

TRINIDAD AND TOBAGO  
**CLASSIFICATION: JUDICIAL REVIEW**

**IN THE HIGH COURT OF JUSTICE  
SUB REGISTRY, SAN FERNADO**

H.C.A. NO. **S-1098** of **2004**

**IN THE MATTER OF AN APPLICATION BY  
FEROZA RAMJOHN OF RAMATALLY PARK  
FYZABAD, FOREIGN SERVICE EXECUTIVE  
OFFICER II, FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW  
JUDICIAL REVIEW ACT 2000**

AND

**IN THE MATTER OF THE ILLEGAL  
AND/OR ULTRA VIRES AND/OR UNLAWFUL  
REVOCATION OF THE APPLICANT'S TRANSFER  
TO THE **HIGH** COMMISSION OF TRINIDAD  
AND TOBAGO IN LONDON, UNITED KINGDOM**

AND

**IN THE MATTER OF THE ILLEGAL AND/OR  
UNFAIR TREATMENT OF THE APPLICANT BY  
THE ACTING PERMANENT SECRETARY IN  
THE MINISTRY OF FOREIGN AFFAIRS**

**BETWEEN**

**FEROZA RAMJOHN**

Applicant

AND

**PERMANENT SECRETARY  
MINISTRY OF FOREIGN AFFAIRS**

Respondent

AND

**PATRICK MANNING, PRIME MINISTER  
OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

Interested Party

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**BEFORE THE HONOURABLE MADAM JUSTICE A. TIWARY-REDDY**

**JUDGMENT**

**APPEARANCES:**

Dr. Fenton Ramsahoye S.O leading Mr. Anand Ramlogan instructed by Mr. Narendra Lalbeharry for the Applicant

Mr. Russell Martineau SC. leading Ms. Petal John and Ms. Linda Fazia Khan instructed by Ms. Sharon Sharma for the Respondent and the Interested Party

1. By a Statement filed on 11.6.04 the Applicant sought:
  - (a) An order of certiorari to remove into this Honourable Court and quash the decision of the Acting Permanent Secretary as contained in the letter of 7<sup>th</sup> day of June, 2004 to rescind or revoke the Applicant's transfer to the High Commission for the Republic of Trinidad and Tobago in London, United Kingdom;
  - (b) A declaration that the purported revocation of the said transfer is ultra vires, illegal, null and void and of no legal effect;
  - (c) A declaration that the Applicant has been treated unfairly and illegally contrary to the principles of natural justice.
  
2. Leave to file for Judicial Review was granted on the said 11.06.04. The Respondent is the Permanent Secretary in the Ministry of Foreign Affairs (the Ministry) while the Interested Party is the Prime Minister, the Honourable Patrick Manning. The Applicant is a public servant who joined the Ministry in 1984.

3. Several affidavits were filed on behalf of the Applicant and the Respondent. However no affidavits were filed by or on behalf of the Interested Party. None of the deponents was cross-examined.
4. Before the hearing of the substantive application, by summons filed on 1.4.05 the Applicant sought discovery of two Reports:
  - a. The Security Department Intelligence Report (the Intelligence Report) referred to in paragraph 7 of the affidavit of Yvonne Gittens-Joseph filed herein on 24.6.04 — Report A
  - b. A memorandum dated 14.6.01 prepared by Gail Guy to which was annexed a report of a meeting of 1.6.99 by Yvonne Gittens-Joseph and Brindsley Peters — Report B.
  - c. A Report on Missing Diplomatic Pouch BW 528 5.6.01 (the Secret Report) — Report C
5. On 29.4.05 this Court ordered disclosure of Report B. With respect to Reports A and C. Mr. Martineau's position was that he was always prepared to make them available to the Applicant's attorneys but had not done so. Mr. Martineau was concerned that the names contained in these Reports not be disclosed. Mr. Ramlogan invited the Court to look at the Report and make a creative Order e.g. that all names save that of the Applicant be deleted. Mr. Martineau did not object to this suggestion.

At paragraph 6 of the affidavit of Yvonne Gittens-Joseph (Ms. Joseph) filed on 24.6.04 Ms. Joseph referred to a letter dated 4.6.04 from the Prime Minister to

the Permanent Secretary of the Ministry and indicated that the Applicant's appointment was revoked by the Prime Minister in light of the contents of the Intelligence Report. At paragraph 7 of the said affidavit Ms. Joseph deposed further that the said Report indicated that the "Applicant may have been involved in a major conspiracy to steal a Diplomatic Pouch containing 200 Trinidad and Tobago passports".

7. It is to be noted that the said pouch went missing on or about 5.6.01. At paragraph 5 (viii) of her affidavit filed on 1.7.04 the Applicant deposed that she was never aware that she was considered a security risk in the Ministry. And at paragraph 9 of the said affidavit the Applicant deposed that on or about 30.6.04 both Ms. Susan Gordon, (Ms. Gordon) the Director of Administration and the then Permanent Secretary in the Ministry, Patrick Edwards (Edwards) had confirmed to her that they had never seen the said Intelligence Report.
8. The Court noted that while discovery is available in Judicial Review proceedings, there is no inherent right to same. However it is obtainable whenever and to the extent that the justice of the case requires. Thus discovery will be ordered where it is required so that the justice of the case may be advanced and where it is necessary for disposing fairly of the matter. The Court concluded that these Reports are relevant and necessary to do justice for the fair disposition of the matter. In the light of Mr. Martineau's expressed concern, the Court ordered discovery of the Intelligence Report and of the Secret Report (Reports A and C) with all names save that of the Applicant, deleted therefrom.
9. The Applicant entered the Public Service as a Temporary Clerk I on 8.10.71, was appointed Clerk III in the Ministry in May, 1984 and was promoted to the position of Foreign Service Executive Officer II with effect from January, 2000. During her career in the Ministry, the Applicant served at two overseas missions, namely as Officer in Charge of the Registry in the Consulate-General

in New York from 1987 to 1989 and as an Accounts Officer in the Permanent Mission to the United Nations, also in New York, from 1989 to 1995.

