

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE EQUAL OPPORTUNITY TRIBUNAL**

(Referred pursuant to S. 39(2) of the Equal Opportunity Act 2000 as amended by Act No. 5 of 2001)

E.O.T. No. 0001 of 2016

**BETWEEN**

**MICHAEL MARK ARCHBALD**

**Complainant**

**AND**

**TRINIDAD & TOBAGO DEFENCE FORCE**

**Respondent**

**CORAM:**

His Honour Mr. Rajmanlal Joseph                    - Judge/Chairman  
Her Honour Ms. Leela Ramdeen                    - Lay Assessor  
His Honour Mr. Harridath Maharaj                - Lay Assessor

**APPEARANCES:**

**Mr Gayle instructed by Ms. Osborne** appeared on behalf of the **Complainant**

**Mr. Ramnanan instructed by Ms. Mahepat** appeared on behalf of the **Respondent**

**Date of Delivery of Judgment: September 13, 2017**

**JUDGMENT**

**BACKGROUND:**

1. This case is concerned with allegations of the Complainant that he was discriminated against by the Respondent on the basis of his race and religion. And requested that the Tribunal make the appropriate declaration; in addition to make an award of damages including aggravated damages and/or exemplary damages and/or vindictory damages and/or damages for indignity and/or injury to feelings, and/or damages for loss of employment and/or income and/or benefits.
  
2. The Respondent on the other hand, by its defence filed on June 17, 2016 denied that the Complainant was discriminated against by the Respondent on the basis of his race or religion or at all. And further that the Complainant was discharged from the service of the Respondent based “*on a risk assessment by the intelligence and investigators of the Trinidad and Tobago Regiment G2 Department*”.

**THE EVIDENCE:**

3. In support of their respective positions articulated hereinabove the parties filed the following witness statements:
  - (a) Witness Statement of the Complainant filed on September 6, 2016
  - (b) Witness Statement of Corporal Roger Leera filed on July 8, 2016
  - (c) Witness Statement of Colonel Peter Sealey filed on July 8, 2016
  - (d) Witness Statement of Retired Warrant Officer, Class 1, Ian Gardner, filed on July 8, 2016
  - (e) Witness Statement of Major Jermain Roachford filed on July 8, 2016
  - (f) Witness Statement of Corporal Kevin Ramdoo filed on July 8, 2016
  - (g) Witness Statement of Corporal Kerwin Peters filed on July 8, 2016

4. Essentially it is the evidence of the Complainant that he is a citizen of Trinidad and Tobago by birth which qualifies him, inter alia, to apply to become a member of the Trinidad and Tobago Defence Force.
5. The Complainant asserted that in 1998 he converted to the Muslim faith from that of being a Seventh Day Adventist. Thereafter he began attending the Al Falah Mosque located at Railway Road, Arima; and began interacting with other members of the Jamaat (members of the congregation) of the said mosque.
6. He further indicated that at the time of his conversion he was residing with the Strakers at their home at Phase Three La Horquetta. The Strakers who were Seventh Day Adventist were shocked by his conversion to Islam; and told him to recant or be put out of their home. He did not recant. He was put out, and had no particular place to stay and sometimes slept at the Mosque, with friends and other Muslim brothers. At this time he was a form one student at the Malabar Composite Secondary School and *“under negative peer pressure he had a rudimentary involvement in anti-social activities of selling marijuana and cocaine”*.
7. The Complainant further stated that when he was about 17 years old he was taken in by Ms. Mira Lawrence who lived in Sherwood Park, Arima. Ms. Lawrence was the grandmother of Filton Abdullah (deceased); and as a consequence of living there he interacted with Mr. Abdullah and went to mosque with him; but did not involve himself in his alleged *“criminal activities”*.
8. He maintained that he always wanted to be a soldier, and he also did two months training at the Civilian Conservation Corps. And in 2008 he *“successfully sat the Trinidad and Tobago Regiment examinations and did the physical test”*. And subsequently received a letter from the Trinidad and Tobago Regiment dated May 26, 2011 in which he was informed that he met the enlistment requirements of the Regiment and should report to the Chaguaramas Main Gate on June 1, 2011. Along with this letter was a list of items

that he should procure; but did not have the finances to obtain the said items, but was able to borrow the sum of \$4,000.00 from Mr. Nazim Ali, the Imam of the Al Falah Mosque.

