IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANIGUILLA
(CIVIL)
A.D. 2018

CLAIM NO. AXAHCV 2018/0010

BETWEEN:

CARL PALMER

Applicant

AND

[1] THE SUPERINTENDENT OF PRISONS

[2] THE ATTORNEY GENERAL

Respondents

Appearances:

The Applicant in Person
Mrs. Sherma Blaize Sylvester for the Respondents

2018: March 16; April 18 ;
July 30

Judicial Review – Application for leave – challenge to several decisions made by separate persons - Grounded on procedural irregularity and unreasonableness of decision – Applicant complaining that decision maker (Tribunal headed by Ms. Fontaine) who was empowered to conduct rehearing, failed to do so but instead held a truncated hearing – Further complaint that the decision maker failed to properly exercise her powers to call for available evidence during hearing – Further complaint that one decision maker (the Superintendent of Prisons) failed to exercise his discretion properly and acted unreasonably in laying charges and referring charges to Governor – Applicant failing to show that an arguable case with any likelihood of success that any of the decisions were bad in law. Application dismissed.

DECISION

[1] RAMDHANI, J. (Ag.): This is an application for leave to apply for judicial review filed on 7th March 2018, seeking permission *inter alia* to challenge the decision of a Tribunal of Inquiry made on the

28th January 2018, and for further declarations that a decision made by the Governor on 20th February 2018 to dismiss him from the prison service is null, void and of no legal effect. Having heard the parties and considered the submissions, permission is denied with no order as to costs for the following reasons.

The Application for Leave

[2] The applicant, **Carl Palmer, was at all relevant times a Senior Officer at Her Majesty's Prison. He** became the subject of certain disciplinary charges in 2016 and after several inquiries, he was dismissed by His Excellency the Governor on the 20th February 2018.

[3] He filed this Application on 7th March 2018 seeking declarations relating to the validity of certain decisions which led to his dismissal as well as an order quashing and setting aside those decisions. The details of those relief are now set out:

1. *A Declaration of the Tribunal of Inquiry led by Ms. Eustella Fontaine and contained in her Report, dated 26th January 2018, to His Excellency the Governor of Anguilla, Tim Foy upholding two charges of discreditable conduct against the applicant, infringes the due process rights and the procedural fairness rights of the applicant;*

2. *A Declaration that the decision made by His Excellency the Governor, Tim Foy on 20th February 2018 to dismiss the applicant from his post as Senior Officer of the prison service of Anguilla is unlawful, null and void and of no legal effect;*

3. *A Declaration that the applicant remains in hi**s post as Senior Officer at Her Majesty's** Prison, Anguilla, and that the applicant remains entitled to the full remuneration attaching to his post since the applicant is willing and able to continue to render the service required of him;*

4. *An order of Certiorari quashing the said decision of Ms. Eustella Fontaine and setting aside the said decision of His Excellency the Governor Tim Foy.*

5. *Costs.*

6. *Such further or other relief as the Court deems fit.*

[4] The grounds of the application were set out as follows:

1. *The applicant alleges unfairness in the decision making process of the Tribunal Inquiry led by Ms. Eustella Fontaine, relative to the said two charges of discreditable conduct brought against the applicant;*

2. *The decision of the Tribunal of Inquiry was rendered without any proper reasoning to support said decision;*

3. *The remit of the Tribunal of Inquiry was to review, hear evidence and make a final recommendation regarding the decision of an earlier tribunal headed by Don Mitchell* ***CBE., QC (the "Don Mitchell Inquiry") with respect to the charges aforesaid against the*** *applicant. Ms. Fontaine in her decision failed to make a proper or any assessment of the facts surrounding said charges; failed to fully consider the decisions of the Don Mitchell Inquiry which she was required to review and in particular failed to consider the reasons given for the decision of the said Don Mitchell Inquiry; further Ms. Fontaine failed to consider how Don Mitchell, CBE QC applied his mind to the facts surrounding the charges against the applicant and failed to give particulars of how she arrived at her conclusion that the two charges of discreditable conduct against the applicant should be upheld;*

4. *Contrary to the self-stated scope of the Tribunal of Inquiry, it failed to consider fully in its review the totality of the evidence relating to the charges brought against the applicant;*

5. *The Tribunal of Inquiry wrongfully limited its proper consideration of the evidence in this matter to hearing three additional witnesses, namely, Lansworth Laborde, Dannice Simmons and Ms. Sasso, contrary to the requirement that the Tribunal review all relevant and appropriate evidence including the evidence of all relevant witnesses available to the Tribunal;*

6. *The Tribunal of Inquiry ruled inappropriately that the first of the two alleged incidents which formed the basis of the charges against the applicant occurred on 29th February 2016 despite the urging of the applicant and the evidence of the witness, Prison Officer, Mr. Laborde that the alleged incident took place on 28th February 2016.*

7. *The Superintendent of Prisons wrongly exercised his discretion to charge the applicant with assault and to refer the charge of assault up to the Governor. The scheme of the Code of Discipline for Prison Officers contained in the Prison Regulations of Revised Regulations of Anguilla (RRAP75-1) and the interests of justice require that the discretion to be exercised on a rational basis and in accordance with the purposes of the Code and the Prison Regulations;*

8. *The decision of Ms. Fontaine was wrong in law and against the weight of the evidence;*

9. *In all the circumstances of the case the decision of the Governor to dismiss the applicant from the prison service following upon the decision of the Tribunal of Inquiry was wrongful, unlawful and contrary to the precepts of due process and procedural fairness.*

[5] The application was supported by an affidavit sworn by the applicant on even date, in which he set out the history of the events leading up to the two decisions which effected his dismissal.

[6] In brief, at the relevant times the applicant was a prison officer who began his career with Her Majesty's Prison as a prison officer Basic Grade in 2009 and was then promoted to Senior Officer in 2015. He asserts that his professionalism caused him to come at odds with then Superintendent Gumbs on issues related to prison discipline among inmates. He stated that he was battling a 'state of chaos' in the prison and this caused him to question the 'less than effective management of the prison'. He stated that he voiced his opinions and disagreement with management issues and this caused the Superintendent to become 'disaffected' with him. As a result, the prison environment among his peers became 'hostile' and in fact that this was being orchestrated by the Superintendent who had become hostile towards him. Matters got to the point where the Superintendent threatened to see him dismissed.

