

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No.600 of 1993

TERRANCE AMEDEE

Applicant

THE DISCIPLINARY COMMITTEE OF THE
ROYAL SAINT LUCIA POLICE FORCE

THE COMMISSIONER OF POLICE

Respondents

Mr V Gill for the Applicant
Solicitor-General for the Respondents

1994: May 25
October 10

JUDGMENT

d' Auvergne, J.

On December 8, 1993 Terrance Amedee applied to the High Court for leave to apply for an order of certiorari for the purpose of quashing a decision made by the Disciplinary Committee of the Royal Saint Lucia Police Force on July 27, 1993 and by the Commissioner of Police, of the Royal Saint Lucia Police Force that the applicant be dismissed from the said Royal Saint Lucia Police Force. The order was granted as prayed and after many adjournments the matter eventually came to trial on May 25, 1994.

FACTS:

The facts as can be gleaned from the affidavits in answer and the various exhibits tendered are as follows:

On Sunday, July 18, 1993, BWIA, British West Indian Airways, flight BW 900 arrived at Hewanorra International Airport from Trinidad and Tobago. On board were passengers from Guyana.

Customs Guard Francis Xavier Charles deponed that knowing that there were Guyanese on board, decided to keep the disembarking passengers under surveillance.

He said that he noticed amongst the passengers one Tryonne George, a Guyanese gold dealer; that he saw Tryonne George take out from one of the two bags on his shoulders a newspaper and a small parcel which he held in his hands along with his passport and that he followed the queue leading to the desk of Immigration Officer Amedee.

This Customs Guard stated that he then reported his observations to Assistant Comptroller of Customs for the south, Mr Willibald W Charles who was the supervisor on duty at Hewanorra International Airport on that said Sunday night, July 18, 1993.

This Supervisor of customs Mr Charles who incidentally has the same surname as the junior customs guard stated that he looked across at the man on the queue who was identified to him and who he later

found out was Tyronne George and he appeared "to be very agitated". He stated that he distinctly saw Tryonne George hand over his passport to the Immigration Officer Amedee, PC 134 then he saw him bend a newspaper he was also holding in his hands forward and that something brown fell unto the counter which Officer Amedee was then using. Having seen that he started to walk around the various counters in the Immigration area, paying particular attention to the counter occupied by Officer Amedee. He stated that he saw "a parcel taped in brown on the counter. PC 134 made an attempt to conceal the parcel by pushing it in a corner and under the immigration forms."

Supervisor Charles narrated his observations to Officer Desir who was the senior Police Officer in-charge of Immigration after asking the Customs Guard Charles to ask Tyronne George to wait.

Officer Desir and Supervisor of Customs Charles went into the Immigration Office where Officer Amedee was talking to a female Guyanese passenger. The said passenger was asked to remain outside the office and Desir and Charles confronted Amedee. Charles said that at that time he noticed a bulge in one of Amedee's front pockets; that he asked Amedee to produce the brown parcel that the passenger dropped on his desk whereupon Amedee pushed his hands in his pocket and produced a green wash rag. Charles said he was shocked but then said to Amedee,

"I am asking you for the last time, I saw a passenger drop a

brown parcel on your desk, I saw when I came around your desk, that you tried to conceal the parcel by pushing it into a corner of the desk and trying to place immigration forms on it. I would like you to hand over that parcel to me."

He further stated that Amedee hesitated but eventually he took out from the top draw of the desk a brown parcel which he handed to Charles and said

"Mr Charles I do not know the guy, he is not my friend, this guy just dropped this on my counter. I said that this guy is up to something. I thought that it was drugs and that was the reason that I brought it inside to have it examined and then call the customs."

At that juncture Charles stated that he pointed out to Amedee the seriousness of the situation. He said that he then left the Immigration Office and went to interrogate the passenger Tyronne George in the presence of Customs Officer Gibbling Joseph.

A summary of the relevant facts obtained from the interrogation process were as follows:

Tyronne George admitted ownership of the parcel obtained from Officer Amedee; that he (Tyronne George) was trying to avoid customs duties and that he had behaved in a similar manner on three previous occasions but that it was not Officer Amedee who had assisted him on those occasions. The parcel was

opened and the contents checked in the presence of Tyrone George but in the absence of Officer Amedee.

