



IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
COLONY OF MONTSERRAT  
(CIVIL)  
A.D 2013

CLAIM NO. MNIHCV2010/0001

**BETWEEN:**

JULIAN WADE Claimant  
and  
THE GOVERNOR OF MONTSERRAT  
HON. ATTORNEY GENERAL Defendants

**APPEARANCES:**

Mr. David Brandt for the Claimant

Mr. Fitzroy Buffong for the Defendants

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2013: September 26  
2013: November 05  
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**JUDGMENT**

[1] **REDHEAD J. (ag):** The Claimant filed a Notice of Motion for Judicial Review on the 10<sup>th</sup> of January 2010 in which he prayed for the following reliefs:-  
  
(i) An order quashing the decision of the First Defendant to rescind the Claimant's appointment as an Inspector of Police.

(ii) An order that the defendant breached the Rules of Natural Justice when he failed to afford the Claimant an opportunity to be heard before deciding to rescind.

(iii) An order that the first defendant, His Excellency the Governor, of Montserrat, is by law required to decide the application made on or about the 28<sup>th</sup> of February 2008 by the Claimant for the post of Inspector of Police in the Royal Montserrat Force properly according to law and particularly in accordance with the principles of **parity, comparability, quality and transparency** required by fairness generally and regulations #20 of the Police Service Regulations of Montserrat.

(iv) An order that the first Defendant took into account irrelevant considerations in making the decision to rescind the approval of the Claimant.

(v) An order that the first Defendant failed to ascertain relevant information and in particular that the Claimant was severely reprimanded by the Commissioner of Police, information which formed the basis for the First Defendant's decision for rescinding the Claimant's appointment.

(vi) A declaration that the First Defendant's decision to rescind the Claimant's appointment was unreasonable.

(vii) A mandatory order requiring the First Defendant or either of them to appoint the Claimant to the post of Inspector of Police in the Royal Montserrat Police Force retroactive from the date he would have been appointed, in accordance with his legitimate expectations.

(viii) A declaration that the Claimant had a legitimate expectation to be appointed as an Inspector having regard to the Public Service Commission Regulations and the settled practice.

(ix) Such orders or directions as may be necessary or appropriate to secure redress by the Claimant for contravention by the Defendants either of them of the rules of Natural Justice.

(x) Costs.

[2] The Claimant was enlisted as a Police Constable in the Royal Montserrat Police Force in April 1990. In December 2006 the Claimant was promoted to the rank of Acting Sergeant. On or about the month of March 2008, the Claimant made an application for the post of Inspector of Police. The Claimant was interviewed for the post.

[3] The Claimant says that this was done under the watchful eyes of the Office of the Department of Administration/ Government Headquarters.

[4] At the time of his application for the post of Inspector of Police the Claimant had completed a Bachelor of Laws degree (LL.B) at WolverHampton University.

[5] In or about May 2008 the Claimant wrote to the Commissioner of Police requesting one year study leave to complete the Bar vocational course at the College of Law Birmingham.

[6] On the 5<sup>th</sup> of August, the Claimant not having had a reply to his letter of May 2008, wrote again to the Commissioner of Police reminding him of his letter

and advising the Commissioner that he needed to be in the United Kingdom by 22<sup>nd</sup> August 2008 for orientation at the College.

[7] On the 22<sup>nd</sup> of August, 2008 the Claimant received a response from the Commissioner of Police advising the Claimant that the Royal Montserrat Police Force was conducting an investigation into a report made by Alwyn Ponteen and also a report in which he had discharged a firearm. As a result of the investigation he was not allowed to travel to the U.K until the completion of the investigations.

[8] As a result, the Claimant consulted his attorney, Mr. David Brandt who wrote to the Commissioner requesting a meeting with him to discuss “the best way forward” for the Claimant to be released to attend law school.

[9] The Claimant, not having heard from the Commissioner of Police sought the interventions of the then Acting Chief Minister and later the Chief Minister. These interventions did not yield any positive results.