9. The Complainant indicated that he reported to the Chaguaramas base on June 1, 2011 there were other young people there and they were taken to the Mess Hall, where he was given a document to sign (Attestation Paper) to become a member of the Trinidad and Tobago Regiment for six (6) years; and was assigned to Platoon 2 Section 5 dorm, and thereafter his training began.
10. During the second week of his training the Complainant stated that he was approached by Corporal Leera (who at that time was assigned to one of the other platoons). He knew Corporal Leera as he lived in the area of Sherwood Park, Arima. When he was about 17 years of age he went to him to get information about getting into the army, and he said to him "*check the papers*". When Corporal Leera approached him he said "*Muslim, wah you doing here*" *How you get in inside ah here!*". He replied "*I did the exam and was successful*".
11. Later that day he was told to "*stand down until further notice*" and was not allowed to do any regular duties. He was subsequently taken to the then Officer in charge and was directed to speak to two officers, Corporal Ramdoo an Intelligence Officer and Corporal Lance Peters a Regimental Police. And was asked certain questions as follows:
  - (i) "*Recruit Mark Archbald, are you still a Muslim?*" He responded "*Yes Sir, but am not practicing it at present*".
  - (ii) "*Where did you learn about weapons?*" He responded "*Well here, other than dat, I went hunting with my girlfriend father and ah use a pellet gun but everything I learn here*"
  - (iii) "*Have you ever sell drugs?*". He responded "*Yes Sir, but when ah was about thirteen (13) but I didn't like how it had people and them looking so ah stop*".

They then gave him a white legal pad and directed him to go into a room and write down his life. Further, he requested a lawyer and was told “*No, we own you and anything we tell you to do, you will do*”.

12. The Complainant further indicated that he wrote his “Life Story” and thereafter was prevented from engaging in any form of training activities, and did domestic chores. By this time the speculation in camp was that he was a “*bad boy*” or “*a terrorist*”. This went on for about three (3) weeks and he felt “*emotionally distraught*”.

13. Further, on July 4, 2011 he was called before the officer in charge (OC) again and a letter of discharge was read to him in the presence of a Special Forces guy. The information read to him was as follows:

*“I was a member of the Jamatt Al Muslimeen  
The Imam who gave me money was from the Jamaat Al Muslimeen  
The mosque I attended was the Jamaat Al Muslimeen mosque  
I sold drugs between the ages of 17-18  
I am a threat to national security and to the Defence Force  
You are hereby discharged this day”*

The Complainant maintained that while the OC was reading this he spoke out saying “*Sir, what you reading is not correct, all yuh making a mistake here*”. But was told to “*shuddup*” by the Special Forces Officer. He was traumatized.

14. Moreover, on July 6, 2011 he was called before the then Commanding Officer of Tetron Barracks Lieutenant Colonel Sealey who read out the same discharge to him, but told him that he was sorry it reached to this level and there was nothing he could do to help him because the order had already passed from higher order. The Complainant further averred that he asked Colonel Sealey whether he would get a discharge paper and he told him “*Yes*”. But was subsequently unable to get same.

15. The Complainant asserted that he was stripped of all Military attire and escorted to the

main gate. He then went to the Regimental Headquarters at Port of Spain to see the officer in charge of recruitment but was unable to do so. He began drinking alcohol heavily.

16. In order to get some form of redress the Complainant maintained that he had his Attorney-at-Law write the Regiment but he did not get a response. He also went to the Ombudsman but they did not have the authority to assist him. He stated that he tried without success to get other officers to assist him about what happened but they were all afraid that they would loose their jobs or be victimised. He strongly maintained that he is not now or ever been a member of the Jamaat Al Muslimeen.
17. This witness was extensively cross-examined by counsel for the Respondent and outside of being unclear about certain dates, for example, this witness was unsure about his age when he began staying at the home of Ms. Lawrence. On the whole however, the Tribunal found this witness to be forthright and credible.
18. The evidence of Corporal Roger Leera was that he was a member of the Trinidad and Tobago Defence Force since November 1996; and in 2011 he had known the Complainant for approximately 2-3 years by seeing him in the Sherwood Park area where he lived. And that during the latter half of 2010 he noticed the Complainant in the area and he started making inquiries, and was informed that he was an affiliate of and staying with a man known as "*Abdullah*" (deceased). Abdullah was known to carry an illegal firearm and was often described as a "*Shooter*".
19. This witness went on to indicate that on or around 2010-2011 before the Complainant joined the TTDF as a recruit he visited his home enquiring about how he may join the TTDF. He told him he should check the newspapers and ended the conversation.
20. Corporal Leera maintained that he did not see the Complainant again until he started recruit training, and on that occasion he questioned him about selling drugs. The Complainant initially denied selling drugs, and when asked again he admitted that he only sold cocaine on an occasion and that he stopped.