[7] It was in this environment that two complaints were made against him related to allegations made by two separate prison officers. The two charges are as follows:

(a) *That on Monday, 29th February 2016 in the island of Anguilla, Senior Officer Carl Palmer did commit an offence of discreditable conduct in that while in a verbal confrontation with SO Rondel Kyte he threatened to 'mash him up' contrary to section 2(a)(iii) of the Code of Discipline for Prison Officers, Prison Regulations RRA P75-1; and*

(b) *That on Wednesday 2nd March 2016 in the island of Anguilla Senior Officer Carl Palmer did commit an offence of discreditable conduct in that while in a verbal confrontation with SO (Ag) Delma Titre he assaulted her by brushing her hand down*

when she attempted to turn on the light switch contrary to section (2)(a)(iv) of the Code of Discipline for Prison Officers, Prison Regulations RRA P75-1

[8] Those charges first came before the Superintendent who did not dismiss them but eventually referred the charges to the then Governor. The then Governor appointed Mr. Don Mitchell Q.C. to conduct a formal inquiry into the charges. Mr. Mitchell Q.C. held the inquiry and issued a report on the 20th April 2017 and found the applicant guilty of both charges.

[9] By a letter dated the 9th May 2017, the then Governor wrote to the applicant and informed him that she had considered the record of proceedings of Inquiry before Mr. Mitchell Q.C. and for the reasons given in the report, had decided to uphold the two charges of discreditable conduct against him. The Governor gave notice that she was proposing to dismiss the applicant and informed him that he had a right before such step was taken to request that a personal hearing be held in accordance with the Code of Discipline.

[10] The applicant requested a personal hearing and one was held by Mr. Stanley Reid who recommended that a further inquiry be held in accordance with section 12(5) of the Prison. The essential complaint before this personal hearing was that the complaint from the applicant that Mr. Mitchell Q.C. had not heard crucial witnesses from his side.

[11] This led to the Governor appointing Ms. Eustella Fontaine to convene a Tribunal of Inquiry to hold a further inquiry into the charges. That further inquiry was held and the findings made by Mr. Mitchell Q.C. were upheld.

[12] The essential complaints against the Ms. Fontaine's Inquiry were contained in the applicant's affidavit at paragraphs 13 to 17. He states:

13. *I am concerned that Ms. Fontaine in her decision following the Tribunal of Inquiry has infringed my rights to due process and to procedural fairness. In the first paragraph of her said decision, Ms. Fontaine set out the scope of her Inquiry and the responsibility that she was appointed to discharge, noting in her said Report that she was appointed* ***as a suitably qualified person to "review, hear evidence and make a final recommendation" regarding the two complaints brought against me.***

14. *I am alleging unfairness in the decision making process of the Inquiry led by Ms. Fontaine for a number of reasons. Firstly, a decision was rendered by the Tribunal of Inquiry upholding the charges against me without any or any proper reasoning to support its decision. I observe that the note of the decision of the Tribunal of Inquiry conducted by Ms. Fontaine says baldly (at page 4 of its report) that:*

    > *"Don Mitchell CBE QC would have had the opportunity to observe the witnesses of fact, who would have had direct evidence arising from the alleged incidents of 29 February 2016 and 2 March 2016. I am of the view that the evidence of Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso now Superintendent Carice Sasso, did not advance the case of Senior Officer Carl Palmer, as such, I am contrained to agree that the two charges of discreditable conduct brought against Senior Officer Carl Palmer* ***should be upheld."***

15. *It is my belief that the Tribunal of Inquiry failed to properly review the totality of the evidence in the matter of the charges brought against me despite the self-stated scope of the Inquiry to review, hear evidence and make recommendations.*

16. *By hearing only the additional evidence of the three prison officers namely, Laborde, Simmons and Sasso, Ms. Fontaine failed in her duty to hear the totality of evidence. Further, the Tribunal of Inquiry was required – as part of its responsibility to review, hear evidence and make recommendations – to go beyond and the mere indication that it "reviewed the transcript of the hearing before Don Mitchell CBE., QC and the notes of the personal hearing before Stanley Reid and the record prepared by the then Superintendent of Prisons, Mr. Conrad Gumbs in his investigation of the charges brought against Mr. Palmer."*

17. *Further, I believe that Ms. Fontaine in her decision failed to make a proper or any assessment of the facts of my case. I also believe that she failed to fully and properly consider the decision of the Don Mitchell Inquiry and in particular the reasons given for its decision. She failed to consider how Don Mitchell CBE QC applied his mind to the facts surrounding the charges against me and also failed to give particulars of how she arrived at her conclusion that the two charges of discreditable conduct against me should be upheld.*

[13] In addition to these complaints, the applicant also complained in his affidavit that the Tribunal made an incorrect ruling about when the events which led to one of the charges occurred. He claimed that it would have been easy for the Tribunal to call for a 'relevant signing-in book' to show that the incident actually occurred on 29th February and not the 28th of February as had been found.

[14] He also complained in his affidavit that the Superintendent wrongly exercised his discretion to lay a charge of assault against him in relation to allegations that he had 'brushed' the hand of another

prison officer, and then to refer the charge to the Governor. His complaint here was that the charge was of a trivial nature and that the Superintendent should have exercised his discretion not to lay the charge and if he did, not to refer it to the Governor.

[15] As far as the decision of the Governor is concerned, his complaint appears to be that the decision to dismiss was a draconian course to adopt as it is not the purpose of the Prison Code to cause the dismissal of officers for trivial offences. For good measure, he stated that 'never in the history of the prison has anyone been charged with assault on the basis of so trivial an incident as brushing the hand of a fellow officer.

