IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DORDZIE (MRS.) JSC (PRESIDING)
AMEGATCHER JSC
OWUSU (MS.) JSC
TORKORNOO (MRS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/32/2022

13TH JULY, 2022

CHORO-PADOH KWANIMBI HAMZA ..... PLAINTIFF/RESPONDENT/ APPELLANT

VRS

1. INSPECTOR GENERAL OF POLICE ..... DEFENDANTS/APPELLANTS/
2. ATTORNEY GENERAL RESPONDENTS

JUDGMENT

PROF. MENSA-BONSU (MRS.) JSC:-

1. This case arose out of the conduct of disciplinary proceedings within the Ghana Police Service.

Facts and background

2. The plaintiff/appellant (hereinafter 'plaintiff'), was a General Constable on duty as Counter NCO at Wa Central Police Station on 21st March 2011 on the 10.00 pm – 6.00 am shift. He took over duty with one female Station Orderly. According to him, at the time he took over duty there was one female remand prisoner behind the counter, sixteen (16) remand prisoners and ten (10) suspects in cells.
3. At about 2.10am on 22nd March 2011, the inmates successfully opened the cell gates and five of them escaped. Two were later re-captured with the help of some people.
4. The Regional Disciplinary Board of Upper West Region instituted proceedings under Regulation 4 (3) of Police Service (Disciplinary Proceedings) Regulations 1974 (L.I. 993).The officer nominated to conduct a formal inquiry into the respondent's conduct made findings and recommendation of dismissal. This recommendation was endorsed by the Regional Disciplinary Board. A dismissal being a major penalty under the Regulations, required approval by the Central Disciplinary Board under Regulation 3 (3) of L I 993. On 20th June 2012 the Central Disciplinary Board under Regulation 3 (1) (a) of L I 993 approved the penalty.
5. The appellant was informed by letter that he had been dismissed from the Service.

> *"Following a Service Enquiry held into your conduct by ASP/MR TWUM BARIMAH PATRICK/LAWRA Dist. under Regulation 16(d) of the Police Service (Disciplinary Proceedings) Regulations 1974 (LI 993) on charge of MISCONDUCT: MISCONDUCT6 CONTRARY TO SECTION 17(K) OF THE POLICE SERVICE ACT 1970 (ACT 350) THE Central Disciplinary Board has, after reviewing the record of*

proceedings and considering the findings of the adjudicating officer, imposed sentences on you as following

(i) No. 44204 G/Const. Choro Padoh K. Hamza – Dismissal

on you in exercise of the powers vested in the Board under Regulation 3(i)(a) of the Police Service (Disciplinary Proceedings), Regulations 1974 (L.I.993)"

He was also informed of his right to appeal to the Inspector General of Police within six weeks of the decision under Regulation 23 of LI 993. He did not pursue the appeal. Instead after a year, he instituted an action on 11th July 2013 at the Human Rights Division of the High Court, Accra seeking the following reliefs:

a. *"A declaration that the decision of the Central Disciplinary Board of the Ghana Police Service was null and void as based on an error of law.*
b. *An order for reinstatement of the Plaintiff by way of restitution to normal rank*
c. *An order for the Plaintiff to be restored to all benefits accruing and due to him as his normal rank.*
d. *Damages for unlawful dismissal*
e. *Cost"*

Case of plaintiff (appellant herein)

6. The general facts are not different from what has been related above, except in the provision of further detail on the events of the morning of 22nd March 2011. Appellant stated that he was on duty when at about 2.10 am, he heard the gates of the cell shake. When he turned, he saw the cell gates being opened by the inmates with a metal rod which was used as a "*window protector at the main gate of the cells*". The inmates came out and began to struggle with him. A female orderly who was then in front of the counter rushed to the armory for a rifle. In the course of the struggle (and obviously after overpowering him), five (5) of the remand prisoners escaped. Later, two were rearrested.

