

IN THE PUBLIC SERVICE DISCIPLINARY TRIBUNAL
AT SUVA

PSDT CASE No. 01 of 2024

BETWEEN : THE MINISTRY OF FINANCE, STRATEGIC PLANNING,
NATIONAL DEVELOPMENT AND STATISTICS
EMPLOYER
AND : ASHWIN NAND
EMPLOYEE

Appearances

For the Employer : Mr. Ram (Attorney General's Chamber)
For the Employee : Mr. D. Nair (Nilesh Sharma Lawyers)
Date of Ruling : 29th November 2024

R U L I N G

Background

1. Mr. Ashwin Nand ("**Nand**") is employed at the Ministry of Finance, Strategic Planning National Development and Statistics ("**Ministry**") as a Manager Macroeconomic Forecasting, Policy, Research and Analysis. Nand joined the Ministry on 12 December 2023. He holds a Masters degree in economics from India.

2. The Ministry raises the following allegations against Nand:

- a. **ALLEGATION 1:** In breach of Civil Service Code of Conduct under Section 6(12) of the Civil Service Act 1999, Mr. Ashwin Nand on 06/02/24 purchased and carried alcohol in a Government vehicle.
- b. **ALLEGATION 2:** In breach of Civil Service Code of Conduct under Section 6(1)(5) of the Civil Service Act 1999, whereby Mr. Ashwin Nand failed to follow instruction from the Head of Fiscal Policy Research and Analysis and consumed alcohol during the official visit on 07/02/24.
- c. **ALLEGATION 3:** In breach of Civil Service Code of Conduct under Section 6(3)(12) of the Civil Service Act 1999, Mr. Ashwin Nand on 07/02/24 caused damage to one of his colleague's mobile phone under the influence of liquor.
- d. **ALLEGATION 4:** In breach of Civil Service Code of Conduct under Section 6(3)(12) of the Civil Service Act 1999, Mr. Ashwin Nand on 08/02/24 was shouting and yelling in the middle of the night causing disturbance while his stay in a hotel room in the early hours under the influence of alcohol.
- e. **ALLEGATION 5:** In breach of Civil Service Code of Conduct under Section 6(5) of the Civil Service Act 1999, Mr. Ashwin Nand failed to follow instruction from the Head of Fiscal Policy Research and did not attend 5 scheduled meetings on 08/02/24 with Labasa Town Council, Sugarcane Growers Association, Valebasoga Tropik Boards Ltd, J Hunter Pearls and Savusavu Tourism Association.
- f. **ALLEGATION 6:** In breach of Civil Service Code of Conduct under Section 6(12) of the Civil Service Act 1999, Mr. Ashwin Nand on 29/12/23 indecently touched few female staff while dancing on New Year's Eve party.
- g. **ALLEGATION 7:** In breach of Civil Service Code of Conduct under Section 6(1) of the Civil Service Act 1999, Mr. Ashwin Nand on 29/12/23 at around 10pm failed to behave honestly and with integrity whereby he abused his authority by forcing himself in the Honorable Assistant Ministers vehicle.
- h. **ALLEGATION 8:** In breach of Civil Service Code of Conduct under Section 6(3) of the Civil Service Act 1999, Mr. Ashwin Nand on 29/12/23 argued with the Government driver Mr. Maamoon Hussein and used offensive language.

3. Nand denies all the allegations. The matter therefore proceeded to a hearing. The Ministry withdrew Allegation 6 at the close of its case.

The Hearing

4. The Ministry called the following three (3) witnesses at the hearing.
 - (i) Munesh Salvin Deo
 - (ii) Pravinesh Kumar Karpana
 - (iii) Maamon Hussein
5. Nand was the sole witness for his case.

Admitted Facts

6. At the outset of the hearing, Mr. Nair advised the Tribunal that Nand was admitting the facts relevant to Allegation 1 to 5.
7. This means that Nand admits that:
 - (i) on 06/02/24, he purchased and carried alcohol in a Government vehicle.
 - (ii) on 07/02/24, he consumed alcohol during the official visit in Labasa
 - (iii) on 07/02/24, whilst under the influence of liquor, he caused damage to a colleague's mobile phone
 - (iv) on 08/02/24, while staying in a hotel room, and whilst under the influence of alcohol, he was shouting and yelling in the middle of the night (in the early hours), causing disturbance
 - (v) on 08/02/24, he did not attend five scheduled meetings with Labasa Town Council, Sugarcane Growers Association, Valebasoga Tropik Boards Ltd, J Hunter Pearls and Savusavu Tourism Association.

8. Mr. Nair also did not object to the *Interview Statements* of the Ministry's three (3) witnesses being admitted into evidence. However, he did cross-examine the three witnesses.

