; and

i. Costs.

The evidence

3. The Claimant filed two affidavits on his own behalf and an affidavit of Leslie Skeete.
4. The Defendant filed affidavits of Kenny Gopaul, an affidavit of Mona Afong, two affidavits of Roosevelt Bruce and an affidavit of Coomarie Goolabsingh.

The Claimant's case

5. The Claimant holds the substantive office of Fire Sub-Station Officer (FSSO) in the Second Division of the Service but has been acting in the office of Assistant Divisional Fire Officer (ADFO).
6. On the 7th day of November 2011, the Chief Fire Officer (CFO) submitted to the Commission a list of FSSO candidates for its consideration for promotion to FSO (the list). The Claimant stated that he was No. 1 on the list and that the other FSSO's who were on that list were Charles Zamore, Ansar Ali, Peter Griffith, Brian Alexander and Roy Thompson.
7. In the month of October 2014, the Claimant and other FSSO's submitted their respective curriculum vitae to the CFO to be considered for promotion.
8. The Claimant contends that he was the most senior officer named on the list and that he and the other FSSOs named on the list were all acting in the office of ADFO.
9. The Claimant is the holder of a Master's Degree in Human Resource Management and a Post Graduate Diploma in Human Resource Management from the Arthur Lok Jack Graduate School of Business of the University of the West Indies and he also has an Associate Degree in Management from the College of Science, Technology and Applied Arts of Trinidad and Tobago (COSTAATT).

10. By reason of being the holder of the aforesaid qualifications the Claimant stated that he fell within 1 (b) of Regulation 8 of the Public Service Amendment Regulations 1998 and he advanced that he holds an equivalent related qualification so as to qualify him for promotion to the post of FSO. The Claimant had previously applied for and was granted an exemption from sitting the Management Studies Examination.
11. In the month of April 2015, the Commission promoted to FSO, effective February 2015, all the FSSOs whose names appeared on the 2011 list, with the exception of the Claimant and the Claimant asserted that the promoted officers all held Associate Degrees from COSTAATT and did not hold any post graduate qualifications.

The Defendant's case

12. The Defendant's contention is that the Claimant failed to establish that he had obtained the requisite approval of the Chief Personnel officer to deem his qualifications as equivalent related qualifications so as to enable his appointment to the post of FSO.

Analysis of the evidence and consideration of the law

13. Promotion in the Service is governed by Regulation 158 of the Public Service Amendment (No. 2) Regulations 1998 which provides as follows:-
- a. In considering eligible fire officers for promotion, the Commission shall take into account the experience, educational qualifications, merit and ability, together with the relative efficiency of those fire officers.
 - b. Where the Commission has to select an officer for promotion from officers who appear to be of equal merit, the Commission shall determine its selection on the basis of the relevant and relative experience of the officers.
 - c. In the performance of its functions under sub-regulation (1), the Commission shall take into account as regards each fire officer –
 - (i) his general fitness;
 - (ii) any special qualifications;
 - (iii) any special courses of training that he may have undergone (whether at the expense of Government or otherwise);

- (iv) the evaluation of the officer's performance as reflected in his performance appraisal report;
- (v) any letters of commendation or special report in respect of any special work done by the fire officer;
- (vi) demonstrated skills and ability relevant to the officer;
- (vii) any specific recommendation of the Permanent Secretary or Chief Fire Officer for the filling of the particular office;
- (viii) any previous relevant employment of his in the Service, the public service, or elsewhere;
- (ix) any special report for which the Commission may call;
- (x) his devotion to duty.

14. Regulation 8 of the Fire Service (Terms and Conditions of Employment) Regulations 1998 stipulates the qualification which an FSSO must possess in order to be qualified for promotion to FSO and provides as follows:-

(1) On satisfying the requirements of sub-regulation (2) or (3), a candidate for appointment to the office of Fire Station Officer shall be a person holding the office of Fire Sub-Station Officer and who –

(i) has passed a job-related written examination conducted by the Examinations Board; or

(ii) is the holder of the Graduate Diploma of the Institution of Fire Engineers or equivalent related qualification as determined by the Chief Fire Officer after consultation with the Permanent Secretary and the Chief Personnel Officer.

(2). Where a candidate for appointment to the office of Fire Station Officer has at least five years in the office of Fire Sub-Station Officer, he shall be required to pass a written examination in English and Management Studies conducted by the Examinations Board.