7. At the trial court, he contended that by Regulation 16 (d) of L.I. 993 there should have been a referral report from the Regional Disciplinary Board to Central Disciplinary Board. The Central Disciplinary Board was required to then formulate charges and nominate an officer to hear the case pursuant of Regulation 16 (d), and that this was not done. The plaintiff claimed that these disciplinary steps were not followed, and that the Regional Disciplinary Board should have made a report of the facts to the Central Disciplinary Board and that it was the Central Disciplinary Board which should have formulated the charges and then nominated an officer to adjudicate. Instead, it was the Regional Disciplinary Board that nominated an officer to investigate and impose a penalty. He therefore contended that the principle of audi alteram partem was breached as the procedure set down for the Central Disciplinary Board was not followed. Therefore, the decision of the Central Disciplinary Board to dismiss him was based on faulty procedure and therefore null and void.
8. The High Court found for the plaintiff, holding that the decision of the Central Disciplinary Board was in flagrant violation of Regulation 16(d) of L. I. 993, when it purported to dismiss the plaintiff from the Service. The defendants appealed to the Court of Appeal. The majority judgment in the Court of Appeal found that the processes leading to the plaintiff's dismissal were correctly initiated and that the procedure was correct under Regulation 16 (c) which was the correct procedure for officers of the rank of Constable. It also concluded that a referral under regulation 16 (d) was mandated only when the Regional Disciplinary Board considered that it did not have authority to maintain disciplinary proceedings over an officer on account of the rank, i.e. Sergeant and above, or that the penalty it could impose was inadequate for the offence committed. Since the plaintiff was a constable by rank, the Regional Disciplinary Board had jurisdiction to both try him and impose a major penalty. It also found that the Central Disciplinary Board reviewed the penalty as required under regulation 16(d) and dismissed the plaintiff. Therefore, the penalty of dismissal was correctly imposed.

The minority judgment agreed with the trial court. The appellant has consequently appealed to this honourable court.

Case of defendants (respondents herein)

9. The facts are not disputed. What is disputed is the interpretation placed upon the Regulations by the trial court and the subsequent conclusion that the procedures used were in flagrant violation of Regulation 16(d) of L.I. 993.

GROUNDS OF APPEAL

a. The majority decision is against the weight of evidence.

b. The Court of Appeal erred in law by holding that the dismissal of Plaintiff/Respondent/Appellant by the Central Disciplinary Board was lawful.

c. The Court of Appeal erred in law when it held that the Central Disciplinary Board's non-compliance with Regulation 3 (3) of L I 993 and Regulation 16 (d) of LI 993 did not offend the procedural requirements.

d. The Court of Appeal erred by not taking into consideration the challenges faced by the Plaintiff/Respondent/Appellant when he was on duty.

e. The Court of Appeal erred by failing to take into consideration for the sake of doing substantial justice, the fact that the escapees were all re-arrested and that [ought to] enure to the benefit of Plaintiff/Respondent/Appellant.

10. On account of the general issues raised in ground '**e**' of the appeal, it will receive attention first before the substantive grounds. Grounds **b**, **c** and **d** will also be

taken together as they entail an analysis of the same/or related regulations under the Police Service Act, Act 350. The last ground to be discussed will be ground 'a'.

11. **Ground 'e'**

> e. *The Court of Appeal erred by failing to take into consideration for the sake of doing substantial justice, the fact that the escapees were all re-arrested and that [ought to] enure to the benefit of Plaintiff/Respondent/Appellant.*

The plaintiff contends by this ground that the tribunal did not show him mercy as there was no real consequence occasioned by his misconduct, and therefore he has suffered an injustice.

