[2010] UKPC 23
Privy Council Appeal No 0112 of 2009

JUDGMENT

Romauld James *v* The Attorney General of Trinidad and Tobago

From the Court of Appeal of Trinidad and Tobago

before

Lord Saville
Lord Brown
Lord Kerr
Sir John Dyson
Sir Stephen Sedley

JUDGMENT DELIVERED BY
Lord Kerr
ON

29 July 2010

Heard on 17 June 2010

Appellant	*Respondent*
Sir Fenton Ramsahoye SC Jodie Blackstock (Instructed by Bankside Law Limited)	Howard Stevens (Instructed by Charles Russell LLP)

LORD KERR

Introduction

1. Mr Romauld James, the appellant, is a police officer in Trinidad and Tobago. He has had an unblemished record of service. He began his police career in January 1981 as a constable in the second division of the Police Service. To be considered for promotion within the ranks of this division, an officer must pass the requisite examination, after which he or she is considered for promotion in accordance with Police Service Regulations.

2. In 1974 the Police Service Commission decided that constables and corporals in the Police Service who had obtained a General Certificate of Education 'O' level pass in English Language could be exempted from the English language component of the qualifying examination for promotion to the ranks of corporal and sergeant.

3. Regulation 4 of the Police Service Regulations governs entry to the Police Service. It does not deal with promotion. The regulation was amended in 1992 to provide that candidates for appointment as constables should: -

> "possess at least three General Certificate of Education passes with a minimum of three passes at Ordinary Level, Grade A, B or C including English Language or, at least three Caribbean Examination Council (CXC) Certificate passes including English Language at the level of General Proficiency Grade I, II or III or Basic I and two other subjects at the level of General Proficiency Grade I, II or III or Basic I or II"

4. In April 1997 the appellant took the qualifying examination for promotion to the rank of sergeant. He did not achieve the necessary grade in the English language component. Two months later he sat the CXC English Language examination and obtained a grade III. On the basis of this, in June 1998 he applied for exemption from the English language component of the qualifying examination for promotion. Of course he was not entitled to exemption on the strength of this result since Regulation 4 had nothing to do with promotion but it appears that other police officers who were in an equivalent position had received exemptions on the basis of similar results to that of the appellant in the CXC examination. On this account, Mr James filed a constitutional motion for certain forms of relief and redress under the Constitution of

Trinidad and Tobago. The reliefs sought included declarations that he had been discriminated against and unfairly treated and that he was entitled to the exemption in the English language component of the qualifying examination. Mr James also sought damages.

5. At the hearing of the motion it emerged that the appellant's application for exemption had not been processed properly. Although it had been forwarded to the appropriate authorities, it was not formally considered. Nor was any exemption published in a Departmental Order which is what ought to happen if the application is successful. Despite this, the appellant claimed that in 1998 he had been told by a Corporal Harper (who was Chief Clerk to the Superintendent) that he had been successful in his application for exemption. Although this claim was disputed by Corporal Harper, the judge who heard the motion found that the appellant had indeed been given this information.

6. At some time between February and April 2003, the appellant searched his personal file and discovered that there was no record of his having been granted the exemption. Paradoxically, he was, nevertheless, promoted to the rank of corporal with effect from 13 March 2003 and the following day, 14 March 2003, to act in the rank of sergeant. He has remained as an acting sergeant since that time.

7. On 3 April 2003 the appellant wrote to the Deputy Commissioner of Police asking again to be exempted from undertaking any further examination in the English language component of the qualifying test. He pointed out that he had obtained a pass grade in English Language in the CXC examinations and that he had previously applied for this exemption but it had not been recorded in his personal file. On 10 June 2003 this letter was endorsed by the Senior Superintendent in the Administration and Finance Branch as follows:-

> "Inform applicant that a CXC pass Grade III obtained in 1997 cannot exempt him from writing English Language for promotion in the Police Service. However, it can be placed in his file, please."

8. The appellant claims that he was not told of this until August or September 2003 when Corporal Harper gave him a copy of it. Again, Corporal Harper disputed this, claiming that he had informed the appellant about it in June 2003. No finding on this conflicting evidence was made and it is unlikely that anything of significance turns on it.