21. Corporal Leera reported this matter to his Head of Department then Captain Roachford and on June 7, 2011 he was interviewed by Corporal Ramdoo and Lance Corporal Peters in the presence of Captain Roachford; in which he indicated that he knew the Complainant for about 2 years from seeing him in the Sherwood Park area. He (the Complainant) was seen in the Congo wearing full "*Muslim garb*" and in the company of Mr. Filton "Abdullah" Lawrence, a known gang leader. That the Complainant once stayed at the residence of Mr. Lawrence. That the Complainant one night came to his residence to enquire about joining the TTDF.
  
22. This witness was thoroughly cross-examined by counsel for the Complainant and there were certain bits of disturbing information that came to the attention of the Tribunal. For example, counsel for the Complainant asked whether he had any personal knowledge of any illegal activities of Mr. Lawrence. He responded, "*no sir!*". That you have no personal knowledge of any illegal activities of the Complainant. He responded, "*no sir!*". In addition, Corporal Leera indicated further that he did not do a criminal records check on Mr. Lawrence, and could not describe him as a shooter; and he had no personal knowledge that he carried an illegal firearm.

When asked by the Tribunal whether he conveyed all these negative observations and information to the Trinidad and Tobago Defence Force, he responded, "*No sir!*"! These responses appear to the Tribunal to be at variance to his witness statement and the written report he gave to the investigators. In that regard the Tribunal considered this witness to be a less than credible witness.

23. The next witness Colonel Peters Sealey indicated that he has been a member of the Trinidad and Tobago Defence Force (TTDF) since 1988. At the material time he was Commanding Officer of the Support and Service Battalion at Tetron Barracks. He asserted that on July 6, 2011 the Complainant was brought before him on Orders to Attend (OTA) with regards to being discharged on the grounds of being "*attested but not*

*finally approved*". Colonel Sealey informed the Complainant that based on the reports compiled, that he would be discharged.

24. He stated that he further advised the Complainant that should he wish to change his life's direction he should continue to do so and that as a law abiding citizen he can continue to serve his country. Colonel Sealey maintained that the sentiments expressed to the Complainant is something he would say to all recruits who were discharged or failed to complete the training.
25. Further, after this Order to Attend, a Discharge Order was published which indicated that the Complainant was discharged on the grounds "*having been attested but not finally approved*".
26. This witness was comprehensibly cross-examined by counsel for the Complainant, and what emerged therefrom was that the G2 Report he received from the Intelligence Unit of the Trinidad and Tobago Defence Force did not contain a critical piece of information that was contained in the "*Confidential Report*" by Lance Corporal Peters in which he stated at paragraph 4 thereof; "*Based on the information received from Corporal Leera, Recruit Archbald has confirmed his affiliation with Mr. Filton "Abdullah" Lawrence. He cannot be trusted thus far since we are not sure where his allegiance lies, whether with the Muslims or with the Ministry of National Security*". And in the words of counsel for the Complainant that G2 Report was "*Sanitised*". Colonel Sealey also stated that before the Complainant was accepted as a recruit there would have been vetting of the candidate done; and would include going to the police and speaking to people in his community. He further stated that the decision to discharge the Complainant was taken at the point when he was brought to him.
27. The Tribunal was of the firm opinion that Colonel Sealey answered all questions posed in cross-examination in a straightforward manner, and consequently we found him to be a credible witness.



28. The next witness was Retired Warrant Officer Class I, Ian Gardner who indicated that he was a member of the Trinidad and Tobago Defence Force for thirty-one (31) years. And at the material time was the Sergeant Major of the Non-Commissioned Officer and Recruit Training Division at Tetron Barracks, Chaguaramas.
29. On July 4, 2011 this witness met with then Captain Roachford while he interviewed the Complainant and informed him that he was to be discharged on the grounds of being attested but not finally approved and that arrangements would be made for him to see the Commanding Officer, then Lieutenant Colonel Sealey.
30. This witness further recited that Warrant Officer II Callender, the Training Warrant Officer was present at this meeting but only to march the Complainant in and out of the proceedings. The said officer did not participate in the Order to Attend; any questions directed to the Complainant was done through him as the Sergeant Major.
31. Mr. Gardner then went on to state that the Complainant was then published on Part II Orders "*as being discharged on the grounds of being attested but not finally approved*". According to this witness the said document is for internal information and administrative action only and was not given to the Complainant. In fact no document is provided to any recruit when they are discharged.
32. This witness was cross-examined by counsel for the Complainant who was able to extract from him that prior to July 4, 2011 he was unaware that there were any issues with the Complainant's candidacy or recruit status. He denied that the Complainant was told that he was discharged; and further denied that it was put to the Complainant that he was a member of the Jamaat Al Muslimeen and attended mosque there, and that he sold drugs between the ages 17-18.  
These responses from this witness clearly suggested that there is some contradiction between paragraph 4 of his Witness Statement wherein he alleged that Captain Roachford interviewed him i.e., the Complainant and informed him that he was to be discharged on "*the grounds of being attested but not finally approved*". Again this also contradicted by the unassailable evidence of Colonel Sealey who stated in cross-examination that it is at

the point of the Order to Attend a meeting with him that a decision to discharge would be made. In the premises, the Tribunal had no hesitation in concluding that this witness was decidedly less than credible.