12. Indeed, on the evidence, the other escapees were arrested, but only after the plaintiff had been dismissed. In seeking to benefit from this post-dismissal state of affairs, the plaintiff does not indicate who managed to re-arrest the escapees; how they were re-arrested; when they were re-arrested; or what harm had been caused by their escape from supposedly secure police custody. His only interest is in the fact that the escapees were restored to custody, and so that ought to be a positive factor in favour of the one whose conduct permitted them to escape in the first place.
13. It must be stated from the outset that in general terms, disciplinary and/or criminal proceedings are initiated based upon conduct engaged in by a person, which conduct constitutes an infraction of rules, and not the consequences, happy or otherwise, thereof. The fact that the escapees were later re-arrested could only be a ground for a plea of mitigation of the penalty. Such mitigation is only a plea for mercy and at the discretion of the tribunal and so cannot be the basis for exculpating an accused person. It is strange reasoning, and tantamount to saying, in a case of stealing for instance, that where all monies claimed to have been stolen by an accused person are subsequently recovered, the accused

person is entitled to an acquittal because nothing has been lost. It is the conduct that is punished not the result of the conduct, and therefore where the result is minimal it only becomes a factor which may be considered in mitigation, but does not mature into a factor of exculpation. Such mitigation is entirely at the discretion of the tribunal as it cannot be compelled to show mercy in the application of its rules. A tribunal may therefore, in consideration of the gravity of the infraction and the accused person's conduct be unwilling to exercise a discretion in the person's favour, and cannot be compelled to do so. Clearly, this ground of the appeal is based upon a misapprehension of the purpose and purport of disciplinary and/or penal proceedings, and is thus misconceived.

14. **Grounds 'b', 'c' and 'd'**

In order to properly appreciate the circumstances under which the inquiry was held by the Regional Disciplinary Board, it would be necessary to reproduce the Act and Regulations that gave rise to the action.

15. The authority to initiate disciplinary proceedings; the procedures to be followed in the appropriate cases; as well as the penalties that may be imposed are set down in the Regulations to the Police Service Act 1970 (Act 350) and its 1974 Regulations of L.I. 993 below:

Regulation 3 (1)

> "Where the Chairman of the National Redemption *Council delegates disciplinary powers to the Inspector General the following shall be the disciplinary authorities.*
>
> *a. The Central Board, which shall have power to impose all penalties.*
>
> *b. Regional Board which shall have power to impose*
>
> *(i) All penalties on all ranks up to Sergeant, and*

(ii) All minor penalties

c. A superior police officer who shall have power to impose a penalty not more severe than stoppage of increment for one year."

Regulation 3 (3) provides

"A major penalty imposed by a Regional Board shall be ***subject to review and approval*** *by the Central Board which may* (emphasis supplied)

(a) Approve the penalty; as

(b) Substitute a finding of its own and reduce, cancel, increase or alter the penalty; or

(c) Annul the proceedings before the Regional Board

(d) …

16. From these provisions in Regulations in Regulation 3(3), the Central Disciplinary Board (hereinafter Central Board) has the power to impose a major penalty, such as dismissal or demotion in rank on all ranks of officers in the Service. However, the Regional Disciplinary Board, which is lower in the chain-of-command, has authority only over officers serving in a particular Region; and has power, subject to the authority of the Central Board, to impose a major penalty on ranks lower than Sergeant i.e. Corporals, Lance Corporals and Constables only. The Central Board thus has authority over all Regional Disciplinary Boards and can exercise it, in appropriate cases, in the manner set down under Regulation 3 (3).

17. In terms of the procedures to be followed pursuant to the powers conferred, Regulation 15 deals with referrals to the Regional Disciplinary Board where a superior officer under whose command a Police Officer is serving has committed a misconduct, which the extent of his powers cannot deal with, or which when proved, the

punishment to be imposed would be inadequate in his opinion, to refer the matter to the Regional Board in charge of the region or to the Inspector General.

18. Regulations 16, 17 and 18 then provide the procedures that must be complied with when a referral has been made by a superior officer.

