

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL CAUSE NO.60 OF 2002

REGIONAL GENERAL MANAGER TAZARA.....APPLICANT
VERSUS
THE HON. MINISTER FOR LABOUR
AND YOUTH DEVELOPMENT.....RESPONDENT

RULING

SHANGWA, J:

This is an application for the order of certiorari to quash the decision of the Minister for Labour and Youth Development in which the Applicant was ordered to reinstate one Eugene Severine in his former post as a train guard. It is supported by affidavit of K.D.A. Kimaro who is working with the Applicant as Acting Head in the Human Resources Department.

The facts concerning this application are that on 30.3.1994, the said Eugene Severine was Summarily dismissed by the applicant for being negligent in his employment as a train

guard. He was aggrieved with his dismissal. He referred his grievance to the Conciliation Board of Ifakara. On 8.6.1994, the said Board ordered that instead of being summarily dismissed, his employment should be terminated. He was not satisfied with the Board's decision and referred the matter to the Minister for Labour and Youth Development. On 12.3.2001, the said Minister quashed the Board's decision and ordered that he should be reinstated in his post and be given a reprimand. The Applicant was aggrieved with the Minister's decision and decided to file this application for an order of certiorari to quash it.

It was submitted on behalf of the Applicant by Mr. R.A. Mleta that the Minister's decision to reinstate Eugene Severine in his post after being satisfied that he had committed an offence of negligence while on duty is very unreasonable. Mr. R.A. Mleta contended that an offender must be punished for his deeds in accordance with the Law irrespective of whether he is

the first, second or third offender. He said that to leave the offender free without punishment as the Minister did in respect of Eugene Severine is very unreasonable. He commented that the offence of negligence at the place of work is very serious and whomsoever commits it must be punished.

In reply, the learned State Attorney submitted on behalf of the Respondent that the decision which was given by the Minister for Labour and Youth Development ordering the Applicant to reinstate Eugene Severine in his post and reprimand him was in accordance with the law and reasonable. It was contended on behalf of the Respondent that the Penalty to be imposed on an employee who neglects his duty contrary to the Disciplinary Code is a reprimand and not a summary dismissal which was imposed by the Applicant on Eugene Severine.

For the purposes of this application, the issue to be considered is whether or not the Minister acted reasonably in ordering for the reinstatement of Eugene Severine in his post as train guard after being satisfied that he had breached the Disciplinary Code for being negligent at work.

Before I embark on this issue, I would like to point out that as Eugene Severine was summarily dismissed by the Applicant for having committed an act which does not amount to a Criminal offence namely neglect of his duty, it is not proper to regard him as an offender. Under the Security of Employment Act, 1964 as amended by Act No.1 of 1975, neglect of ones duty is a breach of the Disciplinary Code which is laid down under the Second Schedule to the said Act. The Disciplinary Code does not create Criminal offences under the Act so as to regard an employee who breaches any of its paragraphs as an offender.

There are two Paragraphs under the Disciplinary Code namely (e) and (h) in which neglect of duty by an employee is being mentioned. Paragraph (e) mentions of a situation where an employee neglects his duties but not so as to endanger the safety of persons or property. Paragraph (h) mentions of a situation where an employee neglects or fails to carry out his duties so as to endanger himself or others or property or neglects or fails to comply with any instructions relating to safety or welfare of others.

The said Paragraphs contain two different categories of negligence which are mentioned therein. In the former Paragraph, the category of negligence which is mentioned is simple negligence and the Permissible Penalty for it is; for 1st breach, a reprimand. For 2nd breach, a severe reprimand. For 3rd breach, a fine. For 4th breach and subsequent breach, a summary dismissal.

In the latter Paragraph, the category of negligence which is mentioned is aggravated negligence and the permissible penalty for it is summary dismissal.

It is not clear as to whether Eugene Severine was summarily dismissed by the Applicant for having breached paragraph (e) or (h) of the Disciplinary Code. The particulars of negligence which led to his dismissal were not stated in this application. However, it is apparent from the Minister's decision that when he quashed the decision of the Conciliation Board of Ifakara in which Eugene Severine's employment was terminated, he considered Eugene Severine's negligent act to be a breach of Paragraph (e) of the Disciplinary Code relating to simple negligence. That is why he ordered that Eugene Severine should be reprimanded instead of terminating his employment or dismissing him summarily.

As I have already indicated, the Permissible Penalty for the 1st breach of Paragraph (e) of the Disciplinary Code is a reprimand. The penalty of summary dismissal which was imposed on Eugene Severine by the Applicant is not permissible for the 1st breach which he committed. It is only permissible for the 4th and subsequent breaches. Also, the Penalty which was ordered by the Conciliation Board of Ifakara on appeal to it by Eugene Severine namely termination of his employment is not at all permissible for the 1st breach of Paragraph (e) of the Disciplinary Code. Therefore the Minister acted judicially in reversing both Penalties. It was within his powers to do so. Eugene Severine did not deserve something more than a reprimand for the 1st breach of paragraph (e) of the Disciplinary Code. In other words, no penalty other than a reprimand could have been justified against him.

One might ask himself a question as to what would have been the position had Eugene Severine breached Paragraph (h)

of the Disciplinary Code under which no other Penalty except Summary dismissal is prescribed. The answer to this question is to be found under S.26 (2) of the Security of Employment Act, 1964 as amended, read together with S.24 (b) of the same Act which gives the Minister for Labour and Youth Development discretionary Powers to impose a lesser disciplinary Penalty for any Particular breach of the Disciplinary Code.

On my part, I find that the decision by the Minister in ordering for the reinstatement of Eugene Severine in his post as train guard is proper, reasonable and legally justified. I cannot therefore interfere with it. For this reason, I dismiss this application with Costs.



A. Shangwa

JUDGE

2.3.2005

Delivered in open Court at Dar es Salaam this 2nd day of
March, 2005.



A. Shangwa
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JUDGE
2.3.2005.