
CRITICAL APPRAISAL OF DISCIPLINARY PROCEDURE UNDER THE KANO STATE CIVIL SERVICE RULES 2005 VIZ A VIZ THE CONSTITUTIONALLY GUARANTEED RIGHT TO FAIR HEARING¹

ABSTRACT

The aim of this research work is to examine the disciplinary procedure under the Kano State Civil Service Rules 2004 vis a vis right to fair hearing with a view to finding out whether the disciplinary procedure is consistent with the 1999 Constitution of the Federal Republic of Nigeria (as amended). The materials for the work have been drawn from both primary and secondary legal sources using doctrinal research methodology. The primary legal sources are Kano State Civil Service Rules 2004, Public Service Rules of the Federation 2014, Constitution of the Federal Republic of Nigeria 1999 as amended, other enactments and judicial authorities. Secondary sources such as books, journal articles seminar papers, conference papers, public lectures, academic theses, projects; dissertations as well as relevant publications have been consulted. The research work found that Rule 04306 of the Kano State Civil Service Rules 2004 which made provision for disciplinary procedure in cases of serious misconduct which may lead to dismissal, but omitted some other necessary features of right to fair hearing. The remaining Rules either completely or substantially but expressly exclude rights of officers to fair hearing in specified cases. The powers of the Permanent Secretary/Head of Extra Ministerial Department to impose the preliminary administrative sanctions arbitrarily were challenged. The research work recommended amendment of the offending Rules to bring them in line with the provisions of the Constitution.

Key Terms: *Law, fair hearing, tribunal, justice*

¹Shamsi Ubale Jibril, Lecturer I, Department of Arts and Humanities, Kano State Polytechnic. email: danjaji3030@gmail.com. The researcher acknowledges Tertiary Education Trust Fund (TetFund) for sponsoring this research single-handedly.

1.0 Background of the Study

It has long been established that administrative officials and bodies have the power to enforce discipline in their respective departments. This is because discipline must be ensured for standards to be maintained.² Although the actions of administrative bodies in disciplining their staff is to ensure effective functioning of the institutions, if such actions interfere with the rights of the affected staff, and have a tendency to be prejudicial to their interest, simple logic demands that they must be fairly treated.³ Since they are determining the fate of others and are making findings of facts and evaluating evidence, administrative bodies must comply with the rules of fair hearing.⁴ An employment enjoys statutory flavour when the contract of service is governed by statute or where the conditions of service are contained in regulations derived from statutory provisions. In the circumstance they vest the employee with a legal status higher than the ordinary master/servant relationship.⁵ The law is settled that the only way to terminate a contract of service with statutory flavour is to adhere strictly to the procedure laid down in the statute.⁶

Where an employment is governed by rules and regulations backed by statute, such as Civil Service Rules, as to how the employment is made and determined, a person who claims to be a public servant and seeks the protection of those rules and regulations must show that he was employed subject to those rules and regulations otherwise he cannot rely on them as protecting his employment.⁷ An employment with statutory flavour, though basically creating a service relationship goes beyond the notion of ordinary master and servant whose contractual obligation can anyhow be effectively brought to an end albeit in breach of contract for which the only remedy is damages.⁸

All Federal public servants in Nigeria are subject to the Public Service Rules of 2014.⁹ The Rules made ample provisions on recruitment, probation, appointment, transfer, allowances, insurance, emoluments, promotion, leave and discipline. The Rules apply to all ministries and extra-ministerial offices under the Federal Government. It is a revised edition of the Public Service Rules, 2007. The current Rules applicable to Kano State of Nigeria is the Kano State Civil Service Rules, 2004. It made provisions for almost every aspect of employment of persons employed in the Kano State Civil Service and extra-ministerial departments. One of the areas covered by the Kano State Civil Service Rules is discipline.

Rule 04403 provides as follows:

- (i) When a serious case that may lead to dismissal has been instituted against an officer, the Permanent Secretary/Head of Extra Ministerial Department may interdict him on not more than half pay pending the determination of the case...

²Ogbuabor C.A and Obinne. O (2014) Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- Morenkeji V Osun State Polytechnic &Ors Revisited. Nigerian Judicial Review. Vol 12 p. 83

³Re H. K. (an Infant) (1967) 1 All E. R. p. 226

⁴Ogbuabor C.A and Obinne. O (2014) Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- Morenkeji V Osun State Polytechnic &Ors Revisited. Nigerian Judicial Review. Vol. 12 p. 85

⁵ImoloameVs W.A.E.C. (1992) NWLR (Pt.265) 303; Olaniyanvs University of Lagos (1985) 2 NWLR (Pt.9) 599; Shitta-Bey v. Public Service Commission (1981) 1 SC 40.

⁶BangboyeVs University of Ilorin (1999) 10 NWLR (Pt.622) 290; Olatunbosun Vs N.I.S.E.R. Council (1988) 3 NWLR (Pt.80) 25; Comptroller General of Customs &ors v. Gusau (2017) LPELR-42081(SC)

⁷ Supra, note 12

⁸ ibid

⁹ Federal Republic of Nigeria: Public Service Rules 2014

- (ii) ...When the charge against him is such that continued performance of his present duties is against public interest or prejudicial to the investigation of the charge against him, consideration shall be given to putting him on alternative duties.
- (iii) When an officer is interdicted he shall cease to report for duty and shall receive such proportion of his emoluments, not being less than one half, as the Commission may determine.
- (iv) If proceedings under Rule 04406 reveal that he is not guilty of the charge made against him, the officer shall immediately be reinstated and shall receive the full amount of his emoluments denied him during the interdiction.
- (v) If he is found guilty but is not dismissed, he may be refunded such portion of the emoluments denied him as the commission may determine.

By Rule 04405, any person who appears to have committed any serious misconduct, may be suspended and his emoluments stopped.

It is clear from the above provisions that a person charged with a case of serious misconduct, and undergoing disciplinary hearing can be subjected to any of the following measures before conclusion of the hearing;

- a. Interdiction. (He can be placed on half salary or half pay)
- b. Suspension (without pay)
- c. Placement on alternative post.¹⁰

Based on the above provisions, the researcher is of the view that the Kano State Civil Service Rules has made it possible for the Permanent Secretary/Head of Extra Ministerial Department to tamper with the civil rights and obligations of a civil servant subject to disciplinary hearing before having the opportunity to hear both sides of the story and arrive at a decision as to whether the affected person has truly breached the provisions of the Civil Service Rules. Some of the measures include suspension and interdiction. If an officer will be subjected to the above punitive measures before the conclusion of hearing, his fundamental right to fair hearing is in jeopardy in the sense that his civil right and obligations are tempered with in the form of temporary loss of salary, deprivation of discharging his duties under his contract of employment, advancement, etc.

Similarly, while the Kano State Civil Service Rules, 2004 contains provisions protecting officer's right to fair hearing in disciplinary proceedings in cases involving serious misconduct which may lead to dismissal on the one hand, it on the other hand authorized the Civil service Commission to dispense with most of the requirements of fair hearing except right to make representations and defend oneself before the Board of Inquiry in cases involving misconduct which may not lead to dismissal, but may lead to demotion, withholding or deferment of promotion, increment or otherwise.¹¹ The germane question is; are disciplinary measures such as demotion, withholding or deferment of promotion or increment not decisions which have a tendency to affect the civil rights and obligations of an officer entitling him to the enjoyment of the right to fair hearing?

The researcher has also identified a provision¹² empowering the Civil Service Commission to completely dispense with disciplinary proceedings and therefore the concept of fair hearing in cases where a Judicial Commission of Inquiry submitted a report of disciplinary nature

¹⁰ See Rules 04403 and 04405

¹¹ See generally Rules 04305 and 04306 of the Kano State Civil Service Rules, 2004

¹² Rule 04303 of the Kano State Civil Service Rules, 2004

against an officer and the report was accepted by the government. As a result of this provision, an inquiry into nature and functions of Judicial Commission of Inquiry and a determination as to whether their function is quasi-judicial or merely investigative and to see whether they are bound by the principles of fair hearing is also significant.

In the same vein, the Rules provide:¹³

*Where it is **considered** that the conduct of an officer is prejudicial to the security of the State, and where a committee comprising members from the State Ministry of Justice, Office of Head of Service and Special Services office is satisfied that an officer has committed an act of misconduct involving the security of the state, **the normal disciplinary procedure need not be followed by the Commission in taking any disciplinary action it may deem fit.*** [emphasis mine]

The above provision also contemplates a total departure from the normal disciplinary proceedings in cases of allegations of misconduct involving the security of the State.

This appraisal is important not only because the rules in question affect the lives of tens of thousands of civil servants in Kano State, but also because most of the disciplinary procedure rules are similar to that contained in the Federal Public service Rules 2014.¹⁴ It is important to note that apart from the areas identified, there are some provisions of the disciplinary procedure that are fair and have somehow scaled the constitutional test of fair hearing.

In the light of the above observations, this research critically examines the disciplinary procedure under the Kano State Civil Service Rules 2004, with a view to seeing what provisions contravene the age long principles of fair hearing. It is submitted that a holistic treatment of the area will entail a study of those portions that were crafted, and indeed succeed in ensuring a conducive atmosphere for the protection of employees' right to fair hearing. It is only through this in-depth research that this feat can be achieved.

2.0 Methodology

These tools, depending upon the nature of information they contain, may be re-categorized into primary and secondary sources of information. National Gazette and Case Reports fall in the first category, while the rest fall in the latter.

Through the dictates of this research methodology, the needed materials for the work have been drawn from both primary and secondary legal sources.

Primarily, Kano State Civil Service Rules and relevant codes have been consulted. In addition to this, the Constitution of the Federal Republic of Nigeria and other enactments are of great use in this work. Along this line, international and regional instruments (such as ILO and AU conventions) have been used, where necessary. Equally, judicial authorities will also form part of the primary materials. Along this line, some disciplinary cases decided under the rules have been carefully studied.

Secondary sources such as books, journal articles seminar papers, conference papers, articles in newspapers and magazines, reports of government based committees, public lectures, academic theses, projects; dissertations as well as relevant publications have been consulted.