> *"16. When a Regional Board receives a report under Regulation 15, it may after considering the facts of the case take action as follows:-*
>
> *(a) If in the opinion of the Board the Superior Police Officer who submitted the report has adequate disciplinary authority to deal with the case the Board shall instruct him to deal with it accordingly; or*
>
> *(b) If in the opinion of the Board the case is one which any other superior Police officer should deal with by summary proceedings, the Board shall fix a suitable time and date for such proceedings and notify the superior officer concerned accordingly; or*
>
> *(c) If after causing such preliminary investigation to be made as the Board shall consider necessary, the Board is of the opinion that the case should be dealt with by formal proceedings the Board shall formulate charges against the Defendant and nominate an officer to hear the case.*
>
> *(d) If the Board is satisfied that the punishment which it could impose would be inadequate, or that, it has insufficient disciplinary authority to deal with the case, it shall report the facts to the Central Board which shall formulate charges against the defendant and nominate an officer to hear the case or*

(e) The officer on completion of the enquiry shall submit the record of proceedings together with its findings and recommendations as to punishment to the Central Board."

17(a) "If the Central Board is of the opinion that the Regional Board or Superior Police Officer concerned has adequate disciplinary authority to deal with it shall instruct the Regional Board or Superior officer to deal with the case accordingly.

17 (c) If, after causing such preliminary investigation to be made as the Board shall consider necessary, the Board is of the opinion that the case should be dealt with by formal proceedings the Board shall formulate charges against the defendant and proceed to hear the case.

18 (1) Where the Board or Superior officer has completed the hearing of the proceedings that disciplinary authority shall impose such penalty within its powers as it considers adequate

19. This means that even when a case has been referred by the Regional Board to Central Board, it can be remitted back to it if the Central Board deems the referral to be inappropriate as the conditions stipulated in 16 (d) would not have been met by the Regional Board.

20. When, then, does a Regional Disciplinary Board have authority to conduct disciplinary proceedings over officers serving in their respective Regions?

i. When an officer of a rank within its authority is accused of misconduct

ii. When the nature of the alleged misconduct is only minor and summary proceedings are required;
iii. When the nature of the alleged misconduct is not serious, and unlikely to attract a major penalty even when proved.
iv. When the nature of the alleged misconduct is serious enough to attract a major penalty and the officer is of a rank below Sergeant
v. When the Central Board determines under 16(d) that, contrary to the opinion of the Regional Disciplinary Board, it is clothed with authority to deal with a case it has referred to the Central Board as being outside its authority.

21. It may be necessary to enquire as to when the Central Board is the only mandated authority to conduct Disciplinary proceedings.

i. When the officer is of a senior rank over which the Regional Board has no disciplinary powers
ii. When the officer is of the rank of Sergeant and above and the conduct is serious enough to attract a major penalty.

It is clear from these rules that

i. the Regional Disciplinary Board has jurisdiction under 16(c) to conduct disciplinary proceedings;
ii. the Regional Disciplinary Board has jurisdiction under 16(d) to conduct disciplinary proceedings when in the opinion of the Central Board it has sufficient authority to hear the case;
iii. to formulate charges where the gravity of the offence requires a formal hearing, on officers of a rank below Sergeant ie Corporals, Lance Corporals and Constables; and
iv. to recommend the imposition of a major penalty, such as dismissal, on such officers;

Where the recommendation is for the imposition of a major penalty, the Central Board must exercise its powers to approve it as is, or review (which review could

result in an increase in the penalty where possible, such as changing a recommendation for 'reduction in rank' to the higher one of 'dismissal'). It may even annul it. It is only when a major penalty has passed this stage that it is considered as valid. Therefore, it is the Central Board when it has exercised its power of approval, that can be said to have imposed the penalty in all cases when the major penalty is exacted.

