

COMMONWEALTH OF DOMINICA
DOMHCV2012/0009

BETWEEN:

ANTHONY LAWRENCE Claimant
and

CHIEF OF POLICE Defendants
POLICE SERVICE COMMISSION

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Lennox Lawrence for the Claimant
Ms. Sherma Dalrymple for the Defendants

[2012: March 9th]
[2013: March 21st]

JUDGMENT

[1] **COTTLE J:** The claimant caused a fixed date claim to be filed. He sought certain prerogative orders consequent upon a failure to promote him from Sergeant of Police to Inspector of Police. I set out the relief sought verbatim :

1. *An Order of certiorari to remove into this High Court and quash the decision of the first defendant not to recommend the claimant for promotion to the rank of Inspector of Police by the second defendant*
2. *An Order of Mandamus directing and /or ordering the first defendant to give reasons why the claimant was by-passed for promotion to the rank of Inspector of Police, whether in a vacant post or acting appointment.*
3. *An Order of Prohibition prohibiting the first named defendant from further withholding the recommendation of the claimant for appointment to the rank of Inspector of Police*
4. *An Order of Mandamus directing and ordering the second named defendant to properly consider the qualifications of the claimant and to determine the matter of his promotion to the rank of Inspector of Police*
5. *A declaration and/or order that the decision of the first named defendant to by-pass the claimant for recommendation for promotion to the rank of*

Inspector of Police, whether in a vacant position or in acting appointment, breached the said first defendant's statutory duty as outlined in the Police Service Commission Regulations and was accordingly illegal, unreasonable and unlawful.

- 6. A declaration that the decision of the first named defendant in failing to submit a recommendation that the claimant be appointed or promoted to the rank of Inspector of Police is unreasonable and offends the claimant's legitimate expectation for promotion to the rank of Inspector of Police.***

- [2] The defendants failed to comply with a case management court order and were not permitted to file affidavits in response after they repeatedly missed deadlines to do so. The trial proceeded with evidence by the claimant only. The claimant is a sergeant. of police in the Commonwealth of Dominica Police Force (C.D.P.F). He joined the force in 1990. During his long career he served in many capacities. Notably he was appointed to act as Inspector from 23rd March 2011 to 26th August 2011 and again from March to July 2012.
- [3] In 2003 the claimant was awarded a Bachelor of Law degree. He went on to obtain professional legal training in the U.K. by completing the post graduate diploma in Law. He swears in his Affidavit in Support that only one other member of the C.D.P.F has obtained an LLB degree and there are no others who have completed the Post Graduate Diploma in Law. He is also the only officer to have embarked upon studies for a Masters degree in Law.
- [4] The second defendant, in December 2011 appointed Sergeant. M. Ferrol to the rank of Inspector of Police. Before that, Sergeant A. Moses was elevated to the rank of Inspector of Police. Several other Sergeants of Police were appointed to act as Inspector of Police. The claimant considered all of the appointees to be less qualified than himself to be appointed on promotion to the rank of Inspector of Police. The claimant further swears that there is a settled practice that persons who have acted as Inspector of Police on one or two occasions are subsequently promoted to the substantive rank of Inspector of Police. He claims to have had a legitimate expectation that he would be treated likewise. He also points out that his Employee Assessment and Development Review for the period 2010-2011 showed that he had achieved the highest ranking of "O" for outstanding.
- [5] He testified of his wide experience in various departments of the C.D.P.F. He says that the first defendant has provided him with no reasons why other officers were appointed acting Inspector of Police ahead of him or why there were promotions to the substantive rank of Inspector of Police and he was overlooked.
- [6] The claimant now complains that the failure by the Chief of Police to give reasons breached his statutory duty to do so and that the Chief of Police acted unfairly by failing to consider the claimant's qualifications in making recommendations for promotion. He avers that the action of the Chief of Police reveals bias and cannot be reasonable. He also complains that his legitimate expectation of promotion has been denied him.
- [7] The claimant's complaint against the Police Service Commission is that it acted illegally and unlawfully in that the decisions as to who would be promoted were not based on objective criteria of education, training and qualification.

The Law

- [8] Sections 26 and 27 of the Police Service Commissions Regulations are in the following terms

26- The Commissioner shall submit, well in advance, recommendation for acting appointments to permit of their consideration by the Commission before the date on which the acting appointment is intended to become effective, but the Commission may waive the provisions of this regulation where the necessity to submit recommendations has been occasioned by sudden illness or very special circumstances or in any other circumstances which the Commission may consider appropriate.

27- In submitting recommendations for acting appointments in any office, the Commissioner shall state the reasons why police officers, if any, are being passed over

- [9] These regulations impose a duty on the Chief of Police to submit to the Police Service Commission recommendations for acting appointments. In those recommendations the Chief of Police must state the reason why any police officers are passed over. These recommendations and reasons are to be provided to the Police Service Commission. These regulations do not require the Chief of Police to forward the recommendation to the candidate police officer. In his Affidavit in Support, the claimant complains that he was not provided with reasons by the Chief of Police. He does not say that the Chief of Police failed to supply a recommendation with the required reasons to the Police Service Commission.

- [10] In his written submission, Counsel for the claimant submits that by failing to give reasons to the claimant when requested, the Chief of Police violated his duty to give reasons. With respect to counsel this misses the point that the claimant must first establish by evidence that the Chief of Police did not furnish those reasons to the Police Service Commission. Evidence that the Chief of Police did not furnish those reasons to the claimant does not suffice to show that the Chief of Police failed to carry out his statutory duty.