¹³ Rule 04501 of the Kano State Civil Service Rules, 2004

¹⁴ Public Service Rules 2014

3.0 Concept and Scope of Fair Hearing

It is observed that the concept of fair hearing is a fundamental right which has been entrenched in almost all Nigerian Constitutions. In Nigeria, even before independence in 1960, we had various constitutions. Nigeria attaining independence in 1960 had the Nigeria (Constitution) Order-In-Council 1960. Section 21 of that particular Constitution dealt with the right to fair hearing. Under the 1963 Constitution of the Federal Republic of Nigeria, provisions for fair hearing in Section 22 were put under the heading of ‘Determination of Rights’. It was not until the 1979 Constitution that these rights were put under the significant side note of ‘Right to fair hearing’. The provision for fair hearing became more comprehensive than those in previous Constitutions. The fair hearing provisions in the 1999 Constitution of the Federal Republic of Nigeria (as amended) are more comprehensive than those in the 1979 constitution.¹⁵ However, none of the Constitutions has defined it, and no case law has offered a comprehensive elucidation of the concept. Morgan, C.J.N observed in *Whyte V Police*:¹⁶

There is no definition in the constitution as to what constitutes a fair hearing within the meaning of Section 22 (1963) and it is difficult, perhaps impossible to give a comprehensive definition that will cover all cases.

Section 36 (1)¹⁷ provide that any court of law, whether exercising civil or criminal jurisdiction so long as they relate to the determination of the civil rights and obligations of a person or against a government or authority, must give parties fair hearing within a reasonable time, in such a manner as to secure its independence. The section goes ahead to empower governments or other authorities power to determine questions arising in the determination of a law which may affect a person’s right and obligations. These requirements also apply to tribunals exercising quasi judicial functions that may affect the civil rights and obligations of persons affected. The only conditions for this exercise are that the tribunal must allow parties to make representations before it can take any decision adverse to any of them, and that its decisions must not be final. The following are the general requirements of fair hearing under the constitution:

1. Audi alteram partem (hear the other side or the rule of fair hearing or the rule that no one should be condemned unheard).
2. Nemo iudex in causa sua (the rule against bias)

It is true that the rule of natural justice restricts the freedom of administrative action and that their observance costs certain amount of time and money.¹⁸ But time and money are more likely to be well spent if they tend to reduce friction in the machinery of government, and it is more likely because they are essentially rules for upholding fairness and to reduce grievances that the rules of natural justice can be said to promote efficiency.¹⁹ The courts do not let them run riot, and keep in touch with the standards of good administration. Any decision which is

¹⁵Roland Otaru Esq., Access to Justice and Right to Fair Hearing; being a lecture delivered at the Nigerian Institute of Advanced Legal Studies on 2nd day of December, 2010). P. 5

¹⁶ (1966) (S.C.N) N.M.L.R 215 at 216

¹⁷The 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹⁸Akshaya G. & Dhivya R. (2018): Principles of Fair Hearing with Respect to Rules of Natural Justice under Article 14 and 21 of the Constitution. International Journal of Pure and Applied Mathematics, Volume 120 No. 5 p. 2106

¹⁹ ibid

made without bias and with prior and proper consideration of the views of those affected by it will also be of better quality. Justice and efficiency go hand in hand.²⁰

The first two are also requirements of the principles of natural justice. For the purpose of clarity, we shall discuss each of the requirements in greater detail.

3.1 *Audi alteram partem* (Hear the other side or the rule of fair hearing or the rule that no one should be condemned unheard).

This principle imposes an obligation on any deciding authority to hear all the parties to a case. This was succinctly put by Lord Hudson in *Ridge V Baldwin*²¹

No one, I think, disputes that three features of natural justice stand out: (1) the right to be heard by an unbiased tribunal, (2) the right to have notice of the charge or misconduct, and (3) the right to be heard in answer to those charges.

In the case of *Baba V Nigerian Civil Aviation Training Centre*,²² the Supreme Court identified the standards of hear-the-other-side before any judicial or quasi-judicial body. For the hearing to be fair, the person affected must;

- a. Be present all through the proceedings and hear all evidence against him;
- b. Cross-examine or otherwise confront or contradict all the witnesses that testified against him;
- c. Have disclosed to him the nature of all relevant material evidence, including real evidence prejudicial to the party, save in recognized exceptions;
- d. Have read before him all the documents tendered in evidence at the hearing;
- e. Know the case he has to meet at the hearing and have the adequate opportunity to prepare for his defense; and
- f. To give evidence by him, call witness if he likes, and make oral submissions either personally or through a counsel of his own choice.²³

In his famous article Friendly, discussed the major indicators of fair hearing in quasi-judicial administrative proceedings²⁴ to include unbiased tribunal, notice of the proposed action and the grounds asserted for it,²⁵ an opportunity to present reasons why the proposed action should not be taken,²⁶ the rights to call witnesses, to know the evidence against one, and to have decision based only on the evidence presented, right to be represented by legal practitioner,²⁷ the making of a record and a statement of reasons.²⁸

3.2 *Nemo Judex in Causa Sua (The Rule Against Bias)*

The second general requirement of fair hearing is that the judge or umpire must not have any direct financial or proprietary interest in the outcome of the proceedings, and must not be reasonably suspected to show a real likelihood of bias.²⁹ It is essential that a court or tribunal

²⁰ *ibid*

²¹ (1963) 2 All ER 63

²² (1991) 7 SCNJ 1

²³ Michael A. Millemann, *Prison Disciplinary Hearings and Procedural Due Process - the Requirement of a Full Administrative Hearing*, 31 Md. L. Rev. 27 (1971) pp. 51-52

²⁴ Friendly H., (1975). *Some Kind of Hearing*. University of Pennsylvania Law Review, Vol. 123.pp.1280-1295

²⁵ Friendly H., (1975) *Some Kind of Hearing*. University of Pennsylvania Law Review: Vol. 123. p. 1280

²⁶ *Ibid*, p 1281

²⁷ *Ibid* p. 1287

²⁸ *Ibid* p. 1291

²⁹ Marume, S., et. al; (2016) *The Principles of Natural Justice in Public Administration and Administrative Law*. International Journal of Business and Invention, Vol. 5 issue 1, January, p. 23

must be completely detached from any of the parties to the case, to have a fair view of the evidence adduced, and pass judgment based on the established facts. In *Garba V University of Maiduguri*,³⁰ the principle was clearly applied. The appellants were students of various disciplines in University of Maiduguri, the respondent, before their expulsion from the said institution with effect from 30th day of March, 1983. Their expulsion was sequel to riotous behavior following demonstration, rampage, wanton destruction of properties in the University and assault on persons. Their expulsion was not till after the Senate had considered the reports of the Disciplinary Board and panels set up by the Vice Chancellor. The Chairman of the Panel which tried the students was a victim of the rampage the students were alleged to have committed. The Supreme Court held that a likelihood of bias was discernible since the Deputy Vice Chancellor was not only a witness in the panel, but also a judge at the same time. The Supreme Court established that fair hearing in Nigeria is not only a common law requirement, but a statutory and Constitutional requirement and that when the Deputy Vice Chancellor assumed the disciplinary powers, he became not a court, but a tribunal established by law acting in a quasi-judicial capacity. Thus he had to comply with the constitutional requirements of fair hearing. The Supreme Court in *Kanon & Ors V Tekam & Ors*³¹ defined bias in the following words;

Bias in its ordinary meaning is opinion or feeling in favor of one side in a dispute or argument resulting in the likelihood that the judge so influenced will be unable to hold an even scale.

Some interests that may disqualify a judge from adjudicating over a matter are highlighted by Chigozie³² as pecuniary interests,³³ relationship with a party,³⁴ previous participation in the matter,³⁵ foreknowledge or previous knowledge of the facts of the case, hobnobbing with a party, unwarranted verbal attack on a party, descending into the arena in support of one side, combining the functions of a judge with that of a prosecutor, witness or other party, inhibiting or denying a party the opportunity to effectively state his case³⁶ and personal attitude, hostility, preference or one side inclination of the judge and a host of other interests or circumstances from which the inference or suspicion of a real likelihood of bias may be drawn.

According to Finin O'Brien,³⁷ possible sources of bias can be grouped under four main categories. The first and most important source of bias is when the umpire has financial interest in the matter, i.e where he has the tendency to benefit from the outcome of the proceedings or he was bribed by a party. Bias may also be inferred from the umpire's personal attitude, relationships or beliefs in the case. The third category is loyalty to an institution which can result in the decision maker being so committed to the objectives or interests of that institution, that they might be incapable of holding a balance between these

³⁰ (1986)1 NWLR 550

³¹ (2001) 7 N.S.C.Q.R 147 p 168

³²Chigozie N., (2016) The Role of fair Hearing in the Dispensation of Justice in Nigeria- A Legal Perspective. International Journal of Innovative Legal and Political Studies (4)1-10- Oct-Dec 2016 P. 8

³³ Metropolitan Properties Co. V Lennon (1969) 1 Q.B 577

³⁴Abiola V FRN (1995) 7 NWLR pt 405; Secretary, Iwo Central L.G V Adio (2000) 8 NWLR pt. 667 p 155

³⁵ A similar decision was arrived at in Sandy V Hotogua (1952) 14 WACA 18

³⁶Olaye V MDPDT (1997) 5 NWLR pt. 505 at 550 CA

³⁷Finin O'Brien: (2015) *Nemo Judex in causa sua*: Aspects of the No-Bias Rule of Constitutional Justice in Courts and Administrative Bodies: Irish Journal of legal Studies Vol. 2(2) p. 27

objectives and other interests. The last possibility is prior involvement in the case or pre-judgment of the issues.³⁸

A party can effectively succeed in overturning a decision on allegation of bias if he can prove that there is likelihood of bias on the part of the umpire. Blackburn J. aptly expounded the rationale for this in *R V Rand*³⁹ that “it is not only of some importance, but is of fundamental importance that justice should not only be done, but should be seen to be done”.

In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal. The court looks at the impression, which would be given to other people. Even if he was impartial, if right minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit, and if he sits, his decision cannot stand.⁴⁰

The standard of impartiality required of full time judges is the same as those required of persons who adjudicate in administrative boards (like Disciplinary Investigation Board).⁴¹ Establishing that a case is tainted by likelihood of bias requires proof from the party alleging it. He has a duty to produce substantial proof that will lead to the conclusion that the umpire had been influenced by some extraneous matters, and might have been biased.⁴² In this regard, mere vague suspicion of whimsical, capricious and unreasonable people should not be made to constitute proof of such serious complaints.