33. The next witness Major Jermain Roachford who stated that he is a member of the Trinidad and Tobago Defence Force since 1999 and is currently stationed at the Regiment Headquarters in the Operation and Training Department.
34. He went on to further indicate that at the material time he was the Chief Instructor of the Recruits and non-Commissioned Officers Training Division at Tetron Barracks. And was informed by Colonel Sealey that two persons from the Investigations Department at Regiment Headquarters were coming to see him regarding interviewing a recruit with reference to an investigation and to make the necessary arrangements.
35. This witness went on to say that on the said date, that is, June 7, 2011, he was present along with Corporal Ramdoo and Lance Corporal Peters; when they interviewed both Corporal Leera and the Complainant and he witnessed their witness statement.
36. Furthermore, Major Roachford stated that on or around June –July, 2011 Colonel Sealey informed him that the Complainant was to be discharged “*on the grounds of being attested but not finally approved*”. He subsequently made arrangements for the Complainant to be brought before him to pass on the said information. And on July 4, 2011 he met with the Complainant and informed him accordingly. And that arrangements would be made for him to see Colonel Sealey. Present at this meeting was the Complainant, Warrant Officer Class I, Ian Gardner, a Special Forces Officer and himself. He further asserted that the Special Forces Officer was only there to escort the Complainant in an out of the meeting, and did not participate in the said meeting.
37. Major Roachford further mentioned that the Complainant was subsequently seen by

Colonel Sealey where the Discharge Orders were read to the Complainant; and was subsequently published on Part II Orders *“on the grounds of being attested but not finally approved”*.

38. This witness reiterated what Mr. Gardner had stated in his evidence that: *“this document is for internal information and administrative action only and was not given to the Complainant. In fact, no documentation is provided to any recruit when they are discharged”*.
39. Major Roachford was extensively cross-examined by counsel for the Complainant, wherein it was discerned by the Tribunal that this witness was not as straightforward as he ought to have been. For instance in his witness statement he stated that Colonel Sealey told him that two persons from the Investigations Department were coming to see him regarding interviewing the Complainant. But in cross-examination he indicated that it was him that conveyed the Complainant’s oral statement to the Commanding Officer, that is, Colonel Sealey. In addition, he stated that Colonel Sealey informed him that the Complainant was to be discharged *“on the grounds of being attested but not finally approved”*. However, according to the uncontroverted evidence of Colonel Sealey that discharge decision was only made at the point of the Order to Attend meeting with the Complainant. Consequently, the Tribunal found that this witness was a bit less than credible.
40. The next witness was Sergeant Ramdoo who at the material time was a Corporal and been a member of the Trinidad and Tobago Defence Force since 1996; and stationed at the Regiment Headquarters in the Investigations Department. And on June 7, 2011 he was informed by his Head of Department to accompany Lance Corporal Kerwin Peters to Tetron Barracks to conduct an interview; and on that said date arrived at Tetron and was met by then Captain Roachford, who indicated that certain allegations were made by Corporal Leera against the Complainant.
41. This witness further averred that they; that is, Lance Corporal Peters and himself first interviewed Corporal Leera in the presence of Captain Roachford, who stated as follows:

- (a) *“He has known the Complainant for approximately two (2) years by seeing him in the Sherwood Park, Arima area, where he lives.*
- (b) *The Complainant was seen in the Congo wearing full Muslim gear in the company of Mr. Filton “Abdullah” Lawrence, deceased, a known Muslim and gang leader.*
- (c) *The Complainant once stayed at the residence of Mr. Filton “Abdullah” Lawrence on Sherwood Drive.*
- (d) *Mr. Filton “Abdullah” Lawrence was also known by the alias “Shooter”.*
- (e) *One night the Complainant came to his home and told him that he was interested in joining the Regiment. He in turn refused to talk to him.*
- (f) *Mr. Filton “Abdullah” Lawrence was gunned down by someone with the alias “Fingers”. “Fingers” was shot and killed the same night by the Police.*
- (g) *In training, Corporal Leera saw the Complainant and asked if he used to sell cocaine, at first the Complainant said “no” when asked again his reply was “yes””.*