[10] As a result , the Claimant swore, that in desperation he sought a meeting with the Commissioner of Police. This was unsuccessful.

[11] The following day the Claimant met with the Commissioner who told the Claimant that he was awaiting the reports of the investigations and he could not do anything.

[12] On the 20<sup>th</sup> August the Commissioner of Police informed the Claimant that the shooting incident was found to be justifiable but he, the Commissioner of Police, had to pay monetary compensation to Alwyn Ponteen (the other matter investigated).

- [13] The Commissioner of Police informed the Claimant that should this reoccur in the future disciplinary action would be instituted against him and a formal reprimand would follow.
- [14] Permission was then granted to the Claimant to travel to the U.K to attend law school. The Claimant left Montserrat on 22 August 2008 for the U.K.
- [15] On the 15<sup>th</sup> of January 2010 the Commissioner of Police wrote to the Claimant that he the Claimant was reverting back to his substantive rank of Constable as from the 22<sup>nd</sup> August 2008. Sometime in June/July 2009 the Claimant wrote to the office of His Excellency, the Governor requesting the result of the interview for the post of Inspector of Police. The Claimant did not receive a reply.
- [16] On the 4<sup>th</sup> of May 2009, the Claimant again wrote to His Excellency, the Governor reminding him that he did not receive a reply to the previous letter and is still awaiting a reply. In fact the Claimant had been in constant contact by telephone with the Office of the Governor concerning the result of the interview for the post of Inspector of Police.
- [17] On return to Montserrat in August the Claimant said that he went to the Office of PSHRM (I suppose that is the Permanent Secretary Human Resource Management), he had a conversation with Mrs. Daphne Cassell who told the Claimant of a letter she sent to the Commissioner of Police. Mrs. Cassell eventually gave the Claimant a copy of the same letter.
- [18] The letter is in the following terms:-

“July 15,2009  
Mr. Julian Wade  
43 Hockley Close  
Newtown  
Birmingham B19 2NS  
West/Midlands  
England  
UFS Commissioner of Police,  
Dear Mr. Wade,

### **REQUEST FOR INFORMATION**

With reference to your letter dated the 4<sup>th</sup> May 2009, to His Excellency the Governor on the above subject, seeking information as to the notification of the outcome of the selection process for the post of Inspector in the Royal Montserrat Police Force, we advise that **you were not offered the post of Inspector in the Royal Montserrat Police Force** (my emphasis). Kindly accept our apologies for the delay in responding.

Daphne Cassell (Mrs.)

Permanent Secretary (HRM)

Cc His Excellency the Governor.

[19] After receipt of the above letter the Claimant on the 10<sup>th</sup> November 2009 wrote to the Office of the PSHRM requesting information concerning the refusal to appoint him to the rank of Inspector . On the 2<sup>nd</sup> December 2009 Mrs. Ryan of PSHRM responded in the following terms:-

Dear Mr. Wade,

Your request of 28<sup>th</sup> October, 2009 refers:

“ Please be advised as follows in relation to your application and interview for the post of Inspector in the Royal Montserrat Police Force:

1. In July 2008 the Public Service Commission recommended your appointment as Inspector of Police which was approved by the Governor.
2. On the 21<sup>st</sup> August 2008 you were severely reprimanded by the Commissioner of Police for your actions in an incident made the subject of a complaint against the Force made by Mr. Alwyn Ponteen. **The complaint was found to be justified and the Force suffered embarrassment and was required to pay monetary compensation to Mr. Ponteen.** As a result of that disciplinary mark against you and on the basis that you were scheduled to remain overseas completing studies, the Governor’s approval for **your appointment was rescinded on the basis that it would not be in the best interest of the Force or Public for you to be appointed.**
3. As a result, you were not offered the position of Inspector of Police. The said post was re-advertised and filled. Please be guided accordingly.

K.Ryan.”

[20] As a result of the foregoing, the Claimant has brought this motion alleging inter alia that the Governor breached the rules of Natural Justice when he failed to give him an opportunity to be heard before deciding to rescind his appointment as Inspector of Police.

