

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2019/0592

**IN THE MATTER OF SECTIONS 8(8), 16, 84, 84, 89 AND 101 OF THE CONSTITUTION
OF GRENADA, SCHEDULE 1 TO THE CONSTITUTION ORDER 1973, CHAPTER 128A
OF
THE CONTINUOUS REVISED EDITION OF THE LAWS OF GRENADA**

AND

**IN THE MATTER OF REGULATION 19 OF THE PUBLIC SERVICE COMMISSION
REGULATIONS 1969, SRO NO. 27 OF 1969, CHAPTER 128A OF THE CONTINUOUS
REVISED EDITION OF THE LAWS OF GRENADA**

AND

**IN THE MATTER OF THE POLICE ACT AND REGULATIONS, CHAPTER 244 OF THE
CONTINUOUS REVISED EDITION OF THE LAWS OF GRENADA**

AND

**IN THE MATTER OF A CLAIM BY SENNETH MARTIN JOSEPH, ASSISTANT
SUPERINTENDENT OF POLICE (ACTING) NO. 618, FOR BREACHES OF HIS
CONSTITUTIONAL RIGHTS AND FOR JUDICIAL REVIEW REQUIRING THE
PUBLIC SERVICE COMMISSION OF GRENADA TO PROPERLY CONSIDER
HIS PROMOTION DEFINITELY TO THE RANK OF SUPERINTENDENT IN THE
ROYAL GRENADA POLICE FORCE PURSUANT TO PART 56 OF THE CIVIL
PROCEDURE RULES 2000 (AS AMENDED)**

BETWEEN:

SENNETH MARTIN JOSEPH

Claimant

and

THE PUBLIC SERVICE COMMISSION

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. V. Nazim Burke for the Claimant
Ms. Karen Samuel for the Defendant

2021: March 12;
June 10

JUDGMENT

- [1] **ACTIE, J.:** This is an application for judicial review by the claimant, Mr. Senneth Martin Joseph (Mr. Joseph), Assistant Superintendent in the Royal Grenada Police Force (RGPF) against the Public Service Commission (the Commission), for declarations challenging the Commission's failure or inactions to promote him between 2013 and 2018 and for violations of the Constitution under sections 8(8) and 89(2) of the Constitution.

Background

- [2] Mr. Joseph was granted leave to apply for judicial review and on 29th January 2020 filed a fixed date claim seeking the following reliefs against the Commission:
- (1) A declaration that the decision of the Commission to consistently and consecutively pass him over for promotion between 2013 and 2018 without any or any adequate reasons given to him for so doing was improperly motivated, unfair, irrational and in breach of his legitimate expectation.
 - (2) A declaration that the decision of the Commission to consistently and consecutively pass him over for promotion between 2013 and 2018 without first giving him an indication as to why he is being passed over for promotion and an opportunity to make representation and or be heard in that regard is in breach of natural justice and his constitutional rights to due process and protection of the Law under section 8(8) of the Constitution and is therefore

unconstitutional.

- (3) A declaration that the Commission has abdicated its responsibility under section 89(2) of the Constitution and regulation 19 of the Commission's Regulations 1969 SRO No. 27 of 1969 also Chapter 128A of the Continuous Revised Edition of the Laws of Grenada by following the dictates of the RGPF promotion committee, the Prime Minister and or some other body or committee in the Ministry of National Security other than itself in coming to the decision on his eligibility for promotion over the past six (6) years between 2013 and 2018.
- (4) An order of mandamus directed to the Commission requiring it to properly exercise its power or duty under section 89(2) of the Constitution and regulation 19 of the Commission's Regulations to properly consider his eligibility for promotion definitively to the rank of Superintendent within the RGPF together with all remuneration and perquisites attendant to that office with effect from 1st January 2019.
- (5) Damages (including vindicatory damages) awarded the State of Grenada for breaches of his constitutional rights.
- (6) Interest, costs and such further or other order as this Honourable Court seems just.