(3) Where a candidate for appointment to the office of Fire Station Officer has served for at least five years in the office of Fire-Sub Station Officer, he shall be required to pass examination in Management Studies conducted by the Examination Board.

(4) A candidate for appointment to the office of Fire Equipment Supervisor shall be a person holding the office of Fire Sub-Station Officer who is the holder of a National Technician's Certificate in Mechanical Engineering or its equivalent as

determined by the Chief Fire Officer after consultation with the Permanent Secretary and the Chief Personnel Officer.

15. At paragraph 3 of his affidavit, the Claimant stated that he had the requisite qualification for promotion to the office of Fire Station Officer (FSO) and that he met the requirements outlined in Reg. 8 (1) b and that his qualifications ought to be viewed as an equivalent related qualification.

16. The law requires, as it relates to qualifications, that there must be a determination to that effect by the Chief Fire Officer ("the CFO") after consultation with the Permanent Secretary and the Chief Personnel Officer ("the CPO"). The documents adduced by the Claimant demonstrated that the CFO said, that subject to the concurrence of the Permanent Secretary and the CPO, he had no objections to accepting the qualifications of the Claimant as an equivalent related qualification in accordance with Regulation 8(1) (b). The evidence however does not indicate that any such concurrence of the CPO was obtained. The Permanent Secretary concurred but the CPO did not. In fact, the CPO first said that his Department was examining the request for concurrence but subsequently informed the Claimant by letter that the qualification would not be considered as an equivalent related qualification. Accordingly, the Claimant's Diploma cannot be considered an equivalent qualification in accordance with regulation 8(1)(b). The stated reason advanced by the CPO was that the Claimant's qualification did not address the technical aspects of the job. The Claimant's dilemma brings into sharp focus the need for considered and calculated decision making in terms of tertiary education. Far too often persons have pursued courses which are not relevant to the specific area of expertise within which they operate. While the pursuit of higher education must always be applauded the benefit derived therefrom would only be realised when the courses pursued have a practical impact within the scope of work engaged by or contemplated by the individuals who pursue same. There has been a thrust to pursue traditional professions and management qualifications but the market appears to be saturated in those fields and a clear and decisive national policy agenda should be established to properly guide those interested in higher education towards areas where there is a demand, such as the pursuit of courses in the field of science and technology.

17. The Claimant asserted that he was granted an exemption from writing the management studies examination which was required for promotion to the rank of Assistant Divisional Fire Officer (“ADFO”) and he was interviewed for the position of ADFO in 2009. In previous proceedings instituted by the Claimant in the matter of Ian Green v Public Service Commission CV 2012-00811, the court held that the exemption was just that and the Claimant still had to satisfy the requirements of regulation 9 of the Fire Service Regulations. Ultimately, an exemption from the management studies examination under regulation 8(3) does not equate to having an equivalent related qualification as prescribed by Regulation 8(1) (b). Having satisfied the requirements of regulation 8(2) or (3), any candidate must still satisfy the requirements of either regulation 8(1) (a) or (b) for appointment to the office sought.
18. The Claimant was granted an exemption from writing the Management Studies examination set for promotion to the rank of FSO at regulation 8(3). The exemption did not, however automatically qualify him for promotion to FSO nor did it exempt him from the requirements specified in regulation 8(1) (a) or (b).
19. The Claimant placed heavy reliance on the evidence of Leslie Skeete and stated that Mr. Leslie Skeete said that he never authorised Mr. Edwards to inform the Claimant that his qualification could not be considered as an equivalent related qualification and that his instructions were, to inform the Claimant, that his diploma was in fact accepted as an equivalent qualification.
20. The Commission's decision can only be challenged on the information that was before it. Mr. Skeete held his office until October 2007 and ought reasonably to have been aware of the letter and its contents. There is no evidence of any query or clarification sought by the Claimant or any attempt to correct the letter by Mr. Skeete. If what Mr. Skeete now says is to be accepted, this would mean that he went against the advice of the CPO.
21. In the Court’s view, Mr. Skeete’s evidence at paragraphs 12 and 13 of his affidavit demonstrates a continued misapprehension of equivalency under regulation 8(1) being equated with an exemption under 8(3). At paragraph 13, Mr. Skeete deposed as follows: *“while it is a fact that the claimant neither passed the job related examination nor holds a*

Graduate Diploma stated in Regulation 8, he was granted an exemption from writing the examination in management studies. As such he was eligible for promotion to FSO....” Exemption from management studies cannot be equated with an exemption from compliance with Regulation 8(1).