**“ Judicial Review is available in cases where a decision making body (or authority) exceeds its powers, commits an error of law, commits a breach of Natural Justice, reached a decision which no reasonable**

**Tribunal could have reached or abuses its powers. “ (per Small Davis J.)<sup>1</sup>**

[21] The crucial issue to be determined in my opinion is, was the Claimant appointed as an Inspector of Police of the Royal Montserrat Police Service. Before I analyze this all important question, I shall first of all consider the issue of Natural Justice.

[22] In **Lambert Nelson v The Mayor and citizens of Castires<sup>2</sup>** Harriprashad- Charles J. quoting from the decision of Tucker C.J in **Rusell v Duke of Norfolk<sup>3</sup>** Lord Tucker opined:

“ There was in my view, no words of which are of universal application to every kind of enquiry and every kind of domestic tribunal. The requirements of Natural Justice must depend on the circumstances of every 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.” (my emphasis)

[23] In **Ridge v Baldwin and others<sup>4</sup>** Lord Eversthd at page 84 said:-

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<sup>1</sup> Jared Adams v Commissioner of Police of the Royal Anguillan Police Force and Hon AG 89 of 2009 H.C Anguilla

<sup>2</sup> SLHCV/2004/0035 at para 24

<sup>3</sup> (1949) 1 AEL 109, 118



“ It has been said many times that the exact requirements in any case of the so called principles of Natural Justice cannot be precisely defined; that they depend in each case on the circumstances of that case. According to Sir Frederick Pollock the meaning of the phrase “natural justice” is the “ultimate principle of fitness with regard to the nature of man as rational as a rational and social being.”

[24] Learned counsel for the Claimant in his written submission refers to **Section 11(2) of the Police Act<sup>5</sup>** which provides:- “Every appointment to the Force of the rank of Assistant Superintendant or Inspector shall be made by the Governor after consultation with the Public Service Commission.”

[25] I make the observation that we are not here considering an appointment of an Inspector. Mr. Brandt contends that in July 2008 Steve Forester, the Commissioner of Police received a memorandum from the Permanent Secretary, Human Resource informing him that the 1<sup>st</sup> Defendant has given approval for the Claimant to be appointed Inspector. The said letter contained an offer by the 1<sup>st</sup> Defendant to be signed by the Claimant. Mr. Steve Foster, Commissioner of Police, refused to pass over the said documents to the Claimant and instead returned them to the Permanent Secretary, Department of Administration.

[26] In this regard the Claimant said under cross-examination-

“ I did not receive a letter in respect of the promotion. I was not given any assurance by anyone that I would be made an inspector. I was made an

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<sup>4</sup> (1963) 2 ALLER 66

<sup>5</sup> Chapter 10.01 of the Laws of Montserrat

Inspector. I am clear what an offer is... I am clear what an acceptance is- a willingness to be bound by an offer. I would not agree with you that there was no contract. The offer letter was not given to me by the Commissioner so that I could not have accepted.”

[27] Mr. Brandt argues that he, the Governor, subsequently consulted the Commissioner of Police and withdrew the offer without consulting the Public Service Commission as required by law. Mr. Brandt failed to indicate what law he was referring to which mandates the Governor to consult with the Commission before withdrawal of the offer. I know of no such law.

[28] Mr. Brandt submits:-

“... that the first Defendant had a duty to consult the Public Service Commission not only when the Claimant applied to become an inspector of Police but also after the Commissioner of Police made an adverse report on the Claimant. He ought to have consulted with the Public Service Commission on receipts of this new information.”

[29] In support of that submission, learned counsel referred to the **Public Service Commission Act**<sup>6</sup>

[30] S4(1) provides:-

“Power to make appointments to Public office... is hereby vested in the Governor after consultation with the Commission.”

[31] I would simply say that the Governor was not making an appointment to a Public Office.