In a statement dated July 20, 1993 recorded by Acting Inspector Peter Eudoxie the said Tyrone George admitted that he became acquainted to Officer Amedee on or about the end of October 1989 and that while on the queue leading to Officer Amedee's counter on the night in question, July 18, 1993 another Immigration Officer beckoned to him to come to that Officer's queue but he did not change over to that Officer's queue. He remained where he was.

Inspector Eudoxie investigated the matter and on 20th July, 1993 Officer Amedee was charged for discreditable conduct contrary to Section 3 (a) of the Police Regulations Statutory Rules and Orders 22 of 1965 and on July 22, 1993 ASP Preville heard and determined the charge.

At the hearing Amedee was represented by his friend No.211 Samuel who cross examined every witness, Amedee also cross examined some of the witnesses.

Many statements including Amedee's statement to the Investigating Officer Eudoxie were tendered as exhibits. Amedee was then cautioned and told to make his defence. After consultation with Constable 211 Samuel who was then representing him he elected to remain silent and then a no case submission was made by the said

Officer Samuel on his behalf and the grounds were as follows:

- 1) The defaulter was not given sufficient time to seek legal counsel in the matter and to prepare a defence.
- 2) Statements and reports obtained as prescribed under Section 12 (a) of the Police Regulation also 12 (b) (3) and (4).
- 3) The rights of the defaulter were violated in that the DCP spoke to the defaulter about the complaint made against him and the Investigating Officer had not yet spoken to the defaulter.
- 4) That the parcel collected from the defaulter was not opened in his presence at any time.
- 5) That the evidence adduced before me do not constitute to the charge.
- 6) That the defaulter was not cautioned by anybody when the complaint was made.
- 7) That it is not proper for an ASP to preside over a matter in which a Superintendent is the investigator.

All the grounds of the submission were overruled and Officer Amedee took the stand and gave evidence on oath. This Officer gave a detailed statement of his performance as Immigration Officer on Sunday, July 18, 1993. He said among other things that after attending to a female Guyanese passenger who had a problem with her passport he attended to one Tyrone George who had a Saint Lucia

passport. He said that George had a newspaper holding in his hands and that he (Amedee) asked him if it was 'Punch' and George replied in the negative; that he had a careful look at George's passport and then stamped it and that George before leaving said to him "Officer you can have the paper" and was about to leave the newspaper on his desk but he told him that he did not want it. George took the paper from the desk and walked away. After George's departure and while dealing with another female passenger he noticed a small brown parcel on his counter. He inquired of that passenger whether the parcel was hers and she said 'no'.

Amedee further said that the finalizing of the other passenger's passport necessitated his going into the Immigration Office to clarify a few details, (eg contacting a few persons by telephone) and that it was while on the telephone that Constable Desir and Customs Officer Willilbald Charles came up to him and demanded the small parcel he said he had seen him receive from a passenger and which he had in his pocket so he (Amedee) pulled out a green rag from his pocket and rested it on top of the desk. Charles then scrutinized the rag and said "you received a brown parcel, I want it."

Amedee said that he then placed the brown parcel on the desk and that Charles took the parcel and left the office. He emphasized that he had no knowledge of the contents of the parcel.

Under cross examination he denied knowing Tyronne George though he admitted to hearing Tyronne George saying that he knew him. He also denied that he saw when Tyronne George left the parcel on his desk.

He said that while it was true that he had attended to Tyronne George in the past at the airport as a passenger he was not aware that he sold jewellery and that he did not know the contents of the parcel, neither was he assisting Tyronne George to evade taxes.

Amedee was found guilty of discreditable conduct and his dismissal from the Force was recommended. That decision (arrived at the hearing) was communicated to him by the presiding officer. Amedee appealed against the findings and recommendation of his dismissal. The entire missive is reproduced:

RE: APPEAL TO CHIEF OF POLICE UNDER SECTION 28 (1) OF THE POLICE ORDINANCE NO.30 OF 1965

- 1) That by virtue of evidence tendered by the Prosecution, the Deputed Officer made a mistake by concluding guilty even when the facts in its totality does not prove any guilt. One witness, Tyronne George who was accused of handing over a parcel to the defaulter said that he forgot the parcel. The defaulter also stated that Tyronne George forgot the parcel. The prosecution had no evidence to prove that there was a deliberate attempt to conceal any jewellery.
- 2) That the Deputed Officer allowed in-admissible evidence by producing exhibits which according to law was not in fact admissible.
 - (a) The Prosecution witnesses admitted that at no time did they opened the alleged parcel in the presence of the defaulter neither did they informed him of the contents. An alleged certified copy of the contents of the parcel made by Customs Officers was

admitted in evidence notwithstanding that the defaulter had no knowledge of it and that an objection to it being admitted was overruled.

