IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

IN THE JUDICIAL REVIEW COURT

SUIT NO. M111 OF 1999

REGINA V. THE COMMISSIONER OF POLICE
PETER DAWSON

Arthur Kitchin for Applicant
Cheryl Lewis instructed by Director of State Proceedings

HEARD: 10th and 11th February, 2000

Cooke, J.

The applicant, Peter Dawson, enlisted in the Island Special Constabulary Force in August, 1990. By letter dated 8th of October, 1998 he was informed that his services had been determined. The reasons for the determination were:

(a) On January 5, 1995 you conducted yourself in an improper manner and or indulged in improper behaviour resulting in you being placed before the Court;

(b) The excessive use of deadly force at a dance at the House of Leo, 3 Cargill Avenue, Kingston, on January 5, 1995;

(c) On divers days between January 15 and 21, 1996, you represented yourself to a member of the public that you were a certain member of the Jamaica Constabulary Force with intent to deceive such member of the public for undeserved financial profit or gain and or to reflect discredit on the member of the Jamaica Constabulary Force and or discredit on the Island Special Constabulary Force;

(d) On divers days between January 15 and 21, 1996 you, represented yourself to a member of the public that you were an importer of motor cars, such representation being done with intent to deceive thereby obtaining for yourself undeserved financial profit or gain.

In this same letter he was told as follows:-

> "Notwistanding the foregoing you may if you so desire, either ask in writing to appear before the Commissioner of Police either alone or accompanied by a representative to show why your services should not be determined, or make a submission in writing setting out the reasons why your services should not be determined.
>
> If you decide to appear before the Commissioner of Police or make a submission, submit same to your Commanding Officer within fourteen (14) days of receipt of this Notice".

On the 11th May, 1999 the applicant along with his attorney-at-law Mr. Arthur Kitchin attended on the Commissioner of Police (the Commissioner). In the Commissioner's view no cause was shown why the applicant's services should not be determined, and so it was.

It is now submitted by the applicant that the determination of his services was unlawful for that decision was taken without his having an opportunity to be heard. Reliance was placed on Regina v. Commissioner of Police exparte Tennant. [1977] 15JLR.79
The respondent concedes that while the initial decision to determine the applicant's services was taken without giving the applicant an opportunity to be heard, the subsequent hearing afforded the applicant on the 11th May, 1999 cured any prior defects. Further it was contented that at the hearing on the 11th May, 1999 the applicant had every opportunity to espouse his cause. Cases cited in support were **(1) De Verteuil v. Knaggs and Another [1918[A.C. 557 (11) Ridge v. Baldwin and Another [1964[A.C. 41 (111) Posluns v. Toronto Stock Exchange et al 67 DLR (2d) 165.**

> "The Commissioner of Police may determine the services of... any Special Constable if such Special Constable does not perform the duties he undertakes or is for any other reason considerd unsuitable. When s Special Constable's services have been determined the fact shall be published in Police Orders."

Thus states regulation 27 of the Island Constabulary (General) Regulations, 1950. This regulation was considered in the **Tennant** case (supra). The headnote which reflects an accurate summary of the circunstances stated that:-

> The applicant was a corporal in the Special Constabulary Force with 12 years' service to his credit. On November 3, 1976, he was accused by the Commandant of the Force of being responsible for the distribution of a certain pamphlet and informed that he would in consequence of this be dismissed as of Friday, November 5, 1976. The applicant denied the accusation. No enquiry was held but an order for his dismissal appeared next day in the Force Order. The order did not specify the reason for his dismissal. The applicant applied for an order of certiorari to quash the order of the Commissioner of Police dismissing him.
>
> Held: (1) that the rules of natural justice required that the applicant be not condemned without a hearing and reg. 27 of the Isalnd Special Constabulary (General) Regulations does not confer on the Commissioner of Police a peremptory right of dismissal;
> (2) that certiorari will lie to quash administrative action.
>
> Application granted.

It will be readily observed that in that case there was no invitation from the Commissioner to show cause as in this case. There the axe fell; and that was that. The Court admonished the Commissioner for acting as if he had "peremptory right of dismissal". In this case after the notice of dismissal there was audience with the Commissioner. There is no complaint that at the appearance before the Commissioner the applicant was hampered, impeded, prevented or denied in any way the opportunity to show cause why his services should not be determined. It must be assumed, therefore, that at that stage the applicant was afforded ample opportunity to be heard. He had, I might add, reasons for the determination of his services since on or about the 8th of October 1998 - some 7 months prior to the meeting with the Commissioner.

The question now arises as to whether the applicant, having been given the opportunity to be heard on the 11th May it can be said that there has been a breach of natural justice as regards the determination of his services. In **De Verteuil** (Supra) the acting Governor of Trinidad and Tobago under section 203 of the Immigration Ordinance of Trinidad removed indentures from the plantation of the appellant to another plantation. The acting Governor had made his decision based on the complaints by the head of the Immigration Department.

At the time of the order of the removal of the indentures the appellant was not given an opportunity to be heard. However, subsequently the aggrieved appellant sought and obtained a personal interview with the acting Governor where opportunity was given for the aggrieved party to resist the order of removal - in effect to answer the complaints of the head of the Immigration Department. The opinion of the Privy Council was that despite the fact that, at first an order had been made without allowing the appellant to be heard the subsequent interview provided the appellant with a fair opportunity of placing before the acting Governor answer to the complaints. Accordingly the discretion of the acting Governor had been properly exercised. In the **Ridge and Baldwin Case** (Supra) the principle that an initial inadequacy can be made right by a subsequent hearing in which an aggrieved party is given a fair opportunity to be heard before a final decision is reached was recognised by **Lord Reid** in his speech at page 79. He said:

> "I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present his case, then its latter decision will be valid. An example is **De Verteuil's case**".

The **Posluns** case (Supra) also lends support to this principle. I therefore hold that the dismissal of the applicant was not unlawful.

There are two other issues which attracts my attention. The first is whether or not the Commissioner in acting pursuant to regulation 27 has to await the outcome of the findings and recommendations of a Disciplinary Board. This Board is set up and regulated by regulations 28, (as amended) 29, and 30. It was suggested that the "regime" of the regulation supported this view. I do not agree. Regulation 27 is quite independent of proceedings of the Disciplinary Board. Admittedly the Board may recommend that a constable's service be determined; then the Commissioner will exercise his discretion whether or not to act on that recommendation. However it must be recognised that the Commissioner as head of The Island Special Constabulary Force has an awesome responsiblity to strive assiduously to create and maintain a force characterised by integrity and professionalism. There will be situations where the bahaviour of a constable is such that warrants and demands instant termination of such constable's sevices. In such a situation it is incumbent on the Commissioner to act decisively and immediately. It must be presumed that no Commissioner of Police will act irrationally. If so, there is the bar of public opinion - and even more so the Courts will be there to offer redress as was so done in the **Tennant** case.

The final issue is whether the Commissioner must hold a hearing before a notice of dismissial is sent to a constable. Let it be understood that **Tennant** is not authority for any such proposition. What **Tennant** decided is that there can be no final determination of a constable's service without giving such constable a fair opportuinty to be heard.

I am of the view that it is not mandatory that a constable should have the opportunity to be heard before a notice of dismissal (with of course reasons) is sent to him. The exigencies of the circumstances could dictate otherwise. What is imperative is that before the final determination of a constable's services such constable is given a fair opportunity to be heard - to challenge the reasons which he would have received. This was so in this case.

It is only left for me to pronounce that the motion is dismissed. There will be costs to the Respondent to be agreed or taxed.