[3] On the day of trial Counsel for Mr. Joseph, Mr. V. Nazim Burke, disclosed to the court that he no longer desired to pursue the issue of legitimate expectation. The court admonishes counsel to discourage such practice as it amounts to an abuse of process and an ambush to the other party who had filed full submissions with authorities on the point. .

Claimant's evidence

[4] Mr. Joseph contends that:

- (1) He is a member of the Royal Grenada Police Force (RGPF) and has been a member since 10th June 1985, as a Constable. As of the date of his affidavit he was an acting Assistant Superintendent.
- (2) He held various positions in the RGPF from Financial Intelligence Unit (FIU) to the Criminal Investigation Department (CID) and, then back to FIU as the Head or acting Director until 2013.
- (3) In 2013, he was transferred to the Criminal Investigation Department. He was ordered to hand over the FIU files to the CID together with the keys. He avers that he was informed by Assistant Commissioner of Police Trevor Modeste that the instructions for his removal came from the Prime Minister and Minister of National Security, Dr. Rt. Hon. Keith Mitchell. He avers that he complied with those orders.
- (4) Between the years 2013 and 2018, he was passed over for promotion by the Commission without any adequate reasons been given to him.
- (5) On 22nd July 2016, he submitted an application for promotion to the rank of ASP. He states that he hand delivered the application together with this CV to ASP Prince who copied it to then Chief Personnel Officer of the Commission. He states that ASP Prince indicated to him that the application was delivered personally to Deputy Commissioner of Police, Franklyn Redhead, who is the Chairman of the promotion committee.

- (6) On or about 13th December 2016, he was informed by senior officers that several persons, who were junior to him were promoted. He felt sidelined, overlooked, and discriminated against. He wrote a letter to the Commissioner of Police (COP) which was copied to the Commission seeking reasons why he was excluded.
- (7) Further, he wrote a letter of enquiry dated 21st December 2016 to the COP and copied it to the Chairman of the Commission seeking an explanation as to why he was excluded or overlooked for promotion while others were appointed. The COP replied by letter dated 6th January 2017 indicating that his application was considered by the Selections Committee, along with others, and was not successful.
- (8) By RGPF Circular No. 4 of 2017 dated 19th January 2017, it was confirmed that a number of officers who were junior to him were appointed by the Commission. He says that the Commission promoted officers who were less qualified and junior to him. He states that the promotions were not based on any objective criteria as outlined in the Police Act and the PSC Regulations on the eligibility of an officer for promotion.
- (9) Based on what transpired in 2013 with regard to his promotion to the rank of ASP, he is of the view that he was being discriminated against. He says the Commission acted unfairly, irrationally and in breach of natural justice and his constitutional rights under section 8(8) of the Constitution. Further, he avers that the Commission abdicated its authority pursuant to section 89(2) of the Constitution and regulation 19 of the PSC regulations in failing to come to a decision on his eligibility for promotion.

- (10) He states that he has been subject to political victimization by the Prime Minister, Dr. Rt. Hon. Keith Mitchell and the leadership of the New National Party.
- (11) By letter dated 31st January 2019 and received on or about 18th February 2019, he was informed by the Commission of his appointment to act as ASP within the RGPF with effect from 1st January 2019.
- (12) He believes that he was consistently and consecutively passed over for promotion without any or any adequate reasons being given for so doing. He is of the view that the Commission was improperly motivated, unfair, irrational and in breach of natural justice and his legitimate expectation that he, as a police officer, would be given an equal opportunity for career advancement.
- (13) On or about January 2019, three officers within the RGPF moved from the rank of ASP to Superintendent of Police ("SUP") leaving vacancies of at least seven positions within the said rank. By letter dated 4th April 2019, his counsel wrote to the Commission outlining his complaints and requesting the Commission to give due consideration to his definitive appointment to the rank of SUP. However, to date, he has not received any substantive communication apart from an acknowledgment of service.

Defendant's evidence

- [5] On 2nd June 2020, Mrs. Naomi Jeremiah, the Chief Personnel Officer (acting) of the Commission filed an affidavit in opposition to the claim and contends that:
 - (1) Between the years 2013 and 2018, the Commission made those appointments within the RGPF in accordance with regulations Part III.