- (b) Verbal statements made by defaulter to Custom Officer Willilbald Wilward Charles was admitted where in fact it was not admissible since the defaulter was not under caution according to Judges rules. A written statement by his said accuser was not supplied to the defaulter.
 - (c) Statement by defaulter to investigator was admitted even after being objected to; a copy was not supplied to defaulter.
- 3) The Deputed Officer refused to read over his notes to the various witnesses in the presence of the defaulter in order to establish that a Verbatim Record of the proceedings were made in accordance with Section 14 (6) of the Police Regulations No.22 of 1965. That questions pertinent to the defaulters defence were not allowed, e.g. to W.W. Charles.
- (1) Did the defaulter attempt to leave the airport with any parcel?
 - (2) Did you frame the defaulter?
 - (3) If you in your own words distinctly saw when Tyronne George handed a parcel to the defaulter, why didn't you take immediate action?
- 4) That the Deputed Officer failed to give the defaulter a 48 hours time frame as prescribe by the Constitution of St Lucia to seek legal counsel. N.B. A copy of the charge was served about 5:30 p.m. Tuesday July 20th 1993. An attempt was made to hear the matter the same day. The Enquiry commenced at 10:00 a.m. on Thursday, July 22nd 1993.
- 5) That the Deputed Officer failed to allow a submission that legal counsel was needed by the defaulter to present his case.
- 6) That the defaulter's right was infringed under section 12 (a) 12 (b) 2, 3, 4 of the Police Regulations No.22 of 1965 by failing to supply the defaulter with all statements of witnesses along with their names, addresses not withstanding that they may be confidential who would be called to give evidence against him.

- 7) The Deputed Officer failed to allow a submission that by virtue of section 14 (4) of the Police Regulations No.22 of 1965 the evidence did not constitute the charge and that it should have been dismissed. In fact the Officer was prejudice in that even before the defaulter gave evidence the Officer stated verbally that there was enough evidence before him for the defaulter to answer a charge.
- (8) That during the enquiry the Deputed Officer visited the scene at the Hewanorra Airport in order to make up a decision in the absence and without the knowledge of the defaulter.

(Signed) Terrence Amedee

Amedee was dismissed from the Royal Saint Lucia Police Force on July 27, 1993.

I have reproduced in its entirety the grounds upon which relief is being sought:

That the decision of the Disciplinary Committee is wrong in that:

- (a) The applicant TERRENCE AMEDEE was not given sufficient time after receipt of a copy of charge in order to properly prepare his defense.
- (b) The applicant was not supplied with copies of the statement of the witnesses and his own as is required by the Police Regulations S.R.D. No.22 of 1965 under which the applicant was tried.
- (c) There were a number of procedural irregularities during the hearing before the Disciplinary Committee with regards to evidence and more so a visit to the locus in the absence of the applicant.
- (d) The applicant was deprive his right to obtain a record of the proceedings in order to present his appeal.
- (e) The applicant was refused the right to be represented at the hearing of his appeal by the Commissioner of Police.

- (f) The Commissioner of Police had already written his decision prior to hearing the applicant present his appeal.
- (g) The basic rules of natural justice were not observed.

I have also reproduced the affidavit in support of the application by Officer Terrance Amedee.