The proceedings

9. Although the constitutional motion included a claim for damages, on the hearing of the motion before Kokaram J, it appears that the principal relief that Mr James sought was "an exemption from writing any further qualifying examination in English Language should he sit any future examinations for promotion to the rank of Sergeant in the Police Service" – para 1.2 of the judgment. The respondent argued that to grant this exemption would compound one error with another. Rejecting this argument, the judge made two declarations, the first to the effect that the Police Service or the Police Service Commission had treated Mr James unfairly and discriminated against him contrary to section 4 (b) and/or 4 (d) of the Constitution. By the second declaration the judge pronounced that Mr James was exempt from "having to write any further qualifying examination in English Language to qualify for future acting appointments and/or promotion in the Police Service of Trinidad and Tobago".

10. The judge dealt briefly and summarily with the claim for damages. He stated that the declaratory relief was sufficient and that he would not make any further award in damages.

11. Mr James appealed and in his Notice of Appeal claimed that the judge had erred in concluding that the declaratory relief was sufficient recompense for the wrong that he had found the appellant to have suffered. It was averred that the giving effect to and protecting and securing the enforcement of the fundamental rights and freedoms guaranteed under section 4 (b) and (d) of the Constitution required the award of damages including aggravated and/or exemplary damages. In the skeleton argument filed on his behalf for the hearing of the case before the Court of Appeal, it was alleged that the appellant's "injury" had been aggravated by the manner in which the State had conducted the case against him in insisting that he had not suffered discrimination and that he was not entitled to the exemption that he had claimed.

12. The Court of Appeal (Hamel-Smith, Kangaloo and Jamadar JJA) dismissed the appellant's appeal on 27 February 2009, Kangaloo JA delivering the only reasoned judgment. He held that since the judge at first instance had failed to explain why he had decided that damages should not be awarded, it was for the Court of Appeal to consider the matter afresh and arrive at a view as to how the discretion to award damages should be exercised. Because the facts were largely not in dispute, Kangaloo JA felt that the Court of Appeal was as well placed as had been the judge to determine whether the appellant should receive monetary compensation. Relying on the language of section 14 (2) of the Constitution and the decision in *Suratt v AG of Trinidad and Tobago* [2008] UKPC 38, Kangaloo JA declared, in para 19, that damages were "a subset of the discretionary relief of the court in granting redress". He qualified this statement, however, in two significant passages in paras 20 and 22 of

his judgment. In the first of these he said that it was "obvious" that before damages could be awarded, they must relate to some loss suffered by the applicant. The more telling comment appears in para 22. After referring to the opinion of the Board in *Attorney General v Ramanoop* [2005] UKPC 15, [2006] 1 AC 338 Kangaloo JA said:-

> "It is therefore beyond doubt that an applicant must demonstrate that as a result of the breach of his constitutional rights he has suffered damage, however it is still a matter of discretion for the court whether or not he is awarded monetary compensation."

13. Kangaloo JA then conducted an analysis of the affidavits filed by the appellant in order to decide whether there was evidence that he had suffered damage as a result of the infringement of his constitutional rights. He concluded that there was none. A firm finding was made that the appellant had not suffered any monetary loss. In particular, a claim that he had lost the chance of being promoted earlier was roundly rejected. The question of whether the appellant could found a claim on distress and inconvenience was then considered and it is worthwhile quoting in full the portion of the judgment that deals with this point: -

> "27. A look at the appellant's affidavit to see whether he could even be awarded damages for the distress and inconvenience caused as a result of the breach of his rights is equally unproductive. The closest he comes to saying he suffered distress and inconvenience is in his undated letter (presumably July/August 2003) to the Deputy Commissioner of Police … In the letter the appellant says inter alia:
>
> "*Please note that I am yet to be informed in writing or by publication in the Departmental Order of the alleged cessation of my acting appointment, which is tenuous, (sic) stressful and fraught with uncertainty.*"
>
> In my view, if the appellant wanted to say that as a result of his not having been granted the exemption, he became worried, fraught with anxiety and suffered stress he should have deposed to this, rather than leave it to be inferred from his letter where it is vaguely mentioned.
>
> This letter can, however, if given a liberal interpretation, amount to some extremely weak evidence of distress and

> inconvenience as a result of the breach and so is one of the factors to be considered.
>
> 28. In my view, it does not lie in the mouth of the appellant to say that he is not obliged to place evidence of damage suffered before the constitutional court before liability is determined. I say so because it must first be shown that there has been damage suffered as a result of the breach of the constitutional right before the court can exercise its discretion to award damages in the nature of compensatory damages to be assessed. If there is damage shown, the second stage of the award is not available as a matter of course. It is only if some damage has been shown that the court can exercise its discretion whether or not to award compensatory damages. The practice has developed in constitutional matters in this jurisdiction of having a separate hearing for the assessment of the damages, but it cannot be overemphasized that this is after there is evidence of the damage. In the instant case there is no evidence of damage suffered as a result of the breaches for which the appellant can be compensated."