10. On 11.5.99 two diplomatic pouches which were despatched from Port of Spain to New York on flight BW 424 went missing. Investigations later revealed that one of the pouches had been located in a container with fish while another had fallen off a container en route from the terminal to the AER Lingus warehouse and had been run over by other vehicles. It is to be noted that the road from the terminal to the AER Lingus warehouse is winding in parts and dark at night. The second pouch originally contained 200 blank Trinidad and Tobago passports. However only 164 of these passports were recovered.
11. The Applicant was appointed Officer in Charge of the Registry at the Ministry from October 2000 to October 2001. On 5.6. 2001 two diplomatic pouches were placed on Flight BW 528 from Port of Spain to New York. Only one pouch was delivered while the other pouch which contained two hundred blank Trinidad and Tobago passports went missing.
12. There has been no suggestion in any of the reports that the Applicant had any dealings with or was responsible for the passports which were lost in 1999. In her memorandum of 14.6.01 (Report B) Gail Guy specifically mentions the security personnel at Triangle Aviation Services and Summit Security Services as the likely culprits. However, no reference was made to the Applicant. And this memorandum was copied to, inter alia, Head, Special Branch.
13. An undated and un-signed SECRET report (Report C) confirmed the failure to recover the missing pouch and recommended inter alia, that the Federal Bureau of Investigation in the United States (the FBI) be informed of a possible conspiracy involving personnel from the Ministry in Trinidad and Tobago and in New York, as well as personnel from Summit Security, Aer Lingus and Triangle Aviation Services at JFK airport in New York. Further, that the Commissioner of Police of Trinidad and Tobago be requested to conduct a

confidential investigation into personnel at the Ministry in Trinidad. No evidence was forthcoming as to whether such an investigation was conducted.

14. This report specifically named a Summit Security Services employee (name deleted) as being implicated in the disappearance of the missing pouch containing the blank passports. This employee admitted that he had received the two bags off Flight BW528 on 5.6.01 and had taken them together with other cargo and left them unattended outside the Aer Lingus warehouse as there was no Aer Lingus personnel available to receive the bags. However the Applicant is not specifically mentioned in this report
15. Report A - the Intelligence Report bearing dates 23.6.01 and 25.6.01 states at page 1:

**"On Saturday 23, June 2001, information received from an official at the Permanent Mission to the Republic of Trinidad and Tobago in New York tends to show that Ms. Ferosa Ramjohn of the Registry, Foreign Affairs Office in Trinidad may be involved in a major conspiracy to steal a Diplomatic Pouch containing 200 blank Trinidad and Tobago Passports that was sent from the Foreign Affairs Office Trinidad to the Permanent Mission to the Republic of Trinidad and Tobago in New York on BW528, June 05, 2001".**

16. This Report detailed the following:
  - a) The Applicant once worked at the Trinidad and Tobago Mission in New York and is very familiar with the procedures and operations at the said Mission for forwarding and receiving diplomatic pouches. Passports were urgently needed at the Mission and the Applicant was the person in Trinidad responsible for packaging and dispatching the diplomatic pouch.

- b) Prior to 5.6.01 the New York Mission was expecting the 200 blank passports to arrive in a diplomatic pouch but newspapers and mail had been dispatched instead of the passports. On being contacted by the New York Mission, the Applicant replied that the pouches were full and so the passports were not sent.
- c) On receiving the urgent request for the passports the Applicant took a few days before dispatching the pouch with the blank passports to New York on 5.6.01. Contrary to custom, the New York Mission received no prior notice that the passports were being sent.
- d) On 5.6.01 three diplomatic pouches including one with the passports, were received at JFK airport in New York. Later that afternoon the pouch containing the passports was discovered missing. The Applicant was notified of this development but waited five days to respond. Sources at the New York Mission perceived the late response as a delaying tactic in a major conspiracy to steal the said pouch and an orchestrated ploy to allow the Applicant's allies to dispose of the passports.
- e) The person who had brought the pouches to BWIA cargo facility on 4.6.01 was never informed of the missing pouch until two weeks later.
- f) Blank Trinidad and Tobago passports are in great demand in the Caribbean and some South American countries by Alien Smugglers who insert US and Canadian Visas and sell these passports for prices ranging between United States \$5-10,000.00

17. The Applicant first saw the Intelligence Report with all names deleted except the Applicant's, during the course of these proceedings, that is three years after the passports went missing. However, the Applicant deposed that on or about 30.6.04 she had met with Edwards and Ms.Gordon, when both officials confirmed to her that there was nothing in her personal file or in the files relating to missing diplomatic pouches which implicated her in any conspiracy to steal the diplomatic pouch containing the blank passports. Edwards subsequently denied the Applicant's account of the meeting.
18. The Applicant denied that she was part of any conspiracy to steal blank Trinidad and Tobago passports. She had left the New York Consulate General ten years ago and had no allies there. No charges or disciplinary action had been taken against any one concerning the passports which were lost in 2001.
19. The procedure regarding dispatching passports is that the passports are sent from the office of the Chief Immigration Officer in the custody of a messenger and received by an officer in the Registry of the Ministry, in this case Ms. Valerie Samuel Clerk III who packed the passports in the pouch. Estate Constable Huggins transported the pouch to Piarco where BWIA security would scan the pouch and BWIA handlers would then transport it to the aircraft. Immigration Head Office would then communicate with staff at the Consulate General to alert them that the passports were en route.
20. The Applicant maintained that she held the position of Accountant at the Permanent Mission in New York from 1989 to 1995 and as such neither forwarded nor received diplomatic pouches. However, she was the Officer in Charge of the Registry with responsibility for the diplomatic bag at the Consulate General in New York from 1987 to 1989.
21. The Applicant insisted that she was never aware or informed that the passports were urgently needed. She maintained that the diplomatic pouch does not leave daily for the New York Mission. There is one pouch per week and newspapers

are never left out to make room for anything else. In this case another diplomatic pouch with the passports could have been sent. If something was urgent and she was so informed, special arrangements would have been made. The Applicant would not normally notify a foreign mission that blank passports are being sent as this would be done by staff at the office of the Chief Immigration Officer, who will liaise and communicate with the Immigration Officer at the relevant Mission.

22. The Applicant denied that after she was informed of the missing passports, she failed to respond immediately because she wanted to give her allies time to dispose of the passports. The Applicant produced a draft memorandum on the missing passports dated 15.6.01 which she had sent to her immediate supervisor, Mr. Harold Robertson, Director of Administration and directed to the Permanent Secretary in the Ministry of National Security requesting urgent attention. This draft memorandum was not challenged by the Respondent. Further since the passports went missing on 5.6.01 and the memorandum noted that there had been communication between BWIA'S Cargo Representative at Piarco during June 7 to 12, 2007, this Court concludes that there was no undue delay in the Applicant's response.
23. The Applicant deposed that she was never interviewed by BWIA's security but by Inspector Maxima of the Police Special Branch which normally conducts investigations into missing documents from the diplomatic pouches.
24. Meanwhile the Applicant was appointed to act in the following higher posts in the Ministry:
  - a) Accountant II from 15.3.02 to 23.7.02
  - b) Foreign Service Executive Officer III from 23.7.02 to 2.9.02
  - c) Foreign Service Executive Officer II from 3.9.02 to 31.3.03
  - d) Records Manager II from 9.8.04 to 1.10.04 and from 5.10.04 to 25.10.04
  - e) Accountant II from 1.5.05 to September, 2005.