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<sup>6</sup> Chapter 01.6 Laws of Montserrat

[32] Learned Counsel, Mr. Brandt, argues that the duty to consult under Section 4(1) is mandatory for the purposes of the legislation in that of the 1<sup>st</sup> Defendant made an appointment in breach of the provision for consultation, that any appointment so made is invalid **Bradbury v London Borough of Enfield** <sup>7</sup>

[33] Again, I reiterate this is for an appointment. Is learned counsel, on behalf of the Claimant saying that the Governor failed to consult the Commission and therefore the “appointment” of the Claimant to the post of Inspector of Police is invalid?

[34] Mr. Brandt also contends that the procedure before the Commission is that the Claimant had to be accorded the right to put his case and cross-examine Mr. Ponteen and the other witnesses who gave evidence against him. He had no such opportunity before the 1<sup>st</sup> Defendant. The matter so far as the withdrawal of the offer of appointment to the post of Inspector was never before the Commission.

[35] Mr. Brandt argues that “ the Claimant was required by Law to have a fair hearing before the offer of promotion was recalled.

[36] Learned counsel refers to a dictum by Lord Bridge in **Lloyd v McMahon**<sup>8</sup> I shall quote the whole passage to get a full meaning of what was said as learned counsel quoted only part.

“My Lords the so called rules of Natural Justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept,

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<sup>7</sup> [1967] 3 A.L.L. ER 424

<sup>8</sup> [1987] Act 25 at 702-703

what the requirements of fairness demands when any body, domestic, administrative or judicial has to make a decision which will affect the rights of individuals **depends on the character of the decision making body, the kind of decision it has to make and the statutory or other frame work in which it operates.** In particular, it is well established that when a statute has conferred on anybody the power to make a decision affecting individuals, procedure prescribed by statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure attainment of fairness.” (my emphasis)

[37] I know of no statutory provision which governs the withdrawal of an offer. In this case the withdrawal of an offer to be promoted to the rank of Inspector of Police. Mr. Brandt has pointed me to none.

[38] I must not be taken for one minute, as saying that the decision maker in exercising the power must not act fairly.

[39] In my view the underlined words, **particularly the kind of decision it has to make,** are critically important in the light of the facts of this case.

[40] Learned Counsel for the Claimant argues that the Claimant contends that he had a legitimate expectation that he would have been given an opportunity by the 1<sup>st</sup> Defendant to be heard.

[41] Mr. Brandt contends that the basic right to be heard is a fundamental aspect of procedural fairness. This often involves putting matters to a particular person and allowing them the chance to comment. He refers to:- **F**

**Hoffman La Roche and co AG. and others v Secretary of State for Trade and Industry.**<sup>9</sup> Lord Diplock at 368 said:

“.. it is the duty of the Commissioner to observe the rules of Natural Justice in the course of their investigation- which means no more than they must act fairly by giving to the person whose activities are being investigated a reasonable opportunity to put forward facts and arguments in justification of his conduct of these activities before they reach a conclusion which may affect him adversely”

[42] Mr. Brandt referred to:- **General Medical Council v Spackman**<sup>10</sup> Lord Wright at page 644 opined:-

“ If the principles of Natural Justice are violated in respect of any decision it is indeed, immaterial, whether the same decision would have been arrived at in the absence of the departure from the principles of Justice. The decision must be declared to be no decision.-

[43] Finally Mr. Brandt in his Skeleton Submissions argue that Mr. Wade’s case is not based on Contract but inter alia on legitimate expectations. It does not depend upon offer and acceptance. Once he was recommended by the Public Service Commission from among 11 persons and his appointment was approved by the Governor, he had a legitimate expectation that he would be appointed. It did not depend upon communicating to him.

[44] The simple point I make is, if the offer was not communicated to him, how would he operate in the post of Inspector?