[16] An affidavit in answer followed from the Superintendent of Prisons, Carice T. Sasso dated 15th March 2018. A number of documents were attached to that affidavit including the charge sheets (CS1); the transcripts of the hearing conducted by Mr. Don Mitchell Q.C. (CS2); a letter to the applicant from the Governor dated 9th May 2017 in which Her Excellency informed the applicant that Mr. Mitchell Q.C. had concluded his hearing and had upheld the charges and that dismissal was being considered and that he had certain rights under the Code of Discipline before such decision would be taken (CS3); letter dated 22nd June 2017 from Mr. Stanley Reid who had conducted a personal hearing with the applicant and the transcripts of that hearing (CS4); letter dated 16th August 2017 from the Governor to the applicant giving notice that a 'further inquiry under Regulation 12(5) be held' (CS5); letter dated 23rd August 2017 from Ms. Eustella Fontaine informing the applicant that she had been appointed to conduct 'a further and final hearing' (CS6); letter dated 26th January 2018 from Ms. Fontaine to the Governor together with transcripts of further and final hearing conducted by Ms. Fontaine (CS7). Two other affidavits were filed on behalf of the Respondents, one by Dannice L. Simmons a prison officer dated 28th March 2018, and the other by Lansworth Laborde also a prison officer dated 29th March 2018. A 'second affidavit' dated 5th April 2018 was then filed by the applicant. On the 6th April 2018 a 'further affidavit' was filed by the Superintendent of Prisons, Carice T Sasso.

[17] At the hearing, the applicant raised new matters. First, he argued that the Superintendent had acted improperly at the initial hearing when he refused or failed to call for witnesses who may have made favourable statements for the applicant. Second, he contended that the delay in finally

getting these witnesses to testify (at the last Tribunal hearing) made it possible for persons to **tamper with and 'coach' his witnesses so that they failed to give any** meaningful evidence on his behalf. These last points were not on the pleaded case, but this Court has addressed them, as having regards to the outcome of this matter, ignoring them might not bring the necessary closure to this matter.

General Principles on an Application for Leave to Apply for Judicial Review **–** Test for grant of leave to apply for judicial review

[18] This applicant represented himself at the hearing of his application and so it has become necessary that this Court carefully set out the applicable principles which guided the court on this application.

[19] On any application for judicial review, the reviewing court is not to embark on a rehearing of the matter but is to investigate whether the decision-maker whose decision it is sought to be reviewed has acted properly and in accordance with law. I can hardy say it any better than how it is set out in Halsbury**'s** Laws of England Volume 1(1) 2001 Reissue at paragraph 59, where the authors stated:

> *"Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties. This jurisdiction was originally derived from the common law, and was exercised by the issue of prerogative writs of mandamus, certiorari and prohibition, but it is now conferred and regulated by statute and rules of court.*
>
> *Judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself. It is thus different from an ordinary appeal. The purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected: it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matters in question. Unless that restriction on the power is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power. That is so whether or not there is a right of appeal against the decision on the merits. The duty of the court is to confine itself to legality. Its concern is whether the decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would have reached, or abused its*

powers. The grounds upon which administrative action is subject to control by judicial review have been conveniently classified as threefold. The first ground is 'illegality': the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. The second is 'irrationality', namely 'Wednesbury unreasonableness'. The third is 'procedural impropriety'.

[20] On the application for leave to apply for judicial review, the applicant is required to show the court that there is an arguable case with a realistic prospect of success. The learning set out by the Privy Council in the case of Sharma v Browne-Antoine and Another (2006) 69 WIR 379 has been adopted by the courts of this region. The test is expressed as follows:

> *"The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: see R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628 and Fordham, Judicial Review Handbook 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application.*

[21] This Court having regard to the evidence presented on this application, must be satisfied that there is a case fit for further investigation properly to be done only at a full *inter partes* hearing of the substantive application for judicial review. It is therefore this Court's task to examine the grounds raised and the evidence to determine whether there is an arguable case with a realistic prospect of success. Having regards to the various contentions on the pleaded case, the court must ask, on the evidence before it, whether there is an arguable case with a likely prospect of success that:

(a) the decision the Tribunal of Inquiry led by Ms. Eustella Fontaine was bad for illegality, infringed due process, or was procedurally unfair?

(b) the decision of the Governor to dismiss the applicant was unreasonable or otherwise bad in law?

[22] Since the applicant was unrepresented, the court will address those other complaints raised by the applicant in his affidavits and his arguments before the court, namely whether the decisions of the Superintendent first, to lay a charge of assault and second to refer that charge to the Governor, were in any way bad in law.

The Law, Analysis and Findings

[23] There is no doubt that notwithstanding the applicant seeks a number of declarations, this is a matter on which the applicant would require the leave of the court to proceed. Having regard to the fact that ultimately the applicant is seeking to quash the decisions which led to his dismissal and be reinstated, it is a matter which falls within the judicial review jurisdiction of the court. See the case of The Honourable Attorney General v Giselle Isaacs (Antigua an Barbuda) [2018] UKPC 11.

[24] It was important to set out the general relevant procedure for discipline on charges of this nature.

The General Procedure on a Charge against Discipline

[25] Discipline in Her Majesty's Prison is governed by the Code of Discipline for Prison Officers. Not so long ago relevant questions related to general procedure to be adopted on a charge against a prison officer, and matters related to the Superintendent's powers of reference to the Governor was addressed by the Privy Council in The Superintendent of Prison and another v Hamilton [2016] UKPC 23. The answers provided by the Board were very instructive on this matter.

[26] Section 3 to 15 of the Code sets out the procedure to be adopted when complaint is made of an offence against a prison officer. It is undisputed that the initial responsibility for hearing any charge is laid upon the Superintendent. By section 5, the Superintendent shall, as soon as possible hear the case, take a full record of the proceedings, sign such parts of the proceedings which comprise evidence and the prison officer shall be shown this and sign it.

[27] There are two categories of offences which are covered by the Code. These are now referred to as 'listed offences' and 'non-listed offences. It is now well established by the Privy Council that the Superintendent, if he does not dismiss any charge before him, has a discretion under the Code to refer up any charge to the Governor but must refer up 'non-listed charges'; there is no discretion in relation to the latter.

[28] The discretion given to the Superintendent to refer up 'listed charges' is an open discretion and matters which may affect this discretion would include questions as to whether the Superintendent may himself be a witness, actual or perceived conflicts of interests, and where he may consider that his power of punishment may not be adequate. There is nothing preventing the Superintendent, in my view, from dealing with a listed charge against a prison officer in a case where a non-listed charge has been referred up to the Governor. There may equally be cases where he might properly refer up the listed charges together with those that he must refer up.