However, an aggrieved party cannot be heard to complain that because he is not of the same tribe with the members of the bench, he cannot have fair hearing. If such argument is upheld, then a number of trials will be vitiated merely because a party is not satisfied with the ethnic composition of the bench.⁴³

4.0 Classification of Acts or Omissions Subject to Disciplinary Actions under the Kano State Civil Service Rules 2004

4.1 General Inefficiency

Under the Kano State Civil Service Rules, the provision of Chapter 4, Rules 04201-04207 makes provisions on action to be taken if an officer is found to be incompetent. The position is different from the Common Law position on inefficiency. It will be seen that there is no power to terminate employment of a civil servant instantly for incompetence. The employer is mandated to notify the employee in writing the grounds for his belief that the employee is incompetent, giving him time to make amends. General inefficiency consists of omissions or incompetence the cumulative effect of which shows that the officer is not capable of discharging efficiently the duties of the office he holds.⁴⁴ Once inefficiency is observed from a subordinate officer, it is the duty of a superior officer to draw the attention of the affected staff and record the shortcoming with a view to improving the officer’s usefulness and

³⁸Finin O’Brien: (2015) *Nemo Judex in causa sua*: Aspects of the No-Bias Rule of Constitutional Justice in Courts and Administrative Bodies: Irish Journal of legal Studies Vol. 2(2) p. 27

³⁹ (1966) L.R 1 Q.B 230

⁴⁰ See generally the speech of Akpata JSC in *Yabugbe V Commissioner of Police* (1992) 4 NWLR (pt. 234) p. 152 at 174

⁴¹ *ibid*

⁴² *Ojengbede V Esan & Anor* (2001) 8 N.S.C.Q.R 461

⁴³ In *Urugbo V Una* (2002) 16 N.W.L.R (Pt. 792) p 175, the Supreme Court stated that the constitutional provision of fair hearing has no tribal insinuation of the composition of the bench vis-à-vis the tribes of the parties.

⁴⁴ Rule 04201. See also Rule 030201 of the Public Service Rules, 2014

efficiency in the service.⁴⁵ It should be noted that the Permanent Secretary/Head of Extra-Ministerial Department has the power to remove an officer for general inefficiency so long as the affected officer had been warned in writing on at least two previous occasions,⁴⁶ had suffered loss or deferment of his last increment and had been given ample opportunity to improve, usually within one year. In any event, the officer shall be given one month notice of removal, or be given one month salary in lieu of notice.⁴⁷

The Permanent Secretary/Head of Extra-Ministerial Department at his discretion can instantly remove a temporary staff, provided that the affected staff had been given notice of grounds of the termination and also the opportunity to submit a representation as to why his employment should not be terminated.⁴⁸

4.2 Misconduct

Misconduct is generally defined as a specific act of wrongdoing or improper behavior which can be investigated and proved⁴⁹. Under the Rules,⁵⁰ misconduct includes: Willful act or omission or general misconduct on the scandal of the public or to the prejudice and proper administration of the government, Engaging in trade or business without authority, Unethical and immoral behavior as prescribed by Islam, Improper dressing to office or while performing official duties, Hawking merchandise or engaging in any other form of trading on office premises.

4.3 Serious Misconduct

The Rules has not given a comprehensive definition of serious misconduct apart from giving specific acts of wrong doing that can be categorized as such. The researcher has not found any specific Nigerian statutory definition of the term “serious misconduct”. In the case of *P.C. Mike Eze vs. Spring Bank Plc.*⁵¹ the Supreme Court defined gross misconduct as a conduct that is of a grave and weighty character as to undermine the confidence which should exist between an employee and the employer. Similarly, working against the deep interest of the employer amounts to gross misconduct entitling an employer to summarily dismiss the employee.

The Kano State Civil Service Rules 2004 has not given a general definition of serious misconduct, but seems to specify the acts that can be treated as such. According to the Rules,⁵² serious misconduct is a specific act of very serious wrong doing and improper

⁴⁵ Rule 04203 see also Rules 030201 of the Public Service Rules, 2014

⁴⁶ See generally, rules 04203 and 04207

⁴⁷ Ibid

⁴⁸ Rule 04204 under the Public Service Rules, 2014, particularly Rule 030203, before the proceedings for removal of an officer for general inefficiency may be commenced, he/she must have been warned on three different occasions.

⁴⁹ Rule 14301 of the Kano State Civil Service Rules, 2004

⁵⁰ Specifically Rule 14301. It appears that in the Public Service Rules, 2014, the scope of misconduct seems to be more specified. By Rule 030301, misconduct is defined as a specific act of wrongdoing or an improper behavior which inimical to the image of the service and which can be investigated and proved. It can also lead to termination and retirement. It includes scandalous conducts such as immoral and unruly behavior, drunkenness, foul language, assault, battery, refusal to proceed on transfer or to accept posting, habitual lateness to work, deliberate delay in treating official document, failure to keep records, unauthorized removal of public records, dishonesty, negligence, membership of cult, sleeping on duty, improper dressing while on duty, hawking merchandise within official premises, refusal to take/carry out lawful instruction from superior officers, malingering, insubordination an discourteous behavior to the public.

⁵¹ (2012) All FWLR (Pt. 609) pg. 1076

⁵² Rule 04401 of the Kano State Civil Service Rules. The Provisions of Rule 030401 of the Public Service Rule, 2014 define serious misconduct as a specific act of very serious wrong-doing and improper behavior which is

behavior which can be investigated and proved. It includes willful act or omission amounting to public scandal, or prejudice of discipline and proper conduct of government business, conviction on a criminal charge (other than minor traffic or sanitary offence or the like), absence from duty without permission, disobedience e.g refusal to accept posting, negligence, suppression of records, false claims against Government, serious financial embarrassment, engaging in political activities, unauthorized disclosure of official information, Corruption, embezzlement, unruly behaviour, membership of secret societies, Violation of section 14 (3) of the Constitution, contravention of any provision of the Civil Service Rules, Financial Regulations and Stores regulation, dishonesty, drunkenness, insubordination, falsification of records, failure to keep records, foul language, sexual promiscuity e.t.c.

4.4 Conduct Alleged to be Prejudicial to the Security of the State

Where it is considered that the conduct of an officer is prejudicial to the security of the State, and where a committee comprising members from the State Ministry of Justice, Office of the Head of Service and Special Services Offices is satisfied that an officer has committed an act of misconduct involving the security of the State, the normal disciplinary procedure need not be followed by the Commission in taking any disciplinary action it may deem fit.⁵³

This provision is quite plain, and gives the Commission power to take disciplinary action against an officer without going through the disciplinary procedure contained therein, if it is of the view that the officer's action constitutes a misconduct involving the security of the state. The Rules has not defined what constitutes acts that involve the security of the state. In Chapter Four below, the researcher will attempt a constitutional study of the rule, especially that the rule excludes any form of hearing before finally taking action that will determine the civil rights and obligations of the affected officer.

5.0 Procedure under Rule 04306 in Cases of Allegations of Serious Misconduct

It is only in cases of allegations of serious misconduct that officers are accorded elaborate proceedings in observance of their right to fair hearing by the Kano State Civil Service Rules, 2004. By Rule 04306, no officer shall be dismissed unless the following procedure has been followed.

- a. **Issuance of Query.** The officer shall be notified in writing of the grounds on which it is proposed to discipline him. The query should be precise and to the point. It must relate the circumstances of the offence, the rule and regulation which the officer has broken and the likely penalty. The query shall call upon the officer to state in writing, within the period specified in the query any ground upon which he relies to exculpate himself.⁵⁴

inimical to the image of the service and which can be investigated and if proven, may lead to dismissal. By Rule 030402 of the Public Service Rules, it includes falsification of records, suppression of records, withholding of files, conviction for a criminal charge other than a minor traffic or sanitary offence or the like, absence from duty without leave, false claims against government officials, engaging in partisan political activities, bankruptcy/serious financial embarrassment, unauthorized disclosure of official information, bribery, corruption, embezzlement, misappropriation, violation of oath of secrecy, action prejudicial to the security of the state, Advanced Fee Fraud, holding more than one full-paid job, nepotism, divided loyalty, sabotage, willful damage to public property, sexual harassment and any other act unbecoming of a public officer.

⁵³ Rule 04501: under Rule 030501 of the Public Service Rule 2014, an officer alleged to have committed an act prejudicial to the security of the state cannot be arbitrarily punished without going through the normal procedure of disciplinary proceedings under the Rule, except that punishment for this type of misconduct shall be aggravated. This, it is submitted is more in line with the established principles of fair hearing.