- (2) Seniority is only one of many grounds set out by the Regulations as the basis for promotion and is only given priority where there are two or more officers on equal footing and the work is of a routine nature.
- (3) Mr. Joseph has failed to show that he is superior in education, training, and/or specialist qualification to the other officers he says were appointed ahead of him. He fails to demonstrate that no consideration was given to this eligibility for promotion.
- (4) Mr. Joseph was not determined by the Commission to be the most suitable candidate at the material dates when consideration was made for promotions for available vacancies. It is the Commission who made the decision to promote Mr. Joseph when it did and not the Chief of Police or some other person.
- (5) The Commission is entitled to appoint selections boards to assist in the selection of candidates for appointment to public offices. The composition and form of reporting are in the discretion of the Commission. The Commission also states that it is within its discretion whether the candidates are to be interviewed by the board. The Commission also has a discretion to require a Permanent Secretary to make recommendations for filling vacancies and also to state reasons why officers are being passed over. The Commission did not receive any report or recommendation from the Prime Minister in relation to Mr. Joseph.
- (6) Mr. Joseph cannot dictate that he be given a definitive appointment. Mr. Joseph's acting appointment states that it was in the first instance. An acting appointment of one year cannot be taken as creating any expectation that Mr. Joseph would be confirmed to the

post. Mr. Joseph was substantially appointed to the post of ASP on 18th May 2020 with effect from 1st January 2019. The Commission is not bound by recommendations for promotion whether by the Chief of Police or the Permanent Secretary.

- (7) None of Mr. Joseph's rights have been infringed and he is not entitled to any reliefs. In any event, Mr. Joseph has not demonstrated that he has ever made an application for promotion to the Commission directly or indirectly. Further, Mr. Joseph has not demonstrated that he was superior in every particular required by the Regulations for consideration by the Commission. His complaint is mainly based on seniority and self-development.

Issues

- [6] The main issues in this case concern whether Mr. Joseph was consecutively passed over for promotion between the years 2013 and 2018 and whether he is eligible for definitive promotion to the rank of Superintendent of Police. The issues can be determined under three points, namely:

- (1) Whether the Public Service Commission properly exercised its power or duty under Section 89(2) of the Constitution and Regulation 19 of the Public Service Commission Regulations when it failed to promote Mr. Joseph during the years 2013 to 2018.
- (2) Whether the Commission abdicated its responsibility.
- (3) Whether the Public Service Commission's inaction or failure to promote Mr. Joseph between 2013 and 2018 without first giving him an opportunity to be heard breached the principles of natural justice and contravenes section 8(8) of the Constitution.

Discussion and Analysis

Whether the Public Service Commission properly exercised its power or duty under Section 89(2) of the Constitution and Regulation 19 of the Public Service Commission Regulations when it failed to promote Mr. Joseph during the years 2013 to 2018

- [7] Counsel for Mr. Joseph, Mr. V. Nazim Burke, submits that it is the duty of the Commission to appoint and promote officers pursuant to section 89(2) of the Constitution. Mr. Burke relies on Regulations 15, 16, 17, 19 and 20 of the Public Service Commission Regulations.
- [8] Mr. Joseph states that between the years 2013 and 2018, there were at least 10 promotions of police officers in 2014, 2015 and 2017 by the Commission. Mr. Joseph said that he had been consistently and consecutively passed over for promotions.
- [9] In considering the Commission's actions or inactions in not promoting Mr. Joseph during the relevant period between 2013 and 2018, the court's decision is guided by the learning from the recent Court of Appeal case of **Elmoalis Ltd. v The Attorney General of Anguilla**¹, where our Chief Justice Her Ladyship Dame Pereira stated:
- “Before turning to each of these alleged illegalities, I observe that these allegations, like those which were made in the court below, centre on matters that took place at the level of the Evaluation Committee. As stated by Lord Brightman in *Chief Constable of the North Wales Police v Evans*, **judicial review is concerned, not with the merits or demerits of a decision, but with the decision-maker's decision-making process**. The Evaluation Committee, of itself, is not a decision maker under the Procurement Act.”² (Emphasis supplied)
- [10] Therefore, in light of the above learning I am enjoined to consider whether the

¹ AXAHCVP2019/0002.