Non-Suit

9. At the close of the Ministry's case, Mr. Nair indicated that he would like to make submissions to non-suit the Ministry's case.
10. The Tribunal opined that a non-suit application is not available at the Magistrates Court because neither the Magistrates Court Rules or Magistrates Court Act make provision for it. As a creature of statute, the Magistrates Court only exercises power and jurisdiction which the Act or the Rules expressly confer upon it.
11. The Tribunal observed that the approach which Mr. Nair relies on would be harsher in effect to his client. If it were to be adhered to, then the Tribunal would have to warn Mr. Nair beforehand that if he were to make submissions on a non-suit, and then fail, he would then be precluded from calling any witness for Nand.
12. Mr. Nair then decided that Nand would give evidence.

Burden & Standard of Proof

13. The onus is on the Ministry to prove the allegations on the balance of probabilities.
14. In *Miller v. Minister of Pensions* 1947 2 All E.R. 372, Lord Denning said:

"That degree is well settled. It must carry a reasonable degree of probability, not so high as is required in a criminal case. If the evidence is such that the tribunal can

say: 'we think it more probable than not', the burden is discharged, but if the probabilities are equal it is not."

15. As stated above, Nand admits to the facts in Allegations 1 to 5. He also, by his counsel, did not object to the Interview Statements of the Ministry's three witnesses, subject to cross-examination.
16. Hence, what the Ministry must establish is that each admitted fact in Allegations 1 to 5 amounts to a breach of the code set out in the corresponding provision of the Civil Service Act.
17. As for Allegations 7 and 8, the Ministry must, firstly, establish the fact alleged, and if established, do likewise as set out above for allegations 1 to 5.
18. Below we set out what the Ministry must establish:

Allegation No.1 - Section 6 (12) of the Civil Service Act 1999

Q: When Nand purchased and carried alcohol in a Government Vehicle on 06/02/24, did he, thus, fail to "uphold the Civil Service Values and the integrity and good reputation"?

Allegation No.2 - Section 6 (1) (5) of the Civil Service Act 1999

Q: When Nand consumed alcohol during the official visit in Labasa on 07/02/24, was he not behaving honestly and with integrity in the course of employment in the civil service?

Q: Was Nand not complying with all lawful and reasonable directions by his immediate superior?

Allegation No.3 and Allegation No.4 - Section 6 (3) (12) of the Civil Service Act 1999

Q: When, on 07/02/24, Nand damaged his colleague's mobile phone whilst under the influence of liquor, was he treating his colleague without respect and courtesy?

Q: Was Nand thus behaving in a way which deviated from the Civil Service Values and the integrity and good reputation of the civil service?

Allegation No.5 - Section 6 (5) of the Civil Service Act 1999

Q: When, on 08/02/24, Nand did not attend the five scheduled meetings with Labasa Town Council, Sugarcane Growers Association, Valebasoga Tropik Boards Ltd, J Hunter Pearls and Savusavu Tourism Association, was he failing in his duty to comply with the lawful and reasonable direction of Mr. Munish Deo, his immediate superior in the Ministry?.

Allegation No.7 - Section 6(1) of the Civil Service Act 1999

Q: Did Nand force himself into the Honorable Assistant Ministers vehicle on 29/12/23?

Q: If so, did he fail to behave honestly and with integrity and was he thus abusing his authority?

Allegation No.8 - Section 6(3) of the Civil Service Act 1999

Q: Further to Allegation No. 7 above, did Nand use offensive language and argue with the Honorable Assistant Minister's Driver, Mr. Maamoon Hussein?

Q: If so, was Nand harassing Mr. Hussein and did he fail to treat Mr. Hussein with respect and courtesy?

Evidence of the Ministry's Three Witnesses

19. Each of the three witness' evidence at the hearing was consistent with his respective Interview Statement.
20. They were unshaken during cross-examination. The Tribunal finds no reason not to believe them.

21. The Tribunal finds that the facts alleged in Allegations 1, 2, 3, 4, 5, 7 and 8 are proven on the balance of probabilities.

Nand's Evidence

22. Nand's evidence, in a nutshell, did not outright refute the factual allegations in Allegations 1 to 5.
23. In essence, what Nand was attempting was to explain that his actions were reasonable in the circumstances and that they did not derogate from the standards set out in the Civil Service Act 1999.
24. As regards Allegation 1, Nand said he bought three cans of beer en route home after work in a Government Vehicle driven by Mr. Munesh Deo. They had stopped over at some point to buy water. Nand bought the beer for himself to consume later at home.
25. With Regards to Allegation 2, Nand said that he had consumed the alcohol on their first night in Labasa after a day of meetings. That was after they had arrived back at the hotel after 8.00 p.m.
26. With regards to Allegation 3, Nand said there were no specific instructions from Mr. Deo against the consumption of alcohol. He denies damaging his colleague's phone. However, he admits that he paid the colleague \$400 on the next morning as compensation.
27. With regards to Allegation 4, Nand denies that he shouted and caused a disturbance at the hotel at around mid-night. He said he drank some alcohol, fell ill, and then went to bed. He said that if he had caused disturbance, the hotel staff would have raised a complaint. No such complaint was ever raised.