Ms. Joseph deposed categorically that the Applicant has never acted as Accountant II. However, the Applicant has produced documentary evidence from the Director of Personnel Administration to confirm her appointment to act as Accountant II at (a) and (e) above. These documents have not been challenged.

25. The Applicant deposed further that in or about October, 2003 she was transferred to the Accounts Department from her position as Officer in Charge of the Registry in Port of Spain. Ms. Marilyn Collier replaced the Applicant as Officer in Charge of the Registry until August, 2005. In or about April-May, 2004 during Ms. Collier's tenure, a criminal investigation was launched into the use of the diplomatic pouches to transport cocaine between Trinidad and Tobago and London, New York and Toronto respectively. But Ms. Collier was not deemed a security risk and no disciplinary action was taken against her. In this instance it must be noted that Bissoon Budhai, Acting Foreign Service Executive Officer I at the London High Commission was recalled and subsequently charged together with other persons with conspiracy to traffic cocaine.
26. On 27.5.04 the Applicant met with Edwards who advised her that she was being transferred to replace Budhai. The Applicant stated that Edwards said her transfer was on an emergency basis and that since no financial accounts had been done for the past month at the London High Commission she should prepare to leave for London immediately. Edwards denied using the term "emergency basis" or "immediately" but acknowledged that he had suggested that the Applicant go "as quickly as possible."
27. The Applicant also said that Edwards had told her she was the most senior officer and most qualified for the posting on the basis of merit and ability. Further, Edwards also joked that this was one time she was not being overlooked as had happened in the past. Edwards denied making this last

statement but admitted that he had told the Applicant she was the most senior officer in terms of accounting.

28. The next day (28.5.04) the Applicant received a letter dated 26.5.04 from Ms. Gordon's secretary. This letter was signed by Edwards, confirmed her transfer to London and enclosed a copy of her Instrument of Transfer dated 24.5.04 and signed by the Honourable Prime Minister which stated:

**"In exercise of the power vested in me under Section 121 (6) of the Constitution of the Republic of Trinidad and Tobago, I do hereby appoint you, Ms. Feroza Ramjohn, Foreign Service Executive Officer II, to the High Commission of the Republic of Trinidad and Tobago, London, United Kingdom, with effect from the date of assumption by you of the duties of the post."**

29. The Applicant was directed to see Ms. Gordon who confirmed that her transfer was on an emergency basis and that she should prepare to leave immediately. To this end the Applicant agreed to sell her Ford Mercury Mystique motor vehicle PBA 5115 to her father for \$75,000 and the contents of her home. She also gave notice to her landlord, her brother that on 30.6.04 she intended to give up the tenancy of an apartment which she occupied. She also sold off her smaller electronic items since Ms. Gordon had advised her that she could not use them in London because of the different electrical voltage over there. The Applicant's medical examination was being arranged and her psychiatric evaluation had been carded for 11.7.04.

30. On 7.6.04 the Applicant was summoned to a meeting with Ms. Joseph, the acting Permanent Secretary. Ms. Joseph had been acting for Edwards for two and a half weeks from 31.5.04 while Edwards had gone to South Africa on official business. According to the Applicant Ms. Joseph handed the Applicant

a letter dated 7.6.04 and stated that she had revoked the Applicant's transfer to London. Ms. Joseph refused to give the Applicant a reason or explanation therefor and was hostile. A perusal of this letter stated simply that the Applicant's transfer to London had been rescinded and that she should discontinue preparations for an early departure.

31. Ms. Joseph denied the Applicant's account of their meeting, maintained that on Friday 4.6.04 she had been instructed by the Minister of Foreign Affairs, Senator Knowlson Gift (the Minister) to advise the Applicant immediately that her transfer had been rescinded and that she had issued the letter of 7.6.04 the following Monday. In particular Ms. Joseph denied that the Applicant had asked her for an explanation or that she, (Ms. Joseph) had behaved in a hostile or unprofessional manner.
32. It is passing strange that according to Ms. Joseph, on 4.6.04 the Minister had instructed her to advise the Applicant immediately that her transfer to London had been rescinded. Yet Ms. Joseph prepared the letter, waited until the Minister returned to office and approved same before handing it to the Applicant late (4.30 p.m.) in the afternoon of 7.6.04 (the following Monday). According to Ms. Joseph:

**"...The Applicant was merely given the letter. She did not open the letter in my presence or inquire about its contents. She merely asked if that was all, to which I responded "yes" and she left..."**

33. From Ms. Joseph's affidavit it can reasonably be inferred that although the Minister had instructed her to advise the Applicant immediately of the rescission of her transfer, Ms. Joseph said nothing to the Applicant and three days later, simply handed over the letter which the Applicant did not open in her presence. This Court finds the Applicant's account of this incident more credible.

## ABSENCE OF CROSS-EXAMINATION

34. Mr. Ramlogan submitted that this case turned more on the evidence than on the law. Further in the absence of cross-examination the approach of the Court should be that stated by **de la Bastide CJ in The Attorney General v. M & M Brokers Ltd. (1996) 50 WIR 462 at 474 b-d:**

**"In my view, evidence whether in written or oral form, is not subject to the technical rules applicable to pleadings. Affidavits should be confined to evidence, that is, material information which the deponent can provide at first hand. There is no obligation on a deponent to formally deny an allegation with regard to which he can provide no admissible evidence. The effect of an unanswered allegation contained in an affidavit is exactly the same as if that allegation had been made in the course of oral evidence. A Court is likely to accept it unless it contains some inherent improbability or conflicts with other evidence in the case, documentary or oral."**

Further the Court can make no observation on the demeanor of a witness if there is no cross-examination.

35. In **HCA: No 1903 of 1997 Alphonsus Mondesir v. The Attorney General,** Sinanan J. adopted the above dicta of de la Bastide CJ and added:

**"Merely because an allegation is un-answered does not oblige the Court to accept it. It takes its place along with other items of evidence to be assessed by the Court in determining any issue or matter."**

36. It is to be noted that there was no request by any party for cross-examination. Accordingly, in assessing the evidence which has not been tested in cross-examination, this Court was and continues to be guided by the foregoing dicta.