[29] When a matter is referred up, the Governor may actually consider that the matter may be better dealt with by the Superintendent and resend it to him. Where the Governor retains the matter and the accused prison officer denies the charge, the Governor shall direct that an inquiry be held by a suitable person. If the person upholds the charges or any of them, the Governor may either caution the prison officer or impose other sanctions which are set out in section 12(1) and which includes dismissal. Where the Governor proposes to impose one of the statutory sanctions, he must in accordance with section 12(3) notify the prison officer concerned of his intent to impose such a sanction. The notice must advise the prison officer that he shall have a right to a 'personal hearing' before a person suitably qualified (other than the person who held the first inquiry). At this hearing, the prison officer may be accompanied by any serving officer of the prison service. The prison officer has within seven days to request such a hearing.

[30] Where the Governor has sent out a notice of proposed sanctions, the prison officer may also, within 14 days of the notice or such longer period as the Governor may allow, make representations in writing to the Governor, whether in defence or mitigation and whether or not he has any personal hearing.

[31] Section 12(5) provides that the Governor may, as a result of any representation made under this section direct a person nominated by him to hold an 'inquiry, rehearing or further inquiry'. The prison officer is entitled to be represented at this hearing.

[32] The Code does not define what each of these types of hearing entail, but it is clear that it envisages several distinct types of hearings. The words 'inquiry' and 'rehearing' may often be used

interchangeably, but it must be accepted that parliament in using three separate words must have intended each of these words to mean a different kind of hearing**. A 'rehearing' would have to** mean a full blown new inquiry where everything is at large, and that all evidence is to be retaken, and perhaps even new evidence led; a re-investigation see Yeung v Capstone Care Ltd UK Employment Appeal Tribunal /0161//13/DA.

[33] **An 'inquiry' when placed opposite 'rehearing' and 'further inquiry' would in my view envisage** in**vestigation of a narrow issue or matter. In this context, a 'further inquiry'** may include those inquiries which involve investigating matters which go beyond the scope of the first hearing.

[34] If after, any of these kinds of hearing is employed, the prison officer is again found to be guilty of the charge or charges, the Governor is then entitled to proceed with the relevant sanction. It is open to the Governor at this stage to impose the sanction of which he had given notice, and in my view, he is only allowed to vary that sanction at this stage where such substituted punishment is lesser or not any more adverse than which had been originally proposed.

[35] With these general principles I turn to the instant case and examine each of the complaints in light of the undisputed evidence presented before me.

The Superintendent**'s** Decision to charge the applicant and to Refer the Charges.

[36] Discipline is crucial for the smooth functioning of the prison. The existence of a Code of Discipline is testament that matters of discipline among prison officers who are expected to maintain a safe prison, is paramount. By Regulation 41 every prison officer is subject to the Code of Discipline, and the Code of Discipline stipulates that a prison officer commits an offence if he fails to conform to the Code **–** Section 1(2) of the Code.

[37] As noted earlier, Section 2 of the Code states that an officer commits an offence against discipline if he commits any of the offences which are set out in the Code. When a person is alleged to have committed an offence, it is the task of the Superintendent to consider the evidence on which the charge is based and then enter the charge on a charge sheet.

[38] It would appear that once a charge is made out on the evidence before the Superintendent, he has no discretion not to lay a charge. If such a discretion were to exist, then it could be open to abuse. Arguments therefore that no-one should be charged when a complaint is of a trivial nature seems more for punishment than whether such a prison officer is to be charged.

[39] Even if I were to be wrong about this, the evidence from the applicant was that there was a complaint from another officer that he had brushed her arm and that she had considered that he had assaulted her.

[40] The complaining officer on this charge, was Delma Titre. She stated in her statement to the Superintendent that on Wednesday the 2nd March 2016, she was on duty at the prison and at about 10:15 hours she was at the Gate. The applicant was in that same room. She stated:

> ***“I,…sat down on t****he computer checking on prison emails. Officer Palmer [The applicant] suddenly just turn the light switch off. I immediately ask Officer Palmer, why did he turn off the lights. I am using it. H****e turned to me and said, ‘now is time for the lights to go off,*** *he* ***wants to relax himself, when he is in here (that is the gate office) he don’t want lights on. I*** *ask him again to turn the lights back on, he refuse. I got up from my seat and headed* ***towards the light switch, as I move closer he said to me ‘turn on the*** *light switch and you will see wa go on here.’ I ask him excuse and he did not move. As I reach for the switch officer Palmer assaulted me by brushing my hands down and started to come to me. I told him (officer Palmer) what are you trying, is either you do me something here tonight or I do you.* ***I …then step back giving more space…***

[41] Now this court must make it very clear that it is not at all deciding whether any of this was true of not. This is not the task of the court. This is a court deciding whether there is an arguable case that any of the challenged decisions was bad for irrationality or irregularity, or in any other way made in excess of jurisdiction.

[42] That being said, I can hardly see how any reasonable Superintendent exercising his functions under the Code could have done anything else but to lay a disciplinary charge against the applicant. In the exercise of his functions under the Code, the Superintendent did not have to decide that the charge was proven to lay the charge; he was simply required to consider whether there was evidence supporting the charge. On paper, there was evidence of an assault. This evidence viewed objectively, revealed allegations of an alarming and volatile incident taking place between two prison officers at the gate office of the prison. The fact that the applicant in his own

statement to the Superintendent was denying the allegations did not make the allegations any less serious. Serious questions would have been raised if this Superintendent did not lay this charge. No reasonable Superintendent looking at this statement could have considered that this was a trivial allegation. The denials of the applicant would become relevant on the hearing.

[43] The charge which was laid against the applicant in relation to this allegation (**'brushing down'**) is a charge essentially of assault and is a non-listed charge. It fell within that category of charges in which the Superintendent had no discretion but to the refer to the Governor for resolution. This was made clear by the Privy Council in the Hamilton case discussed above. Once it is a non-listed charge, the Superintendent, after going through the formalities, and where he does not dismiss it, must refer the matter to the Governor.