² Ibid at para. 25

Commission's decision-making process was properly followed. The Commission published Public Service Commission Regulations 1969 for the discharge of its functions.

[11] **Regulation 15** provides for the appointment of Selection Boards and reads as follows:

The Commission may, from time to time, appoint one or more Selection Boards to assist in selection of candidates for appointment to public offices and the composition of any such Board and the form in which its reports are to be submitted shall be in the discretion of the Commission.

On consideration of any report of a Selection Board, the Commission may, in its discretion, summon for interview any of the candidates recommended by such Board.

[12] **Regulation 16** mandates that where a vacancy arises in a public office the Permanent Secretary or Head of Department shall communicate to the Chief Personnel Officer his or her recommendation in writing for the filing of the vacancy to the office. Regulation 16 provides:

Recommendations for filing public offices

- (1) As soon as it is known that a vacancy will occur in a public office the Permanent Secretary or Head of Department shall communicate thereon to the Chief Personnel Officer in writing and shall make his or her recommendation regarding the filling of the vacancy.
- (2) The Chief Personnel Officer may send, from time to time, to the Permanent Secretary or Head of Department a statement of existing vacancies in his or her Ministry or Department a statement of existing vacancies in his or her Ministry or Department (as the case may require) requesting early recommendations for appointing a person to hold the office.

[13] Counsel for the Commission, Ms. Karen Samuel, submits that the language of the Public Service Commission Regulations gives it certain levels of discretion as to which process it shall take when considering promotions. Ms. Samuel relies on the authority of **Ausbert Regis, Commissioner of Police v The Attorney General of St. Lucia**³ and the case of **Antonia Martial v The Public Service Commission**⁴. She states that Mr. Joseph alleges that the Commission has abdicated its responsibility to other public authorities and/or public bodies. However, she states Mr. Joseph has not placed any evidence before this court that the Commission received directives from these bodies.

Eligibility for promotion

[14] **Regulation 19** deals with the eligibility of officers for promotions and what factors the Commission shall take into account in arriving at its decision to promote. In relation to the eligibility of public officers for promotion, the Commission is enjoined to examine the following:

Principles of selection for promotion

- (1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with the relative efficiency of such officers, and, in the event of an equality of efficiency of two or more officers, the Commission shall give consideration to the relative seniority of the officers available for promotion to the vacancy.
- (2) The commission, in considering the eligibility of officers under sub regulation (1) for an appointment on promotion, shall attach greater weight to-
 - (a) **Seniority, where promotion is to be an office that**

³ SLUHCV2010/0497.

⁴ SLUHCV2005/0301 at para. 62.

involves work of a routine nature; or

- (b) Merit and ability where promotion is to be an office that involves work of progressively greater and higher responsibility and initiative than is required for an office specified in subparagraph (a). (Emphasis supplied)**

(3) In the performance of its functions under subregulations (1) and (2), the Commission shall take into account as respects each officer-

- (a) His or her fitness.
- (b) The positions of his or her name on the seniority list;
- (c) Any special qualifications.
- (d) Any special courses of training that he or she may have undergone (whether at the expense of Government or otherwise);
- (e) The evaluation of his or her overall performance as reflected in annual staff reports by an Permanent Secretary, Head of Department or other senior officer under whom the officer worked during his or her service;
- (f) Any letters of commendations or special reports in respect of any special work done by the officer;
- (g) The duties of which he or she has had knowledge;
- (h) The duties of the office for which he or she is a candidate;
- (i) Any specific recommendation of the Permanent Secretary or the Head of Department for filling the particular office;
- (j) Any previous employment of his or her in the public service, or otherwise;
- (k) Any special reports for which the Commission may call;
- (l) His or her devotion to duty.