1. That I was employed as a Constable of the Royal St.Lucia Police Force attached to the immigration department.
2. That I was served with a copy of a charge on Tuesday, 20th July 1993 at about 5.30 p.m. and was called upon to answer the charge after refusing to do so immediately on Thursday the 22nd July 1993 at 10.00 a.m. less than 48 hours after service of the charge.
3. That prior the hearing of the charge by the Disciplinary Committee I was not served a copy of the written statements of witnesses along with their names and addresses contrary to section 12 (a), and 12 (b) (ii), 12 (b) (iii) and 12 (b) (iv) of the Police Regulations S.R.O No.22 of 1965.
4. That I was never shown the contents of the alleged package containing jewellery which I was alleged to have concealed.
5. During the proceedings before the committee a written statement by P.C 312 Charles was admitted into evidence despite the fact that the constable was absent from the proceedings.
6. Further, during the said proceedings the Deputed Officer together with the Investigating Officer visited the locus at Hewanorra International Airport in my absence.
7. That I requested a copy of the written transcript of the proceedings in order to pursue an appeal against the decision of the Committee before the Commissioner of Police and the request was refused the Commissioner himself stating that he was not prepared to do so as I had no right to the record.
8. That I was refused the right to be represented by legal counsel of my choice at the appeal before the commissioner.

9. That I was not given a fair hearing at my appeal as immediately after presentation of my appeal to the Commissioner of Police, the Commission took out and read to me a typed decision which had been prepared prior to his hearing my appeal.
10. That there were serious breaches of procedure and that these breaches coupled with the non observance of the basic rules of natural justice make the decision of the Disciplinary Committee and the Commissioner of Police unsafe and untenable.
11. That I respectfully request that I be given leave to apply to this Honourable Court.

ARGUMENTS

Counsel for the Applicant commenced his arguments by quoting various cases which demonstrated that the remedy of Certiorari was open to an aggrieved person to bring proceedings of an inferior tribunal before the High Court for review so that the Courts can determine whether they shall be quashed, or to quash such proceedings.

He contended that the Disciplinary Committee who heard this case failed to act fairly and offended the rules of Natural Justice.

He quoted the following authorities:

PAUL WALLIS FURNELL vs WHARGAREI HIGH SCHOOLS BOARD AC [1973] PAGE 660 which held that a man should not be condemned unheard.

BUROUGHS AND ANOTHER vs RAMPARGAT KATWAROO [1992] 40 WIR PAGE 287 which held that a man should be heard before decision was given.

CAMPBELL GUELPH [1963] 5 WIR PAGE 366 which held that "justice should not only be done, but should manifestly and undoubtedly be seen to be done."

Counsel argued that Sections 12 and 14 of the Police Regulations had been breached in that documents relevant to the hearing before the Disciplinary Committee and appeal before the Commissioner of Police had not been given to him and that there were various procedural irregularities.

The Solicitor General, Counsel for the Respondents on the other hand argued that there were no procedural irregularities in that the Police Regulations were adhered to. He referred to the affidavit of Joseph Preville who was deputed to hear and determine the disciplinary charge of discreditable conduct brought against the Applicant. The affidavit of Assistant Superintendent of Police Joseph Preville is produced in its entirety and reads as follows:

I, Joseph Preville of Corinth do hereby make oath and say as follows:

1. I am a member of the Royal Saint Lucia Police Force presently holding the rank of Assistant Superintendent.
2. By memorandum dated July 20, 1993 from the Commissioner of Police I was deputed to hear and determine the disciplinary charge of discreditable conduct brought against P.C. 134 Terrance Amedee (hereinafter referred to as the applicant"). A true copy of the said memorandum is produced, shown to me and Marked "J".
3. I was advised by the Acting Superintendent Peter Eudoxie, the Investigating Officer that the applicant was given a written notice of the charge 19th July 1993. A true copy of the

written notice of the charge is produced, shown to me and marked "A".