[44] The other charge against the applicant was a listed charge. This charge was brought under section 2(a)(iii) of the Code and related to allegations made by SO Rondell Kyte. The relevant parts of the statement which came before the Superintendent from SO Kyte is now set out:

> *Dear Superintendent of Prison,*
>
> *Superintendent on Monday 29th February, 2016 at about 23:15hrs, Officers Lansworth Laborde and Terrell Thomas and I Senior Officer Rondel Kyte was in the Control Hub when I received a telephone call from SO C. Palmer who was stationed at the gate office.*
>
> ***He said to me, "I have a visitor coming and I would like to go outside and talk to him." I told*** *SO Palmer that I was unable to allow him to go outside at this time because I will have to seek permission from the Head of Custody (HOC) Carice Sasso. He subsequently slammed the telephone down.*
>
> *I immediately made a few telephone calls to the HOC from the control hub but they went straight to voicemail.*
>
> *I asked Officer T. Thomas to accompany me to the gate office. Upon approaching the* ***gate, I heard So C. Palmer saying, "I gonna mash up some people in here", we stood by*** *the gate for a few minutes. Shortly after SO C. Palmer opened the gate and Officer Thomas and I entered the gate office area, I told So C. Palmer again that I will have to seek permission from someone in Management before allowing him to go on the outside of the Prison Compound.*
>
> ***He said to me, "You are in charge now." I can let him out because I don't have to seek*** *permission. I told him at this time I am unable to let him leave the Prison Compound; I*

have to seek permission from someone in Management first. While in the gate office trying to make contact with the Superintendent of Prison via telephone, SO C. Palmer said to me ***in the presence of Officer Thomas, "I will mash you up", I immediately put down the phone*** *and told SO C. Palmer about the threats that he was making and informed him that I will report the matter to the Police and Superintendent.*

I made contact with the Superintendent shortly after and report the matter to him and permission was granted by the Superintendent for him to go outside.

[45] Without assessing the truthfulness of this statement, a neutral and objective assessment of this statement indeed reveals that there is sufficient material here for any reasonable Superintendent to lay a charge. Again, the denial of the applicant which was also before the Superintendent is not a matter which can lead to a finding that no charge should be laid. Denials and conflicting evidence are matters for the actual investigations into the charges.

[46] This was a **'listed charge,** and so there was a discretion to refer this charge up to the Governor or the Superintendent could have dealt with this matter himself.

[47] There was so much material coming from the applicant himself that he was at odds with the Superintendent that I failed to see how any reasonable Superintendent could have decided to try this charge or any charges which may have been laid against this applicant. In his affidavit, the applicant **spoke of the atmosphere which existed at the prison, and the 'hostile environment'** against him. The transcript of the personal hearing shows the depth of adverse view which the applicant holds of the Superintendent and his ability to be fair to him. As he stated himself, the Superintendent was on a stated mission to get rid of him before he, the Superintendent retires.[1] Having regards to these matters, I fail to see how the Superintendent could have exercised his discretion in any other way but to refer this charge to the Governor and this is so, especially in the light that there was a non-listed charge which was being referred to at the same time. For these reasons I cannot find that there is any arguable case with any prospect of success that the Superintendent**'s** decision to lay the charges or refer them to the Governor was unreasonable or otherwise unlawful.

[1] See page 7 of the transcript of personal hearing before Mr. Stanley E. Reid.

[48] Outside of his pleaded case, the applicant spent much time at the hearing arguing that the Superintendent acted improperly when he failed to call for all witnesses to give statements. This meant that he failed to receive statements from Laborde and Simmons, persons whom the applicant had wished to rely on and persons who, when they eventually testified, stated that they were not present at the relevant point in time when the alleged acts of wrongdoing took place. From the transcripts of the hearing before Mr. Mitchell Q.C. the Superintendent was questioned by counsel appearing for the applicant at that hearing about the absence of his witnesses at that the initial hearing before the Superintendent. He gave reasons for their absence saying that he only found out about them as being potential witnesses during the initial hearing. He actually states that the applicant was given an opportunity to call them but declined saying that he was stressed out. He was not contradicted by the applicant before Mr. Mitchell Q.C. This Court is not deciding whether any of that is true. But regardless, in my view, the absence of these witnesses at the initial hearing was not a matter which went to the reasonableness or lawfulness of the decision of the Superintendent to lay and refer the charges. What further reinforces this conclusion is that two tribunals have heard these witnesses – Durant appeared before Mr. Mitchell Q.C. and Laborde and Simmons appeared before Ms. Fontaine, and it has become clear that their evidence did not detract from the findings of guilt made by Mr. Mitchell Q.C. and affirmed by Ms. Fontaine. So even if I could properly consider this complaint, it not being pleaded, I am of the view, it does not raise any arguable point to grant leave.

The Tribunal Hearing before Ms. Eustella Fontaine

[49] The complaint here is that Ms. Fontaine failed to observe the due process rights of the applicant, and that she failed to properly carry out the task which was assigned to her.

[50] At the personal hearing before Mr. Reid, the applicant's primary complaint in relation to the hearing before Mr. Mitchell Q.C. was that he had been unable to call several witnesses who he stated were crucial to his defence. Mr. Reid completed his hearing and wrote to the Governor on 22nd June 2017 in the following terms:

> *Your Excellency,*
>
> *Mr. Carl Palmer, Senior Prison Officer requested a personal hearing pursuant to paragraph 12 (3) of the Code of Discipline for Prison officers contained in the Schedule to the Prison*

Regulations RRA P75-1. At your request I conducted the personal hearing, on 20th June, 2017 in the Executive Council Room. A copy of the transcript of the personal hearing is attached hereto.