14. Kangaloo JA remarked that it was not surprising that Kokaram J had made only fleeting reference to the question of damages since that topic did not feature in the extensive skeleton argument that had been filed on the appellant's behalf for the first instance hearing. This omission Kangaloo JA took to be an indication by the appellant to the judge that a declaration in relation to his future exemption from the English language component of the examinations for promotion would be sufficient to redress the violation of his constitutional rights.

15. The judgment then addressed the question whether an additional award of damages was appropriate. This had been prompted by a statement in the judgment of Lord Nicholls of Birkenhead in para 19 of *Ramanoop* where he had said: -

> "An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and

> the gravity of the breach, and deter further breaches. All these elements have a place in the additional award."

16. Kangaloo JA did not consider that the fact that a compensatory award had not been made necessarily precluded the making of an additional award but he concluded that this was not a case in which such an award should be made. There was nothing about the case that suggested that public outrage had been excited; it was not an especially grave breach although the constitutional right was undoubtedly important; and the need for deterrence did not arise. Although Kokaram J had held that there was mala fides on the part of the Police Service, this had been for the purpose of finding that there had been a constitutional breach. It did not represent the judge's view that there was "ill or malicious intent" on the part of the authorities.

The appeal

17. The appellant's principal submission before the Board was that the Court of Appeal had erred in imposing as a requirement for access to monetary compensation that there be damage over and beyond that which naturally and inevitably flows from being the victim of discrimination and unequal treatment in the constitutional context. In any event, it was submitted, distress and anxiety on the part of the appellant at the wrongful denial of his exemption was to be presumed. Sir Fenton Ramsahoye SC argued strongly that the denial of monetary compensation in this case (the first time, apparently, that this had happened) significantly devalued the appellant's constitutional right and made light of the serious breach of that right by the authorities. Sir Fenton also suggested that one could not be sure that the appellant had not suffered some disadvantage as a result of the withholding of the exemption but he candidly accepted that there was no direct evidence capable of establishing that such a disadvantage had in fact accrued.

18. Following for the appellant, Ms Jodie Blackstock, in a valiant and persuasively argued submission, sought to make the case that the appellant was entitled to additional or, as they have sometimes been called, vindicatory, damages to cater for the factors identified by Lord Nicholls in the passage from *Ramanoop* quoted above. Those factors were, she said, adequately present in this case.

19. For the respondent, Mr Howard Stevens emphasised the discretionary nature of relief under section 14 (2) of the Constitution. He contended that the Court of Appeal had properly exercised its discretion in refusing to make either a compensatory or an additional award of damages. In as much as the compensation claimed was for distress and inconvenience, it had to be proved that these had in fact been suffered, just as it must be proved that there had been a pecuniary loss. The appellant, said Mr Stevens, had not produced evidence that was capable of establishing that either

species of loss had in fact been sustained. Compensatable distress or anxiety was not to be presumed.

20. Mr Stevens further submitted that the appellant had obtained more than a mere declaration that his rights had been violated. Drawing analogy with the manner in which claims for breach of a right arising under the European Convention on Human Rights and Fundamental Freedoms ("ECHR") are usually dealt with, he contended that a statement that the appellant had been unequally treated, expressed in the court's declaration to that effect, would have sufficiently recognised the wrong that had been done to him, particularly in the highly unusual circumstances of this case. But, in fact, the appellant had received significantly more than this. The second declaration had conferred on him a potentially highly valuable benefit in the form of the exemption. The decision that he should not receive anything beyond that extra benefit lay comfortably within the range of the discretion available to the Court of Appeal. It could not be impeached.

The relevant provisions of the Constitution

21. Section 4 of the Constitution of Trinidad and Tobago, in so far as is relevant, provides: -

> "It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:
>
> …
>
> (b) the right of the individual to equality before the law and the protection of the law;
>
> …
>
> (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
>
> …"

22. It is an interesting and – for reasons that will appear – relevant aspect of this case that the right which the appellant has asserted is not one which, absent the erroneous grant of the exemption to other officers, would have been available to him. He has been treated unequally only because others have been treated better than he (and better than they ought to have been) due to an administrative error. If the rules had been properly applied to all, neither the appellant nor those to whom he has compared himself in order to demonstrate unequal treatment would have received the exemption.

