



THE LEGAL FRAMEWORK

- (1) Constitution
- (2) Public Service Commission Regulations
- (3) Public Service Commission Delegations Order
- (4) The Code of Conduct



The Constitution of the Republic of Trinidad and Tobago

“Section 121. (1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices and to enforce standards of conduct on such officers shall vest in the Public Service Commission”.



GUIDELINES FOR THE CONDUCT OF A ONE MAN TRIBUNAL

Service Commissions Department



Discipline (cont'd.)

✦ Constitutional Responsibility of the Public Service Commission and Delegation Order

The Public Service Commission has jurisdiction to exercise disciplinary control over public officers in the Civil Service, the Prison Service and the Fire Service by virtue of Section 121 of the Constitution.



Discipline (cont'd.)

The Public Service Commission by Legal Notice No. 60 of 1999 delegated to Permanent Secretaries and Heads of Departments, the authority to hear and determine specified acts of misconduct and indiscipline.

Discipline



Permanent Secretaries and Heads of Departments were thereby empowered to act as **“one man disciplinary tribunals”** or to appoint an officer to hear and determine allegations of misconduct, which are relatively minor in nature.



Definition

An officer who is alleged to have committed an act of misconduct or who is alleged to have committed an act of indiscipline by failing to comply with any regulation, order or directive for the time being in force in the Ministry or Department, to which he is assigned, is liable to disciplinary proceedings in accordance with the procedure prescribed.



● Relevant Regulation: Public Service Commission Regulations 85

For the purpose of Regulation 85 of the Public Service Commission Regulations, an act of misconduct or indiscipline which the Permanent Secretary, Head of Department or the Chief Administrator, Tobago House of Assembly has jurisdiction to hear and determine under that regulation, is an act of misconduct or indiscipline being a breach of a regulation.



The acts of misconduct or indiscipline which the Permanent Secretary or Head of Department or the Chief Administrator, Tobago House of Assembly has authority to hear are listed below:-



Relevant Regulation

135 (1)

135 (2)

135 (3)

Acts of Misconduct/Indiscipline

Failure to attend to matters promptly within the scope of office

Lack of courtesy to a member of the public or other public officer

Willful failure to perform duties



Relevant Regulation

Acts of Misconduct/Indiscipline

136 (1)

Absence without leave or reasonable excuse

136 (2)

Failure to report absence from country

137 (2)

Failure to disclose activities outside Service



Relevant Regulation

140

141

142

Acts of Misconduct/Indiscipline

Breach of rules relating to broadcast

Act of indebtedness to the extent it impairs efficiency, etc

Failure to notify of bankruptcy proceedings



Relevant Regulation

Acts of Misconduct/Indiscipline

149 (1) (a)

Failure to perform duties in a proper manner

149 (1) (b)

Breach of a written law

149 (1) (d)

Behaviour that is prejudicial to, or discredits the Service



Relevant Regulation

149 (2) (b)

149 (2) (d)
& (f)

149 (2) (g)

Acts of Misconduct/Indiscipline

Disobedience to orders

Neglect of duty

Unlawful or unnecessary exercise of duty



Relevant Regulation

149 (2) (a)

149 (2) (c)

Acts of Misconduct/Indiscipline

Absence without leave from office or habitually irregular in arrival/departure from office

Unfit for duty through drunkenness or illicit use of drugs



NOTE: The Permanent Secretary or Head of Department or the Chief Administrator, Tobago House of Assembly must inform the public Service Commission when a disciplinary charge/charges is/are preferred against an officer.



Principles and Procedures

The procedure for the One-Man Tribunal is outlined in Regulations 85 of the Public Service Commission Regulations as amended by the Public Service Commission (Amendment) Regulations 1990.



The process begins where an officer is alleged to have committed an act of misconduct or indiscipline that has been delegated to the Permanent Secretary or Head of Department.



The steps to be followed are:

1. The Permanent Secretary or Head of Department or Chief Administrator, Tobago House of Assembly, should refer the matter to an officer senior in office to the officer against whom the report or allegation is made.



2. The senior officer will examine the allegations and come to a decision whether the facts alleged are such as to constitute an act or acts of misconduct for which the officer may be charged.

If necessary he may need to make additional enquiries i.e. talk to the parties involved.



3. If the facts warrant that disciplinary charges be laid, the senior officer should formulate the charges and notify the officer in writing, through the Permanent Secretary or Head of Department or Chief Administrator, Tobago House of Assembly, of the charges laid against him.