⁵⁴ Rule 04306 (i). This is similar to Rule 030307 (i) of the FRN Public Service Rules

- b. **Response to the Query.** If the officer submits his representation and the State Civil Service Commission is not satisfied that he has exculpated himself, and considered that the officer should be dismissed, it shall take such action accordingly. In the absence of such representation, the commission may take such action as it may consider necessary.⁵⁵ If upon considering the representations of the officer the Commission is of the opinion that the officer does not deserve to be dismissed from service but deserved some other punishment, it shall impose on the officer such punishment as it considers appropriate.⁵⁶
- c. **Setting up of Board of Inquiry.** The Commission if it considers necessary may set up a Board of Inquiry which shall consist of not less than three persons one of whom shall be appointed by the Chairman of Commission.⁵⁷ The members of the Board shall be selected with due regard to the status of the officer involved in the disciplinary case as well as the nature of the offence which is the subject of inquiry.⁵⁸ In any case, the Head of the officer's department shall not be a member of the Board.⁵⁹ This is possibly to avoid conflict of interests and the likelihood of the head of department being a judge in his own cause.
- d. **Appearance before the Board.** At the date of hearing, the officer will be allowed to defend himself, and to call witnesses in his defense.⁶⁰ This Rule complies with decision in *R V Director of Audit (Western Region) & Anor, Ex Parte Oputa & Ors*⁶¹ where the Supreme Court held, among other thing, that opportunity to appear before disciplinary committee is an essential requirement of right to fair hearing. However, his failure to appear to defend himself before the Board will not invalidate the proceedings so long there is evidence to establish that he is aware of the sitting.⁶² The fair hearing principle entrenched in Section 36 of the Constitution is not for the indolent but for the party who is ready to take advantage of the principle at the appropriate time.⁶³ Where a party is given opportunity to present his case and he misused that opportunity, he cannot complain of breach of his right to fair hearing.⁶⁴
- e. **Right to Cross-examine Witnesses who Testified against him.**⁶⁵ The officer has the right to put questions to the witness with a view to exposing any possible contradiction, or bias in his testimony. In *Denloye V Medical and Dental Practitioners Disciplinary Tribunal*,⁶⁶ the denial of right to cross-examine witnesses called at the tribunal lead to a decision quashing the proceedings. During cross-examination, the cross-examining party has the right to put as many questions as are material to his case.⁶⁷ Facts elicited during cross-examination must be given utmost consideration by the Board of Inquiry and must be taken into consideration in the determination of the matter. Going by what was decided by the court in the above

⁵⁵Rule 04306 (iii) This is similar to Rule 030307 (iv) of the FRN Public Service Rules

⁵⁶ Ibid

⁵⁷ Rule 04306 (v) This is similar to Rule 030307 (v) of the FRN Public Service Rules

⁵⁸ ibid

⁵⁹ ibid

⁶⁰ Rule 04036(vi) This is similar to Rule 030307 (vi) of the FRN Public Service Rules

⁶¹ 1961 All NLR p. 659

⁶² ibid

⁶³ *Newswatch Communications v Attah* (2006) 12 NWLR pt. 992 p 144

⁶⁴ *Chidoka v First City* (2012) 7 SCNJ 452

⁶⁵ Rule 04306(vii)

⁶⁶ (1986) 1 All E.R

⁶⁷ *Ibrahim v Shagari* (1983) 2 SCNLR 170 at 196

cases, the provision of Rule 04306, it is submitted, complies with the principles of fair hearing.

- f. **Right to Have Advance Copies of Documents to be Tendered before the Board against Him.** No documentary evidence shall be used against the officer unless he has been previously supplied with a copy thereof or given access thereto.⁶⁸ In *Adedeji V Police Service Commission*⁶⁹, the appellant who was an Assistant Superintendent of Police was served with a letter by the respondent in which he was accused of corruption and contravention of certain general orders. He was required to make representations why he should not be dismissed for the offences. He wrote a reply but was eventually dismissed. He challenged his dismissal, but was confronted at the High Court with allegations which were not in the letter of query issued to him by the Commission. The court dismissed his case. He appealed to the Supreme Court. The court held that the letter did not sufficiently appraise the appellant of the case against him, giving him the opportunity to state his case in rebuttal in view of the fresh allegations in the counter affidavit filed at the High Court, and that adequate opportunity was not given to him to meet the case or the facts of the case known to the Commission.
- g. **Discovery of Additional Grounds for Dismissal.** If during the course of inquiry further grounds for dismissal are disclosed, and the State Civil Service Commission deems fit to proceed against the officer upon such grounds, the officer shall by the direction of the commission, be furnished with a written statement thereof and the same steps shall be taken as prescribed above in respect of the original grounds.⁷⁰ It undoubtedly accords with the principles of fair hearing for an officer against whom additional ground which may lead to dismissal have been discovered to be issued with a fresh query containing the fresh grounds, giving him the opportunity to defend himself. As stated above, all the perquisites of fair hearing will be given to the officer in respect of the fresh grounds.
- h. **Submission of Report to the Commission.** The Board having inquired into the matter shall make a report to the Commission. If the Commission considers that the report should be amplified in any respect or that further enquiry is desirable, it may refer any matter back to the Board for further inquiry or report.⁷¹ The Commission shall not itself hear witnesses. The above clearly shows that the report of the Board must be reasoned; not capricious. For the Board to obviate the possibility of abuse of power, it must address all the issues raised in the allegation and give reason for its finding on each of them. If the Commission is of the view that more clarification needs to be made, then the Board has to supply these clarifications. As we have seen in Chapter Two, even administrative bodies have to give reasons for their decisions. This provision of Rule 04306 of the Kano State Civil Service Rules, 2004 complies with officer's right to fair hearing.
- i. **Consideration and or Implementation of the Report.** If upon considering the report of the Board together with the evidence and all material documents relating to the case, the Commission is of the opinion that the officer shall be dismissed, such

⁶⁸ Rule 04306(vii) This is similar to Rule 030307 (vii) of the FRN Public Service Rules

⁶⁹ (1968) N.M.L.R p. 102

⁷⁰ Rule 04306(viii) This is similar to Rule 030307 (viii) of the FRN Public Service Rules

⁷¹ Rule 04306 (ix) This is similar to Rule 030307 (ix) of the FRN Public Service Rules

action shall be immediately taken.⁷² If the Commission does not approve the officer's dismissal and does not consider that any penalty should be imposed, the officer should be reinstated forthwith and be entitled to the full amount of salary denied him if he was interdicted or suspended.⁷³ If upon considering the report of the Board, the Commission is of the opinion that the officer does not deserve to be dismissed but that the proceedings disclosed grounds to requiring him to retire, the commission shall, without further proceedings, direct accordingly.

6.0 What is missing in Rule 04306 as far as Fair Hearing is concerned

Having gone through the provisions of Rule 04306 of the Kano State Civil Service Rules, 2004 it has been observed that the procedure applies to cases in which an officer is alleged to have committed an act of serious misconduct which may lead to dismissal. It does not apply to cases of misconduct. This is possibly why an attempt is made to provide as much of fair trial to an officer as the framers of the Rules can envisage. The importance of this inquiry is centred on the fact that under the Nigerian Labour Law, a plaintiff in case for wrongful dismissal or termination of employment has a duty to place before the court the relevant condition of service under which the employment was brought to an end, and point specifically how the employer breached the condition of service in bringing the employment to an end. In this situation therefore, if there is an essential principle of fair hearing that is omitted in Rule 04306 of the Kano State Civil Service Rule, there is need to point it out and justify the need for its inclusion. However, Rule 04306 is deficient in the sense that it does not cover the following areas which are also important segments of fair hearing in quasi-judicial administrative proceedings.

6.1 Right to be Present Throughout the Proceedings

Right to be present at all stages of proceedings in a case concerning an individual is inherent in all proceedings. Rule 04306 of the Kano State Civil Service does not recognize the right of an officer against whom a disciplinary case is on-going to be present all through the proceedings. What the Rule contemplates is the presence of an officer subject to disciplinary proceedings before the Board of Inquiry only in two instances. The first instance is when he is called upon to make his defense and call his witnesses in support of his own case. The second is when he chooses to cross-examine the witnesses that testified against him. It should be noted that nowhere was it stated in the Rules that witnesses testifying against an officer must do so in his presence. The only right he has is to cross-examine such witnesses who could have testified in his absence, the record of which he might have been supplied.

The rationale for the principle permitting the officer to be present at all stages of the proceedings obviously is that a party will not have adequate knowledge of the nature of the case against him if he was not opportune to be at the hearing, or given access to the records. Denial of this will be unfair and a breach of right to fair hearing. In *Denloye V Medical and Dental Practitioners Disciplinary Tribunal*,⁷⁴ the court set aside disciplinary proceedings on the ground that the appellant was not called or allowed to be present at the sittings of the Medical and Dental Practitioner's Investigative Panel were witnesses testified and document against him. When the appellant was summoned, the Panel declined his request to have access to evidence taken in his absence. The court in quashing the proceedings held that the procedure adopted by the panel was a gross violation of the appellant's right to fair hearing.

⁷² Rule 04306(x) This is similar to Rule 030307 (x) of the FRN Public Service Rules

⁷³ Rule 04306(xi)

⁷⁴ (1986) 1 All NLR p. 306

Therefore, an officer can successfully challenge proceedings conducted under Rule 04306 of the Kano State Civil Service Rules which does not recognize his right to be present except at two stages of the proceedings, namely, when he appears before the Board of Inquiry to defend himself⁷⁵ and when he appears before the Board to cross-examine witnesses who testified against him.⁷⁶ Apart from the above two situations, the Board may exclude the presence of an officer undergoing disciplinary cases. The researcher submits that this is contrary to the principles of fair hearing.

In a recent case decided under the Kano State Civil Service Rules, 2004⁷⁷ one of the grounds of setting aside the disciplinary proceedings against the Respondent was the failure of the Board invite him back to attend its sittings, or to know the testimonies of witnesses who testified against him in the case. The Court of Appeal in resolving this issue in favor of the Respondent stated as follows:

*One of the essential elements of fair hearing is that the body investigating an alleged misconduct against a person must not receive evidence or representation behind the back of the person being investigated. Where this is done, the Court will not enquire whether such evidence or representation did work to the prejudice of the person being investigated. It is sufficient that it might. The risk of it is enough.*⁷⁸

The researcher submits that literal study of Rule 04306 of the Kano State Civil Service Rules, 2004 leads the Board, as in *Aminu's* case supra, to dispense with the presence of the officer facing disciplinary proceedings, and require his presence only when he is to defend himself. The only way to address this lacuna is for Rule 04306 to expressly recognize the right of the officer to be present throughout the proceedings.

6.2 Right to Legal Representation

The failure of Rule 04306 of the Kano State Civil Service Rules, 2004 to recognize the right of an officer to be represented by a legal practitioner during the sittings of the Board of Inquiry will deprive the officer of obtaining legal assistance in situations where he needs them to sufficiently defend himself. The Rules mandates the officer to appear personally to defend himself in respect of the allegations levelled against him. As it was argued by Muhammad,⁷⁹ in any proceedings be it civil, criminal or administrative in which a person is required to appear, he is entitled to be represented by a legal practitioner. It is submitted that this is a serious omission that can negatively affect the right of an officer to defend himself before the Board of Inquiry.