23. Section 14 of the Constitution is concerned with the enforcement of the protective provisions of the Constitution. These include section 4 (b) and (d). The relevant parts of section 14 are these: -

> "14 (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.
>
> (2) The High Court shall have original jurisdiction-
>
> (a) to hear and determine any application made by any person in pursuance of subsection (1);
>
> …
>
> and may … make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled."

24. Enforcement of the protective provisions may require more than mere recognition that a violation of those provisions has occurred. As Lord Nicholls said in *Ramanoop*, "when exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened" (para 18). The constitutional dimension adds an extra ingredient. The violated right requires emphatic vindication. For that reason, careful consideration is required of the nature of the breach, of the circumstances in which it occurred and of the need to send a clear message that it should not be repeated. Frequently, this will lead to the conclusion that something beyond a mere declaration that there has been a violation will be necessary. This is not inevitably so, however. Nor is it even the case that it will be required in all but exceptional circumstances. Close attention to the facts of each individual case is required in order to decide on what is required to meet the need for vindication of the constitutional right which is at stake.

Must 'damage' be proved?

25. In declaring that an applicant must demonstrate that, as a result of the breach of his constitutional rights, he has suffered damage before he can have access to the court's discretionary power to award monetary compensation, Kangaloo JA relied on the statements of Lord Nicholls in para 18 of *Ramanoop.* Although some of these have been referred to above, in order to put the critical sentence on which the Court of Appeal relied in its proper context, it is necessary to set out the entire paragraph. It is to the following effect: -

> "When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action in law."

26. It is clear that Kangaloo JA had in mind some type of damage beyond that of being the victim of a violation of an applicant's constitutional rights before the question of compensation could arise. He founded this conclusion on the third sentence of the paragraph quoted, "*If the person wronged has suffered damage, the court may award him compensation.*" I do not believe, however, that in this comment, Lord Nicholls purported to propound a general rule that some form of extra or superimposed damage was required before monetary compensation could be considered. In the context of constitutional violation, compensation can be seen to perform two functions. It may, of course, provide redress for the *in personam* damage suffered. But it may also be an essential part of the vindication of the constitutional right. This has a broader concept than compensation for the personal wrong. Although it is clear that compensation in this area should not include an exemplary or punitive element – see para 19 of *Ramanoop* - part of the function of an award of compensation in this setting is to mark the fact that a *constitutional* breach has occurred. Lord Nicholls was therefore observing that when that extra ingredient is required, one of the forms that it may take is monetary compensation when the person who has been the victim of the breach of the constitutional protection has suffered damage. He was not suggesting that some specific type of damage suffered by the victim of the constitutional breach was necessary before the question of monetary compensation could be considered.

27. In any event, the very fact of discrimination having occurred can inflict damage on those who have been discriminated against. The sense of having been wronged, the uncertainty over one's status as a consequence of the discriminatory conduct and the distress associated with having to resort to litigation in order to have the discrimination exposed and corrected can all be recognised as damage, perhaps not in the conventional personal injury sense, but damage nonetheless.

28. An injury suffered as a result of discrimination is no less real because it does not possess tangible physical or financial consequences. And the difficulty in assessing the amount of compensation for that type of injury should not deter a court from recognising its compensatable potential. This concept was well expressed by Mummery LJ in *Vento v Chief Constable of West Yorkshire Police* [2003] ICR 318, at 331: -

> "50. It is self evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of

> measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. As Dickson J said in *Andrews v Grand & Toy Alberta Ltd* (1978) 83 DLR (3d) 452, 475-476, (cited by this court in *Heil v Rankin* [2001] QB 272, 292, para 16) there is no medium of exchange or market for non-pecuniary losses and their monetary evaluation: 'is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution.'
>
> 51. Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury."

Proof of the effects of discrimination

29. In the field of sex discrimination it has been held that it is not difficult to establish injury to feelings. In *Ministry of Defence v Cannock* [1994] ICR 918, 954 the Employment Appeal Tribunal stated: -

> "Compensation for injury to feelings is not automatic. Injury must be proved. It will often be easy to prove, in the sense that no tribunal will take much persuasion that the anger, distress and affront caused by the act of discrimination has injured the applicant's feelings. But it is not invariably so."