🔦 The Charge:

(a) Could be drafted by an officer within the Human Resource Unit designated by the Permanent Secretary or Head of Department or Chief Administrator, Tobago House of Assembly, an attorney of the Ministry/Department/THA or a collaborative effort between the HR officer and the attorney of the Ministry/Department/THA.



(b) Must give reasonable information as to the nature of the charge and should include such details as ***date***, ***time*** and ***place*** where the alleged act of misconduct or indiscipline occurred so that the officer charged will not be prejudiced or embarrassed in his defense.



(c) Must be double and triple checked to ensure accuracy.

(d) If there are two or more offences committed, then there should be a like number of charges.



☛ The Charge:

– Shall consist of three parts:

i. the Commencement

(e.g.) John Brown is charged as follows).



- ii. the Statement of the Offence
***(e.g.) “Disobedience to orders”
contrary to Regulation 149 (2) (b) of
the Civil Service (Amendment)
Regulations 1996); and***



- iii. the Particulars of the Offence
(e.g.) “that you John Brown, Messenger II of the Ministry of Works on the 9th day of November, 2005 at the Ministry of Works building, Richmond Street, Port of Spain, willfully disobeyed a lawful order



given to you when you Administrative Officer IV, Jane Smith instructed you to deliver correspondence to the Minister of Works and you failed to comply with these instructions.



(e) Must describe persons by their forename and surname, office and Ministry/Department.

4. The Permanent Secretary or Head of Department or Chief Administrator, Tobago House of Assembly should then inform in writing, the officer charged of the date, time and place of the hearing before a One-Man Tribunal.



5. No documentary evidence shall be used against the officer unless he has previously been supplied with a copy thereof or given access thereto.



6. The Permanent Secretary or Head of Department or Chief Administrator, Tobago House of Assembly shall act as a disciplinary tribunal or appoint in writing as a Disciplinary Tribunal, an officer in his Ministry or Department or the THA as the Commission directs, holding or performing the duties of an office which is senior to that of the officer charged.



7. The officer will appear before the One-Man Tribunal on the appointed day and time. No attorney-at-law is allowed to represent either party. The officer charged may however, if he so wishes, be represented by his Association or an officer of his Ministry/Department or the Assembly.



8. The One-Man Tribunal will open proceedings by ensuring that the officer understands exactly what is taking place and he shall read the charge(s) and ask the officer to state whether the allegations are true or not, or whether he pleads guilty or not guilty.



If the officer pleads “**guilty**” to the charge, then the officer presenting the case for the Ministry shall give the facts or details of what occurred and the Tribunal should ask the officer if these facts are correct.



If the officer says they are not correct, then the Tribunal should enter a plea of “**Not Guilty**” and proceed as if the officer had pleaded not guilty.

If the officer agrees with the facts, the Tribunal should then ask the officer if he has anything to say (mitigation).



The tribunal may then impose a penalty on the officer.

A guilty plea should be taken into account in determining penalty as it is often one of the clearest means of showing remorse and he would have saved time and expense.

(this should be reflected in the report/notes of proceedings.)



9. If the officer pleads “**Not Guilty**” to the charge, then the officer leading the evidence will present the case against the officer charged by calling witnesses.



10. The officer charged, or his representative or Association, will be entitled to cross-examine the witnesses called to give evidence against him.

After this the officer (or his representative may make a no-case submission).



11. The officer charged may then:

- a) give evidence and call no witnesses
- b) give evidence and call witnesses
- c) not give evidence but call witnesses or
- d) not give evidence and call no witnesses

The officer charged shall give evidence first followed by his witnesses.



12. If the officer charged chooses to give evidence and call witnesses, this will be followed by cross-examination of the persons who gave evidence for the officer charged including the officer himself.

The cross-examination should be done immediately after a person gives evidence.



13. Closing statements may then be made by the officer charged or his representative, followed by closing statements by the officer presenting the case for the Ministry/Department/THA.



14. The Tribunal will then give its decision and impose a penalty where appropriate.

Where the Tribunal finds the officer guilty, the Tribunal should ask the officer if he has anything to say before a penalty is imposed on him (i.e. mitigation).



✦ The penalties which may be imposed are:

(A) Where the Permanent Secretary or Head of Department or Chief Administrator, THA sits as the Tribunal:

(f) reprimand

(g) fine (maximum of 12 days pay to be deducted in no more than 3 months.

(in accordance with Public Service Commission Regulations: 110)



(B) Where the Permanent Secretary or Head of Department or Chief Administrator, Tobago House of Assembly ***appoints another officer*** to sit as the Tribunal:

(f) reprimand



(g) fine (maximum of 4 days pay to be deducted in no more than 2 installments).