- [11] Regulation 25 reads

“Where an acting appointment falls to be made whether as a prelude to a substantive appointment or not the Commissioner shall notify the police officers who are eligible for consideration”

The evidence of the claimant is that the Chief of Police failed to inform him of the intention to make the appointment as acting inspector. This represents a failure by the Chief of Police to comply with a mandatory requirement of the Public Service Commission regulations. The purpose of this regulation is to afford police officers who are interested the opportunity to make representations on the filling of any vacancy.

- [12] In his affidavit in support the claimant does not say that he was disadvantaged by this failure on the part of the Chief of Police. Indeed the claimant was very well aware of vacancies as they arose. He wrote an application to the Police Service Commission. He enclosed copies of his qualifications.

He set out clearly all the factors that the Police Service Commission might find relevant in deciding to make appointments to the rank of Inspector. During his cross examination he agreed that all vacancies were communicated to him in a weekly force order as such vacancies arose.

- [13] Regulation 20 sets out the principles by which the Police Service Commission is to be guided in making selections for promotion. The regulation is as follows

'In considering the eligibility of police officers for promotion, the Commission shall take into account the seniority, experience, education qualifications, merit and ability, together with the relative efficiency of such police officers and, in the event of an equality of efficiency of two or more police officers, shall give consideration to the relative seniority of the police officers available for promotion to the vacancy.'

- [14] In his Fixed Date Claim Form the claimant complained against the second defendant. He averred that the Police Service Commission failed to keep up to date seniority lists of all police officers. He also claimed that the Police Service Commission failed to carry out its public law obligation to give reasons why the claimant was not considered for promotion or promoted. His further complaint was that the Police Service Commission acted unreasonably in failing to consider or properly consider that in relation to the officers appointed to the rank of Inspector or Acting Inspector that the claimant was senior in appointment and more qualified academically and professionally.

- [15] In his Affidavit in Support the claimant sets out his academic and professional qualifications and his length of service. He does not do the same for the officers who he says were promoted in preference to him. There is no evidence before the court that the Police Service Commission failed to consider the criteria set out at regulation 20. The claimant wrote to the Police Service Commission seeking reasons for their selection. The secretary to the Police Service Commission responded indicating that a response to the request for reasons would be provided after the next meeting of the Police Service Commission.

- [16] The claimant did not wait for the meeting but launched the present proceedings instead. Consequently this court is not informed of what matters the Police Service Commission considered in making the impugned appointments. In the absence of evidence to the contrary, this court applies the maxim omnia praesumuntur rite esse acta. It is to be stressed that the function of this court is not to substitute its judgment for that of the Police Service Commission but merely to ascertain that the Police Service Commission arrived at its conclusion properly.

- [17] The authorities submitted by counsel for the claimant were of great assistance to the court but the difficulty that faces the claimant is his failure to carry the evidential burden which rests on him. The only failure he was able to establish by evidence was the failure of the Chief of Police to inform him of the impending vacancies. As noted above, this failure did not disadvantage him. He was notified of the vacancies in the force order. Not only was he aware of them, he applied for the position. He submitted his curriculum vitae. There is no evidence that the Public Service Commission did not give due consideration to his application and qualifications. How is this court to treat this failure by the Chief of Police?

- [18] Clive Lewis QC in his work Judicial Remedies in Public Law at para 11- 026 puts it thus

“A court may be influenced by the fact that a public body would have exercised its powers in the same way or reached the same decision, even if it had not fallen into error. Thus a court may not quash a decision where there was an error of law, or a failure to take account of a relevant consideration, if the decision maker would have reached the same decision even if he had correctly interpreted the law or taken into account of all relevant material. A decision reached in breach of natural justice may not be quashed if the courts are satisfied that the decision maker would have come to the same decision if natural justice had been observed”

I can see no reason to suppose that the failure of the Chief of Police in anyway influenced the Police Service Commission 's determination as to which officers would be promoted.

- [19] The claimant also raised the issue of legitimate expectation. He says there is a settled practice that officers who act as Inspector of Police on one or two occasions are promoted thereafter to the position of Inspector. He was unable to offer examples of this “settled practice”. He merely testified that Inspector Moses was promoted after acting as Inspector on one occasion. He did not say when that was, or how long she acted. Inspector Ferrol he says acted as Inspector twice before he was promoted. These two instances do not demonstrate a settled practice. It is clear from the statutory requirements that many factors are considered by the Police Service Commission when choosing a candidate for promotion.
- [20] Having regard to the evidence this court cannot grant an order of certiorari to remove into this court and quash the decision of the Chief of Police not to recommend the claimant for promotion. There simply is no evidence of such a refusal. It would be very strange to conclude that the Chief of Police has refused to recommend the claimant against the backdrop of the claimant's evidence that the Police Service Commission appointed him to act as Inspector on two occasions in the past.
- [21] There is no legal requirement that the claimant be given reasons by the Chief of Police why he was by-passed for promotion. Appointments on promotion are made by the Police Service Commission an independent body established under the constitution. It is therefore not for the Chief of Police to explain reasons for decisions of the Police Service Commission. The requested order prohibiting the Chief of Police from further withholding his recommendation is refused because as noted above the claimant has yet to show that the Chief of Police refused to recommend him.
- [22] This court is not minded to issue an order of mandamus against the Police Service Commission requiring them to properly consider the claimant's qualifications. The claimant has not shown that his qualifications were not considered. His evidence is that he submitted these to the Police Service Commission. The declaration sought that the Chief of Police's decision to by-pass the claimant for recommendation is unlawful is refused because the claimant has not shown that the Chief of Police did not recommend him.
- [23] The claimants claim is accordingly dismissed. As is usual in these matters, acting under CPR 2000 part 56:13 (6), I make no order as to costs.

High Court Judge
Brian Cottle