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<sup>9</sup> [1975] AC 295

<sup>10</sup> [1947] AC. 627

In **Regina v The Department of Education and Employment**<sup>11</sup> Peter Gibson L.J at paragraph 48 referred to De Smith, Woolf and Jowell in **Judicial Review of Administrative Action**<sup>12</sup> The learned authors inform us:

“ Although detrimental reliance should not therefore be a condition precedent to protection of a substantive legitimate expectation, it may be relevant in two situations: first, it might provide evidence of the existence or extent of an expectation. In that sense it can be a consideration to be taken into account in deciding whether a person was in fact led to believe that the authority would be bound by the representations. Second, detrimental reliance may be relevant to the decision of authority whether to revoke a representation.”

[45] At paragraph 50 of **R v Department of Education** (supra) Peter Gibson L.J referring to **R v North & East Devon Health Authority, ex Coughlan**<sup>13</sup> in which Lord Woolf M.R said:

“When the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantial, not simply procedural, authority now establishes that here too the court within a proper case decided whether to frustrate a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.”

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<sup>11</sup> QBC OF 1999/0782/4 Civil Division

<sup>12</sup> 5<sup>th</sup> Edition 1955 P 524

<sup>13</sup> 16 unreported 16 July 1999

[46] In light of the foregoing, in my opinion, it seems to me that Mr. Brandt's submission was based on a procedural benefit and not one which is substantial.

[47] I know of no promise direct or indirect, or can be inferred which would avail the Claimant so that he can rely on legitimate expectation. However as I said above the decision maker, in this case, the Governor, must act fairly. "Legitimate expectation sought to be relied on as a basis of Judicial review must emanate from an unequivocal and unambiguous representation expressed or implied of a public authority..." See **Attorney General and others vs. Joyce and Boyle**<sup>14</sup>

[48] Even if the Claimant could rely on legitimate expectation the court must first of all conduct a balancing exercise. In **Nersham Insurance (Barbados) Limited v The supervisor of Insurance et al.**<sup>15</sup> Chase J. opined:

"...depending on the circumstance, fairness is not limited to the person who alleges unfairness in the decision making process but where the public interest is affected, fairness extends to the community at large. To my mind, fairness may also include the existence of a just system to ensure that the ends of Justice are met."

#### **DID THE GOVERNOR ACT FAIRLY**

[49] Learned Counsel Mr. Brandt in his Skeleton arguments filed on 7<sup>th</sup> October and which I received on 31<sup>st</sup> October argues that the Claimant was treated unfairly. He had a right to be heard by the Governor, Mr. Bacon and

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<sup>14</sup> [2006] 69 WIR 104 TO I07

<sup>15</sup> Suit no. 265/1996 1<sup>st</sup> July 1996 H.C Barbados

Mr. Foster. He was not accorded due process. After Mr. Foster “bad talked” the Claimant, it was incumbent upon the Governor to put what Mr. Foster said to the Claimant and get his side of the story. After affording him the opportunity he could have decided not to approve the Claimant’s promotion but he must be given the opportunity to be heard.

[50] According to Mr. Brandt it is a matter of adjectival law not of substantive law. The questions “Was the decision reached fairly” and “Was the decision a fair one” remains separate questions. The test is not “has an unjust decision been reached?” but the principle of fairness is rooted in the common law and fairness involves a right to be heard “was there an opportunity afforded for injustice to be done?”. Mr. Brandt refers to “**Barrs Supra**” (The case was neither provided nor the citation).

[51] The first observation I wish to make is that Mr. Foster was not bad talking (as Mr. Brandt inelegantly puts it) the Claimant. Mr. Foster, as Commissioner, has a duty to report to the Governor the result of the investigation.

[52] The letter from the Department of Administration dated the 2<sup>nd</sup> December 2009 giving the reason for rescinding the approval for the appointment of the Claimant to the rank of Inspector reads in part as follows:

“...on August 21<sup>st</sup> 2008 you were severely reprimanded by the Commissioner of Police for your actions in an incident made the subject of a complaint against the Force made by Mr. Alwyn Ponteen. The complaint was found to be justified and the Force suffered embarrassment and was



**required to pay monetary compensation to Mr. Ponteen ... the Governor's approval for your appointment was rescinded on the basis that it would not be in the best interest of the Force or the public for you to be appointed (my emphasis)..”**

In rescinding the decision to appoint the Claimant the Governor took into consideration not only the interest of the police force but also the interest of the public.