***Mr. Palmer's request for a personal hearing followed your decision to uphold t**wo charges of discreditable conduct brought against Mr. Palmer by the Superintendent of Prisons, Mr. Conrad Gumbs. You came to this decision following an Inquiry into the charges by Mr. Don Mitchell CBE QC. By correspondence dated 9th May, 2017 you advised Mr. Palmer that pursuant to paragraph 12 (1) (a) and (2) of the Code of Discipline you are proposing an award by way of the sanction of dismissal from the prison service of Anguilla.*

The charges which have been and continue to be the subject of your consideration are:

1. *that on Monday 29th February, 2016 in the Island of Anguilla Senior Officer Carl Palmer did commit an offence of discreditable conduct, in that while in a verbal confrontation with SO **Rondel Kyte he threatened to "mash him up" contrary to** section 41 (2)(a)(iii) of the Code of Discipline for Prison Officers, Prison Regulations, RRA P75-1.*

2. *that on Wednesday 2nd March, 2016 in the Island of Anguilla Senior Officer Carl Palmer did commit an offence of discreditable conduct, in that while in a verbal confrontation with SO (Ag) Delma Titre he assaulted her by brushing her hand down when she attempted to turn on the light switch contrary to section 41 (2) (a) (iv) of the Code of Discipline for Prison Officers, Prison Regulations, RRA P75-1.*

*M**r. Palmer detailed his service at Her Majesty's Prison (HMP) from his initial appointment** and portrayed himself as an officer who took his duties very seriously and was one of four officers who brought order to the chaotic situation at HMP. He does not think highly of the Prison Management and expressed such a view at a meeting with an official from Public Administration. This meeting was one of a series of meetings convened as a result of Mr. Palmer lodging a complaint with Mrs. Ornette Edwards at the Department of Public Administration, when he felt that a charge of discreditable conduct had been unfairly brought against him, in relation to an incident which occurred in the latter half of December 2014. Mr. Palmer is of the view that the Superintendent of Prisons, Mr. Conrad Gumbs, was made aware of the views expressed by Mr. Palmer, about the management of the Prison, and has since then set in motion a plan to get rid of him. He explained that he understood from a conversation he overheard between fellow officers, that following the **meeting, the Superintendent decided that because of his (Mr. Palmer's) complaint to** Public Administration the Superintendent decided that he must get rid of him before he (the Superintendent) leaves office.*

*Mr. Palmer is of the view that the incidents which resulted in the two charges, set out **above, were orchestrated as part of the Superintendent's plan to get rid of him.***

Mr. Palmer referenced the presence of an Officer Labode during the incident involving Senior Officer Kyte on 29th February, 2016. He questions why the Superintendent did not request a statement from Officer Labode and suggests that the Superintendent has in

meetings threatened officers not to come forward with any statements. He believes Officer Labode is fearful of losing his job. My review of the documents shared with me indicates that Officer Labode did not play any part in the proceedings before Superintendent Gumbs or Mr. Don Mitchell CBE QC.

Mr. Palmer indicated that there was an arrangement made, following discussions between Dr. Robin and Head of Custody, Carice Sasso, for him to work alone in the gate office. He believes that the presence of Officer Titre in the gate office on 2nd March, 2016 was a deliberate act of provocation and was all part of an orchestrated plan by the Superintendent to get rid of him.

You may wish to consider whether there is any merit in directing a further inquiry in accordance with section 12 (5) of the Prison Regulations, specifically to hear from Officer Labode and Head of Custody, Carice Sasso, to determine whether any credibility can be ***attached to Mr. Palmer's view that there is a concerted plan on the part of the*** *Superintendent to get rid of him and this plan was being facilitated by some of his fellow officers. While the determination of any further inquiry may not affect your decision to uphold the two charges of discreditable conduct, it may affect your final determination in relation to the award you wish to make under section 12 (1) in relation to the charges. In determining whether to direct that a further inquiry be conducted consideration should be* ***given to the fact that, Mr. Palmer's employment and source of income is in jeopardy and*** *that a further inquiry in relation to the specific points highlighted above should not significantly delay a final determination in this matter.*

[51] The Governor then wrote to the applicant the following letter dated 16th August 2017:

Dear Mr. Palmer,

CHARGES OF DISCREDITABLE CONDUCT: PERSONAL HEARING

I sent to you on 4 July the report of the personal hearing conducted by Mr. Stanley Reid in case you wished to add any further comments. I have not received any.

As I said in that letter, I also sent Mr. Reid's report to Mr. Mitchell and asked him for his *comments. He has replied that he notes that as a result of what you represented to him, Mr. Reid now recommends that a further inquiry under Regulation 12 (5) be held, at which you would have the opportunity to have your witnesses testify on your behalf. Mr. Mitchell* ***accepts that I should follow Mr. Reid's recommendation and appoint yet another suitably*** *qualified person to review and hear the evidence and make a final recommendation.*

I have therefore asked Ms. Eustella Fontaine to review all of the paperwork to this date, and to make arrangements for a further and final hearing. This will then allow for a final determination to be made in due course by Mr. Tim Foy, who takes over as Governor in the coming days.

I am copying this letter to Ms. Fontaine, the Attorney General, PS Foster Rogers, Superintendent Sasso, and to Tim Foy.

[52] On 23rd August 2017, Ms. Fontaine herself wrote to the applicant **and copied to the AG's** Chambers in the following terms:

> *Dear All,*
>
> *RE: CHARGES OF DISCREDITABLE CONDUCT: OFFICER CARL PALMER*
>
> *I have been appointed by the Governor of Anguilla to review all of the paperwork to this date, and to make arrangements for a further and final hearing in regard to the above captioned matter.*
>
> *As a result, I would be grateful if Mr. Palmer and /or his representative and Counsel for the* ***Attorney General's Chambers could advise of their available dates in September 2017, in*** *order to conduct a further and final hearing.*
>
> *At the further and final hearing, I will request that the A****ttorney General's Chambers,*** *through HM Prison, make available to attend and give evidence at the said hearing, Officer Laborde and Head of Custody Carice Sasso.*
>
> *Grateful for a response as to your availability for the month of September 2017 no later than 31st August 2017. For ease of access, a response can be emailed to me on efontaine@fontainelawfirm.com or a copy of your response delivered to my office address above at Fontaine & Associates.*

[53] The further hearing was then held, and the additional witnesses were called. By a letter dated 29th January 2018, Ms. Fontaine then wrote to the Governor setting out her decision. It is useful to set out the entire decision. She stated:

> *IN THE MATTER OF CHARGES OF DISCREDITABLE CONDUCT: OFFICER CARL PALMER PURSUANT TO THE CODE OF DISCIPLINE FOR PRISON OFFICERS, PRISON REGULATIONS RRA P75-1*
>
> *ADVICE TO HIS EXCELLENCY THE GOVERNOR*
>
> *Your Excellency,*
>
> *Pursuant to Regulation 12(5) of the Code of Discipline for Prison Officers contained in the Schedule to the Prison Regulations RRA P75-1, I was appointed as a suitably qualified person to review, hear evidence and make a final recommendation to Your Excellency regarding two complaints against Senior Officer Carl Palmer concerning alleged incidents occurring on two occasions, the first alleged incident on 29th February 2016 and the second alleged incident on 2nd March 2016.*

I have conducted a further inquiry into the above captioned matter by hearing witnesses Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso, now Superintendent Carice Sasso, as requested by Senior Officer Carl Palmer and by reviewing the transcript of the hearing before Stanley E. Reid. I have also read the record prepared by then Superintendent of Prisons, Conrad Gumbs in relation to his investigation of the charges brought against Senior Officer Carl Palmer.