## AMENDMENT

37. Mr. Martineau strongly criticised the Applicant for having challenged the decision of the Respondent when in fact it was the Interested Party who had revoked the Applicant's transfer to London. Further he objected to Mr. Ramlogan seeking an amendment to this effect, late in the day and sought costs of this application.
38. Mr. Ramlogan countered that both the Respondent and the Interested Party had been served and were always aware that the Applicant was seeking judicial review of the decision to revoke her transfer. Further the Applicant had only learnt this was the decision of the Interested Party after these proceedings had been commenced although to date no Instrument of Revocation had been produced. In the circumstances it was not unreasonable for the Applicant to have concluded that the decision to revoke was that of the Respondent. In any event the amendment being sought was not inconsistent with the case which had been filed or argued.
39. Towards the end of his submissions Mr. Martineau suggested that he had not represented the Interested Party in the initial stages while Mr. Ramlogan stated that when the application to vary the injunction came before Best J. Mr. Martineau informed the Court that he was appearing for the Respondent and the Interested Party. Mr. Martineau did not accept this and asked the Court to check its notes.
40. This Court does not know what was said before Best J. But having checked its notes, this Court can confirm that on 20.10.05 and before the submissions had commenced, Mr. Martineau informed the Court that he was appearing for the Respondent and the Interested Party. This Court notes that Mr. Martineau was always aware that the Applicant was seeking to quash the decision to revoke the Applicant's transfer to London.

41. It will be useful to recount the sequence of events. The Applicant's Instrument of Transfer was dated 24.5.04 while the letter advising of the revocation was dated 7.6.04. These proceedings were commenced on 11.6.04. Further the Applicant only became aware of the letter of 4.6.04 from the Interested Party revoking her transfer, when it was exhibited to the affidavit of Yvonne Gittens-Joseph filed on 24.6.04. In the said affidavit Ms. Joseph deposed that she herself only became aware of the letter of 4.6.04 some time after she had issued her letter of 7.6.04 to the Applicant.
42. In the circumstances this Court is prepared to grant the application to amend and will reserve the question of costs.

### **ISSUE**

43. Whether the decision of the Prime Minister as contained in his letter of 4.6.04 to revoke the Applicant's transfer to London on grounds of national security was an abuse of process, an irregular exercise of discretion and/or was so unreasonable that no reasonable authority would have taken such a decision.

### **SUB ISSUES**

- a. Whether there was a genuine issue of national security
- b. Whether the issue of national security was invoked to justify a breach of the rules of natural justice in relation to the Applicant or to justify unequal treatment of the Applicant.
- c. Whether the Applicant was discriminated against on the ground of race or ethnicity.

### **National Security**

45. Former Prime Minister, Basdeo Panday (Mr. Panday) deposed that in 2001, during his tenure as Prime Minister and Chairman of the National Security Council (NSC) he was informed of the missing diplomatic pouch containing 200 passports which had been ear-marked for the Consulate General in New

York. As a result instructions were given to the Special Branch to carry out an investigation which concluded that there was no evidence to lay any criminal charges against anyone. Further, at no time was he informed that the Applicant was or might have been involved in or was part of a major conspiracy to steal the said diplomatic pouch.

46. Lebert Legere, retired Assistant Commissioner of Police, who was the Head of Special Branch from January 2001 to October 2002 responded that he was never instructed by Mr. Panday or anyone else to investigate any matter involving a missing diplomatic pouch containing passports. Neither did the Special Branch ever carry out such an investigation. Mr. Panday countered that he was no longer in possession of the relevant records, could not recall to whom instructions to investigate were given and that it was likely that the instruction to the Special Branch to investigate came from one of his advisors on matters of national security.
47. Mr. Panday deposed further that if there are grounds for suspecting that a person is a threat to national security, a report must be sent to the NSC for consideration and determination as to whether such a person should be deemed a threat to national security. Further, it would be dangerous or highly improper for a state agency of department to withhold from the Prime Minister and/or the Chairman of the NSC information that any person is a threat to national security. The Cabinet over which Mr. Panday presided was never informed that the Applicant was considered a risk to national security.
48. John Sandy (Sandy) deposed that he had served in the Trinidad and Tobago Defence Force for 36 years and as Chief of Defence Staff he served as a member of the NSC from mid July, 2000 to January, 2002. To his knowledge the standard practice and procedure in Trinidad and Tobago is that the Chief of Defence Staff must be notified of any threat to national security and that he was never informed that the Applicant was considered such a threat. Further, only the NSC has the authority and power to deem someone a threat to national

security. Sandy also set out the procedure for a person to be deemed a threat to national security and confirmed that such a report will be properly investigated by the nation's intelligence agencies whose reports will be submitted to the NSC which will determine whether such a person should be deemed and treated as a threat to national security.

49. John Jeremie deposed that since his appointment as Attorney General on 10.11.03 he has been a member of the NSC but that he does not consider it prudent to disclose publicly the internal details and operations of the NSC or for the identities of its Secretary and Chief Executive Office to be disclosed. However in his experience the operations and operational details which are deposed to in the affidavits of Messrs Panday and Sandy are not true.
  
50. In an affidavit filed on 12.10.05 Michael Maxima (Maxima) deposed that he has been a police officer for more than 37 years and has been attached to the Special Branch for 35 years. At present he holds the position of Superintendent of Police and performs the functions of Deputy Head of Special Branch. Maxima denied the Applicant's assertion that he had interviewed the Applicant in connection with missing passports and/or missing diplomatic pouches.

However, Maxima added that in or about June, 2001 he had been assigned by Cyril Bernard (Bernard) the then Deputy Head of Special Branch to monitor the procedure for the movement of articles to be placed in the diplomatic pouch, the process for handling the said articles at the Ministry and the transmission of these articles in diplomatic pouches from the Ministry to various Missions abroad with particular emphasis on the procedure followed at the Ministry in transporting these articles from the Ministry to the airport, their stay at the airport and the means and modes of conveyance out of Trinidad and Tobago. In carrying out this assignment, the acting Chief of Protocol in the Ministry, Frank Lawrence referred him to the Applicant as she was the officer in charge of the department that dealt with diplomatic pouches at the time. Maxima asked the

Applicant to provide information on the assignment given to him by Bernard. That was the only discussion Maxima held with the Applicant.

52. It is significant that Ms. Joseph who was then the Deputy Permanent Representative to Trinidad and Tobago's Mission to the United Nations in New York, was one of two persons who signed the report of a meeting held in New York on 1.6.99 concerning the 36 missing passports. It is of further significance that the existence of the reports on the passports which went missing in 2001 only came to the attention of the Interested Party sometime after he had issued the Instrument of Transfer on 24.5.04 and before 4.6.04 when the transfer was revoked. It is to be noted that Ms. Joseph acted as Permanent Secretary in the Ministry from 31.5.04 to 16.6.04.
53. The Applicant had deposed that at a meeting on 30.6.04 with Ms Gordon and Edwards at the Applicant's request, Ms. Gordon perused the file on missing diplomatic pouches and said that there were several other instances where passports and diplomatic pouches had gone missing. In response to the Applicant's question as to whether they were aware of any Security Intelligence Report which stated or implied that the Applicant may have been involved in a major conspiracy to steal a diplomatic pouch containing the passports which went missing in June, 2001 and that both Ms. Gordon and Edwards had replied that they had never seen any such document.
54. Edwards responded that he never read the documents in the file on missing diplomatic pouches. Further, he denied answering the Applicant's query as to whether the documents implicated the Applicant in any conspiracy. Rather, it was a rhetorical question which Edwards did not answer. Ms. Gordon denied telling the Applicant that there were several other instances of diplomatic pouches having gone missing. However she admitted saying that the file contained no Security Intelligence Report but added that the Applicant casually asked "Do you all see anything to implicate me in any conspiracy?" and she, Ms. Gordon had merely replied no. It is reasonable to conclude that up to

30.6.04 the Intelligence Report was not contained in the file on missing diplomatic pouches. And this is the Report which caused the Interested Party to revoke the Applicant's transfer.