[53] I am of the view that the Governor in acting fairly should not only take into consideration the interest of the Claimant but, that of the public,

#### **CRONOLOGY OF EVENTS**

[54] On Saturday 7<sup>th</sup> July 2007 the Claimant arrested Alwyn Ponteen. This arrest triggered the inquiry into the Claimant's conduct. On 18<sup>th</sup> March 2008, some nine months after the arrest, the Claimant was interviewed for the post of Inspector of Police. When the Claimant was interviewed the investigation was ongoing.

[55] Mr. Foster in cross-examination said:-

“ It was a three personal panel that did the interview I brought it to the attention of the panel that there were two ongoing investigations against Mr. Wade.” Mr. Foster also said that he was a member of the three member panel that interviewed the claimant.

[56] It was suggested to Mr. Foster in cross-examination that he should not have allowed the Claimant to be interviewed because of the ongoing

investigation. Had he done so, the Commissioner would have been accused of bias on prejudging the issue.

[57] Mr. Foster said in cross-examination that he reported the incident to the Governor in 2007 as he was duty bound to do. He also said that the Ponteen matter was not finalized until 2008.

[58] In July 2008 the Public Service recommended the Claimant's appointment as an Inspector. Which was approved by the Governor.

[59] According to the letter from the Department of Administration (referred to above) the Commissioner reprimanded the Claimant on the 21<sup>st</sup> August, the report into the incident involving the arrest of Mr. Ponteen must have been released on 21<sup>st</sup> August or close to that date. The Claimant left for studies in England on the following day 22<sup>nd</sup> August 2008.

[60] The Commissioner of Police informed the Governor of the result of the investigation, that was after the Governor had approved the recommendation of the Public Service recommendation that the Claimant should be appointed to the post of Inspector of Police. The Governor then rescinded his approval.

[61] I turn now to consider the case of **Ridge v Baldwin and others**<sup>16</sup>. Ridge the Applicant was Chief Constable of Brighton Borough Police Force He, along with 2 other junior officers was arrested for criminal conspiracy to corrupt the course of justice. He was suspended from duty after he had been arrested. Two indictments were filed against the Appellant and his co accused- Criminal conspiracy and corruption. At the end of his trial on the first indictment the appellant was acquitted but the other two officers were

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<sup>16</sup> [1963] AEN 66

convicted. In passing sentence on the two convicted officers, the judge commented that they had not had from the appellant the professional and moral leadership which they should have had.

[62] At the trial on the Second indictment on 6<sup>th</sup> March 1958, the prosecution offered no evidence against the appellant. The judge directed the jury to acquit him. Again, the judge made observations about the appellant. On 7<sup>th</sup> March 1958, the Watch Committee held a meeting which, after considering matters relating to the appellant, they unanimously dismissed him from his office as Chief Constable.

[63] The appellant commenced an action against the Watch committee claiming that his purported dismissal was void and also claiming payment of salary and pension or alternatively damages. His action was dismissed. On appeal, The House of Lords, by a majority. Held, (Lord Evershead dissenting) The decision of the Watch Committee on 7<sup>th</sup> March 1958 dismissing the appellant was null and void for the following reasons:- (I refer to the reason so far that is material to the case under consideration.) (Lord Devlin dissenting) the consequence of a failure to observe the rules of Natural Justice was that the decision of 7<sup>th</sup> was void not merely voidable.

[64] Lord Evershead in a powerful dissention judgment. I accept it is a dissenting judgment and what this means.

[65] Lord Evershead in considering the words of Donovan J, the learned trial judge at the appellant's trial when he told the two officers who were tried

with the appellant that “they had not had from the appellant the professional and moral leadership which they should have had.”