⁷⁵ Rule 04036 (vi) of the Kano State Civil Service Rules, 2004

⁷⁶ Rule 04036 (vii) of the Kano State Civil Service Rules, 2004

⁷⁷ Kano State Polytechnic V Aminu Gambo (Unreported suit No CA/360/2012)

⁷⁸ Kano State Polytechnic V Aminu Gambo (Unreported suit No CA/360/2012) p. 18

⁷⁹ Muhammed, H., (1986.) Concept of Fair Hearing Under the Nigerian Law, being an unpublished thesis submitted to the Faculty of Law, Ahmadu Bello University Zaria, in partial fulfillment for the award of LLM, P. 82 see also the observation by Galadima JCA in *Nwanegbo v. Major Oluwole & Anor* (2001) 37 LRN 101 that there are certain components which must be present in any judicial determination either by the regular court or by an administrative tribunal some of which are that he may give evidence by himself, call witnesses, if he likes and make oral submission either personally or through a counsel of his choice if he so desires. See also Friendly H., (1975) Some Kind of Hearing: University of Pennsylvania Law Review: Vol. 123: at p. 1287

6.3 Right to Trial within a Reasonable Time.

The right to a trial within a reasonable time applies to civil, criminal and quasi-judicial cases. Section 36(1)⁸⁰ provides

*In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing **within a reasonable time by a court or other tribunal established by law**, constituted in such manner as to secure its independence and impartiality.
[Emphasis supplied]*

The purpose of this provision is to protect civil litigants and criminal defendants against excessive delays in legal proceedings, and to underline the importance of rendering justice without delays which might jeopardise its effectiveness and credibility. The question of what period of time is “reasonable” is judged in each case according to its particular circumstances. In making the assessment of reasonableness, the Court has regard to three issues, namely the complexity of the case, the conduct of the applicant, and the conduct of the state authorities. The Court examines the three issues separately, and then considers whether at certain stages, or overall, there have been excessive delays.

It is clear that the Board of Inquiry has the ultimate control of fixing time, place and duration of the proceedings.⁸¹ However, the Rules do not have a time limit within which all disciplinary cases must be concluded. This failure places the officer subject to disciplinary proceedings in great danger of being involved in an array of proceedings for years that might at the end culminate in his exoneration. However, he may in the interim have to bear the psychological stress of undergoing a disciplinary action. Proceedings can be used by an unscrupulous superior officer merely to overreach and cause untold annoyance to an officer with whom he is not in good terms.

Similarly, officers subjected to the interim measures of suspension and interdictions may have to forfeit their salaries or half of it until such a period, no matter how long, that the disciplinary proceedings might have come to an end and a report exonerating them considered. This is the more reason why the disciplinary proceedings under the Kano State Civil Service Rules should have time limit.

7.0 Instances of Breach of the Principles of Fair Hearing under the Kano State Civil Service Rules

There are also provisions in the Kano State Civil Service Rules that are completely in breach of the principles of fair hearing. These situations are:

- a. Dispensing with Disciplinary Procedure and Replacing it with the Report of Judicial Commission of Enquiry,
- b. Dispensing with comprehensive disciplinary proceedings under Rule 04306 in cases of misconduct,
- c. Denial of Fair Hearing Cases of Alleged Conduct Prejudicial to the Security of the State,
- d. Denial of fair hearing in taking interim measures suspending or interdicting an officer.

⁸⁰ Constitution of the Federal Republic of Nigeria (1999) as amended

⁸¹ Obviously having recognized this danger, Rule 030307 (xiii) of Federal Republic of Nigeria Public Service Rules states that all disciplinary proceeding must commence and be completed within 60 days except where it involves criminal cases.

The researcher will analyze these provisions with a view to seeing how they breach the principles of fair hearing.

7.1 Dispensing with Disciplinary Procedure and replacing it with the Report of Judicial Commission of Enquiry.

There are instances where the need for a query and disciplinary proceedings under the Rules may be dispensed with. Where a Judicial Commission of Inquiry set up by the Government makes recommendations of a disciplinary nature of an officer, and such recommendations are accepted by the Government, the State Civil Service Commission shall proceed and implement the Commission's recommendations without having recourse to the disciplinary procedure encapsulated in the Rules.⁸²

A Judicial Commission of Inquiry is normally constituted by virtue of and under a Judicial Commission of Inquiry Law or Act as the case may be, to inquire into certain affairs and/or conduct of some individuals and after the enquiry, which is investigative in nature, the said commission submits its report to the government which set it up. The government will now study the recommendations and take further necessary actions.⁸³

The current legislation in Kano State is the Commissions of Enquiry Law of 1940 (as amended in 1983). Section 1 of the Law states:

Subject to the provision of Section 120 of the Constitution,⁸⁴ the Governor may, whenever he shall deem desirable, issue a commission appointing one or more commissioners, and authorizing such commissioners, or any quorum of them mentioned, to hold a commission of enquiry into the conduct of any officer in the public service of the State, or of any Chief, or the management of any department of the public service, or of any local institution, or into any matter in respect of which, in his opinion, an enquiry would be for the public welfare.

The Commission in the exercise of its functions is empowered to summon witnesses, receive oral and documentary evidence, issue warrant to compel the attendance of witnesses, etc⁸⁵

By the Rules,⁸⁶ an officer can be disciplined based on the report of a Judicial Commission of Inquiry concerning him. If the government has accepted the report, the Commission can go ahead and implement the report without having resort to the disciplinary proceedings under the Rules. The nagging question is what is the justification for recognizing the report of a commission of inquiry as a substitute for disciplinary proceedings under the Kano State Civil Service Rules? Is the procedure adopted by Judicial Commissions of Inquiry similar to disciplinary procedure under the Rules? The answers to the above questions are not far-fetched.

To start with, the role of Judicial Commission of Inquiry is investigative while the role of Board of Inquiry set up under the Civil Service Rules is quasi-judicial. The role of the investigating panel is different from that of the disciplinary tribunal. Unlike quasi-judicial administrative bodies, the duty of the investigative panel is simply to investigate an

⁸² Rule 04303

⁸³ *Dunbraye v. Preyor* [2015] All FWLR pt. 774 p 127 at 171

⁸⁴ This is referring to Section 120 of the 1979 Constitution of the Federal Republic of Nigeria. The relevant section is section 128 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁸⁵ Section 7 of the Kano State Commissions of Enquiry Law, 1940 (as amended)

⁸⁶ Rule 04303 of the Kano State Civil Service Rules

allegation, assemble the evidence and submit its report to the government. The government can either implement the report or keep it in view.⁸⁷

Similarly, while there is detailed procedure before a disciplinary action can be taken under Kano State Civil Service Rules, there is no definite procedure as to how Commission of Inquiry under the Kano State Commissions of Inquiry Law can arrive at a decision or conduct its proceedings. Section 6 of the Law⁸⁸ states

The commissioners may make such rules for the conduct of the proceedings, the time and place of meeting and of adjournments as they may think fit, subject to the terms of the commission.

This shows that the commission has no definite rules that will ensure the fair hearing required before disciplinary action can be taken on an officer. Rule 04303 is contrary to the principle of right to fair hearing.

7.2 Dispensing with Comprehensive Disciplinary Proceedings under Rule 04306 in Cases of Misconduct

If it is represented to the Civil Service Commission that an officer has been guilty of misconduct and the Commission does not consider the alleged misconduct serious enough to warrant proceedings under Rule 04306 with a view to dismissal, it may cause an investigation to be made into the matter in such manner as it considers proper and the officer shall be entitled to know the whole case made against him, and shall have adequate opportunity of making his defence.⁸⁹ If as a result the Commission decides that the allegation is proved, it may inflict any other punishment upon the officer such as demotion, withholding or deferment of promotion, increment or otherwise. The implication of the above Rule is to empower the Commission to circumvent the provisions of Rule 04306 and refuse to comply with the principles of natural justice, except that the officer shall be given the opportunity to defend himself, where it is of the view that the officer faced with a case of misconduct which may not lead to dismissal.

The main problem with the above provision is that it will deprive the officer charged with a case of misconduct the opportunity to have advance copy of documents to be used against him and the opportunity to cross-examine the witnesses who testified against him as well as such other measures put in place to ensure that the officer obtains fair hearing before any form of punishment is imposed on him.

As we have seen above, opportunity to cross-examine witnesses, to receive copies of documents to be used against him before the proceedings, among others are essential in any administrative disciplinary proceedings like the one Under the Kano State Civil Service Rules. At the end of investigation in a case of misconduct, the officer might be faced with sanctions such as demotion, withholding or deferment of promotion, increment or otherwise which are clearly decisions that can affect his civil rights and obligations.

Consequently, it is submitted that the provisions of Rule 04305 of the Kano State Civil Service Rules are contrary to the constitutionally guaranteed right to fair hearing. An officer who is punished in accordance with this rule can successfully challenge it in court.

⁸⁷Dunbraye v. Preyor [2015] All FWLR pt. 774 p 127 at 171

⁸⁸Kano State Commissions of Inquiry Law, 1940

⁸⁹Rule 04305 this similar to Rule 030305 of the Federal Republic of Nigeria Public Service Rules, 2014

7.3 Denial of Fair Hearing Cases of Alleged Conduct Prejudicial to the Security of the State

Where it is considered that the conduct of an officer is prejudicial to the security of the State, and where a committee comprising members from the State Ministry of Justice, Office of the Head of Service and Special Services Offices is satisfied that an officer has committed an act of misconduct involving the security of the State, the normal disciplinary procedure needs not be followed by the Commission in taking any disciplinary action it may deem fit.⁹⁰

This provision is quite plain, and gives the Commission power to take disciplinary action against an officer without going through the disciplinary procedure contained therein, if it is of the view that the officer's action constitutes a misconduct involving the security of the state.

Rule 04501 has not defined what constitutes acts that involve the security of the state that will empower the Kano State Civil Service Commission to punish officers without observing the principles of fair hearing. This Rule is also a clear violation of officers right to fair hearing, especially that the rule excludes the application hearing before finally taking action that will determine the civil rights and obligations of the affected officer. It is clear that disciplinary action to be taken pursuant to this Rule can include dismissal, the most serious punishment under the Civil Service Rules. Disciplinary action can be taken under this Rule solely by the Civil Service Commission on even mere suspicion of engaging in activities that are prejudicial to the security of the State.