4. On 20th July, 1993 two files containing a copy of the notice, the applicant's statement, statements made by witnesses against the applicant together with two copies of the Discipline Form were handed to me. True copies of the statements and the Discipline Forms are produced, shown to me and marked "A", "B", "C", "D", "E", "F", "G", "H", "I" and "J", respectively.
5. On the said day of 20th July, 1993 one set of the statements and a copy of the Disciplinary Form were handed over to the applicant as required by law.
6. At the time of the handing over the documents to the applicant in my office, I informed the applicant of the charge which he denied. At this time also I informed the applicant of the date of the hearing and of his right to conduct in person or by a police officer of equivalent or lower rank.
7. On 22nd July, 1993, I heard and determined the disciplinary charge against the applicant at the Vieux Fort Police Station in any capacity as Deputed Officer.
8. At the hearing of the disciplinary charge against the applicant, I recorded the evidence of Customs Officer - Willibald W. Charles, customs Guard - Francis X. Charles, accused passenger - Tyrone George, Customs Officer - Gibbling Joseph, Superintendent Peter Eudoxie, Immigration Officer - P.C. 333 Dominique Desir, and the applicant. True copies of the evidence of the said witnesses are produced, shown to me and marked "K", "L", "M", "N", "O", "P", "Q" and "R", respectively.
9. The hearing was conducted in accordance with the rules of natural justice in that as Deputed Officer I was impartial and the applicant was given a fair hearing. More particularly, the applicant was permitted to have his defence conducted by a police officer (P.C. 211 Samuel) and the said officer cross-examined the witnesses.
10. At the hearing there were no irregularities concerning the admission of evidence. Further, I am advised by counsel that generally administrative tribunals are not bound by the strict rules of evidence.
11. During the adjournment for lunch I proceeded to the Hewanorra Airport in order to purchase some lunch at the restaurant. This visit had no connection with the hearing of the charge against the applicant.

12. On completion of the hearing I reported to the Commissioner of Police and discussed my findings based on notes taken at the said hearing. The Disciplinary Form on which my decision was recorded was then delivered to him. A written report was also prepared but the typing thereof was not completed until 26th July 1994 on which date it was handed to the Commissioner of Police. True copies of the Discipline Form and my report are produced, shown to me and marked "J" and "S", respectively.
13. Subsequent to the hearing I received a document from the applicant which stated, *inter alia*, that it was an appeal to the Commissioner of Police under section 28 (1) (b) of the Police Ordinance No.30 of 1965. The document was duly forwarded to the Commissioner as required by the said Ordinance. A true copy of the document is produced, shown to me and marked "T".

I respectfully request that for the foregoing reasons the applicant's originating notice of motion for an order of certiorari be dismissed by this Honourable Court.

The Solicitor General argued that Natural Justice is not a rigid set of rules. He quoted from De Smith's Judicial Review of Administrative Action 4th Edition Page 163 where the author states:

"The rules of natural justice are not rigid norms of unchanging content and their ambit may vary according to the context."

In RUSSELL vs DUKE OF NORFOLK AND OTHERS PAGE 109 AT PAGE 118 Tucker L J had this to say, *"The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but whatever standard is adopted, one essential is that the person concerned should have a*

reasonable opportunity of presenting his case."

The Solicitor-General pointed out that the applicant was handed a notice of the charge on the afternoon of July 19, by Superintendent Eudoxie and therefore the notice required to be given to him by the Police Regulations was complied with and moreover the officer is a Police Officer and was fully aware of what would be taking place from the very night of July 18, 1993; that on July 20 at 5:30 p.m. he was served with a copy of the charge after he had already given a written statement on July 19, 1993 to Inspector Eudoxie setting out his version of what took place on the night of July 18, 1993 at Hewanorra Airport, that on 19th July, 1993 he was confronted with 312 Dwight Charles and P.C. 333 Dominique Desir at Hewanorra Airport where the events of July 18, 1993 were fully discussed. Counsel argued that the applicant had indeed been given reasonable time to prepare and present his case.

Counsel contended that the applicant had sufficient knowledge of what was involved from the night of the incident viz July 18, 1993 and quoted the case of CUMBERBATCH vs WEBER [1965] 9 WIR PAGE 143. The facts of that case are almost similar to the case in question. The applicant in that case was a sergeant in the British Guiana Police Force, he was placed on disciplinary charges. The respondent who was then Commissioner of Police, constituted the Deputy Commissioner to inquire into the charges. Afterwards the latter forwarded both the notes of evidence taken at the inquiry and his

considered opinion to the Respondent whose duty it was to decide whether the appellant was guilty or not guilty. At the inquiry the appellant was informed that he was liable to be dismissed if ultimately found guilty of any of the charges. He was represented at the inquiry, he was given the opportunity to cross examine witnesses and he testified on his own behalf. He was not supplied with a copy of the notes of evidence nor with the considered opinion of the court of inquiry. The respondent found the appellant guilty on all the charges and dismissed him from the Force, so informing him by letter. The appellant appealed to the Governor and the findings were upheld. The appellant from then filed a writ in the supreme court, claiming inter alia that the order of dismissal made by the respondent was invalid and a nullity in law.