55. With respect to the pouch which went missing in 2001, this Court accepts that in June, 2001 Bernard, the Deputy Head of Special Branch instructed Maxima to investigate the procedure for packing and transmitting diplomatic pouches from the Ministry to various Missions abroad. During the course of this investigation Maxima interviewed the Applicant. Since the pouch containing the passports went missing on 5.6.01, the only reasonable inference is that Maxima had been instructed to investigate the disappearance of this pouch. In the circumstances Mr. Panday's account is to be preferred. It should also be noted that Maxima did not disclose the results of his investigation. This Court also accepts the Applicant's assertion that she was interviewed by Maxima regarding the missing passports.
56. Three of the four reports dealt with the 2001 missing passports. And only the Intelligence Report implicated the Applicant. This report was prepared by BWIA security, not the Trinidad and Tobago Police nor the New York police nor the FBI and has as its subject "Conspiracy to Steal Diplomatic Pouch Containing Blank Trinidad and Tobago Passports". For the Applicant it was submitted that this report is incomplete and gives as the source of the information which implicated the Applicant, an anonymous official at the Permanent Mission to the Republic of Trinidad and Tobago in New York.
57. This Court has examined the original of the Intelligence Report and of the Secret Report and can confirm that both reports were prepared by the same person, an official in charge of security at BWIA. The Secret Report bears the date 25.6.01 while the Intelligence Report carries two dates 23.6.01 and 25.6.01.

58. The Secret Report states that a Summit Security Officer is involved in the disappearance of the diplomatic pouch and may be just a part of a major conspiracy which may have begun in Trinidad but does not mention the Applicant. Further, this report recommends that the FBI carry out investigations in New York while the Trinidad and Tobago Commissioner of Police do the same locally. Maxima has confirmed that he was instructed by the Deputy Head of Special Branch to investigate the procedure for dispatching diplomatic pouches and interviewed the Applicant during his investigation. However he declined to report his findings. And no information has been forthcoming as to whether the New York police or the FBI carried out any investigation in New York.
59. The Intelligence Report which was prepared by the same person at the same time specifically names the Applicant, based on information received from an official at the New York Mission. Both the Intelligence Report and the Secret Report refer to the Permanent Mission of the Republic of Trinidad and Tobago in New York. However, this Court understands that there is a Permanent Mission of the Republic of Trinidad and Tobago to the United Nations in New York, which deals with multi-lateral relations and the Consulate General in New York, which is responsible for bi-lateral relations. The missing passports had been earmarked for the Consulate General, the functions of which include the issuing and renewal of Trinidad and Tobago passports. The Applicant had worked as Officer in Charge of the Registry at the Consulate General in New York from 1987 to 1989 and as an Accounts Officer at the Trinidad and Tobago Permanent Mission to the United Nations from 1989 to 1995.
60. No explanation has been forthcoming as to what became of these two Reports from June, 2001 to date. In the interim the Applicant was appointed to act in several higher posts including that of Records Manager from August to October, 2004. It is passing strange that from 2001 to 2004 the contents of the Intelligence Report were not drawn to the Applicant's attention so that she could respond. The Intelligence Report stated that an official at the Consulate General had fingered the Applicant in the alleged conspiracy. In the face of

such a serious allegation the authorities had a duty to investigate this matter further and obtain evidence, if any, of the Applicant's involvement in such a nefarious plot. In the light of the Respondent's silence on any follow-up investigation the only inference which can be drawn is that there was no follow-up investigation or that such an investigation yielded no evidence against the Applicant.

61. The Intelligence Report notes that blank Trinidad and Tobago passports are in great demand by alien smugglers into Canada and the USA. Attorney for the Applicant contended that this may be a threat to the security of these countries and not to that of Trinidad and Tobago. It is unclear in what circumstances and when the Intelligence Report came to the attention of the Interested Party. Since that Report is dated June, 2001 and the Interested Party only saw this report after he had signed the Instrument of Transfer, that is, in late May – early June 2004, he (the Interested Party) should have made further inquiries into the alleged conspiracy, particularly since the Applicant was never disciplined, therefor, continued to act in senior positions of trust in the Ministry and was recommended for the transfer to London by the Permanent Secretary in the Ministry.
  
62. The Applicant submits that it is questionable whether the potential to smuggle aliens into the USA and Canada raises an issue of national security. Further, in the absence of any criminal charges or disciplinary action three years after the initial allegation of conspiracy, such an allegation, without more, cannot amount to a cogent threat to national security. Finally, if there was a threat, the Applicant concludes that the Respondent's actions must be proportionate and reasonable in the circumstances.

### **THE LAW**

63. **Constitution of the Republic of Trinidad and Tobago**

#### **Section 121 (6)**

**"6) Power to make appointments on transfer to the following offices shall vest in the Prime Minister**

- b) any office the holder of which is required to reside outside Trinidad and Tobago for the proper discharge of his functions, and such offices in the Ministry of External Affairs as may from time to time be designated by the Prime Minister after consultation with the Public Service Commission.**

Section 129 (4)

**"(4) No penalty may be imposed on any public officer except as a result of disciplinary proceedings."**

- 64. The Interested Party invoked the power under section 121 (6) above to transfer the Applicant to London and also to revoke the said transfer. The Respondent submitted that the revocation of the transfer was on the ground of national security and could not be inquired into. Further the power of the Prime Minister under section 121(6) above is not one that attracts the principles of natural justice as it was an operational decision. There was no element of discipline involved and the principles of fairness are not to be applied by rote in every situation.
  
- 65. *In Council of Civil Service Unions & Ors v Minister for the Civil Service (CCSUV Minister) /1985) 1A.C. 374* the facts were that the functions of Government Communications Headquarters (GCHQ) were to ensure the security of military and official communications and to provide the government with signals intelligence. Since 1947 staff employed at GCHQ had been permitted to belong to trade unions. In 1983 the Minister gave an order without

consulting the union that the terms and conditions of service for staff were to be varied so that they could no longer belong to unions.