42. According to this witness the Complainant was then interviewed in the presence of Captain Roachford. He was informed of the allegations made against him, that is, he was affiliated with a known gang member. The Complainant then proceeded to state the following:

- (a) *“His present and former address.*
- (b) *He resided with Mr. Filton “Abdullah” Lawrence and his mother Mrs. Mira at Sherwood Park, Arima, since he had nowhere else to stay.*
- (c) *He fellowshipped at Al Falah Mosque.*
- (d) *Kyo was once Mr. Filton “Abdullah” Lawrence right hand man the only person he confided in.*
- (e) *He walked through the Congo with Mr. Filton “Abdullah” Lawrence in full Muslim gab.*

- (f) *He only knew of Mr. Filton "Abdullah" Lawrence's affiliation about 2 months after staying at his residence but stayed because he had nowhere else to stay.*
- (g) *He never dealt with guns.*
- (h) *Between 2003 – 2004 he sold marijuana and cocaine.*
- (i) *When Mr. Filton "Abdullah" Lawrence died, he attended his funeral to give support to Mrs. Mira for the support and assistance she gave him.*
- (j) *His reason for joining the Regiment is because of his brother who is a soldier and he looks up to him.*
- (k) *He was a member of the Civilian Conversation Corps Programme in Mausica and wrote the Regiment's entrance exam in 2008 at which time he still resided at Mr. Filton "Abdullah" Lawrence's residence.*
- (l) *His uncle Mr. Wade Mark assisted him by giving him a loan of \$1,200.00 for the medical and a loan of \$4,000.00 from the Imam of his Mosque to buy items needed for training.*
- (m) *He is still a Muslim though he does not practice the faith".*

43. Sergeant Ramdoo further indicated that upon completion of the interviews, a report was written and forwarded to the Head of the Investigations Department at Defence Force Headquarters.

44. This witness was comprehensibly cross-examined by counsel for the Complainant and was able to establish that certain bits of critical information were omitted from his witness statement. For example, on the instructions he received from the Head of his Department he was told that certain allegations were made by Corporal Leera against a recruit. In addition, they (Corporal Peters and himself) were told by then Captain Roachford that Corporal Leera had made allegations against Recruit Archbald that for the past two years he affiliated himself with a known gang leader in the vicinity of Sherwood Park, Arima. And that the Complainant admitted that he used to sell cocaine. This

information did not find expression in his Witness Statement. In addition, he indicated in his Witness Statement that “*Abdullah*” was a gang leader which is directly contradicted by the Written Statement of Corporal Leera made on June 7, 2011. Nowhere in his written statement did Corporal Leera refer to “*Abdullah*” as a gang leader. Consequently, the Tribunal found that this witness was evasive, less than straightforward and thus an unreliable witness.

45. The final witness for the Respondent was Corporal Kerwin Peters who stated that he was a member of the Trinidad and Tobago Defence Force since September, 1999 and at the material time was stationed at the Regiment Headquarters in the Investigations Department. And on June 7, 2011 he was informed by the Head of his Department to accompany then Corporal Ramdoo to conduct an interview. At this point the witness asserted that he was not privy to the reason for this instruction.
46. On the aforesaid date this witness and Corporal Ramdoo arrived at Tetron Barracks, Chaguaramas, and met by Captain Roachford, the Officer Commanding, Training Company, who indicated that certain allegations were made by Corporal Leera against the Complainant. Thereafter, the contents of his Witness Statement was identical to that of Sergeant Ramdoo.
47. This witness was cross-examined by counsel for the Complainant and it came out that there were several inconsistencies in his evidence. For instance, he insisted that at the time he received instructions to conduct the interviews he did not know who they were going to interview. But from the evidence of Sergeant Ramdoo it was known that Corporal Leera had made allegations against a recruit. In addition, he said that he took notes of the interview, but that they never copied those notes to exhibit to any document, but expects the Tribunal to accept that they relied on those notes to prepare their witness statements and report. In addition, he attempted to resile from the full impact of what he wrote in paragraph 4 of his Report in which he definitively stated that: “*He cannot be trusted thus far since we are not sure where his allegiance lies, whether with the Muslims*”

*or the Ministry of National Security*". As a result, the Tribunal had great concern as to the reliability of this witness.