It was held that the appellant was a public officer and was therefore dismissable by the Commissioner of Police and that the failure to supply the person charged with copy of notes of evidence the nature of which he was aware of was not a breach of Natural Justice.

The Learned Solicitor General also quoted the Australian case of O'ROURKE vs MILLER PAGE 662 [1986] LRC AT PAGE 654 (of permissive authority) which conveys the same principle.

The Learned Solicitor General contended that the contents of the package was not critical to this issue concerning Police Officer Amedee, but was relevant with regard any charge that would be brought against the passenger Tyronne George.

The Solicitor General concluded his arguments after replying to all the grounds upon which the order of certiorari was sought by acknowledging that the strict rules of Natural Justice had not been followed at the hearing of the Disciplinary Committee and the appeal hearing, but he stressed that those were administrative tribunals and that "*Natural Justice does not impose on administrative and domestic tribunals, a duty to abuse all the technical rules of evidence applicable to proceedings before courts of law.*" (Halsbury's Laws of England, 4th Edition Page 94).

CONCLUSIONS

It is trite law that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard.

It is also a well accepted principle that Natural Justice does not impose on administrative tribunals, a duty to observe all the rules of evidence applicable to proceedings before courts of law but it imposes a duty to act judicially upon an administrative tribunal when dealing with the exercise of a power to deprive a person of his livelihood.

There is no doubt in my that the Disciplinary Committee and the hearing of the appeal by the Commissioner of Police were administrative tribunals exercising a quasi judicial function and therefore they had to conform with the Police Regulations. They were also in duty bound to give Police Officer Amedee notice of the allegations against him and a fair opportunity of being heard.

In order for me to arrive at a conclusion I have to accept either the evidence as deposed by Joseph Preville who heard and determined the disciplinary charge of discreditable conduct against the applicant, Officer Amedee or that of the latter.

By paragraph 5 and 6 of Preville's affidavit stated above, he said:

Paragraph 5: "On the said day of July 20, 1993 one set of the statements and a copy of the Disciplinary Form were handed over to the applicant as required by law."

Paragraph 6: "At the time of the handing over of the documents to the applicant in my office, I informed the applicant of the charge which he denied. At this time also I informed the applicant of the date of the hearing and of his right to conduct in person or by a police officer of equivalent or lower rank."

I pause here to note that paragraph 5 of Police Regulations (Procedure at hearing) states:

"The defaulter may conduct his defence either in person or by

a police officer of equivalent or lower rank as his friend and selected by himself on his behalf. Provided that on an application made by the defaulter, the Chief of Police may authorize a police officer of or below the rank of inspector to be the defaulter's friend.

Provided further that if the defaulter is represented by another police officer the defaulter as well as his representative may cross examine the witnesses called in support of the case against him the report of the hearing shows clearly that both the applicant and his representor cross examined the witness called in support of the case against him."

While it is true that the applicant was served on July 20, 1993 at 5:30 p.m. and the hearing was on July 22, 1993 at 10:00 a.m. and technically speaking under 24 hours as required by law, it is my view that, that proposition should be regarded as belonging to the realm of semantics since this applicant was fully aware of the seriousness of the allegation since Senior Customs Officer Willibald Charles informed the applicant on the night of July 18, 1993 of the seriousness of the matter, that he would not be arresting him but that he had committed several offences against the customs laws and that he would get in touch with the applicant later.

It is my view that even if those words were not uttered to the applicant he was fully aware of the seriousness of the situation and therefore the grounds that he did not have sufficient time to prepare his defence and that he was not supplied with copies of the witnesses and his own, must fail since I have accepted the evidence of Assistant Superintendent of Police Preville that he was served with them.

With regard to procedural irregularities, I have examined the exhibits which contain the mode of the procedure employed on July 22, 1993 and I find no fault with it. I found it was on all fours with paragraph 14 of Police Regulations 1965. Moreover I do agree that the strict rules of evidence need not be closely adhered to, at such a hearing.