66. The House of Lords held, inter alia, that executive action was not immune from judicial review merely because it was carried out in pursuance of a power derived from common law or prerogative rather than a statutory source, and a Minister acting under a prerogative power might, depending on its subject matter, be under the same duty to act fairly as in the case of action under a statutory power. However it was for the executive and not the courts to decide whether, in any particular case, the requirements of national security outweighed those of fairness.

Per Lord Fraser of Tullybelton at p.402 C-F

**"The question is one of evidence. The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the government is under an obligation to produce evidence that the decision was in fact based on grounds of national security. Authority for both these points is found in *The Zamora* [1916] 2 A.C.**

**77. The former point is dealt with in the well known passage from the advice of the Judicial Committee delivered by Lord Parker of Waddington, at p. 107:**

**'Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public.'**

The second point, less often referred to, appears at p. 106 and more particularly at p. 108 where this passage occurs:

**`In their Lordships' opinion the order appealed from was wrong, not because, as contended by the appellants, there is by international law no right at all to requisition ships or goods in the custody of the court, but because the judge had before him *no satisfactory evidence* that such a right was exercisable' (Emphasis added.)**

**What was required was the evidence that a cargo of copper in the custody of the Prize Court was urgently required for national purposes, but no evidence had been directed to that point".**

67. At p.404 E and G Lord Scarman stated:

**"The point of principle in the appeal is as to the duty of the court when in proceedings properly brought before it a question arises as to what is required in the interest of national security .... But, however it arises it is a matter to be considered by the court in the circumstances and context of the case.... If the question arises as a matter of fact, the court requires evidence to be given. If it arises as a factor to be considered in reviewing the exercise of a discretionary power, evidence is also needed so that the court may determine whether it should intervene to correct excess or abuse of the power."**

68. Referring to Secretary of State for Defence v Guardian Newspapers Ltd.

J19851 AC 339 Lord Scarman noted at p.406 F

**"...all their Lordships held that evidence was necessary so that the court could be judicially satisfied that the interest of**

**national security required disclosure of the newspaper's source of information."**

69. The Respondent cited this case (CCSU v Minister) in support of the proposition that national security over-rides the requirements of natural justice. However it is also authority for the proposition that the State must provide evidence to establish that the issue was one of national security. A court will not simply accept national security as a blanket defence.
70. In the Canadian case of **R v Blanas 120041 ONCJ 212** the accused was a production Clerk at the passport office. His duties were to assemble and complete Canadian Passports. In 2002 five boxes of blank passports went missing. The accused was arrested and charged for theft and breach of trust. The accused stood trial and was convicted.
71. While the facts of this case are somewhat similar to the facts in the instant case, it demonstrates that in Canada the loss of blank passports was treated as a simple criminal matter rather than one of national security while giving the accused her day in court. Although the loss of blank passports is a serious matter, it begs the question whether it is one which threatens the security of the state.
72. **R v Secretary of State for the Home Department ex parte Hosenball 119771 3 AER 452**

The Applicant, a U.S. citizen worked in England as an investigative journalist. On 15.11.76 four weeks before his permit to stay in the UK was about to expire he received a letter from the Home Office that he had obtained for publication information harmful to the security of the UK and as a result of a deportation order had been made against him. The applicant through his attorneys requested further particulars of the allegations against him. The Secretary refused to provide same on the grounds that to give further information was not

in the interest of national security. There is no right of appeal against a deportation order but the decision was made to make the deportation order subject to a three-person advisory panel. The applicant made representations to the panel. The panel's report was not made available to the applicant. On consideration of the panel's report the Secretary made a deportation order against the applicant. The applicant filed for an order of certiorari. The Divisional Court dismissed the application and the applicant appealed. The Court of Appeal held that the appeal would be dismissed because when national security is invoked the rules of natural justice were liable to be modified.

Per Lord Denning at p.457 a and f

**"This is no ordinary case. In a case where national security is involved and our history shows that when the state itself is endangered, our cherished freedoms may have to take second place. Even natural justice may suffer a setback..."**

**"So it seems to me that when the natural security is at stake even the rules of natural justice may have to be modified to meet the position..."**

Lord Denning was well aware that in some parts of the world governments have used the cloak of national security to infringe on individual liberty. But Lord Denning was convinced that this does not occur in England. Thus the superiority of natural justice over individual liberty may be applicable to the UK. In this country the Constitution is the supreme law.

73 — **R v Secretary of State for The Home Department Ex parte Doody et al**  
**[ 1994] 1AC 531**

The four applicants each received mandatory life sentences for separate convictions for murder. The Secretary of State for the Home Department was

empowered to grant them release upon license. Procedure dictated that the Secretary consult the presiding Judge and the Lord Chief Justice (LCJ) on the date for the first review after the prisoners had served a minimum term for retribution and deterrence. The applicants sought judicial review on the grounds that they were not informed of the date suggested by the LCJ or the presiding Judge; that the Secretary could not give a minimum term longer than that suggested by the judiciary; that if he did so that he had to give reasons; that the prisoners were entitled to make representations to the Secretary concerning the minimum term and for that purpose they were entitled to the information upon which the Secretary had based his decisions. The Divisional Court dismissed the applications. The appellate Court allowed part of the appeal, namely that the prisoners were entitled to be informed of the period recommended by the judiciary and to be given an opportunity to make representations to the Secretary before determination of the minimum term.

74. The House of Lords held that:

1. A prisoner serving a mandatory life sentence should be given the opportunity to make written representations;
2. That prior to this, the Secretary was required to inform the prisoner of the judiciary's recommendations and of any other relevant opinion expressed by the judiciary; and
3. The Secretary was not required to adopt the judiciary's recommendations, though if he departed from them he was obliged to give reasons and that such duty could be delegated to a junior minister.

The requirements of fairness – per Lord Mustill at p.560 D-F

**"...(1) Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner that is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and their application to decisions of a particular type. (3)**

**The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will often require that a person who has been adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result or after it is taken with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing the factors which may be weighed against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.**

75. **R on behalf of Tucker vs Director General of the National Crime Squad (20031 EWCA Civ2**

The Appellant was a Detective Inspector in Derbyshire. In 1996 he was seconded for 5 years to the National Crime Squad (NCS), a high status posting. His secondment to the NCS was extended to May 2002. However in April 2001 it was terminated and he was returned to his local force. In April 2001 several officers of the NCS were arrested on suspicion of drug related offences. Two others had their secondments terminated and were returned home for disciplinary investigation. The Appellant too had his secondment terminated but without any disciplinary implications. The Deputy Director General (DDG) told him that the NCS had lost confidence in his performance and as such he was being returned to his local Department in Derbyshire. The appellant applied for judicial review. His appeal was dismissed on the ground that there was no public law element and that fairness was not breached.