(in accordance with the Public Service Commission Regulations 110).



15. If the officer is found guilty, the Permanent Secretary or Head of Department or Chief Administrator, Tobago House of Assembly should inform the officer in writing of his right of appeal to the Public Service Appeal Board.



16. There should be a true record of the proceedings at the hearing. A copy of the record must be made available if the officer desires to appeal.



DOCUMENTATION

- (i) Notify the Director of Personnel Administration when a disciplinary charge/ charges are preferred against the officer;



(ii) Complete the Return Form (at Appendix I) which must be signed by the officer designated by the Permanent Secretary, Head of Department or Chief Administrator, Tobago House of Assembly;



(iii) A letter signed by an officer, designated by the Permanent Secretary, or Head of Department or Chief Administrator, THA must be issued to the officer informing him/her of the outcome of the matter;



- (iv) The Returns Form (at Appendix I) must be submitted to the Director of Personnel Administration on a quarterly basis;
- (v) Update officer's personal file;
- (vi) Update IhRIS records.

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Rules of Natural Justice (cont'd.)

☛ Natural Justice -

The natural sense of what is right and wrong.

principles of fairness which guide the process of informed decision making.



Rules of Natural Justice (cont'd.)

- Two fundamental rules of fair procedure-
- (1) a man may not be judge in his own cause
- (2) a man's defence must always be fairly heard



Rules of Natural Justice (cont'd.)

📌 Constitutional provisions

Section 5 (2) (e) & Section 5 (2) (f) (ii)



Rules of Natural Justice (cont'd.)

✦ The accused officer has a right to have his matter heard before and impartial tribunal -

Know the particulars of the charge

Have a right to representation



Rules of Natural Justice (cont'd.)

- ✦ Principles relating to Natural Justice present throughout the Regulations
- ✦ Laid out in the case of Ridge v Baldwin (1963) 2 A&R 66 Lord Hudson listed three (3) features of natural justice.



Rules of Natural Justice (cont'd.)

- ✦ The right to be heard by an unbiased Tribunal - a person will not be a judge in his own cause
- ✦ The right to have notice of charges of misconduct
- ✦ The right to be heard in answer to that charge



Rules of Natural Justice (cont'd.)

The right to a fair hearing.

- right to make representation before a decision is made.

Regulations

- ✚ Reg. 43 (1) - probationary period
- ✚ Reg. 55 (3)- termination of appointment



Rules of Natural Justice (cont'd.)

☛ Reg. 29 (2) – transfer of an officer

☛ Reg. 123 – termination of acting or temporary appointments



Rules of Natural Justice (cont'd.)

Discipline

✦ Reg. 90(6) -The right to have notice of charges brought against you - right to know the particulars of the charge

Reg. 94 (1) and (2) right to call witnesses and have their testimony heard



Rules of Natural Justice (cont'd.)

Reg. 99 – provides for the adjournment of a matter

Regulation 100 – no good reason for absence at a hearing - matter will be adjourned to allow an opportunity to be heard



Rules of Natural Justice (cont'd.)

Review

- ✦ The officer has a right to be heard by an unbiased Tribunal
- ✦ The Tribunal officer has a duty to act fairly
- ✦ The officer has a right to have notice of the charges brought against him
- ✦ Right to reasons for a decision (new)



Rules of Natural Justice

- ☛ **Consequences of non compliance**
- ☛ –serious financial consequences for the State.
- ☛ -decision may be quashed.



Case before the High Court (cont'd.)

Rafael Mitchell v The Public Service Commission

🔦 Facts -

- 🔦 - Applicant was a Revenue Officer, Ministry of Finance
- 🔦 - Arrested and charged for **'making a false statutory declaration'**.



Case before the High Court (cont'd.)

- ✦ - On 10th March, 2000 Commission suspended him
- ✦ - On 10th November, 2000 the Commission interdicted him on $\frac{3}{4}$ salary
- ✦ - Declarations sought - decisions to suspend and interdict him in breach of the rules of natural justice



Case before the High Court (cont'd.)

👉 **DECISION**

- no injustice was done to the Applicant by the Commission's failure to afford him a right to be heard prior to suspension
- 👉 Decision to interdict in breach of natural justice and to be quashed since at no time prior to the



Case before the High Court

decision to interdict him was he given the opportunity to be heard (the right to be heard was read into regulation 89).



Case before the Public Service Appeal Board (cont'd.)