Paragraph 6 of the Police Regulations state that:

"A verbatim record of the proceedings of the hearing of the case shall be taken and a transcription of the record shall be made if the defaulter desires to appeal to the Chief of Police or to the administrator".

By paragraph 12 of Preville's affidavit he showed that he complied with that regulation. Moreover, the case of CUMBERBATCH vs WEBER [1965] 9WIR PAGE 143 shows that the omission to supply the appellant with a copy of the notes of evidence the nature of which

he was aware of, he having attended the hearing of Disciplinary Committee was not a breach of Natural Justice.

The fifth ground upon which the relief is being sought is that the Applicant was refused the right to be represented at the hearing of his appeal by the Commissioner of Police and he also states by paragraph 7 of his affidavit that upon request for a written transcript of the proceedings the Commissioner of Police told him that he was not prepared to do so and that the Applicant had no right to the record.

As stated earlier this was an administrative tribunal albeit exercising a quasi judicial function and as can be gleaned from the various affidavits of the Police Officers of either those who conducted proceedings or those who acted as observers, the strict letter of the Police ordinance and regulations were adhered to. It is to be noted that there is no regulation which states that a record should be given to the applicant or that he should be legally represented.

In R vs VISITING JUSTICE AT HER MAJESTY'S PRISON PENTRIDGE EX PARTE WALKER [1975] VR a case from the Supreme Court of Victoria it was held that a prisoner had no right to demand to be represented by a legal practitioner for whereas legal practitioners should not be denied audience before courts and tribunals, that is they have the right to be heard, there is no right in the prisoner to insist on

being legally represented. This authority is only of persuasive authority.

Superintendent of Police **Hazel Charles'** affidavit in answer dated May 20, 1994 states as follows:

4. I recall that Mr Vern Gill, Solicitor for the applicant also sat in on the appeal without participating after permission to do so was refused by the Commissioner of Police.
5. I do not recall the applicant or his Solicitor protesting, threatening to leave on account of the refusal of the Commissioner of Police to permit Mr. Gill to participate in the appeal.
6. I am advised by the Deputed Officer and verily believe that the applicant was provided with a copy of the record of the hearing of the charge in order that he could prepare for his appeal.
7. I am advised by counsel and verily believe that in the circumstances of the refusal of the Commissioner of Police to permit the applicant's Solicitor to participate in the appeal there were legal options which could have been pursued.

There was no affidavit in answer from the Commissioner of Police who no longer holds that post and is also out of the State.

In my opinion the Legal Counsel, Mr Gill can be said to have acquiesced with the procedure followed by the Commissioner and I agree with paragraph 7 of Hazel Charles' affidavit noted earlier.

The allegation that the Commissioner of Police had already written his decision prior to the hearing of the applicant's appeal could not be rebutted nor confirmed since as stated earlier that

Commissioner of Police is no longer employed by the Government of Saint Lucia and is out of the State.

Taking the evidence in this case in its entirety, though I do agree that there were some procedural irregularities I do not find that the Applicant had not been given a fair hearing since it is my view that the Applicant was given a reasonable opportunity of being heard.

SURINDER SING KANDA vs GOVERNMENT OF THE FEDERATION OF MALAYA
[1962] AC PAGE 322.

As stated earlier the Commissioner of Police adhered to the rigid letter of the Police Ordinance and the Regulation which only state that the applicant should be allowed to conduct his defence either in person or by an officer of equivalent or lower rank and that there was no mention of legal representation. **Section 28 (4) of the Police Ordinance states:**

"The Chief of Police or the Administrator, as the case may be, after considering the appeal and the notes of evidence and statements and other documents submitted to him by virtue of subsection (3) of this section shall either:

- (a) allow the appeal; or*
- (b) dismiss the appeal; or*
- (c) vary the punishment by substituting some other punishment which the Gazetted Officer might have awarded.*

I am also of the view that no amount of procedural propriety would have affected the outcome of this case (that the applicant would be dismissed from the Royal Saint Lucia Police Force). (RIDGE vs BELDWIN [1964] AC 40, 68.

Therefore based on that view that the procedural irregularities are minor and would not have affected the ultimate decision I accordingly dismiss the motion for the order of certiorari.

The Applicant is to pay costs to the Respondents to be agreed or otherwise taxed.

**SUZIE d'AUVERGNE
PUISNE JUDGE**