The charges against Senior Officer Carl Palmer are as follows:

That on Monday 29th February 2016 in the island of Anguilla Senior Officer Carl Palmer did commit an offence of discreditable conduct, in that while in a verbal confrontation with SO Rondel Kyte he threated to "mash him up" contrary to section 41(2) (a) (iii) of the Code of Discipline for Prison Officers, Prison Regulations RRA P75-1.

That on Wednesday 2nd March 2016 in the island of Anguilla Senior Officer Carl Palmer did commit an offence of discreditable conduct in that while in a verbal confrontation with SO (Ag) Delma Titre he assaulted her by brushing her hand down when she attempted to turn on the light switch contrary to section 41(2) (a) (iv) of the Code of Discipline for Prison Officers, Prison Regulations RRA P75-1.

At Tab 1 is a copy of the witness summaries for Officer Lansworth Laborde, Officer Dannice L. Simmons as provided by Senior Officer Carl Palmer.

At Tab 2 is a copy of the signed witness statement of Officer Lansworth Laborde.

At Tab 3 is a copy of the transcript/notes of evidence of statements taken from Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso, now Superintendent Carice Sasso at the hearing of 12th January 2018.

Due to the passing of hurricane Irma to the island of Anguilla, the hearing of the matter was delayed, and oral evidence taken from witnesses on 12th January 2018. In addition, Senior Officer Carl Palmer was provided with an extended period before the hearing on 12th January 2018 to obtain representation.

Senior Officer Carl Palmer represented his interest at the hearing of 12th January 2018. The Prison Service was represented by Mrs. Sherma Blaize-Sylvester of the Attorney General's Chambers.

Before taking evidence from the witnesses present on 12th January 2018, Senior Officer Palmer made submissions to me that there was no alleged incident which took place on Monday 29th February 2016 and that if anything the first charge against him ought to be thrown out. Senior Officer Palmer went on to state that the alleged incident took place on 28th February 2016 and not 29th February 2016 and therefore it is not a proper charge against him. I asked whether this was raised before Don Mitchell CBE QC at the first hearing and Senior Palmer stated that he did not raise the issue of the discrepancy of the dates of 28th February 2016 and 29th February 2016 before Don Mitchell CBE QC.

I note with particular interest that the date of 1st March 2016 was amended to 2 March 2016 in the complaint before Don Mitchell CBE QC, but nothing at that time was said or

referenced in regard to the date of 29th February 2016 being a date of 28th February 2016. Of even furthest interest, both Senior Officer Palmer and his then witness Officer Allington Durand in their oral evidence speak to the dates of 29th February 2016. On another point of reference, only the witness statement of Officer Lansworth Laborde speaks to an incident on 28th February 2016. Therefore and without more, any discrepancy with the date of the alleged incident either being 28th February 2016 or 29th February 2016, on the preponderance of evidence in the documents and from the witnesses (one of those witnesses being Senior Officer Palmer himself) it is clear that the incident would have taken place on 29th February 2016.

I will now turn the further evidence at the oral hearing on 12th January 2018.

I had the opportunity to observe and take the evidence of Office Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso, now Superintendent Sasso, and I believe all these witnesses to be witnesses of truth.

Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso, now Superintendent Carice Sasso all spoke highly of Senior Officer Carl Palmer and indicated that Senior Officer Carl Palmer was a hard worker, that he was easy to talk to and that he was keen on the job that he did at the prison. Unfortunately none of these witnesses could speak directly to the incidents of 29th February 2016 or 2nd March 2016 as they were not present at the time the alleged incidents would have taken place or neither could they speak on the fact Senior Officer Carl Palmer was being victimized by then Superintendent Gumbs.

Don Mitchell CBE QC would have had the opportunity to observe the witnesses of fact, who would have had direct evidence arising from the alleged incidents of 29th February 2016 and 2nd March 2016. I am of the view that the evidence of Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso now Superintendent Carice Sasso, did not advance the case of Senior Officer Carl Palmer, as such, I am constrained to agree that the two charges of discreditable conduct brought against Senior Officer Carl Palmer should be upheld.

If it is any consolation to Senior Officer Carl Palmer, Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso, now Superintendent Carice Sasso, all agreed that Senior Officer Palmer was a hard worker, that he was easy to talk to and that he was keen on the job that he did at the prison.

[54] The examination of this decision shows that the complaint that the inquiry before Ms. Fontaine **should have been a 'rehearing' is of no merit. As explained above, at this stage, the Code speaks of three separate kinds of hearings, namely 'inquiry', a 'rehearing' or a 'further inquiry'. Having** regards to (a) the clear language of the Governor, to **"review all of the paperwork to this date, and to make arrangements for a further and final hearing"** (b) the complaints made by the applicant before Mr. Reid that his own witnesses were never allowed to testify, it was clear that the hearing

before Ms. Fontaine was never intended to be a rehearing of the matter where she was required to re-hear all the evidence and take such further evidence which had become available. In the letter from the Governor dated 16th August 2017, to the applicant, the Governor speaking of the recommendations of Mr. Reid stated:

> *"...He has replied that he notes that as a result of what you represented to him, Mr. Reid now recommends that a further inquiry under Regulation 12 (5) be held, at which you would have the opportunity to have your witnesses testify on your behalf. Mr. Mitchell* ***accepts that I should follow Mr. Reid's recommendation and appoint yet another suitably*** *qualified person to review and hear the evidence and make a final recommendation."*

[55] All that was intended was that there should be a further hearing or a further inquiry in the words of the statute. I cannot see how Ms. Fontaine could have done any other kind of hearing. Additionally, there was no complaint at that hearing by the applicant that the witnesses before Mr. Mitchell Q.C. should be recalled. There has been nothing of merit presented on this issue that grounds any discretion on my part to grant leave to apply for judicial review.