22. What then is the case of the appellant in this case? The Appellant was a constable, against whom formal disciplinary proceedings were taken by the Regional Disciplinary Board of Upper West Region, following the jailbreak and escape of five persons in the custody of the police at the Wa police Station while he was on duty. Clearly, the Regional Disciplinary Board had jurisdiction over him, both as to the rank and the likely penalty. In thus exercising the power, the Regional Board did not breach the appellant's rights in any way. When the recommendation for the imposition of the major penalty was approved by the Central Board it was within its powers to do so. There was no need to hear the case afresh, and for the appellant to be heard by the Central Board under its own procedures set down in 16(d). When the Central Board acted on the case of the appellant, it was exercising its power to approve and impose the recommended penalty, and so had no mandate to hold a fresh proceeding. The Central Board was the only body with final authority to approve and impose the penalty recommended because it was a major penalty, and it did so. The appellant suffered no miscarriage of justice.

23. Indeed, it is too narrow an interpretation of 16(d) to maintain that any citing of its provisions is necessarily a reference to the procedure for trial set down under it for the exercise of some of its powers. The matter is put beyond doubt by the terms of Regulation 17. Under the terms of Regulation 16 (d), there are two conditions to be met under Regulation 17 before the Central Board would assume jurisdiction over a case referred to it.

1. The Central Board must be satisfied that the penalty it considers adequate on the facts are beyond the limits of authority of the Regional Board to impose such punishment because the person is of a rank of Sergeant or above;
2. The Regional Board must have insufficient disciplinary authority to deal with the case.

Unless these conditions are satisfied, the case can be remitted back to the Regional Board by the Central Board to conduct the disciplinary proceedings prescribed by Regulation 16(c).

24. The appellant contends in his statement of case that

> *"It is clear from the provisions of Regulations 16 (d) of LI 993 that there must be a reference of a report to the Central Disciplinary Board from Regional Disciplinary Board. Charges must also be preferred against the Defendant by the Central Disciplinary Board and again the Central Disciplinary Board must nominate an officer to hear the case… My Lords, we humbly submit that once Regulation 16 (d) of LI 993 is invoked or applied the procedural steps stated therein must be strictly followed or complied with else the procedure will not be complete and same would offend against L.I. 993."*

With respect, this submission ignores the fact that from the Regulations in 16 (d) and 17 (a), the Regional Board must be satisfied that it either has no authority to deal with such misconduct of the officer of the rank involved, or that the penalties it is authorized to impose would be inadequate to deal with the gravity of the misconduct involved before such a report to the Central Board would be mandated.

25. The Central Disciplinary Board can, and even if contrary to the opinion formed by the Regional Board to refer the case to the higher authority, remit the case back to the Regional Board if it does not share or agree with the Regional Board's interpretation of

the limits of its authority. Since the appellant was a General Constable, there was no question about the authority of the Regional Board.

26. Secondly the Regional Board can impose a major sanction on those of ranks below Sergeant. Since the appellant was of a rank below Sergeant, the Regional Board could impose the major penalty of dismissal, subject to the approval of the Central Board. Therefore, it is incorrect to state that 16 (d) compels the Central Disciplinary Board to assume jurisdiction over a case and use procedures set down there under.

27. It must also be pointed out that the processes set down for the Central Disciplinary Board apply when it must exercise its powers to conduct formal proceedings into allegations of misconduct for ranks of Sergeant and above. The evidence shows that the case was sent as required by the Regulations to the Central Board after a major penalty had been recommended to be imposed.

28. Counsel for appellant makes a submission in his Statement of case which is difficult to appreciate.

> *"What the Central Board did was that it reviewed the record of proceedings and also considered the adjudicating officer's findings of fact. It did not review the major penalty imposed by the Regional Board in accordance with Regulation 3 (3) of LI 1993. The Central Board in this case did not comply with Regulation 3 (3) of LI 993 and Regulation 16 (d) of L. I. 993."*

First, it is unclear why he maintains that it was for the purposes of "review" only, that the case was referred to the Central Board, when clearly a referral to the Central Board is required as it is the final authority whenever a major penalty is being imposed. With power to merely "approve" the penalty as imposed; review the proceedings and/or the penalty; or even to annul the proceedings, it is surprising that there should be an insistence that a referral to the Central Board amounts to a request for "review" only.