It can be argued that this Rule can be used to victimize officer in the Civil Service, since the Civil Service Commission is given a free hand and endless discretion in this disciplinary measure by giving it the power to determine the actions that are prejudicial to the security of the state and how to punish it without observing the principles of fair hearing.

7.4 Suspending an Officer

By Rule 04405, any person who appears to have committed any serious misconduct, when a *prima facie* case has been made against him may be suspended and his emoluments stopped. It is clear that Rule 04405 of the Kano State Civil Service Rules vests the Permanent Secretary/Head of Extra Ministerial Department with the power to suspend an officer pending the conclusion of investigation if he considers the suspension necessary, and in public interest.

The rationale of suspending an officer from his post in cases where he is charged with serious misconduct which may lead to dismissal, is that it removes the employee from the workplace so that he/she does not have the opportunity to interfere with records relevant to the investigation or to work with other staff who may provide evidence in respect of the allegations. However, can it be said that by suspending an officer without pay when a *prima facie* case was made against him without more not a clear violation of his fundamental right? The researcher submits that it is, for the following reasons. The power to suspend can be challenged from the following angles.

- a. Suspending an officer charged or about to be charged with an act of serious misconduct which can lead to dismissal is an act which can affect his civil rights

⁹⁰ Rule 04501: under the Public service rule, an officer alleged to have committed an act prejudicial to the security of the state cannot be arbitrarily punished without going through the normal procedure of disciplinary proceedings under the rule. This, it is submitted is more in line with the established principles of fair hearing.

and obligations. This is because the suspension has in a way tempered with his rights and duties under the contract of service between him and his employer by prohibiting him from carrying out his duties during the period of suspension. Secondly, it has deprived him of receiving salaries from which he takes care of his basic needs. During the period of suspension the affected officer will be deprived of means to settle his bills, children's school fees and other things. Thirdly, suspension will have psychological effect on him and adversely affect his credibility among his peers. To confirm this point, Rule 04405 state that if at the end of the disciplinary proceedings the officer is exonerated, he shall be paid all his salaries unpaid during the period of suspension. There is no provision in the Rules entitling the officer to subsistence allowance, which is a token given to civil servants on suspension, disbursed to enable him to take care of his basic necessities.⁹¹

- b. By Rule 04405, any person who *appears* to have committed any serious misconduct, may be suspended and his emoluments stopped. The authorised officer can suspend an affected staff at the point of investigation when he considers that a *prima facie* case has been made against the officer. However, this can happen even before the officer has been issued with a query and his response to the allegation received. The authorised officer, in this case the Permanent Secretary/Head of Extra-Ministerial Department, by arriving at a decision at the point of investigation as to whether a *prima facie* case has been made against an officer, is exercising a quasi-judicial function. If he is exercising a quasi-judicial function, he has a duty to observe the principles of natural justice, which entails among other things giving the concerned officer an opportunity to make a representation as to whether it is appropriate to suspend him or not. The question is what if the officer is suspended but at the end of the day, the Commission finds it expedient not to take disciplinary proceedings against him? Is it not likely that the officer's rights could have been affected without basis?
- c. The only way suspension can have a semblance of fair hearing is when it is meted out by the Permanent Secretary prior to hearing or the Board during the disciplinary hearing, when the officer is given the opportunity to make a representation specifically on the propriety of an order of suspension. In these circumstances, the Permanent Secretary or the Board will have the opportunity to appraise the facts of the case with a view to determining whether it is appropriate make such order. The facts to be considered will include the possibility of the officer interfering with the proceedings and the likely effects of the order of suspension of his life. If suspension at this level is not to be taken as punishment, the determination on whether to make it or not will be taken as something similar to interlocutory application in normal civil proceedings in the courts. This practice is what is obtainable as best practice in the international community. Section 75 (3) of New York Civil Service Law provides that "Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days." Section VIII of New York State Department of Civil Service Manual of Procedure in Disciplinary Actions 2003

⁹¹ See the Indian cases of *Ghanashyamdas v. State of MP*, AIR 1973 SC 1183 and *Laxmi Dattv. Union of India*, SLR 1971 Del 232.

made reference to the above Section in regulating the procedure to be followed as follows:

The individual placed on suspension pending disciplinary charges should, at least, be given the opportunity to object to or give a reason why he or she should not be suspended before the suspension begins. In practice, this can be done at the time the Notice of Discipline is served and does not require a separate meeting or hearing. No questions should be asked, but the employee should be given a chance to read the charges, be aware that a suspension is to be imposed, and say something, if he or she wants to. The decision to suspend, however, remains with the employer. A witness is always a good idea at any stage of the disciplinary process to show that “due process” and fairness were followed regarding the suspension.

This clearly shows that even in cases of suspension as an interim measure, the agency is mandated to observe the principles of natural justice.

- d. The period of suspension has not been specified. In the same way that Civil Service Rules does not make provisions stating the time limit within which disciplinary proceeding must be concluded. It is an essential requirement of fair hearing that proceedings must be concluded within reasonable time.

By way of comparison, Section 75 (3) of New York Civil Service Law limits the length of period of suspension to 30 days. In India, there is no time limit for the period during which a civil servant can be kept under suspension. Even where the Rules provide that where an authority other than the government has kept a civil servant under suspension it should report the matter to the government, if the departmental enquiry is not completed within a period of six months it does not mean that an order of suspension beyond six months is not valid. The only duty enjoined by such a rule is that the officer who made the order of suspension must make a report to the government in all cases in which disciplinary proceedings are not concluded within a period of six months, so that the government may, by the application of its mind to the facts and circumstances of the case, make a proper order. It is open to the government to make an order vacating the order of suspension or to make an order directing the expeditious disposal of the disciplinary proceedings.⁹² Where an employee was suspended and charge sheet was served after a long time, causing inordinate delay in the conduct of enquiry, the Indian apex court ordered reinstatement on that ground.⁹³

The absence of a similar provision in the Kano State Civil Service Rule, or in the case law will place the officer at the mercy of the authorities to the extent that he will remain suspended without pay for as long the proceedings last, even if it will take years. What confirms this suspicion is the provision of Rule 04405 of the Kano State Civil Service Rules which states that the officer will resume discharging his duties only upon his exoneration by the Board. If period of disciplinary hearing has been provided, and suspension exceeds this period, the officer could have reason to complain and demand his full pay. In the Kenyan case of *Peter Opiyo v Laikipia University*⁹⁴ the Court held that:

⁹²SubbaRao v. Assistant Commissioner, ILR 1962 Mys 972; State of Punjab v. Mewa Singh, SLR 1982(2) P&I I 611.

⁹³ *ibid*

⁹⁴ [2015] eKLR

In my view, where there is an express provision for interdiction or suspension and the interdiction or suspension stretches beyond such period, the employee would be entitled to all benefits prior to such interdiction or suspension.

7.5 Interdiction

Literally, interdiction is an act of stopping something or of not allowing something.⁹⁵ It can also be defined as an act of stopping and taking illegal goods that are being transported somewhere, or an occasion when this happens.⁹⁶ Technically, interdiction refers to temporary removal of an officer from performing his normal duties.⁹⁷

Rule 04403 provides

- (vi) When a serious case that may lead to dismissal has been instituted against an officer, the Permanent Secretary/Head of Extra Ministerial Department may interdict him on not more than half pay pending the determination of the case.
- (vii)When the charge against him is such that continued performance of his present duties is against public interest or prejudicial to the investigation of the charge against him, consideration shall be given to putting him on alternative duties.
- (viii) When an officer is interdicted he shall cease to report for duty and shall receive such proportion of his emoluments, not being less than one half, as the commission may determine.
- (ix) If proceedings under reveal that he is not guilty of the charge made against him, the officer shall immediately be reinstated and shall receive the full amount of his emoluments denied him during the interdiction.
- (x) If he is found guilty but is not dismissed, he may be refunded such portion of the emoluments denied him as the commission may determine.

By Rule 04404 a suspended and or interdicted officers have similar responsibilities namely they have a duty to inform and obtain the consent of their Permanent Secretary/Head of Extra-Ministerial Department before the State. They must keep the Ministry/Department informed of the addresses at which instructions to them can be delivered. If they fail to comply with the instructions delivered to them at such address within 7 days, they will be regarded as being absent from duty without permission.

Although there are arguments that suspension and interdiction are one and the same thing in the sense that they require an employee not to attend the workplace either for investigative purposes or as a disciplinary sanction,⁹⁸ Subsection (2) of Section 36⁹⁹

without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law-

⁹⁵ <https://dictionary.cambridge> accessed on 2nd April, 2019

⁹⁶ *ibid*

⁹⁷ www.bahamas.gov.bs accessed on 2nd April, 2019

⁹⁸ See <https://kenyaemploymentlaw.com> accessed on 3rd April, 2019. In the Kenyan case of *Teresia N. Peter vs Kitui Teachers Savings Credit Co-operative Society Ltd* [2014] eKLR, the court held the view that suspension is neutral action taken to facilitate investigations whereas interdiction is a disciplinary penalty that can be coupled with the employee's salary being withheld.

⁹⁹ Constitution of the Federal Republic of Nigeria (1999) (as amended)

- a. *Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes decision affecting that person*

Without a doubt, interdiction is a very ambivalent measure. It can be taken both as a preventive measure or a punitive measure. In both cases, they affect the civil rights and obligations of the officer concerned. In the Kenyan case of *Fredrick Saundu Amolo v Principal Namanga Mixed Day Secondary School & 2 others*¹⁰⁰ the court made the following observations

It is important to note that there can be preventive interdictions and punitive interdictions... Punitive interdictions can only issue in circumstances where the employment contract, the employer code of conduct, the Collective Bargaining Agreement or the law allows for it as a sanction... Whether it is preventive or punitive, the interdiction to be valid must meet the requirements of substantive and procedural fairness. This is the position articulated in Chirwa v Transnet and Others [2008] 2 BLLR 29, at the Constitutional Court of South Africa and reiterated by this court in Industrial Petition No 15 of 2012 in the matter of Joseph Mburu Kahiga et al versus KENATCO Co Ltd et al. This is so because suspensions and interdictions are acts that have detrimental effect of it impacts on the employee's reputation, advancement, job security and fulfilment.