(4) In addition to the requirements prescribed in subregulations (1), (2) and (3), the Commission shall consider any specifications that may be

required from time to time for appointment to the office in question.

[15] With regard to Mr. Joseph's relevant promotion history in the case at bar, it is the evidence that he was promoted to the rank of Inspector of Police sometime in the year 2007. Mr. Joseph was also promoted in 2019 and 2020 via letters from the Commission dated 31st January 2019, to act in the position of Assistant Superintendent of Police and by letter dated 27th May 2020 he was given a definitive appointment to the post of Assistant Superintendent of Police.

[16] Between the years 2013 to 2018, the ranks of Assistant Superintendent of Police and Superintendent of Police were senior ranks to Mr. Joseph, who at the time was an Inspector of Police, and as such involved greater responsibility and initiative. With regard to Mr. Joseph's eligibility for promotion he asserts his seniority and good standing in relation to reports as the basis that he should be eligible to be promoted to the rank of Superintendent of Police. In terms of seniority within the rank of RGPF, **Section 4 of the Police Act**⁵ provides:

Seniority of ranks

The Force shall consist of the undermentioned ranks in the following order of seniority—

(a)

Gazetted Officers

Commissioner of Police

Deputy Commissioner of Police

Assistant Commissioner of Police

Superintendent of Police

Assistant Superintendent of Police

(b)

Inspector of Police

(c)

⁵ Cap 244 of the 2010 Continuous Revised Edition of the Laws of Grenada.

Subordinate Officers

Cadet Officer

Police Sergeant

Police Corporal

(d)

Police Constable:

Provided that the Governor-General may, by Notice published in the Gazette, from time to time amend those ranks.

[17] **Regulation 25** provides:

Where an acting appointment falls to be made otherwise than as a prelude to a substantive appointment, the officer appointed shall, as a general rule, be the senior officer in the Ministry or Department eligible for such acting appointment, and any officer so appointed shall be expected to assume and discharge the duties and responsibilities of the officer to which he is appointed to act.

[18] The distinction between Regulation 25 which deals with acting appointments which are not a prelude to a substantive appointment and Regulation 19 which deals with permanent or definitive appointments was considered by the Privy Council in the case of **Harinath Ramoutar v Commissioner of Prisons and Public Service Commission**⁶. The appeal before the Privy Council arose out of an application for judicial review from the appellant, Harinath Ramoutar, for an appointment to the rank of acting Chief Prisons Welfare Officer. In considering the Trinidad and Tobago Public Service Commission Regulations 18 and 26, which are similar to our Regulations 19 and 25 respectively, Lord Sumption held that:

“In the case of **permanent appointments** and appointments intended as the prelude to permanent appointments, **seniority is one factor among many in the assessment of candidates, but it is never conclusive, and for the more responsible appointments it may be of very limited weight; whereas for purely acting appointments it is stated to be the general rule. This reflects significant differences in the nature of**

⁶ [2012] UKPC 29.

these appointments. The appointment of a stand-in on an acting basis is essentially an internal reallocation of the duties of existing staff to meet the exigencies of the service. It is temporary. It may fall to be made at short notice and sometimes for short periods”⁷. (Emphasis supplied)

- [19] The brief facts of **Ramoutar** are that the office of Chief Prisons Welfare Officer became vacant as the officeholder was transferred and the Prisons Welfare Officer II (whose rank is immediately below that of Chief Prisons Welfare Officer) was also transferred. The appellant was the next most eligible officer to act in the post of Chief Prisons Welfare Officer. The Privy Council ruled that the appellant was most suitable to act in the office of Chief Prisons Welfare Officer given he was the most senior officer.
- [20] However, in the case at bar, Mr. Joseph asks the court for an order of mandamus appointing him definitively or permanently to the post of Superintendent of Police with retroactive effect. Mr. Joseph is not seeking an acting appointment in his claim or relief. The applicable regime in this case is Regulation 19 (2) b which deals with permanent appointments. Therefore, the Commission, in determining whether or not to promote Mr. Joseph was enjoined to consider Regulation 19(2) b and (3) which provides that the Commission shall attach greater weight to “**merit and ability where promotion is to be an office that involves work of progressively greater and higher responsibility and initiative than is required for an office**”⁸ of a “**routine nature**.”⁹
- [21] **Regulations 19(2) b and 19(3)** are pellucid that the Commission shall give greater weight to merit and ability of the officer, among a long list of other factors as contained in Regulation 19 subregulation (3). It is therefore incorrect for Mr. Joseph to posture that the main basis or paramount consideration for a promotion in the circumstances of this case is seniority and a good report. The criteria are no more than matters to be “taken into account”. As the Privy Council held in **Ramoutar**, the seniority of an officer is only given greater consideration as a