✦ Candace Des Vignes and the Public Service Appeal Board

- ✦ Officer was attached to the Industrial Court
- ✦ charged with being habitually irregular in the time of her arrival for work.



● Case before the Public Service Appeal Board (cont'd.)

- The Registrar was delegated the power to deal with the matter
- The Registrar appointed a Librarian I to investigate the charge.



● Case before the Public Service Appeal Board (cont'd.)

- ✦ Registrar notifies officer that he was the Tribunal set up to hear the evidence and find the facts in the matter.
- ✦ The charge was laid and heard by the Registrar who conducted hearing in the absence of the officer
- ✦ Officer was found guilty of the charge and fined 9 days' pay.



● Case before the Public Service Appeal Board (cont'd.)

- ✦ The officer then appealed to the PSAB on the grounds that -
 - ✦ the principles and procedures relative to a one-man Tribunal as outlined in regulation 85 were not adhered to
 - ✦ The proceedings before the one-man Tribunal were heard and determined in her absence.



● Case before the Public Service Appeal Board (cont'd.)

- The Appellant did not have the opportunity to appear before the Tribunal
- That it was contrary to law for the Registrar to be complainant, enquirer and then sit as a Disciplinary Tribunal in this matter.



Case before the Public Service Appeal Board

- In this matter the appeal was allowed and the order (including the penalty) made by the Disciplinary Tribunal against the appellant was set aside.



Anthony Leach Prison Officer II

Discipline



Facts

- ✦ Applicant a Prison Officer II w.e.f. 1995.
- ✦ Subject of disciplinary investigations in 2000 concerning escape of three condemned persons from POS Prison on 6th April, 2000, leading to his suspension on 7th April, 2000.
- ✦ Investigating Officer appointed on or about July, 2000 to investigate into allegations.
- ✦ Charged for neglect of duty in 2004.



Facts cont'd.

- ✦ Sought Judicial Review for declarations:
 - that suspension for a period of over four years without preferment of charge illegal, unreasonable and punitive even without invoking disciplinary procedure;
 - that there was unreasonable delay by PSC in deciding whether Applicant should be charged under Regulation 90(6).

Facts



- that it would be an abuse of process to charge the Applicant after such a protracted delay.
- for a directive or Mandamus for PSC to reinstate Applicant into prison service on account of no lawful basis to continue suspension.

Issue



Whether it is fair for disciplinary process to continue given the delay of over four years between the institution of the procedure and preferring of the charge.



Decision

- ✦ That the delay of over four years between institution of discipline proceedings and preferment of charges was unreasonable and prejudiced the Applicant in having a fair trial at the tribunal, amounting to an abuse of process.
- ✦ PSC's decision to charge Applicant to be quashed.

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REGULATION 101

Service Commissions Department



● Burden of Proof/Management of Matter (cont'd.)

- He who asserts must prove
- Legal Burden – must carry a reasonable degree of probability



Burden of Proof/Management of Matter (cont'd.)

- Must adduce evidence in which the Tribunal can say:
“we think it more probable than not that the burden has been discharged”.



TYPES OF EVIDENCE (cont'd.)

TESTIMONY

Is the statements of a witness made orally and presented as evidence of the truth of what he or she states.



TYPES OF EVIDENCE (cont'd.)

☛ DIRECT TESTIMONY

Is statements of a witness about a fact which he or she has or claims to have direct, personal or first hand knowledge.



TYPES OF EVIDENCE (cont'd.)

HEARSAY

Is any statement, other than one made by a witness in the course of giving his/her evidence, offered as evidence of the truth of its contents.



TYPES OF EVIDENCE (cont'd.)

📍 ORIGINAL EVIDENCE

This is evidence of an out of court statement tendered for any relevant purpose other than that of proving the truth of the facts contained in it e.g. simply to prove that the statement was made or to prove the state of mind of its maker.



TYPES OF EVIDENCE (cont'd.)

REAL EVIDENCE

This usually takes the form of a material object produced for inspection by the court either to prove that the object exists or to enable the court to draw an inference from its own observation as to its physical condition or value.



TYPES OF EVIDENCE (cont'd.)

DOCUMENTARY EVIDENCE

Consists of documents produced for inspection by the court, either as items of real evidence or as hearsay or original evidence.



TYPES OF EVIDENCE (cont'd.)

PRIMARY EVIDENCE

This is evidence of the best or highest kind applied e.g. to the original of the document.



TYPES OF EVIDENCE (cont'd.)

SECONDARY EVIDENCE

This is evidence of an inferior kind applied e.g. a copy of a document or a copy of such a document.



TYPES OF EVIDENCE (cont'd.)