30. In the present case, evidence that the appellant suffered any of the reactions adumbrated in this passage is not easy to find. In a nineteen paragraph affidavit, filed in support of the constitutional motion, Mr James makes no reference whatever to any injury to his feelings. The only mention of any effect on the appellant is in relation to uncertainty as to his status. A second short affidavit filed in response to the respondent's affidavits contains no reference to any reaction on his part to the discrimination of which he complained. Nowhere in the skeleton argument that the appellant provided for the hearing before Kokaram J is it stated that he suffered distress or injury to his feelings. In his extensive recital of the evidence the judge did not allude to any evidence given by the appellant that he had suffered any such reaction. And, as noted in para 9 above, the principal preoccupation of the first instance hearing appears to have been on obtaining the exemption.

31. The only item of evidence on which any claim for injury to feelings could be advanced was that contained in the letter of July/August 2003 from the appellant to the Deputy Commissioner of Police referred to in para 27 of the Court of Appeal's judgment and quoted in para 13 above. The single - fairly oblique – reference to the issue in the skeleton argument filed on the appellant's behalf for the hearing before the Court of Appeal was contained in a solitary sentence to the effect that he should be entitled "to greater damages to include damages for distress and inconvenience". Conspicuously, despite a lengthy and detailed examination of how damages should be assessed, the skeleton argument did not aver that the appellant had *actually* suffered distress or inconvenience.

32. The Board has therefore concluded that, although the Court of Appeal was wrong in its view that there needed to be some form of additional damage (beyond being the victim of discrimination) before the question of damages could be considered, it was unquestionably right in its decision that there was no acceptable evidence that the appellant had suffered an injury to his feelings or particular distress. To put the matter another way, although, by dint of the fact that he was found to have been the victim of discrimination, the appellant was entitled to have access to the court's judgment whether to award damages, in so far as monetary compensation depended on an assessment of the impact on him, there was simply no basis on which it could be made.

Does the constitutional breach require to be marked by an award of damages?

33. In *Suratt v AG of Trinidad and Tobago* the Judicial Committee of the Privy Council was dealing with the failure of the government of Trinidad and Tobago to effectively implement the Equal Opportunity Act 2000. It was claimed that this failure breached the appellants' fundamental right to "the protection of the law" under s 4(b) of the Constitution. At an earlier hearing it had already been decided that the Act should be implemented without delay and the Board had made a declaration to

that effect. On the subsequent hearing the Board expressed the clear view that, even if the non-implementation of the Act had deprived the appellants of the protection of the law, the making of the earlier declarations had provided them with proper and sufficient "redress" pursuant to s 14 of the Constitution. Delivering the judgment of the Board, Lord Brown of Eaton under Heywood drew what he accepted was a less than perfect analogy between that case and the power to award damages under section 8 of the Human Rights Act 1998. At para 12 of his judgment he said: -

> "By the same token that the House of Lords in *R (Greenfield) v Secretary of State for the Home Department* [2005] UKHL 14, [2005] 1 WLR 673 held that United Kingdom courts, exercising the power to award damages or order compensation given to them under s 8 of the Human Rights Act 1998 should, consistently with the ECtHR exercising its art 41 jurisdiction under the European Convention on Human Rights, treat the finding of the violation, certainly in art 6 cases, as in itself affording just satisfaction to the injured party rather than speculate on what the outcome of the proceedings would have been but for the violation, and generally should award damages only where satisfied that loss had in fact been caused by the violation, so too their Lordships believe that the Board's declarations already made on 15 October 2007 provide adequate and appropriate redress for the Appellants here. Obviously the analogy with the application to due process violations of s 8 of the Human Rights Act (and art 41 of the Convention) is not an exact one. But what the Appellants have been deprived of here – assuming always in their favour that their s 4(b) constitutional right has been breached – is the opportunity in recent years to bring discrimination complaints against private persons. What the upshot of any such complaints would have been is in the highest degree speculative."

34. Of course, *Suratt's* case was different from the present. What the appellants in that case had lost was the opportunity to bring proceedings against individuals and there was no guarantee that, had that opportunity been available, they would have succeeded in any claim. By contrast, here the appellant has established that he was the victim of discrimination. But that consideration alone does not bring with it an automatic entitlement to compensation. This, essentially, was the appellant's case – that where a violation of a constitutional right occurs monetary compensation should be ordered. That case was based principally on the opening words of Lord Nicholls in para 18 of his judgment in *Ramanoop* (quoted above at para 25) where he said: -

> "When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation."