Per Lord Justice Scott Baker at pars32

**..."There is no disciplinary element to the decision in the Appellant's case. He was returned to the force because the Respondent had lost confidence in his ability to carry out his responsibilities. It seems to me this was an entirely operational decision similar to the kinds of decisions that are made with officers up and down the country every day...These, to my mind, are run of the mill management decisions involving deployment of staff or running the force. They are decisions that relate to the individual officer personally and have no public element. They are if you like the nuts and bolts of operating a police force...It is, in my judgment quite inappropriate for the courts to exercise any supervisory jurisdiction over police operational decisions of this kind. There is quite simply no public law element to them. The position is different where, however disciplinary decisions have been taken against an officer and ordinary principles of fairness have been breached."**

And at para 51

**"There is no sufficient public law element in the decision to terminate the Appellant's secondment. His claim is not amenable to judicial review and therefore the court has no jurisdiction to entertain it. I would therefore dismiss the appeal on this ground. I do however agree with Harrison J. that there was in any event, no breach of the public law principles of fairness.**

76. It is to be noted that in **Tucker** the appellant was informed both verbally and in writing by the DDG the reason for his secondment being

terminated, namely that he had lost the confidence of the NSC. In the instant case no reasons were given up to the time the applicant filed suit.

### **CONCLUSION AND FINDINGS**

77. The Applicant had been employed in the public service for approximately 35 years and had spent the last 15 years in the Ministry. She had never received one adverse report or marking throughout her entire career and had never been the subject of any disciplinary complaint. When passports went missing in 1999, Ms. Mayantie Narine was the person in charge of the Registry. However she was not disciplined or deemed a security risk. Ms. Valerie Samuel who actually packed the bag containing the passports which went missing in 2001 was never disciplined or deemed a security risk
78. The allegation that the Applicant may have been involved in a major conspiracy to steal a diplomatic pouch containing blank Trinidad and Tobago passports was made in the Intelligence Report prepared by an un-named person in charge of security at BWIA and was based on information from an un-named source at the Consulate General. This information was never particularized or verified. It was just a bald statement.
79. The Respondent has failed to explain what became of the Intelligence Report in which this allegation had been made between June 2001 and the revocation of the Applicant's transfer on 4.6.04. Neither did the Respondent explain what investigation or follow-up action was taken in respect of this allegation against the Applicant. Maxima failed to disclose the results of his investigation. The Attorney General did not consider it prudent to disclose the procedure before the NSC or how one is deemed a risk to national security.
80. For three full years after the allegation of conspiracy had been made, against the Applicant, the document containing this allegation simply disappeared and only surfaced after the Permanent Secretary had recommended the Applicant to

be transferred and after the Interested Party had accepted the recommendation and issued the Instrument of Transfer. In the interim during 2001 to 2004 the Applicant continued to hold and be promoted to act in several higher positions of trust in the very Ministry.

81. **In CCSU v Minister (above)** Lord Fraser stated (para 62 above)

**"...But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the government is under an obligation to produce evidence that the decision was in fact based on grounds of national security..."**

The Applicant has challenged the decision, alleging that the process was unfair. She contends that she was never told of her alleged involvement in any conspiracy between 2001 and after she sought judicial review in June 2004. So she was never given an opportunity to respond. Further, when the Applicant first learnt of the existence of the Intelligence and other reports through the affidavits filed on behalf of the Respondent, the latter strenuously resisted disclosing the said reports on grounds of national security.

82. Two of the requirements of fairness as set out by Lord Mustill in **ex parte Doody** (para 75 above) are that a person who has been adversely affected by a decision must have an opportunity to make representations and in order to do so must be informed of the gist of the case he has to answer. These authorities confirm that if the process by which the decision was reached is unfair, the State must produce evidence that the decision was in fact based on grounds of national security. This Court finds that the process by which the decision was reached was unfair to the Applicant. This Court finds further, and I so hold that the State has produced no or no cogent evidence that any issue of national security arose in the transfer of the Applicant to London.

Accordingly I find that the Applicant was treated unfairly and contrary to the principles of natural justice.

### **IRRATIONALITY**

83. The letter dated 4.6.04 signed by the Honourable Prime Minister stated:

**"I have reconsidered the appointment of Feroza Ramjohn in light of the contents of the Security Department Intelligence Report. So as to avoid any possibility for further damage to the reputation of the Republic, I hereby revoke the appointment.**

**Please advise me as a matter of urgency on a safe and appropriate replacement against whom there can be no question raised in this moment of crisis"**

Attorney for the Applicant objected to the above letter being put in evidence on the ground that there was no affidavit from the Interested Party and that it was not done on his official stationery. Since this Court has already dealt with the Applicant's amendment to challenge the decision of the Interested Party made in this very letter, I reject this objection.

**84. R v Secretary of State for the Home Department ex parte Cheblak (1991 2 AER 319**

The applicant was a Lebanese citizen who had resided in the United Kingdom for 16 years. He had been granted indefinite leave to remain in the United Kingdom, and was married to a Palestinian woman who lived with his wife and two children in London in a home he and his wife owned. The applicant had held a number of academic posts and published academic works on Middle Eastern subjects. He was a freelance writer and was employed by the Arab League's London Office as a senior research officer. Shortly after the outbreak of hostilities in the Gulf in 1991 he was arrested and served with

notice of the Home Secretary's intention to serve him with a deportation order on reasons that his deportation would be "conductive to the public good for reasons of national security". It was alleged that the applicant was associated with a terrorist organisation hostile to the West. After his application for a writ of habeas corpus and leave to apply for judicial review were denied, the applicant appealed.

85. The Court of Appeal agreed with the order of the lower court, and denied the applicant leave to apply for judicial review, since there was no evidence to suggest that the Home Secretary's decision had been irrational.

Per Lord Donaldson M.R. at page 333 e-f

**"Those who are able most effectively to undermine national security are those who least appear to constitute any risk to it. In saying this I am not to be taken as implying that Mr. Chelblak is other than an innocent person of circumstances or that on the other hand the Home Secretary's decision was wrong. I am simply saying that there is no evidence whatsoever that the decision was irrational, and, in this particular field it would probably be a unique case if there was."**

And at p.334 f-g

**"although they give rise to tensions at the interface, 'national security' and civil liberties' are on the same side. In accepting as we must, that to some extent the needs of national security must displace civil liberties, albeit to the least possible extent it is not irrelevant to remember that the maintenance of national security underpins and is the foundation of all our civil liberties.**

86. Attorney for the Respondent and for the Interested Party submitted and I accept that the threshold of unreasonableness is notoriously high. Having regard to the facts of this case and especially to the date when the Intelligence Report came to the attention of the Interested Party this Court concludes that the decision to revoke the Applicant's transfer is not *Wednesbury* unreasonable.