RELEVANCE

All evidence sufficiently relevant to prove the facts are admissible.



❖ ADMISSIBILITY

- ❖ Question for the Tribunal
- ❖ Must be sufficiently relevant to be admissible
- ❖ Regulation 101(3)



WEIGHT

- ❖ refers to the quality, value of evidence → take into account a multiplicity of factors
- ❖ other evidence given in the case
- ❖ the fact that a party has failed to bring to court the best available evidence but instead



- ❖ has relied on inferior evidence
- ❖ in the case of testimony, the demeanour, credibility and plausibility of witnesses
- ❖ in the case of documentary evidence, authenticity



❖ CONDUCT OF MATTER

- ❖ Necessary for all parties to meet with respective witnesses → case preparation
- ❖ Prosecution → ensure witnesses adduce relevant evidence to prove charge/s

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HEARSAY



🔦 What is hearsay

Is any statement, other than one made by a witness in the course of giving his/her evidence, offered as evidence of the truth of its contents.



RULE AGAINST HEARSAY

✦ An assertion other than one made by a person while giving oral evidence in the proceedings and tendered as evidence of the facts asserted is inadmissible:

R v Sharp (1988) 1 WLR 7 per Lord Havers.



“FIRST HAND” HEARSAY STATEMENTS

By a “first hand” hearsay statement is meant a statement made by A and proved either by his direct oral evidence, or by the production of the document in which he made it, or by the direct oral evidence of a witness who heard him make it.



“SECONDHAND” HEARSAY STATEMENTS

If a witness swears that A told him that B had said something, or if the document asserts that the author was told something by others, or that he is repeating what he read in another document, the hearsay statement proved by the witness or narrated in court by the author of the document is "second hand".



ADMISSIBILITY OF “FIRST HAND” HEARSAY

**In civil proceedings, First Hand hearsay
statements are admissible –**

**[1] with the leave of the court when
the maker is called as a witness;**



ADMISSIBILITY OF “FIRST HAND” HEARSAY (cont’d.)

[2] as of right when notice of desire to tender it in evidence has been served and either one of the reasons specified in section 8 for not calling the maker of the statement as a witness exists, or else no counter notice has been served, and he is not called; and



● Admissibility of “First Hand” Hearsay (cont’d.)

[3] at the discretion of the court in any other case.



STATUTORY EXCEPTIONS TO HEARSAY

- ❖ The Evidence Act, Ch. 7:02 –
- ❖ Section 37 Admissibility of out-of-court statements as evidence of facts stated;



● STATUTORY EXCEPTIONS TO HEARSAY (cont'd.)

- Section 38 Witness's previous statement, if proved, to be evidence of facts stated;



STATUTORY EXCEPTIONS TO HEARSAY (cont'd.)

- ❖ Section 39 Admissibility of certain records as evidence of facts stated; and
- ❖ Section 40 Admissibility of statements produced by computers.



HEARSAY (exercise)

Choose which of the following statements are hearsay:

- (1) Ann told me that Brian shouted at the boss in front of everybody in the office.**
- (2) I heard Brian shout at the boss in the office.**



HEARSAY (exercise cont'd)

Choose which of the following statements are hearsay:

- (3) Cato has a long standing problem of absenteeism and James has raised this issue with me several times.**
- (4) I saw Steve and I asked him whether he saw the money. He told me no and left.**



LEADING QUESTIONS

The definition of a leading question is **‘to put the very words into the mouth of the witness which he is expected to echo back or deny’**. These leading questions suggest the desired answers.



LEADING QUESTIONS (cont'd.)

In examination-in-chief and re-examination before the Tribunal, parties are not allowed to ask leading questions of the witness when eliciting the facts of the matter.



LEADING QUESTIONS (cont'd.)

- Leading questions may be put to a witness in cross-examination.
- These questions are put to the witness in a form permitting the simple reply of “**yes**” or “**no**”.



LEADING QUESTIONS (cont'd.)

A simple rule of thumb in asking non-leading questions of witnesses at a Tribunal are to phrase your question starting with **“who”**, **“what”**. **“where”**, **“when”**. **“why”** and **“how”**.



LEADING QUESTIONS

☛ Choose which of the following questions are leading questions:

(1) You shouted at your boss on the 1st April, 2008, didn't you?

(2) What happened on the 1st April, 2008?



LEADING QUESTIONS (exercise cont'd)

Choose which of the following questions are leading questions:

(3) You took the \$500.00 from the cash pan, didn't you?

(4) Why did you take the \$500.00 from the cash pan?