⁷ Ibid at para. 15.

⁸ Public Service Commission Regulation 19 (2)b.

⁹ See Regulation 19 (2)a.

general rule for acting appointments pursuant to Regulation 25.

- [22] In my view an office or post of a routine nature is one which involves administrative duties or work that is of a similar nature to the current duties of the eligible public officer. It seems unlikely that the office of Superintendent of Police in issue in the present case, could have been regarded as falling into that category. In any event, there is no pleading or assertion by Mr. Joseph that the office of Superintendent of Police is of a routine nature nor is Mr. Joseph seeking an acting appointment as Superintendent of Police. The court is therefore constrained to the pleaded case of Mr. Joseph.

Eligibility for promotion to rank of Superintendent of Police

- [23] The court notes that Mr Joseph is a well-qualified Police officer with LLB (Hons) from Wolverhampton University and LLM in law of Finance, specializing in Money Laundering, Corruption, Insider Trading and Fraud Manipulation. It is of much amazement given Mr. Joseph's extensive experience and postgraduate qualifications in law enforcement, that he is currently at that level of rank in the RGPF. However, it is not for the court to assume the powers of the Commission on an application for judicial review. The Commission is best suited to consider and appoint suitable public officers to fill various vacancies within the RGPF.
- [24] The court on a judicial review application is only tasked with determining whether the decision-making process by the public body was followed properly and lawfully¹⁰. In the circumstances of this case, the Commission was obliged to consider other factors under Regulation 19 and not simply Mr. Joseph's seniority.
- [25] Applying the principles espoused by the Privy Council in **Ramoutar**, the court is of the view that the Commission did not act outside the scope of its power and duties as per the Constitution and its Regulations. Accordingly, Mr. Joseph's arguments that he was consecutively passed over by the Commission for promotion from 2013 to 2018 lack merit and must fail. Having so ruled, there is no need to

¹⁰ Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223

consider: (1) whether the Commission's inactions or failures in promoting him to higher ranks were improperly motivated, unfair and irrational; and (2) whether the Commission was obliged to give him reasons for being passed over for promotion.

Whether the Commission abdicated its responsibility

[26] **Section 89(2) of the Constitution** provides as follows:

“(2) Subject to the provisions of section 91 of this Constitution, **the power to appoint persons to hold or act in offices in the Police Force below the rank of Chief of Police but above the rank of Sergeant (including the power to confirm appointments)**, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office **shall vest in the Public Service Commission.**” (Emphasis supplied)

[27] The Commission is also empowered to publish Regulations for the discharge of its function. **Regulation 15** provides for the appointment of Selection Boards to assist in the selection of candidates for appointment to public offices. The commission when considering any report of a selection may in its discretion, summon for interview any of the candidates recommended by such Board.

[28] In *Ramoutar*,¹¹ the Privy Council held that “*Prison officers are public officers whose appointment and promotion are the responsibility of the Public Services Commission, an independent body established under the Constitution. The Commission is empowered to publish Regulations for the discharge of its functions.*” Similarly, in Grenada, the Commission under section 89(2) of the Constitution of Grenada is given the power to appoint police officers below the rank of Chief of Police, but above the rank of Sergeant.