**FINDINGS OF FACT:**

48 Based on the evidence presented in this matter the Tribunal on a balance of probabilities find the following facts:

- (a) The Complainant was accepted by the Respondent as a recruit after having successfully passed the required examination and physical fitness tests, in addition to having been vetted by way of a thorough process of checks with the police and interviewing persons from his community and signed an Attestation Paper on June 1, 2011; and thereafter began his training to become a full fledged member of the Respondent.
- (b) That during the second week of his training the Complainant was approached by Corporal Leera who said to him *Muslin what are you doing here? How you get inside of here?* He replied that *he did the exam and was successful.*
- (c) Shortly after this encounter with Corporal Leera an investigation was mounted by the Respondent in order to presumably determine whether the Complainant was a fit and proper person to continue his training to become a full fledged member of the Respondent.
- (d) The two officers selected to conduct the investigation by interviewing the Complainant and Corporal Leera, in their evidence and their Final Report demonstrated a bias towards the Complainant and came to the unsupported view that the Complainant was untrustworthy; since they were unsure where his allegiance lay whether with the Muslims or with the Ministry of National Security.
- (e) In the Complainant's Orders to Attend meeting on July 4, 2011 before the Captain Roachford he was told that he was a member of the Jamaat Al Muslimeen, and

the Imam who gave him money was from that Jamaat. And that he attended the Jamaat Al Muslimeen Mosque, that he sold drugs between the ages of 17-18 and he was a threat to National Security, and that he would be discharged.

- (f) That the Complainant converted to Islam in 1998 and began attending the Al Falah Mosque, Railway Road, Arima, and maintained that religious persuasion throughout his brief training with the Respondent.
- (g) That the Complainant while a minor engaged in what he called anti-social activities of selling marijuana and cocaine for a short period of time; but was never convicted of any criminal offence.
- (h) The Complainant signed the Attestation Paper on June 1, 2011 for service for six years and in response to question 13 dealing with being found guilty by a civil court of any offence; truthfully answered No!
- (i) When the Complainant was being “interviewed” by then Corporal Ramdoo and Lance Corporal Peters he requested the services of a lawyer and was refused.
- (j) At the Orders to Attend meeting with Corporal Sealy the complainant was discharged from the service of the Respondent ostensibly on the basis that he was Attested but not finally approved.
- (k) The Complainant was thereafter stripped of all military attire and escorted to the Main Gate. He later sought to have an audience with the officer in charge of recruitment at Regimental Headquarters in Port of Spain, but was unsuccessful. He then sought the services of an Attorney-at-Law and the Ombudsman but did not get a positive response form the Respondent.



**ISSUE:**

49. The only issue to be determined is whether the Complainant was discriminated on the basis of his race/religion.

**ANALYSIS:**

50. The Equal Opportunity Act, Chap. 22:03 makes unlawful discrimination in certain areas of activity, Section 4 states:

*“This Act applies to—*

- (a) Discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is—*
  - (i) discrimination on the ground of status as defined in Section 5; or*
  - (ii) discrimination by victimisation as defined in Section 6;*
  
- (b) Offensive behaviour referred to in Section 7.”*

51. Moreover, Section 3 of the Act which deals with the interpretation of certain words, indicate that the word “*STATUS*” in relation to a person, means-

- “(a) the sex;*
- (b) the race;*
- (c) the ethnicity;*
- (d) the origin, including geographical origin;*
- (e) the religion;*
- (f) the marital status; or*
- (g) any disability of that person.”*

52. In addition, Section 5 of the Act goes on to indicate what the term discrimination encompasses, the Section states as follows:

*“For the purposes of this Act, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the grounds of status if, by reason of—*

- (a) the status of the aggrieved person;*
- (b) a characteristic that appertains generally to persons of the status of the aggrieved person; or*
- (c) a characteristic that is generally imputed to persons of the status of the aggrieved person,*

*the discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourable than the discriminator treats another person of a different status”.*

- 53. Simply put, the Act is saying that if (as in this case) you fall within the employment relationship, and you are of an appropriate status (race/religion) and your employer in circumstances that are the same or are not materially different, treats you less favourably than he treats another person of a different status; then once you can adduce evidence to prove on a balance of probabilities that the above characteristics apply to you, then you would have proven your case that you were discriminated against.
- 54. In this matter it is the un-contradicted evidence of the Complainant that he applied to become a member of the Respondent and passed all the required tests for entry. In addition, he was thoroughly vetted by the Respondent by making enquiries of the police and certain residents of the community in which the Complainant resided. There were no negative information unearthed by this vetting process.
- 55. Consequently, the Complainant received a letter from the Respondent dated May 26, 2011 in which he was advised *“that you have met the requirements and have been selected for enlistment into the Trinidad and Tobago Regiment”*. He was required to present himself at the Chaguaramas Main Gate on June 1, 2011 at 6:00a.m. and must be appropriately dressed, and was also required to bring certain documents (original and copies).

