

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 474 J.R.]

BETWEEN

DIANE BYRNE

APPLICANT

AND

MINISTER FOR DEFENCE, IRELAND AND ATTORNEY GENERAL

RESPONDENT

JUDGMENT of Mr. Justice Eagar delivered on the 10th day of July, 2017

1. On 28th July, 2014, Baker J. gave leave to apply by way of an application for judicial review for a number of reliefs. On 25th July, 2016, this Court made orders in respect of the following:-

(a) a declaration that the applicant is qualified for promotion from the rank of Captain to Commandant in accordance with para. 8(4) of the Defence Forces Regulations A15;

(b) a declaration that the applicant qualifies for fixed period promotion to the rank of Commandant on 28th July, 2013, after nine years service in the rank of Commandant in accordance with para. 8(4) of the Defence Forces Regulations A15; and

(c) a declaration that the respondents are in breach of Article 2(2)(c), Articles 14(2) to Article 15 of the Directive 2006/54/EC of the European Parliament and that the Council of 5th July, 2006 on the implementation of the principle of equal opportunities and the equal treatment of men and women in matters of employment were breached.

2. On that date, the Court adjourned the question of whether the applicant was entitled to damages for loss of earnings, on the basis that it would hear submissions in relation to damages for loss of earnings on 28th July, 2013 to date.

3. On 9th May, 2017, the court heard evidence of the agreed actuarial reports (noting that the applicant had subsequently obtained employment as an engineer with Bord Gáis). The actuarial evidence was given by Nigel Tennant of Messrs. Seagrave – Daly & Lynch Limited Consultant Actuaries. He stated that the evidence as to agreed losses was as follows: the pension loss of €378,000.00, the gratuity loss of €80,484.00, the current contribution to Gas Networks of €114,000.00, bringing the subtotal to €344,484.00. The past loss of earnings is of €436.00 and the overseas duties for future duties is of €67,477.00. The total loss is €412,397.00 and as the award is taxable, the Court will double the figures above in order to place the plaintiff within the net figures. The Court awards the plaintiff the sum by way of loss of earnings the sum of €824,794.00.

4. Having heard the evidence, counsel for the plaintiff indicated that he proposed to call the applicant to give evidence of the effect of the treatment that she received, for the purpose of the Court giving an award of general damages.

5. Counsel for the applicant cited the case of *P. v. Board of Management of A Secondary School and Health Services Executive* [2010] IEHC 189. This was a claim for damages which had arisen out of earlier judicial review proceedings.

6. Therein, O'Neill J. reviewed in detail the conduct of an investigation into a complaint against the plaintiff and he held "there had been many egregious breaches of the applicant's rights of fair procedures and natural justice." He refused, however, to give an order for prohibition, concluding that the balance of justice was in favour of the public interest in the continuance of the investigation into the allegations made.

7. On the application of the applicant in that case, O'Neill J. directed that the proceedings be converted into a plenary hearing.

8. It is noted by this Court that the applicant in that case had requested O'Neill J. to have a plenary hearing in relation to the question of damages. In this case, no application has been made to direct that the proceedings be converted into a plenary hearing. The Court proposes to deal with the matter by way of the loss of earnings incurred by the applicant which has been outlined in evidence.

9. Counsel on behalf of the respondents indicated that there has been no mention in the course of the proceedings, or in the papers that the applicant had left the army, and that all that she was entitled to was the loss of earnings occasioned by the failure of the respondent to promote her to the rank of Commandant.

10. The Court is satisfied that it must have been reasonably foreseeable on the part of the respondents that the applicant would leave her employment in the Defence Forces, in circumstances in which the applicant was excluded from the promotion process as a result of her being on maternity leave, where she was not told that there was a Board being established to consider the issues of promotion, and where she was treated in a different manner to her work colleagues, all of whom were men. The finding of this Court was that the respondents were in breach of Articles 2, Article 14 (2) and Article 15 of the Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in respect of employment.

11. The Court rejects any suggestion that this was not reasonably foreseeable. In all the circumstances, the court will award the applicant damages for loss of earnings in the sum of €824,794.00.