29. Second, to maintain that a review involves a rehearing of the case is to misapprehend the exercise of the power of review. A review does not mean a fresh hearing of the case. Considering that the Central Board can vary a penalty in exercise of its powers of review, there can be no insistence on hearing the case afresh before such variation. Third, it does not follow that every review would yield a lower penalty. It is entirely possible for the Central Board to take a more serious view of the facts presented, than a Regional Board. Fourth, it would be odd, to say the least, to hold that a body with the power to review a penalty imposed did not confirm the penalty when it refused to vary it. None of these situations requires it to conduct a fresh hearing of the case before coming to its conclusions. Indeed, the Central Board may annul the proceedings entirely. Surely it would be absurd to require that the case be heard afresh by the Central Board before it can come to the conclusion that the earlier proceedings were not valid and ought to be annulled?

30. **Ground 'a'**

The appellant has pleaded the omnibus ground of the judgment being against the weight of the evidence.

It is trite law that when the omnibus clause is pleaded it is an invitation to an appellate court to examine the entire case by way of re-hearing. The well-known and much-cited authorities such as **Tuakwa** v **Bosom** [2001-2002] SCGLR 61 at p.65, per Akuffo JSC (as she then was); **Agyeiwaa** v **P&T Corp** [2007-2008] 2 SCGLR 985; **Oppong** v **Anarfi** [2010-2012 GLR 159; and **Djin** v **Musah Baako** [2007-2008] SCGLR 686,leave one in no doubt as to the nature of the power to be exercised. In **Agyeiwaa** v **P&T Corp** (supra), Georgina Wood CJ restated the principle at p. 989 thus:

> *"The well established rule is that an appeal is by way of rehearing, and an appellate court is therefore entitled to look at the entire evidence and come to the proper conclusions on both the facts and the law."*

31. In **Djin** v **Musah Baako (supra),** the task of the appellant when relying on this omnibus ground was clarified. The Supreme Court, per Aninakwah JSC stated at p 691,

> *"It has been held in several decided cases that where an (as in the instant case) appellant complains that a judgment is against the weight of evidence, he is implying that there were certain pieces of evidence on the record which, if applied in his favour, could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against.*

Therefore, it is not enough to merely plead that the judgment is against the weight of the evidence without pointing out what evidence was ignored in the judgment of which the appellant complains.

32. After demanding a rehearing by the appellate court, counsel for the appellant herein further submits that

> *"An appeal court should be cautious not to interfere with findings of facts made by a trial court."*

It is true that this court has urged caution when an appellate court finds it necessary to depart from the findings of a trial court. However, this appeal turns on the appreciation of the meaning of provisions in the Police Regulations L I 993, which is a matter of law, not facts, and certainly not the kind of "facts" underlying the caution underlying this rule.

33. What is the purpose of the power of re-hearing if the appellate court has to treat the findings of the trial court as sacrosanct, no matter how erroneous? In **Oppong** v **Anarfi** [2010-2012 GLR 159 at p.167, Akoto-Bamfo JSC restated the position in respect of an appellate court and the findings of a trial court thus:

> *"There is a wealth of authorities on the burden allocated to an appellant who alleges in his notice of appeal that the decision is against the weight of evidence led. Even though it is ordinarily within the province of the trial court to evaluate the veracity or otherwise of a witness, it is incumbent upon an appellate court in such a case, to analyse the entire record, take into account the testimonies and all documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that, on the preponderance of probabilities, the conclusions of the trial judge are reasonable or amply supported by the evidence."*

Thus the task of re-hearing a case requires not that the findings be treated as sacrosanct, but that unless there is good cause, the findings are entitled to great respect. This does not mean they cannot, or ought not to, be touched, even if wrong. Indeed, few of the authorities cited by Counsel support the position he is urging on the court. In ***Bonney v Bonney [1992-93][1993-94] 1GLR 610*** at 617 what the court said actually undermines the proposition for which counsel has cited it. In that case, the court did not say that findings of trial courts are never to be challenged. Aikins JSC (as he then was), speaking for the court and dismissing the appeal stated at p 617:

> *"Counsel has argued that an appeal is by way of rehearing and therefore the appellate court is entitled to make its own mind on the facts adduced and inferences from them. That may well be so. But what has to be borne in mind is that the appeal court should not under any circumstances interfere with the findings of fact by the trial judge except where they are clearly shown to be wrong, or that he did not take all the circumstances and evidence into account, or has misapprehended certain of the evidence, or has drawn wrong inferences without any evidence to support them or*

he has not taken proper advantage of his having seen and heard the witnesses."

The court therefore set down conditions under which the caution counselled may be inappropriate: (i.) when the findings are clearly shown to be wrong, or (ii.) that the trial court did not take all the circumstances and evidence into account; or (iii) that the court has misapprehended certain of the evidence, or has drawn wrong inferences without any evidence to support them; or (iv) the court has not taken proper advantage of his having seen and heard the witnesses. These conditions set down enable an appellate court, in the course of re-hearing a case, to set the record straight if there is need to do so and not have to rely on facts improperly found or inadequately supported on the evidence.

34. Even when concurrent findings of the trial and first appellate court are in issue, the Supreme Court urges great caution, but does not say it should never happen. In **Fynn** v **Fynn** and **Osei** (2013-2014) 1 SCGLR 727; **Gregory** v **Tandoh IV** and **Hanson** (2010) SCGLR 971; and **Obeng &Ors** v **Assembles of God Church, Ghana** (2010) SCGLR 300 the Supreme Court has made definite pronouncements on the powers of a second appellate court, even when there are concurrent findings by the first appellate court and the trial court. In **Gregory** v **Tandoh IV and Hanson** (2010) SCGLR 971, Dotse JSC stated at pp 986-987

"It is therefore clear that, a second appellate court, like this Supreme Court, can and is entitled to depart from findings of fact made by the trial court and concurred in by the first appellate court under the following circumstances: -

First, where from the record of appeal, the findings of fact by the trial court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory;

Second, where the findings of fact by the trial court can be seen from the record of appeal to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record of appeal;

Third, where the findings of fact made by the trial court are consistently inconsistent with important documentary evidence on record;

Fourth, where the 1st appellate court has wrongly applied the principle of law (see Achoro v Akonfela) (Supra) the second appellate court must feel free to interfere with the said findings of fact in order to ensure that absolute justice is done in the case."

35. These cases cited above and many more like them, go to show that there are, indeed circumstances under which the findings of a trial court and even concurrent findings by an appellate court could be departed from, when necessary. If the Supreme Court sets down conditions under which an appellate court may interfere with the findings of fact, then surely that could not be taken to mean that even if those conditions are made out, as in this case, the appellate court ought not to interfere? Clearly, counsel is mistaken as to the effect of the Supreme Court's opinion.

36. In any case, the principle as it pertains to the respect to which the findings of a trial court must be given is in respect of facts found on the evidence, and not the law as applied by the trial court. Were that the case, there would be no point setting up appellate courts since they could neither review the facts nor law as applied. The trial court in the instant case applied the law incorrectly, and the majority opinion set it straight.

37. The judgment of the majority left nothing in doubt as to why the appeal before them ought to succeed. It was well-argued and written in clear language.

Conclusion

38. The majority judgment did justice to the issues on hand. The appellant was tried by the appropriate disciplinary Board and the findings confirmed by the Central Board as required by law. The appellant was not of sufficient seniority to be entitled to a different procedure. The trial was well conducted and his right to a hearing was not breached in any way. This appeal is without merit and must fail. We dismiss the appeal in its entirety.

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER
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(JUSTICE OF THE SUPREME COURT)

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