The above shows that interdiction can be imposed as a punitive measure on the employee after conducting a disciplinary hearing and finding him guilty where condition of service or the law permits it. It can be argued that punitive interdiction is unknown to Kano State Civil Service Rules. What is common in Nigerian Civil Service Rules is preventive interdiction. In this circumstance, the officer is interdicted pending the conclusion of investigation or disciplinary hearing, placing him on a half salary in some cases. In the above stated case, the court went ahead to lay down requirement of fair hearing in cases of interdiction, even if they are preventive in the following way;¹⁰¹

There must be a clear reason why the employee's interdiction is necessary, independent of any contention relating to the seriousness of the misconduct... thus a suspension or interdiction should only follow pending a disciplinary enquiry only in exceptional circumstances, were there is reasonable apprehension that the employee will interfere with any investigation that has been initiated or repeat the misconduct in question. The purpose of such removal from the workplace even temporarily, must be rational and reasonable and conveyed to the employee in sufficient detail to enable the employee to defend himself in a meaningful way...

The Kano State Civil Service Rules however, states that suspension should not be used as synonymous to interdiction as the latter is lighter than the former. Suspension shall apply where a *prima facie* case, the nature of which is serious has been established against an officer and it is considered necessary in the public interest that he shall forthwith be prohibited from carrying out his duties.¹⁰² From the above, the researcher is of the view that the Rules differentiates between interdiction and suspension in the following ways:

¹⁰⁰ [2014] eKLR

¹⁰¹ See also *Fredrick Saundu Amolo v Principla Namanga Mixed Day Secondary School & 2 others* [2014] eKLR

¹⁰² Rule 04405

In the first place, suspension is more serious in nature as an interim measure than interdiction. In addition, an officer can be suspended by the Permanent Secretary/Head of Extra Ministerial Department if he is of the view that at the point of investigation, a prima facie case had been made against him. In the case of interdiction, a prima facie case need not be made out against an officer. Finally, a suspended officer will not enjoy his salary during the period of suspension¹⁰³ but an interdicted officer can only be denied not more than half of his salary during the period of interdiction.¹⁰⁴ The researcher submits that criticisms given against the legality of suspension of an officer as an interim measure will apply here, *mutatis mutandis*. The Rules as it stands on interdiction is contrary to the right to fair hearing since order of interdiction is arbitrarily imposed on the officer without procedural fairness.

8.0 Judicial Control of Administrative Adjudication under the Nigerian Law

An administrative tribunal, no matter how highly placed is inferior to the High Court and is always subject to the supervisory jurisdiction of the High Court. According to Awogu J.C.A. in *National Electoral Commission (N.E.C) V Nzeribe*¹⁰⁵

A tribunal, no matter how highly clothed with power is still a tribunal and so an inferior Court and subject to the supervisory jurisdiction of a superior Court of record, such as the High Court of Lagos.

Accordingly, proceedings before an administrative or statutory tribunal may be challenged at the High Court on certain grounds. Prominent among these is want or excess of jurisdiction, denial of natural justice or fair hearing and error of law in the conduct of the proceedings by the tribunal.¹⁰⁶

It is settled law that a tribunal or other body with a limited jurisdiction acts *ultra vires* if it purports to decide a case falling outside its jurisdiction. Such proceedings will be a nullity and will be set aside by the courts.¹⁰⁷ Therefore a tribunal must act within the four corners of the statute creating it.¹⁰⁸ Rule of natural justice with its twin pillars of *audi altarem partem* and *nemo iudex in causa sua* which are inherent in S.36 of the 1999 Constitution must be observed by these tribunals as failure may render their proceedings null and void.¹⁰⁹ Also, failure to follow the rules and procedure laid down by the enabling statute or an error of law in the proceeding before a tribunal may be fatal depending on whether the defect is fundamental or not.¹¹⁰

9.0 Findings

Having undertaken the research as indicated above a perusal of the chapters revealed the following findings.

1. That fair hearing as a concept applies to civil, criminal as well as quasi-judicial disciplinary proceedings. Although the requirements of each could be different, it is

¹⁰³ Rule 04405

¹⁰⁴ Rule 04403

¹⁰⁵ (1991) 5 NWLR (P 192) 458 at 472

¹⁰⁶ See *Anisminic Ltd. V Foreign Compensation Commission* [1969] 2 A.C. 147.

¹⁰⁷ *ibid*

¹⁰⁸ *Okoroafor V Miscellaneous Offences Tribunal* [1995] 4 NWLR pt.387 pg. 59; *Soleye v. Sonibare* (2002) FWLR (pt.95) 221

¹⁰⁹ *Orugbo V Una* (2002) 9-10 S.C. 60 at 69

¹¹⁰ *R. v. Minister of Health, ex. parte Yaffe* [1930] 2 K.B. 98

essential that for parties to be given fair hearing, they must have been given adequate opportunity to know the nature of the case against them, have access to all the documents that will be used against them as well as be given the opportunity to defend themselves.

2. That the Kano State Civil Service Rules, 2004 was made pursuant to section 197 of 1999 Constitution of the Federal Republic of Nigeria (as amended) and same is considered a bye-law of the Constitution. This has made it to have constitutional flavour and so is bound to follow the spirit of the Constitution especially on issues that have to do with rights of citizens. Being a by-law of the Constitution, it is expected that provisions of the Civil Service Rules will always be in line with constitutional provision, and not contrary to it.

The Kano State Civil Service Rules made various provisions concerning civil servants stemming from recruitment, postings, salaries and increments, medical and dental procedures, overtime, allowances, leaves, promotions, transfers e.t.c. Three of those areas which are germane to this research work are classification of offences, the applicable sanctions as well as disciplinary proceedings respectively.

3. Although the Kano State Civil Service Rules, 2004 and the Public Service Rules of the Federation are similar especially with respect to discipline, it was discovered that the Public Service Rules applying to Federal public servants contains more provisions that guarantee officers' right to fair hearing. Firstly, by Rule 04501 of the Kano State Civil Service Rules 2004, an officer alleged to have committed an act prejudicial to the security of the state can be arbitrarily punished based on the report of a committee not established for disciplinary purpose. However, Under Rule 030501 of the Public Service Rule 2014, an officer alleged to have committed an act prejudicial to the security of the state cannot be arbitrarily punished without going through the normal procedure of disciplinary proceedings under the Rule, except that punishment for this type of misconduct shall be aggravated. This, it is submitted, is more in line with the established principles of fair hearing. Secondly, under Rule 04406 of the Kano State Civil Service Rules 2004, officers dismissed are not entitled to all terminal benefits. However, under Rule 030407 of the Public Service Rules 2014, applying to employees under the Nigerian Federal Public Service, this provision is subject to the Pension Reform Act 2004.¹¹¹ Once an officer is entitled to terminal benefits under the Act, he will receive them even if his employment was brought to an end by dismissal. The researcher is of the view that this provision is more humane than the provision of Rule 04406 of the Kano State Civil Service Rules 2004. Finally, the Kano State Civil Service Rules 2004 has not made provisions stating the time limit within which disciplinary proceedings must be concluded. This might authorise the Civil Service Commission to proceed against an officer longer than necessary, to that extent that disciplinary proceedings could be initiated in the spirit of witch-hunt. Rule 030307 (xiii) of the Public Service Rules however limits the period of disciplinary proceedings to 60 days. This in effect guarantees the right of officers to have a fair trial within a reasonable period.
4. Rule 04306 of the Kano State Civil Service Rules 2004, which has laid down a relatively elaborate procedure on fair hearing has a quite limited application as it applies only to cases of alleged serious misconduct which may lead to dismissal by

¹¹¹The applicable law is Pension Reform Act 2014

giving them opportunity to respond to query, make representations in their defense, have copies of documents tendered against them before the Board of Inquiry and right to cross-examine witnesses who testified against them. The Rule however, omitted right to legal representation, right to be present throughout the trial and right to have the inquiry concluded within a reasonable time, which are necessary features of right to fair hearing enshrined in Section 36(2) of the 1999 Constitution. This is to say, the only instance that the Kano State Civil Service Rules attempted to comply with disciplinary cases is in cases of serious misconduct which may lead to dismissal, but even then, the Rule has failed to adequately provide for this right because some salient provisions are missing.

Rule 04305 has empowered the Kano State Civil Service Commission to sanction officers found guilty of misconduct and to impose the appropriate penalty like demotion, deferment of promotion, increment or otherwise, without giving them fair hearing as exemplified by Rule 04306 except an opportunity to make representations in his defense. This provision will enable Commission to deny an officer right to cross-examine witnesses, receive copies of documents tendered during the proceedings of the Board of Inquiry if he is tried for a misconduct which may not lead to dismissal. The researcher has shown how measures such as demotion, deferment of promotion, increment or otherwise affect the civil rights and obligations of citizens, and not dismissal alone. By these provisions, it is clear that the approach of the Rules to the concept of fair hearing is quite narrow, and can subject officers to disciplinary sanctions without according them the opportunity of a fair trial.

5. A study of Rule 04306 of the Kano State Civil Service Rules 2004 will reveal that the Rule itself is insufficient to provide fair hearing to officers because although the Rule provides for some aspects of fair hearing, it has failed to recognize the right of an officer undergoing disciplinary proceedings to be present before the Board of Inquiry in all stages of the proceedings and to be represented by a legal practitioner. This in effect means that the Board of Inquiry can proceed against the officer in his absence and may need him to be present only when it is his turn to defend himself. Of course, the Board may console him by giving him documents that were tendered against him and record of testimonies of witness who testified against him. The researcher submits that this measure is still inadequate, in the sense that presence of the officer or his legal practitioner during the whole disciplinary proceedings is the only way that he will be fully abreast with the facts of the case and the circumstances of the proceedings to the extent that he will be in the best position to defend himself. He cannot be expected to study all the bundles of documents and witness statements and appreciate them in the same way that he would have, if the witnesses testified and the documents were tendered in his presence or his legal practitioner. This denial has rendered the Rule contrary to Section 36 (2) of the 1999 Constitution of the Federal Republic of Nigeria was judicially interpreted by the Supreme Court in the cases of *The cases of J.S.C., Cross River State v Young*,¹¹² *Baba v N.C.A.T.C.*,¹¹³ *P.H.M.B v Edosa*¹¹⁴ and a host of others.
6. Rule 04303 empowers the Civil Service Commission to dispense with disciplinary procedure and replace it with the report of a Judicial Commission of Inquiry and can impose any penalty to the affected officer, including dismissal. It has been found that

¹¹² [2014] All FWLR p. 714 p 40

¹¹³ (1991) 5 NWLR (pt. 192) 388

¹¹⁴ (2001) FWLR(pt. 41) 1977, (2001) 5 NWLR (pt. 707) 612

a Judicial Commission of Enquiry is investigative in nature, and does not exercise quasi-judicial functions. It is more or less in a fact finding mission and submits report to the government. In addition to that, Judicial Commission of Inquiry does not have any recognized, mandatory procedure. It is after the inauguration of the Commission that the Commissioners can improvise their own rules that will guide their proceedings¹¹⁵. This cannot replace the provisions of the Civil Service Rules which are made pursuant to the Constitution. The researcher submits that report of a 6Judicial Commission of Inquiry cannot substitute disciplinary proceedings under the Civil Service Rules.