[29] The Court of the Appeal in the recent decision in *Elmoalis Ltd.* opined that: “*the necessary starting point to determining whether the allegations of improper delegation or abdication of the Evaluation Committee's decision-making power have been made out, is to construe the terms of the statute to*

¹¹ [2012] UKPC 29 at para. 3.

determine whether what was done in a case, was contemplated by the statute¹²

Appointment of Selections Committee

- [30] The Commission, pursuant to Regulation 15, established a selection board for the RGPF, which selects and/or recommends candidates for promotions. This is a lawful exercise of the discretion that is given to the Commission. However, the selections board of the RGPF is not responsible for the actual promotion of officers as that responsibility lies with the Public Service Commission.
- [31] Mr. Joseph indicated in his affidavit evidence that the Deputy Commissioner of Police is the head of the Selections Board. In the absence of a clear procedure for selecting officers, the Deputy Commissioner, as one of the leaders in the RGPF, is certainly able to make recommendations as to which officer is best suited to be recommended for promotion to fill a vacancy.
- [32] The Commission's Regulations are not clear as to what criteria or procedure the Selections Committee is obliged to consider when selecting officers for promotion, however, in the absence of clear procedure and criteria the Selections Board is entitled to determine its own procedure and criteria. The recent learning from **Elmoalis Ltd.**¹³, gives much guidance where the court opined:

"It is also recognised that where a statute is not prescriptive of the specific manner in which an administrative body is to operate, it is usually within the remit of that body to determine its own procedure, of course, in accordance with the broader overarching principles of law attendant on decision making by public officials. This is borne out by the decision of the English Court of Appeal in *Selvarajan v Race Relations Board* where it was held at page 19 that, in the absence of an express statutory prescription, an administrative body is the 'master of its own procedure'¹⁴." (Emphasis supplied)

- [33] The Selections Board is entitled by law to make recommendations to the

¹² AXAHC VAP2019/0002 at para. 50.

¹³ AXAHC VAP2019/0002.

¹⁴ Ibid at para. 46 See also. Para. 47.

Commission. Mr. Joseph's application for promotion was considered by the Selections Board by letter dated 6th January 2017 the Commissioner of Police indicated to Mr. Joseph that he was not a successful candidate for recommendation.

[34] On the facts there is no abdication of responsibility by the Commission as the power to appoint a public officer still rests with the Commission even after recommendations are made by the Selections Board. In order for Mr. Joseph to say that this process was flawed, he must lead evidence to show that the Commission did not properly exercise its discretion when it failed to consider him for promotion to the senior ranks. Mr. Joseph has not shown any evidence that would impugn the selection process by the Selections Board.

[35] In light of the above, I do not see how Mr. Joseph can maintain that a failure or inaction by the Selections Board to recommend him for promotion, after its deliberation, can amount to him being passed over by the Commission. As stated earlier, the purpose of the Selections Board is to select and recommend officers for promotion. In essence, its goal is to shortlist persons for recommendation to the Commission.

[36] The Commission is entitled to rely on the recommendation of the Selections Board if it so chooses under Regulation 15. In any event, even if Mr. Joseph was recommended for promotion by the Selections Board or the Chief of Police as a Head of Department, the final decision still rests with the Commission pursuant to section 89(2) of the Constitution. Therefore, Mr. Joseph's argument on this issue must fail as there was no such abdication of the Commission's duty or power on the facts of this case. Further, there is no evidence of any breach of the Regulations nor the Constitution in relation to the Commission's failure or inaction not to promote Mr. Joseph.

Allegations against Prime Minister

[37] Mr. Joseph also alleges that the Prime Minister stated during a speech in

Parliament that he would never promote Mr. Joseph while he is Prime Minister. Mr. Joseph also asserts that in 2013 instructions came from the Prime Minister for Mr. Joseph to hand over the keys and files to the FIU and to proceed to the CID. The court notes from Mr. Joseph's evidence that he complied with those orders and never challenged the decision. In the court's view, the proper recourse was to have challenged the decision at the time made in 2013, this belated challenge is nugatory. Apart from the above bald assertions there is no other evidence to corroborate Mr. Joseph's assertions that the Commission was directed by the Prime Minister, or the Commission followed the dictates of the Prime Minister when arriving at any decision not to promote him or at the very least consider his application for promotion. Mr. Joseph's assertion that the Commission received instructions from the Prime Minister or followed his instructions is unsubstantiated by evidence.