28. He denies that Mr. Munesh Deo ever gave any instructions for him to attend the five scheduled meetings in question. In any event, he said he was ill and had a genuine reason not to attend. He said he did call Mr. Deo at some point in mid-morning to tell him that he may join the meeting later. He did not produce any sick-sheet to verify that he was sick. However, he took it upon himself later to take a taxi and travel to Savusavu where the team was scheduled to meet industry people the next day.
29. Allegation 6 was withdrawn by the Ministry.
30. With regards to Allegation 7 and 8, Nand however refuted that he ever tried to get into the Assistant Minister's vehicle, let alone, that he even spoke to Mr. Hussein the driver, and let alone, that he ever swore at Mr. Hussein.
31. In terms of the alcohol-related incidents in Allegations 1 to 5, Nand stated:
- (i) that these all happened outside the normal working hours,
 - (ii) that there was no specific prohibition from his immediate supervisor (Munesh Deo) on consumption of alcohol during official visits,
 - (iii) that there had been some alcohol related functions in his office which he had been part of
 - (iv) that he was unable to be present for scheduled industry visits due to sickness.
32. Nand did not produce any sick sheet to verify that he was really sick. His evidence does not refute that Mr. Muni Deo had required him to be present at the five meetings. In fact, the whole reason why his team was in Labasa was to conduct those meetings with key industry

Submissions

33. Both counsel have filed closing submissions. The Tribunal has considered these.
34. The gist of the Ministry's submission is that the witnesses and documentary evidence has shown sufficient evidence that Nand behaved in a manner which amounts to a misconduct for each Allegation and that each misconduct was a breach of the Code of Conduct in the Civil Service Act 1999.
35. The Ministry recommends that Nand be terminated as a result.
36. Nand via his counsel submits that no misconduct can be attributed to him because the incidents relevant to Allegations 1 to 4 and 7 were outside the normal working hours.
37. Nand relies on the case of *Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu*, [1994] FJHC 1801.
38. In addition the failure in the Allegations to specify time as well as that the authority was given to Munesh Deo to give directions, renders Allegations 1 to 5 defective.
39. Finally in terms of Allegation 8, the Employee submits predetermination of the matter as a result of the endorsement on the Investigation report dated 12/4/2024 for termination.

Analysis & Conclusion

40. Section 7 of the Civil Service Act provides that

7. A breach of the Public Service Code of Conduct by an employee is a ground for disciplinary action under the regulations of the relevant Commission or, in the case of a person to whom Part 4 of the Constitution applies, for removal under that Part.

41. The Tribunal finds that the Ministry has established the facts in Allegations 1, 2, 3, 4, 5, 7 and 8 on the balance of probabilities.
42. Nand relies on the Travelodge case (*supra*) to support his argument that, because the facts alleged and admitted all occur outside the working hours, that he therefore could not be held to have breached any Code of Conduct in the Civil Service Act 1999.
43. The above case is a workmen's compensation claim where one of the issues was whether or not the deceased workman died in the course of employment. The court said:
- "The two conditions which must be fulfilled before an accident can be said to have occurred "in the **course of employment** " are:*
- (a) the accident must have occurred during the employment of the workman and*
- (b) it must have occurred while he was doing something which "his employer could and did, expressly or by implication, employ him to do or order him to do"*
44. The Tribunal is of the view that if Nand's argument is upheld, then it would lead to an absurdity which could not have been contemplated by the Civil Service Act.
- e.g. would that mean that a government employee can purchase and carry (and even consume alcohol) in a government vehicle so long as it is outside working hours?
- e.g. does that mean that a civil servant on an official trip is only a civil servant from 8.00 a.m to 4.30 p.m.
45. The Tribunal cannot accept the submission by Nand's lawyer as a result.

46. Secondly Nand's lawyer submits that the allegations are defective because they do not specify the exact times of the incident and they also do not specify that Munesh Deo was indeed authorised to give directions.
47. This is a misguided position by the Nand's counsel in light of the fact that the Counsel himself by the act of not disputing the factual matters in Allegations 1 to 5 and also not objecting to the acceptance of the interview statements, cancels out this submission.
48. Therefore, there is no merit in this submission.
49. Thirdly, Nand's counsel submits that there is predetermination as to the outcome of the disciplinary matter due to the endorsement contained in the Investigation report recommending termination of Mr. Nand.
50. Whilst the Tribunal acknowledges that the Investigation report does contain an endorsement for termination, to the Employers credit they have not terminated the employment of the Employee but have rather chosen to have the matter determined by the Tribunal.
51. There is also no merit in this submission.

Conclusion

52. In consideration of the above paragraphs, the Tribunal finds that that the allegations against the employee has been proved in respect of all the seven remaining Allegations.

53. The tribunal would like to hear from the employee and employer prior to considering the sanctions which may be imposed.

Signed _____

Mr. Anare Tuilevuka

[Chairman - Public Service Disciplinary Tribunal]

Date: 29/11/24

Signed _____

Ms. Deepika Prakash

[Member - Public Service Disciplinary Tribunal]

Date: 29/11/24

Signed _____

Mr. Jeremaia N.L Savou

[Member - Public Service Disciplinary Tribunal]

Date: 29/11/24