22. At paragraph 16 of his affidavit, Mr. Skeete did not demonstrate that the Claimant satisfied 8(1)(a) or 8(1)(b) of the Regulations but only that the Claimant was exempt from writing the management examination.
23. Ultimately the Claimant’s qualification was not certified as an equivalent related qualification and the decision of the CPO in that regard was not challenged by way of review before this or any other Court. Consequently as it stands the Claimant does not meet the requirements of the regulations and without the recognised requisite qualification he cannot be considered for promotion to the post of FSO.
24. There was a dispute as to which list, whether the 2011 or 2013, was a merit list and/or seniority list. The Claimant challenged that exhibit “MAA2” was a merit list but Ms. Mona Afong said that it was.
25. An examination of the document revealed that, the first column states “merit no.” and there is a column intituled “qualification”. In that Qualification column, the Claimant is the only officer who did not pass the FSO examination and his qualification is listed as his management diploma.
26. There was no cross-examination on the issue as to the lists and the Claimant did not discharge the burden of proof that rested upon his shoulders to establish that the 2011 list was a merit list and not a seniority list. On a balance of probabilities the Court found that it was more plausible to conclude that the 2011 list was a seniority and not a merit list and that the 2013 list was a merit list and accordingly that the relevant list for promotions in 2015, was the 2013 list and not the 2011 list.
27. The Claimant stated that he was similarly circumstanced to Mr. Desmond Thomson and the other FSSO’s who were promoted by the Defendant to the post of FSO. The Exhibit

MAA2, which as stated aforesaid, the Court treated as the merit list, placed three persons higher than the Claimant and the claimant was the only person on the said list who had not passed the FSO examination. On the evidence, the Court formed the view that the Claimant did not establish that others standing in a similar position to him were treated differently and in the absence of cogent evidence as to the existence of a comparator(s), the Claimant's case for unequal treatment under section 4(d) of the Constitution is without merit.

28. Regulation 158 of the Public Service Commission Regulations outlines the criteria to be followed in promoting fire officers, and both seniority and qualifications are matters to be considered. The promoted officers satisfied the qualifications criterion but the Claimant did not and ultimately it is within the discretion of the Commission to determine what weight it places on the respective criteria. This approach was outlined in **Gopiechand Ganga and Others v Commissioner of Police Civ. App. 211 of 2007** at para. 40.

29. Ms. Affong at paragraph 15 of the affidavit clearly advocated that the Commission was guided by Regulation 158. Before this Court there was no evidence that supported the Claimant's argument that the decision of the Commission was in conflict with the Regulations and/or in breach of natural justice.

30. The Commission cannot exercise a discretion and effect a promotion where the requirements of the regulations have not been met. It is bound by the regulations which set out a statutory scheme that must be followed for appointment to offices within its purview. In **Romain v. Police Service Commission (2014) UKPC 33** at paragraph 28. The Board of the Privy Council stated that:

“There is also a public interest in the process for the appointment of public officers ...being clearly defined, and potential candidates knowing what it is. To permit the Commission to waive parts of the process when it thinks it appropriate would have the potential to create an uncertain and unequal playing field.”

31. Having reviewed the evidence, the Court cannot conclude that the Commission acted in a manner that was unreasonable and/or contrary to the principles of natural justice, or that it took into account irrelevant matters or that it failed to take into account relevant matters. The evidence also established that the Commission did consider Regulations 158 and 160. The Claimant advocated that the Commission gave no consideration to the merits of his objective claim to promotion when in fact he was qualified for the post and he relied on **Harinath Ramoutar v. The Commissioner of Prisons & Public Service Commission (Privy Council Appeal No. 0025 of 2011)** to support this contention. The Court formed the view that the **Ramoutar** case was clearly distinguishable from the facts of the instant case. The Privy Council held that there was an obligation for the decision maker to consider the most senior officer when making an acting appointment, in the instant case no such circumstance arose. The germane issue in the instant case was whether or not the Claimant was seized of the requisite qualification to enable his appointment to the post of FSO.

32. For the reasons that have been outlined the Court formed the view that the Claimant's case is without merit and must fail. Consequently the Court orders that the Claimant's claim is hereby dismissed and the Claimant is to pay to the Defendant the cost of this matter which is to be assessed in default agreement.

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FRANK SEEPERSAD
JUDGE