7. Rule 04501 clearly denies fair hearing to officers in cases of alleged conduct prejudicial to the security of the state, before the imposition of penalties which may include dismissal. When an officer is suspected to having engaged in a conduct prejudicial to the security of the State, under the Rule, the officer will not be given any form of fair hearing before he is punished. Surprising, the Rule has not defined the actions that are prejudicial to the security of the state, leaving same to be determined by a committee comprising members from the State Ministry of Justice, Office of the Head of Service and Special Services Office. Once the committee is satisfied that an officer has committed an act involving the security of the State, the normal disciplinary procedure need not be followed by the Commission in taking any disciplinary action it may deem fit. The researcher submits that this is a clear violation of right to fair hearing.
8. The provisions of Rules 04405 (entitling the Permanent Secretary/ Head of Extra Ministerial Department to suspend an officer without salary if it appears to him at the point of investigation that prima facie case has been made against the officer) and Rule 04403 (entitling the Permanent Secretary/Head of Extra Ministerial Department to interdict or place him on not less than half salary when a serious case which may lead to dismissal have been instituted against the officer) are clear violations of Section 36(2) of the Constitution since they authorized the above superior officers to make decisions affecting the civil rights and obligations without giving them an opportunity to make representations on the propriety or otherwise of such orders. There is no doubt that at this stage, that suspension by the Permanent Secretary/Head of Extra Ministerial Department are purely administrative actions taken before the trial. It has been established by the cases¹¹⁶ that public authorities when exercising their functions in situations where the civil rights and obligations can be adversely affected are bound to comply with the rules of natural justice. In Schmidt's case, the court held that the courts are willing to intervene to protect a complainant having some right or even legitimate expectation which it will not be fair to deprive him without a hearing. In the Nigerian cases of *Chairman of Board of Inland Revenue v Joseph*¹¹⁷ and *WAEC v Mbalamu*,¹¹⁸ it was held that before taking any administrative action affecting the civil rights and obligations of a citizen, the principle of natural justice must be observed. In essence the affected person must be given an opportunity to make representations before the decision can be taken.

¹¹⁵ Section 6 of the Kano State Commission of Inquiry Law, 1940

¹¹⁶ *Schmidt v Secretary of the State for Home Affairs* (1969) 2 Ch p 149, *R v Gaming Board Ex Parte Beniam* (1970) Q.B p. 417, *Kanda V Government of Malaya* (1962) A.C p. 322

¹¹⁷ (1962) All N.L.R p. 1

¹¹⁸ (1992) 3 NWLR pt. 230 p 481

We have seen how suspending or interdicting an officer reduces him to a position of complete partial or total denial of his salary during the period of the interdiction of suspension, thereby depriving him of earning a livelihood both for himself and his family. If this measure can be imposed without listening to him, his right to fair hearing has been infringed upon. It is for this reason that in the Kenyan cases of *Fredrick Saundu Amolo v Principal Namanga Mixed day Secondary School & 2 ors*¹¹⁹ and *Chirwa v Transnet and Others*,¹²⁰ the courts have held that whether preventive or punitive, interdiction or suspension must meet the requirements of substantive and procedural fairness. This is because according to the courts, suspension and interdiction are acts that have detrimental effect on the employees reputation, advancement, job security and fulfillment.

10.0 Recommendations

To address the problems identified by this study, the study recommends the following areas of amendment of the Kano State Civil Service Rules 2004 are recommended for the Kano State Civil Service Commission.

1. Rule 04306 should be amended and widened to recognize rights of officers to be present throughout disciplinary proceedings as well as their right to be represented by a legal practitioner during the proceedings. This will make it to agree with the decisions of the Supreme Court setting down the minimum requirements for fair hearing in these types of proceedings.
2. The scope of the application of Rule 04306 should be expanded to cover cases of misconduct which may be demotion, deferment of promotion or increment among others. This is because it has been established that the requirement of fair hearing in disciplinary cases is geared towards ensuring procedural fairness before the imposition of penalties. This fairness is mandatory whether the likely penalty is dismissal, demotion, deferment of promotion or any other form of penalty. Consequently, Rule 04305 should be removed, having been replaced.
3. The maximum period of 60 days within which disciplinary cases must be initiated and concluded as contained in the Public Service Rules¹²¹ should be adopted. This will enable the officers to know their fate within a reasonable time, and to obviate the tendency to victimize staff members.
4. Rules 04303 (Dispensing with disciplinary procedure and replacing it with the report of a Judicial Commission of Enquiry) and 04501 (Denial of fair hearing cases of alleged conduct prejudicial to the security of the state) should be removed/deleted having been found inconsistent with the provisions of Section 36 (2) of the 1999 Constitution of the Federal Republic of Nigeria and therefore void.
5. Rules 04405 (entitling the Permanent Secretary/ Head of Extra Ministerial Department to suspend an officer without salary if it appears to him at the point of investigation that prima facie case has been made against the officer) and Rule 04403 (entitling the Permanent Secretary/ Head of Extra Ministerial Department to interdict an place him on not less than half salary when a serious case which may lead to

¹¹⁹ [2014] eKLR

¹²⁰ [2008] 2 BLLR, 29

¹²¹ Rule 030307 (xiii) of the Public Service Rules of the Federal Republic of Nigeria 2014

dismissal have been instituted against the officer) should be amended in the following ways:

- a. The power to suspend and interdict, being quasi-judicial decisions should be vested in the Board of Inquiry and not the Permanent Secretary/ Head of Extra Ministerial Department.
- b. Before the exercise of the interim power to suspend or interdict, the Board should be made to present proposal to take these measures and an opportunity be given to the officer to make representations on why the order should not be made, since it is a measure that will affect him. Equipped with the available evidence, the Board can then decide whether or not to suspend or interdict the officer.
- c. In order to safeguard the interest of an officer suspended or interdicted, there should be a time limit for such measure. If such period elapses, the officer will be deemed reinstated.
- d. There should be sustenance allowance for officers under suspension, to reduce the hardship caused by total denial of salary.

11.0 Conclusion

The idea of embarking on this research work was inspired by the desire to ensure level playing ground for all citizens involved in all spheres of human endeavour. One of the legal provisions ensuring this level playing ground is the provision for the fundamental right to fair hearing. The Kano State Civil Service Rules, 2004 has several provisions prescribing penalties for certain forms of conducts. It has also made provisions on how Board of Inquiry set up by the Civil Service Commission can arrive at a decision on the guilt or otherwise of an officer charged with a disciplinary case. It was found that the disciplinary procedure under the Rules fall grossly short of the basic requirements on fair hearing. Even Rule 04306 which has made some provisions on fair hearing is itself deficient in the since that it has failed to encapsulate all the provisions of fair hearing as duly interpreted by the courts. The said rule is too narrow in approach as it relates only to serious misconduct which may lead to dismissal. Rule 04305 which relate to disciplinary procedure for misconduct has clearly denied officers' right to fair hearing with the exception of right to make representations in their defense. To make matters worse, rules 04303 and 04501 have unequivocally excluded the application of the principles of fair hearing in two particular instances. It is been submitted that this is inconsistent with the provisions of Section 36(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The power of a superior officer to suspend or interdict officers before the conclusion of cases against them has been found to be *ultra vires* and clear breach of right to fair hearing.

It was consequent upon these findings that the research work recommended the amendment of the provisions of the Kano State Civil Service Rule on disciplinary proceedings to bring them in line with the provisions of Section 36(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

12.0 References

1. Akshaya G. & Dhivya R. (2018): Principles of Fair Hearing with Respect to Rules of Natural Justice under Article 14 and 21 of the Constitution. International Journal of Pure and Applied Mathematics, Volume 120 No. 5 p. 2106
2. Chigozie N., (2016) The Role of fair Hearing in the Dispensation of Justice in Nigeria- A Legal Perspective. International Journal of Innovative Legal and Political Studies (4)1-10- Oct-Dec 2016 P. 8
3. Finin O'Brien: (2015) *Nemo Judex in causa sua*: Aspects of the No-Bias Rule of Constitutional Justice in Courts and Administrative Bodies: Irish Journal of legal Studies Vol. 2(2) p. 27
4. Friendly H., (1975). Some Kind of Hearing. University of Pennsylvania Law Review, Vol. 123.pp.1280-1295
5. Marume, S., et. al; (2016) The Principles of Natural Justice in Public Administration and Administrative Law. International Journal of Business and Invention, Vol. 5 issue 1, January, p. 23
6. Michael A. Millemann, Prison Disciplinary Hearings and Procedural Due Process - the Requirement of a Full Administrative Hearing, 31 Md. L. Rev. 27 (1971) pp. 51-52
7. Muhammed, H., (1986.) Concept of Fair Hearing Under the Nigerian Law, being an unpublished thesis submitted to the Faculty of Law, Ahmadu Bello University Zaria, in partial fulfillment for the award of LLM, P. 82
8. Ogbuabor C.A and Obinne. O (2014) Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- Morenkeji V Osun State Polytechnic &Ors Revisited. Nigerian Judicial Review. Vol 12 p. 83
9. Roland Otaru Esq., Access to Justice and Right to Fair Hearing; being a lecture delivered at the Nigerian Institute of Advanced Legal Studies on 2nd day of December, 2010). P. 5