[56] There was a complaint that Ms. Fontaine acted unfairly when she refused to take simple steps to verify that the date of one of the charges was wrong as once it was verified, the charge would be shown to be bad in law and ought to be dismissed. I have seen Ms. Fontaine careful handling of this in her decision. I have noted that she actually gave reasons why she rejected these arguments, and not call for any other evidence. This Court does not find any arguable case with a likely prospect of success of unreasonable or illegal conduct with regards this matter.

[57] The applicant has also contended that there is a case to be investigated as to whether Ms. Fontaine gave any proper reasons for her decisions.

[58] Now, where any tribunal such as this one, embarks on a hearing which has adverse consequences for the applicant, that Tribunal is duty bound to provide reasons for resulting decision. This would be in keeping with basic principles of natural justice.[2] It is a matter for the Tribunal to decide how much should be explained by way of reason, or whether the reasons given should touch and cover every point which may have been argued. The guiding principles must be fairness. Any reasons

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[2] See paragraph 110 of Volume 1(a) Halsbury's Laws of England.

given must be reasonably clear so that the affected person or any reasonable person standing in his shoes must learn the basis upon which he lost his hearing. It is a matter of elementary justice that a losing party in cases such as this should be told the reasons why liability was found against him. See generally Paragraph 112 **– 'Duty of Give Reasons' Volume 1(1) Halsbury's** Laws of England 2001 edn. Reissue; R v Laing (2013) 83 WIR 86; Yeung v Capstone Care Ltd UK Employment Appeal Tribunal /0161//13/DA.

[59] I have examined the reasons given. It is set out above. Having regard to the fact that this was a further and final hearing and it was only intended to treat with the persons whose evidence had not been taken earlier, I cannot see how the reasons given can be faulted. Ms. Fontaine is to be commended for her clarity when she stated:

> *Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso, now Superintendent Carice Sasso all spoke highly of Senior Officer Carl Palmer and indicated that Senior Officer Carl Palmer was a hard worker, that he was easy to talk to and that he was keen on the job that he did at the prison. Unfortunately none of these witnesses could speak directly to the incidents of 29th February 2016 or 2nd March 2016 as they were not present at the time the alleged incidents would have taken place or neither could they speak on the fact Senior Officer Carl Palmer was being victimized by the Superintendent Gumbs.*
>
> *Don Mitchell CBE QC would have had the opportunity to observe the witnesses of fact, who would have had direct evidence arising from the alleged incidents of 29th February 2016 and 2nd March 2016. I am of the view that the evidence of Officer Lansworth Laborde, Officer Dannice L. Simmons and then Head of Custody Carice Sasso now Superintendent Carice Sasso, did not advance the case of senior Officer Carl Palmer, as such, I am constrained to agree that the two charges of discreditable conduct brought against Senior Officer Carl Palmer should be upheld*

[60] In her decision Ms. Fontaine covered the key elements of her task. She stated that she had to take further evidence. She did so. She stated that those witnesses added nothing to the case as they themselves stated. She stated that she found them to be witnesses of the truth. She stated that she reviewed the evidence led before Mr. Mitchell Q.C. She stated that there was nothing to contradict the finding of Mr. Mitchell Q.C. in the first inquiry. There was nothing to disturb the findings against the applicant. This is not a decision that may be faulted. I can see no arguable case with any prospects of success which might show that Ms. Fontaine failed at her task.

[61] It is necessary to address one aspect of the applicant's arguments before this Court. His original complaints related to two other prison officers who he claimed he was not allowed to call as witnesses before the Superintendent, and that he did not have a fair opportunity to do so before Mr. Mitchell Q.C.. Before this Court, the applicant sought to argue that the witnesses had been tampered with since when they finally were allowed to give evidence at the Tribunal before Ms. Fontaine, they essentially claimed that they were really not present at any relevant time to give any useful support for the applicant – they were now not telling the truth he claimed. This court again, could not embark on any inquiry to decide on the truth of any matter, but this was a rather startling submission. Even if I could have considered this, the applicant has not produced anything which shows that there is any basis to hold that there has been any tampering. This was clearly a stretch and it did not at all assist the applicant on his application for leave.

[62] This was an unfortunate matter. The applicant has been dismissed from his job following the charges and the several hearings. This Court is unable to find that there is any basis to question the decision of the Superintendent to prefer the relevant charges and to refer them to the Governor. For the reasons given above, the Superintendent could not have done anything else.

[63] The Governor clearly followed the Code when Her Excellency directed that there should be a personal hearing. There has been no challenge to this personal hearing. It could not have been any clearer that the further hearing was simply to review all that had been done before Mr. Mitchell Q.C. and to take the further evidence from two persons who had not given evidence previously. I note that even the applicant had not complained before Ms. Fontaine that she should recall any of the previous witnesses. I am satisfied that there is no merit in any challenge against her decision.

[64] If it need be said, the applicant has also not shown in any way how the decision of the Governor to dismiss him by itself was unreasonable or irrational or illegal. It did appear that this declaration was being sought on the basis that if the court were to find that Ms. Fontaine's decision was bad, then that the Governor's decision would necessarily be wrong. But even if the applicant was making a separate complaint against the Governor's decision as being unreasonable or irrational, I can see no arguable case. The decision was clearly within the exercise of His Excellency's discretion and powers. The Governor was faced with an officer who was found guilty of assault by one prison

officer against another. Her Majesty's prison must be a disciplined environment. It must be safe and secure. It was quite open to any reasonable Governor to use such a finding especially in the context in which it occurred, to decide that the officer who was found to be the offender to be dismissed from the service.

[65] I have tried to set out my reasons as carefully as I can as it is a matter of elementary justice that a losing party should know why their arguments have been rejected' and why they have not succeeded. I can only hope that these reasons make some sense to the applicant even if he might not agree with them. This Court can only hope that whatever other steps he may decide to take, he can hopefully find resolution.

[66] In all the circumstances, the application for leave to apply for judicial review is dismissed. There shall be no order as to costs.

Darshan Ramdhani
High Court Judge Ag.

By the Court

Registrar