56. The Complainant presented himself at the appointed place and time, properly attired with the necessary paperwork. He was required to fill out and sign an Attestation Paper, in which he agreed to serve for a period of six years. The only question on that Attestation Paper that is relevant to this analysis is question 13 which states: *"Have you at any time been found guilty by a civil court of any offence? If so, give particulars"*. The Complainant answered *No!* to be sure, none of the other questions on this Paper required the Complainant to give a history of his life as a minor.
57. While the Complainant was in his second week of training he was approached by Corporal Leera, who without more, said to him *"Muslim, wah you doing here? How you get inside ah here?!"* He responded by saying *"I did the exam and was successful"*. The logical question that arises is if the Complainant was of the Christian Faith (as he once was) would Corporal Leera address him as *"Christian, wah you doing here? How you get inside ah here?"* The Tribunal thought not. That mode of address is quite unusual and inappropriate, and is highly suggestive of discriminatory intent based on the religion of the Complainant.
58. To be sure, when the Complainant had his Order to Attend on then Captain Roachford and was *"interviewed"* by the two investigators, one of the questions that was asked of the Complainant was whether he was still a Muslim. He responded *Yes!* But was not practicing it at present. The asking of such a question betrays the mind set of the investigators and the inference could reasonably be drawn that they were adverse to his religious persuasion.
59. Moreover, the Tribunal in its assessment of the evidence adduced on cross-examination and even in their witness statements found the two investigators, then Corporal Ramdoo and Lance Corporal Peters to be unreliable. However, what was even more disturbing to the Tribunal was their concluding paragraph in their *"Confidential Report"* wherein it was stated:  
*"Based on the information received from Cpl. Leera, Recruit Archibald has confirmed his affiliation with Mr. Fulton "Abdullah" Lawrence. He cannot be trusted thus far since*

*we are not sure where his allegiance lies, whether with the Muslims or the Ministry of National Security”.*

This statement the Tribunal considered to be an unwarranted attack on Muslims in general and the Complainant in particular. Since it is highly suggestive of the fact that the Complainant cannot be trusted because they are unsure of where his allegiance lay. And that allegiance to one precludes allegiance to the other. In short, being a Muslim maybe antithetical to the interest of the Ministry of National Security. Which, to put it mildly is utterly ludicrous; since in the past we have had a Muslim who was commander-in-Chief of the Armed Forces of Trinidad and Tobago.

60. Furthermore, when the Complainant was again called before Captain Roachford on July 4, 2011 and he read a *“letter of discharge”* to the complainant stating that he was a member of the Jamaat Al Muslimeen and had taken money from them, attend their Mosque, sold drugs between the ages of 17-18 and was a threat to national security and he was discharged this day. This action by Captain Roachford clearly illustrates that the Respondent through a very senior officer was prepared to make unsupported findings in order to get rid of a Muslim recruit. Since there was not a shred of evidence in support of the Complainant being a members of the Jamaat Al Muslimeen or had any relationship with that organisation; nor was he a threat to national security or that he sold drugs at the age of 17-18. To be sure, this action was highly suggestive of less favourable treatment on the basis of his religion.
  
61. Further, when the Complainant appeared before Colonel Sealey on July 6, 2011 he informed the Complainant that based on reports compiled, he would be discharged. Colonel Sealey identified a report attached to his witness statement marked *“P.S.I”*, wherein it stated: *“ Recruit was told that it was unfortunate that he continued to maintain links to a noted criminal organisation Jamaat Al Muslimeen..... Discharged on the grounds having been attested but not finally approved”*. Again even at the level of the Commanding Officer there was not a scintilla of evidence to link the Complainant to the Jamaat Al Muslimeen. And when Colonel Sealey was shown the *“Confidential Report”* of then Corporal Ramdoo and Lance Corporal Peters and in particular paragraph 4 he

stated that was the first time he was seeing that report, since the report he got from G2 did not have such a paragraph. The only logical conclusion that the Tribunal could reasonably draw from this response from Colonel Sealy was that certain officers of the Respondent, namely, Corporal Leera, Corporal Ramdeo and Lance Corporal Peters together with the tacit approval of Caption Roachford were prepared to weave a tissue of deception to show the Complainant as a Muslim who had ties to a “*criminal organization*” who was untrustworthy, who sold drugs at age 17-18 and who was a threat to national security.