Whether the Public Service Commission's inaction or failure to promote Mr. Joseph between 2013 and 2018 without first giving him an opportunity to be heard breached the principles of natural justice and contravenes section 8(8) of the Constitution.

[38] Mr. Burke submits that the right to protection of the law is enshrined in section 8(8) of the Constitution. He submits that the Privy Council in **Sam Maharaj v Prime Minister**¹⁵ gave a wide interpretation to protection of the law to afford every citizen adequate safeguard against irrationality, unreasonableness, unfairness and arbitrary exercise of power. He states that Mr. Joseph was not given an opportunity to be heard on him being passed over for promotion. He asserts that the Commission having failed to give Mr. Joseph an opportunity to be heard breached Mr. Joseph's right to protection of the law and natural justice.

[39] Ms. Samuel submits that the Commission is not in breach of any principle of natural justice and Mr. Joseph's rights under section 8(8) of the Constitution of Grenada. Further, she submits that Mr. Joseph does not have any locus standi to

¹⁵ [2016] UKPC 37.

approach the court on the ground of breach of constitutional rights.

[40] **Regulation 15** provides that the Commission when considering any report of a selection **may** in its discretion, summon for interview any of the candidates recommended by such Board. On the facts before the case the Commission was not under any obligation to provide Mr. Joseph with an opportunity to be heard before deliberating on its decision. Given the circumstances of this case, affording Mr. Joseph an opportunity to be heard on his eligibility for promotion would not have been necessary as he was not facing any disciplinary action nor was there any negative reports or comments about him by his superiors.

[41] It would be an onerous task for the Commission, given its volume of work and extensive duties, to provide each public officer with an audience to make representations before its deliberation on whether or not to permanently appoint him or her. This would certainly infringe on the constitutional duty placed on the Commission to make appointments at its discretion and to carry out its business without interference and delay.

[42] Therefore, even if Mr. Joseph was given an opportunity to be heard on his application for promotion, the power whether or not to appoint him still rests with the Commission after due consideration of the relevant criteria in Regulation 19. The Commission would not be bound by his representations in person nor recommendations made to it by the Permanent Secretary in the Ministry of National Security or Head of Department, such as the Commissioner of Police. In light of the above, Mr. Joseph has not established any breach of the principles of natural justice or contravention of section 8(8) of the Constitution.

Whether Mr. Joseph is entitled to any relief

[43] Taking all in the round, I am of the view that the facts of this case do not disclose any “**procedural impropriety**” as formulated by Lord Diplock in **Council of Civil**

Service Unions v Minister of Civil Service¹⁶ that would require the court's intervention or review.

- [44] Mr. Joseph has not made out a successful challenge against the inactions or decisions of the Commission in relation to his promotion or eligibility for promotion. Moreover, Mr. Joseph has not specifically pleaded, asserted or proved any pecuniary loss or damage. He merely asserts that the Commission violated his constitutional rights, and its actions were improperly motivated, unfair and unconstitutional, among other things. The court is of the view that Mr. Joseph is not entitled to any reliefs or declarations sought, including an order of mandamus and damages, including vindictory damages as claimed.

Conclusion

- [45] Mr Joseph has not found any basis for inferring that the Commission had been improperly influenced or had abdicated its independent decision-making function in the appointment process. The only criticism made was of the implied suggestion that the Prime Minister might have brought his political influence to bear in statements made. However, this was not substantiated with any palpable evidence that the commission was influenced by those statements.
- [46] For reasons advanced above, I order that Mr. Joseph's application for judicial review is refused and there shall be no order as to costs.

Agnes Actie
High Court Judge

By the Court

Registrar

¹⁶ [1985] AC 374 at page 411.