[66] Lord Evershead at page 18 of the judgment opined:-

“ As I understand the language of Donovan J ( and as I no doubt , the Watch committee also understood it) The appellant had been shown not to possess a sense of responsibility sufficient for the office which he held and so was unable to provide to the police force under his control which his office properly required.”

[67] The first of the relevant headings in the discipline code, “Discreditable conduct” is thus defined: “that is to say, if a member of the Police Force acts in a disorderly manner or any manner prejudicial to the discipline or reasonably likely to bring discredit on the reputation of the force or of the police service”

[68] It must be remembered that the Watch Committee was acting on the criticism of the behavior of the appellant by the judge. The decision as the failure of the Watch Committee to observe the rules of Natural Justice the decision being void, two of judges of the House of Lords dissented.

[69] In the case at bar a report was made by Ponteen. The Claimant was told of the report. He wrote a detailed 5 page report in answer to the Complaint. In this regard it cannot be seriously contended, in my considered opinion, that he was not given an opportunity to be heard or to respond to the allegation which was made against him.

[70] The internal investigation which was conducted in relation to the Ponteen affair, the report was before the investigator(s), who ever carried out the investigation. I reiterate it cannot be said that he was not heard. One does not have to be present to be heard.

[71] Having carried out the investigation and I entertain no doubt that it was properly carried out in light of the fact that the Claimant's report was before the investigator(s). In that regard he was heard. The report which resulted from the investigation was eventually passed to the Governor who revoked his approval for the Claimant to be elevated to the rank of Inspector of Police. One of the reasons given for the revocation was that it would not be in the interest of the public or police force.

[72] Learned Counsel Mr. Meade who apparently had conduct of this matter on behalf of the Defendants, in his Skeleton arguments submits that the Defendants did not breach the the rules of Natural Justice by not affording the Claimant an opportunity to be heard after the Public Service Commission made its recommendations. His Excellency the Governor recommending the appointment of the Claimant, disciplinary breaches came to light. They were the subject of an internal investigation in which the Claimant made written statements outlining his actions in respect of the two incidents, one involving a firearm incidents, the other involving unlawful arrest and false imprisonment in respect of Alwyn Ponteen. He was cleared of the firearm incident. The incident involving Alwyn Ponteen amounted to unlawful arrest and gross misconduct.

[73] As a result a formal apology was offered to Mr. Ponteen on behalf of the Montserrat Police Force and compensation was paid to Mr. Ponteen by the Montserrat Police Force.

[74] The Claimant was given a formal reprimand. His Excellency the Governor acting upon the result of the internal investigation decided to rescind his approval for the appointment of the Claimant to the post of Inspector.

[75] Mr. Meade, Learned Counsel, argues that in that circumstance the rules of Natural Justice were not breached. I agree.

[76] I turn now to the important question, was the Claimant appointed Inspector of Police of the Montserrat Police Force. The answer in my judgment, without a doubt, is no.

[77] Mr. Buffong learned counsel for the defendants in cross-examination of the Claimant who said:- “ I did not receive a letter in respect of the promotion... I was not given any assurance by any one that I would be made an Inspector. The application was not given to me by the Commissioner so therefore I could not have accepted.”

[78] I am of the view that the basic elements of a contract have not been met.

[79] The Governor signed the approval for the Claimant to be elevated to the rank of Inspector of Police. This was never communicated to him. He should have signed a an acceptance form. He never received it or signed it. (See Steve Foster's Affidavit.) Moreover when one is promoted as Inspector of Police that position must be gazetted. There is no indication that this was done in relation to the Claimant. Clear indication, in my view that the

Claimant was never appointed or promoted to the rank of Inspector of Police in the Montserrat Police Force.

[80] There was no breach of the rules of Natural Justice with regard to the rescinding of the offer of appointment to the Claimant.

[81] In light of the foregoing the remedies prayed for by the Claimant are denied.

[82] There will be no order as to costs.



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Albert Redhead

High Court Judge