62. On the issue of the Complainant’s admission that he got himself involved in drugs at the age of 13, the Tribunal is of the view that at the then time the Complainant was a minor experiencing familial difficulties since his mother had passed away from cancer; and his father had all but abandoned him. But to his credit he was able to resist the inexorable pull towards dysfunctionality and get his act together by the time he attained his majority. The deviance of the Complainant as a minor is clearly distinguishable from the case of *Ainsley Greaves-v-the Attorney General of Trinidad and Tobago (CV2012-02753)* where the Court stated that a person who has a criminal record is disentitled from being enlisted to serve in the Nation’s Protective Service. This case cited by counsel for the Respondent is clearly distinguishable from the instant case as the Complainant does not have a criminal record.
63. In this matter the Tribunal has found that the dicta of Lord Nicholas in *Shamoon-v-Chief Constable of Royal Ulster Constabulary [2003] 2 All ER 26* to be very persuasive, in that it was explained that in analysing an allegation of discrimination, in some cases more focus should be placed on the explanation for the reason for the treatment rather than a choice of comparators. In short the Tribunal should look at the “*reason why*” the Complainant was treated in the manner he was.
64. The “*reason why*” approach is preferable to engaging in a sterile search for an actual or hypothetical comparator. In this regard see *Landele and Mc Farlene-v-The United Kingdom [2010] ICR 507* and *Cordell-v-Foreign and Commonwealth Office [2011] Eq.*

LR 1210. In the instant case based on the evidence adduced and our findings of fact on a balance of probabilities it is apparent that the reason why he was discrimination against is on the basis of his religion. However, no evidence was adduced by the Complainant to support the contention that he was discrimination on the basis of his race.

## CONCLUSION

65. From the foregoing analysis, it is evident that the Respondent discriminated against the Complainant on the basis of his religion. Consequently, the Complainant must be compensation.

## COMPENSATION

66. The jurisdiction of the Tribunal to make awarded of compensation can be found in Section 41(4) (c) of the Act, wherein it states:

*“The Tribunal shall have jurisdiction to make such declarations, orders and awards of compensation as it thinks fit”*

67. The contemporary approach to compensating victims of discrimination is to award compensation for **INJURY TO FEELINGS**, in this regard see *Vento-v-Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102*. Moreover, in this novel area of anti-discrimination jurisprudence, the Tribunal has made certain recent awards namely, in *EOT No. 0003 of 2013 Giselle Glaude-v-Quality Bodyguard Services Limited*, the Tribunal awarded the sum of \$150,000.00 for religious discrimination. In addition, to *EOT No. 0002 of 2014 between Kerwin Simmons-v-The Water and Sewerage Authority*, where the Complainant was awarded the sum of \$186,000.00. for discrimination on the basis of race. While in *EOT No. 0003 of 2014 Vidya S. Maharaj-v-Immigration Division of the Ministry of National Security*, the Tribunal awarded the sum of \$231,303.80. However, in *EOT No. 0006 of 2013 Dindial Ragoov-v-The Ministry of Food Production* the sum of \$167,351.00 was awarded on the basis of racial discrimination; and in *EOT No. 0004 of 2013 Geeta Sahatoo-v-Ministry of Labour and Small and Micro Enterprise Development* an award of \$180,000.00 was made on the basis of racial discrimination.

68. Since the Complainant has suffered injury to his feelings and the discriminatory acts were serious and continuing for sometime, he has to be compensated appropriately. However, the loss of income pleaded in his complaint fall within the rubric of special damages; and according to the learned author of *Mc Gregor on Damages 19<sup>th</sup> Edition, para. 49-007* indicates that where any special damages which is attributable to the wrongful act, must be specifically averred and proved. In this instant case, this was not done and therefore was disallowed by the Tribunal. Additionally the claim for exemplary damages was not entertained as the evidence did not establish it within any of the three categories articulated in *Rookes-v-Barnard [1964] Ac 1129*.
69. However, due to the seriousness of the discriminatory acts of the Respondent the Tribunal has placed its award of compensation for injury to feelings on its decision according to the *Giselle Glaude case (Supra)* adjusted for inflation. And our award of compensation to the Complainant is in the amount of \$159,000.00.

#### **ORDER**

70. (i) The Respondent shall pay to the Complainant compensation in the amount of \$159,000.00 with interest at the rate of 6% from the filing of the complaint to judgment.
- (ii) The Respondent to pay the Complainant his cost on the prescribed scale, that is, the sum of \$23,850.00 in accordance with Rule 20.4 (d) of the Rules of Practice and Procedure, 2016 of the Equal Opportunity Tribunal.
71. The foregoing decision is made and delivered by the Judge/Chairman of the Tribunal in accordance with Section 44 (7) of the Act, which states:

*“The decision of the tribunal in any proceedings shall be made by the Chairman and shall be delivered by him”.*

**HIS HONOUR MR. RAJMANLAL JOSEPH  
JUDGE / CHAIRMAN  
EQUAL OPPORTUNITY TRIBUNAL**