### **RACIAL DISCRIMINATION**

87. The Applicant alleged that she was discriminated against by the decision to revoke her transfer in the light of the racial imbalance in the composition of staff at the country's foreign Missions. The Applicant deposed that there were far fewer Indo-Trinidadians than Afro-Trinidadians at the several missions. However Ms. Joseph challenged the Applicant's statistics and the issue remained un-resolved.

88. In any event Ms. Joseph agreed that if the Applicant's transfer to London had not been revoked, of the 26 persons employed at the London High Commission there would have been 6 Indo-Trinidadians, being approximately 23 per centum of the total staff. It was submitted for the State that any decision to have more persons of any particular race at the London Mission or any other Mission because of racial imbalance alone is unconstitutional and would amount to discrimination for its own sake. Further, in any event there was no evidence that race played any part in the revocation of the Applicant's transfer.

89. **King v the Great Britain-China Centre [1992] IRLR 513**

In 1987 a vacancy arose for the post of Deputy Director at the Great Britain-China Centre for which Ms King, an ethnic Chinese applied. Her resume reflected the requisite qualifications namely, knowledge of standard Chinese, awareness and experience of the Chinese culture, as well as other necessary attributes. Notwithstanding her qualifications she was never contacted for an interview and she subsequently issued an originating application seeking a

finding that she had been discriminated against contrary to the Race Relations Act 1976. The industrial tribunal held by a majority that the applicant had been discriminated against on the ground of her race. The Centre appealed to the Employment Appeal Tribunal which ordered a re-hearing. Ms. King appealed to the Court of Appeal which held that:

1. The burden of proving racial discrimination lay on the applicant, which must be done on a balance of probabilities
2. Direct evidence of racial discrimination is unusual to find therefore the outcome of the case will depend on what inferences it is proper to draw from the primary facts found by the tribunal.
3. Though there will be some cases where for example non-selection of the applicant for the post or for promotion is clearly not on racial grounds, a finding of discrimination and a finding of a difference in race will often point to the possibility of racial discrimination. In such circumstances the tribunal will look to the employer for an explanation. If no explanation is then put forward or if the tribunal considers the explanation to be inadequate or unsatisfactory it will be legitimate for the tribunal to infer that the discrimination was on racial grounds.

Since the burden of proving racial discrimination lay on the Applicant, this Court finds that the Applicant has not discharged that burden

90. **DAMAGES**

**Section 8 (4) of the Judicial Review Act, 2000 stipulates:**

**"(4) On an application for judicial review, the Court may award damages to the applicant if-**

- (a) the Applicant has included in the application a claim for damages arising from any matter to which the application relates; and**

**(b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages".**

91. Paragraph 5 of the Applicant's Statement filed on 11.6.84 states that the Applicant claims no damages. Paragraph 58 of the submissions filed on 18.10.05 states:

**"58. While no specific claim for damages was made at the time leave was applied for such claim is recorded in the Order of Best J. following the application for leave and subsequent notice dated 11 June 2004 at paragraph (e) of the relief claimed."**

This Court has reviewed the court file and especially the Notice filed on 11.6.06 and has seen no such claim for damages. The state's position is that on damages should be awarded as the Applicant's transfer was subject to her medical fitness and at the time of the revocation the Applicant had not yet completed her medical and psychiatric evaluations. The Applicant has deposed that while she would have received the same salary on her transfer she would have been entitled to receive additional allowances.

92 The transfer was revoked on 4.6.04 and to seek judicial review was granted on 11.6.04 when an interim injunction was also granted staying the appointment of any other person to replace Budhai pending the determination of this application for judicial review. On 25.6.04 this injunction was varied to allow the Respondent to make a temporary appointment to fill the vacancy created by Budhai's recall.

93. The evidence before this Court demonstrates that the applicant was making preparations for an early departure for London. To this end a date for one of her medical examinations had already been fixed. The Applicant had a career lasting 35 years in the public service including 15 years in the Ministry. During this period she did not receive a single adverse report or disciplinary complaint. There was nothing in the evidence to suggest that the Applicant would not have passed the medical examinations. In any event it is the revocation of her transfer which prevented her from completing this requirement.
94. In ***Rees v Crane***<sup>11941</sup> **1 WLR 476** the Privy Council held that the Judicial and Legal Service Commission had acted in breach of the principles of natural justice and had thereby contravened the respondent's right to the protection of the law, including the right to natural just, afforded by section 4 (b) of the Constitution. The respondent had sought judicial review and redress for an alleged claim for infringement of his constitutional right but had not included a claim for damages. The Privy Council upheld the majority decision of the Court of Appeal to accept the respondent's claim in damages and ruled that the respondent was entitled to damages to be assessed by the High Court.
95. Since the decision in ***Rees v Crane*** (above) the Judicial Review Act 2000 came into force and **section 8(4)** provides that court may award damages if the applicant included such a claim in his application for judicial review and if the court is satisfied that had the claim had been made in an action begun by the applicant at the same time, the applicant could have been awarded damages.
96. Applying the decision in ***Rees v Crane*** (above) to the instant case, it is clear that the Applicant could have been awarded damages for a breach of her right to the protection of the law contained in **section 4(b) of the Constitution**. Accordingly, provided that the Applicant can establish that a claim for damages had been made in the application, as submitted by her Attorney, this Court will make an order that the Applicant is entitled to damages to be assessed on a date

to be fixed. This Court has also noted that in order to quantify her claim the Applicant is relying on disclosure by the Respondent to confirm her loss of earnings.

97. **DECISION**

1. This Court declares that:
  - (a) The Applicant has been treated unfairly and contrary to the principles of national justice; and
  - (b) The decision of the Interested Party, the Honourable Prime Minister contained in his letter of the 4<sup>th</sup> day of June, 2004 to revoke the applicant's transfer to the High Commission for the Republic of Trinidad and Tobago in London, United Kingdom is ultra vires, null and void and of no legal effect.
2. This Court grants an order of certiorari to remove into this Honourable Court and quash the said decision of the Interested Party dated 4<sup>th</sup> day of June, 2004.
3. The Respondent to pay to the Applicant damages to be assessed subject to the Applicant providing proof that a claim for damages had in fact been made.

4. The injunction granted on 11.6.04 and varied on 25.6.04 is hereby discharged.

The Court will hear attorneys on costs at a later date.

Dated this 3<sup>rd</sup> day of May, 2007

.....  
Amrika Tiwary-Reddy  
Judge.

Emile Enightoola (JRA)  
Aisha Peters-Francis (JRA)