35. I do not understand Lord Nicholls in this passage to be suggesting that, in principle, compensation should normally be awarded. What, as it seems to me, he was at pains to point out was that a violation of someone's constitutional rights will commonly call for something more than a mere statement to that effect. This is required in order to reflect the importance of the constitutional right and the need for it to be respected by the state authorities. A risk of the devaluation of such rights would obviously arise if the state could expect that the most significant sanction for their being flouted was a declaration that they had been breached. It is, of course, significant that in *Ramanoop* there was no dispute as to whether the respondent was entitled to damages. The question in that case was whether the state should be required to pay an additional amount of damages in order to reflect the sense of public outrage that the breach of the constitutional right had occasioned. Moreover, the case was one which clearly called for a compensatory award (as well as the additional award). The respondent had been assaulted over a prolonged period by a police officer. The latter's behaviour had been described by Lord Nicholls as "quite appalling". The need for a compensatory award – and, indeed, an additional award – of damages was, in that case, quite plain.

36. To treat entitlement to monetary compensation as automatic where violation of a constitutional right has occurred would undermine the discretion that is invested in the court by section 14 of the Constitution. It would also run directly counter to jurisprudence in this area. In *Inniss v Attorney General of St Christopher and Nevis* [2008] UKPC 42, in considering this issue Lord Hope of Craighead said this in para 21: -

> "The question … is whether a declaration that there has been a contravention of s 83(3) would be sufficient relief for the Appellant in the circumstances. The function that the granting of relief is intended to serve is to vindicate the constitutional right. In some cases a declaration on its own may achieve all that is needed to vindicate the right. This is likely to be so where the contravention has not yet had any significant effect on the party who seeks relief."

37. The very least that these statements make obvious is that there will be cases where the vindication of the constitutional right will be achieved by the making of a declaration. Where there has been no major impact on the claimant, a declaration is more likely than not to suffice. This has notable relevance for the present case. Although it was found that the appellant had been discriminated against, this does not appear to have affected him in any material way whatever. Despite having been denied the exemption, he was in fact promoted and has continued in the rank of acting sergeant even after the error was detected. He has now secured an exemption through the legal proceedings that he instituted. This is not, therefore, even a case such as that envisaged by Lord Hope of there not having been a significant effect *yet*; the appellant has not suffered nor will he, because of the declaration that has been made, suffer such an effect.

38. Lord Brown (in the passage from *Suratt* quoted above at para 33) had referred to the analogy to be drawn with claims for compensation in cases where a breach of ECHR had occurred. As well as the case of *Greenfield* (to which Lord Brown alluded), in *Anufrijeva and another v Southwark London Borough Council* [2004] QB 1124, the Court of Appeal addressed the question of the adequacy and efficacy of declaratory judgments in cases where there had been a violation of human rights. At para 53 Lord Woolf CJ said: -

> "Where an infringement of an individual's human rights has occurred, the concern will usually be to bring the infringement to an end and any question of compensation will be of secondary, if any, importance. This is reflected in the fact that, when it is necessary to resort to the courts to uphold and protect human rights, the remedies that are most frequently sought are the orders which are the descendants of the historic prerogative orders or declaratory judgments. The orders enable the court to order a public body to refrain from or to take action, or to quash an offending administrative decision of a public body. Declaratory judgments usually resolve disputes as to what is the correct answer in law to a dispute."

39. Although one must be wary of importing, without qualification, this reasoning into the field of constitutional violations, there are obvious similarities in each context. While recognising that constitutional violations require emphatic vindication, one may also postulate that this vindication can be supplied by a mere declaration in appropriate cases. This case is one such, in the Board's view. The appellant has suffered no material disadvantage. His principal aim was clearly to secure a declaration that proved his position to be correct. That he has achieved. He does not require money to underscore that achievement not least because the appellant has in truth acquired more than a mere declaration. He has been given an exemption which,

if the rules had been applied equally and properly, he would not have been entitled to and would not have obtained. The Board therefore dismisses the appeal against the refusal to award compensatory damages.

Additional awards

40. The Court of Appeal believed that, theoretically, an 'additional' award might be made even if no compensatory award had been made. For understandable reasons no detailed argument on this issue was made and the Board would prefer to reserve its opinion as to its correctness until a suitable case arises in which the issue can be fully considered.

41. The circumstances in which such an award will be appropriate were clearly outlined by Lord Nicholls in para 19 of *Ramanoop*: -

> "An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in s 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award."

42. This case is, plainly, not one in which an additional award could be made. That the constitutional right is important cannot be doubted but the breach of it is of an eccentric kind, consisting as it does of a failure to include the appellant in a departure from the rules governing a promotion which he has in the event obtained. The possibility of further breaches of similar character arising is, at best, one hopes, remote. Quite simply, there is no case to be made that the considerations that underlie such an award are present here. The Board therefore dismisses the appeal on this ground also.