

A

**DALAM MAHKAMAH RAYUAN MALAYSIA
BIDANGKUASA RAYUAN
RAYUAN SIVIL NO. W-01-80-01**

ANTARA

MOHD DAUD BIN MAHMUD ... PERAYU

B

DAN

- 1. SURUHANJAYA PERKHIDMATAN AWAM, MALAYSIA**
- 2. KERAJAAN MALAYSIA ... RESPONDEN-RESPONDEN**

**(Dalam perkara Mahkamah Tinggi Malaya, Kuala Lumpur
Guaman No. S2-21-152-1996**

C

Antara

Mohd Daud bin Mahmud ... Plaintiff

Dan

- 1. Suruhanjaya Perkhidmatan Awam, Malaysia**
- 2. Kerajaan Malaysia ... Defendan-Defendan**

D

**CORUM : ZALEHA ZAHARI, JCA
HASAN LAH, JCA
SULAIMAN DAUD, JCA**

JUDGMENT OF THE COURT

E

This is an appeal against the decision of the High Court Kuala Lumpur dated 29.8.2001 dismissing the Plaintiff's (Appellant before us) claim with costs. On 25.9.2008 we

A dismissed the appeal with costs. Our reasons are as follows.

Background

B The Appellant was at the material times an officer attached to the Cultural, Arts & Tourism Centre, Wilayah Timur, Kota Bharu, Kelantan. By a Show Cause letter dated 22.3.1993, bearing the heading "*Kenyataan Alasan-Alasan Buang Kerja atau Turun Pangkat*", the Plaintiff was informed that based on a report received, pursuant to the General Order 26 of the Public Officers (Conduct and Discipline) (Chapter "D") General Orders 1980, the Defendants (Respondents before us) had decided that C disciplinary action with a view to dismissal or reduction in rank should be taken against him based on six grounds, inter alia, absence from work without permission, leaving his workplace without permission, as well as inefficiency (being irresponsible) at work. The Appellant was required to give reasons in writing as to why he should not be dismissed or reduced in rank within 21 days D from the date of receipt of the letter.

The Appellant showed cause vide letter dated 30.4.1993. Upon receipt of the Appellant's reply, pursuant to General Order 26(5) Chapter D, a Committee of Enquiry was then set up. An enquiry was held on 29.9.1993 at which enquiry the Appellant E attended and gave evidence.

The Respondents then issued a letter dated 11.11.1993

A to the Appellant as follows:

“Encik Mohd Daud bin Mahmood

Melalui dan Salinan:

B Ketua Setiausaha,
Kementerian Kebudayaan, Keseniaan
dan Pelancongan Malaysia,
Tingkat 34-36, Menara Dato’ Onn,
Pusat Dagangan Dunia Putra,
45, Jalan Tun Ismail,
50694 KUALA LUMPUR

Tuan,

C Keputusan Tatatertib Suruhanjaya Perkhidmatan Awam,

D Saya diarah merujuk kepada surat Suruhajaya ini SPA. SULIT.
152259/3/(5) bertarikh 22.3.1993 meminta tuan mengemukakan
representasi secara bertulis yang mengandungi alasan-alasan
yang tuan hendak gunakan untuk membebaskan diri tuan
daripada tindakan tatatertib dengan tujuan buang kerja di
bawah Perintah Am 26, Perintah-Perintah Am Pegawai Awam
(Kelakuan dan Tatertib) (Bab ‘D’) 1980. Tuan telah
mengemukakan representasi tersebut melalui surat tuan
bertarikh 30.4.1993.

E 2. Surahajaya Perkhidmatan Awam dalam mesyuaratnya yang
ke-1748 pada 1.11.1993 setelah menimbang dengan teliti
kes tuan itu pada keseluruhannya telah memutuskan bahawa
tuan dikenakan hukuman buang kerja berkuatkuasa dengan
serta merta iaitu mulai 2.11.1993.”

A On 16.10.1996 the Appellant instituted proceedings for a declaration that his dismissal from service was null and void, that he was is still an employee in the public service, as well as consequential orders and damages.

 In the High Court the Appellant's case was argued on the
B pleaded issues of an alleged infringement of Article 135(2) of the Federal Constitution and General Order 23, that he was not given an opportunity to mitigate before punishment was imposed upon him, the decision was invalid for failure to give reasons.

 On the facts of this case it was clear that the
C Respondents had complied with GO 23 and 26 and that the rule of natural justice had been complied with. By issuing the Show Cause letter which the Respondents did, in which letter the grounds upon which the disciplinary action was based had been set out and where it was expressly stated that it was with a view to dismissal or reduction in rank, the Appellant had clearly been
D given an opportunity to state his case and make his representations. The holding an oral enquiry, at which enquiry the Plaintiff was present and given an opportunity to testify, it is abundantly clear that the Appellant had been given the fullest opportunity of being heard. The Respondents decision at the conclusion of the enquiry was that the Appellant's explanation did
E not exculpate him.

A The High Court Judge was clearly in the circumstances of this case right in ruling on the issues before him, based on the authorities cited in the judgment, that there was no separate right to make representations before punishment is meted out against the Appellant. We agree that no injustice was occasioned by not giving the Appellant an opportunity to mitigate before punishment
B was imposed. The disciplinary board was not even required to make a finding of guilt and is not required to give reasons. [See *Lembaga Tata tertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525 Federal Court].

C On appeal before us, the Appellant's Counsel, Encik Karpal Singh, applied orally for leave to raise a new issue, i.e. "*That the "decision-making process at the ultimate end of the proceedings is fatally flawed"*". We granted him leave to do so. The arguments at the hearing of the appeal was confined and directed to this new issue.

D The Appellant's Counsel submission on this new issue was this. He was of the view that the absence of the words "*atau Turun Pangkat*" in the letter dated 11.11.1993 in communicating the Respondents' decision was significant. En. Karpal submitted the absence of the words "*atau Turun Pangkat*" amounted to a
E "contradiction" of the earlier Show Cause letter and be construed to mean that the Respondents had not adequately applied their

A minds in the decision making process at the ultimate end of the proceedings rendering the whole proceedings flawed.

On this new issue, we are of the following view. The absence of the words "*atau Turun Pangkat*" in the letter communicating the Respondents' decision in respect of the
B disciplinary proceedings instituted against the Appellant cannot be construed to mean that the Respondents did not adequately apply their mind at the decision making process at the ultimate end of the proceedings by reason of the express cross reference to the earlier Show Cause letter, where the words "*reduction in rank*" had been expressly mentioned. We are of the view that this
C express cross reference to the earlier letter must be construed to mean that the Respondents were fully cognizant of the fact that the disciplinary proceedings instituted against the Appellant were with a view to dismissal or reduction in rank. That it was open to the Respondents to impose either one or the other of these two punishment should they find the misconduct alleged against the
D Appellant proven. On the facts and circumstances of this case the disciplinary authority considered the more serious punishment to be more appropriate. The omission to state expressly the words "*or reduction in rank*" in the letter communicating the Respondents' decision, in our considered opinion, does not vitiate the proceedings. The decision making process up to the ultimate
E end of the proceedings was in our considered opinion valid and of full legal effect.

