

## PUBLIC BODIES APPEAL TRIBUNAL

Det 01 of 2017

**The fact that an Appellant has applied several times previously does not necessarily imply that there is any bias against him as the panels are different. Bias must be raised a ground of appeal and be proved.**

The Appellant, a HWR, is appealing against the decision of the Respondent to appoint the Co-Respondents to the post of DRRR in a temporary capacity at the District Council of...

### **Appellant's Case**

The Appellant had grounded his appeal as follows:

*“(i) Appellant is a more meritorious candidate and a better qualified and more experienced worker than all the selected candidates or the other candidates who had applied for the job ...*

*(ii) The interviewing panel had not given due consideration to Regulation 13 of Local Government Service Commission, which put “qualifications, experience and merit before seniority”.*

*(iii) None of the selected candidates have had as much experience as the Appellant as far as ... is concerned. Appellant joined service initially at ... District Council in or about ... and started working as a replacing DRRR for the Council since ... whilst being officially employed as LLO and then as HWRO. Appellant in ... got assignment as. (further details of Appellant's job assignments will be provided in the Statement of Case). By such lengthy experience as DRR, the Appellant should have naturally been considered as being more qualified and meritorious for the job of DRR than the other candidates.*

*(iv) Appellant has applied 5 times for the job of DRRR, respectively in 2001, 2002, 2006, 2011 and 2015. Each time he was called for an interview and his application was rejected.*

*(v) Appellant has obtained his qualifications in ...*

*(vi) Even though assignment of duties/actingship does not give any claim for appointment, it is submitted that in the present matter, the interviewing panel should have nevertheless taken into consideration that nearly all the selected candidates had been offered assignments as DRR and that the Applicant's official assignments as DRR started before those candidates except for one of them who got assignments as DRR in the same year as Appellant. Therefore in such a particular case scenario, it is submitted that seniority in the undertaking of assignments becomes relevant and it should have been taken into account by the Local Government Service Commission to select the most experienced and qualified candidates.*

*(vii) The decision of the Local Government Service Commission is discriminatory against Appellant."*

The Appellant, feeling aggrieved by the decision of the Respondent, moved that the decision to appoint the Co-Respondents be quashed.

### **Respondent's Case**

The Respondent averred that the post was filled by selection and according to LGSC regulation 13 (1) (b) consideration was given to qualifications, experience and merit before seniority when the Respondent exercised its powers in connection with appointment exercises. In this appointment exercise, appointment was made from among employees on the Permanent and Pensionable Establishment of the Local authority who had certain qualifications and specific knowledge.

Both the Appellant and the Co-Respondents were fully qualified as per the Scheme of Service. The Appellant was assigned the duties of DRR. The Appellant was

told that such assignments of duties would not give him any claim for permanent appointment in the post.

Respondent averred that since there was a selection exercise, seniority was not a determining factor.

The Co-Respondents were also assigned duties.

Respondent gave the details of the qualifications and knowledge of the Co Respondents as well as the career paths of the Appellant and the Co-Respondents.

Respondent agreed that the Appellant applied for the post of DRR on three occasions before. He also applied for the post of DRRR twice. This was in the Appellant's grounds of appeal. However, Respondent replied that Appellant could not contest his non selection for those previous posts at this stage as it was outside the time delay.

The Respondent averred that it followed all the procedures. The appointments were made by selection as per the Scheme of Service for the post.

The Respondent moved that the appeal be set aside.

### **Co-Respondents' Case**

The Co-Respondents left the matter in the hands of the Tribunal.

### **Determination**

It is not contested that appointment to the post of DRRR was done by selection. Both the Appellant and the Co-Respondents were eligible and they were called for interview.

Appellant avers that Co-Respondent No 1 and himself are the most senior officers among the candidates. They both started work in the local authorities in the same year. According to Respondent, Co-Respondent No 2 joined service in ... In any case, LGSC regulations 13(1) (b) is clear that consideration has to be given to qualifications, experience and merit before seniority. Seniority *per se*, therefore is not an

overriding criterion. It is only when candidates are at par that seniority may tip the balance in favour of the one most senior in the grade.

The Appellants and the Co-Respondents have the permits required for the post. There is no question that one is more qualified. It came out, however, on hearing this case that the local authorities have the habit of asking workers to do the job without appointing them as DRR or assigning them duties as such. All is done through verbal instructions and those performing such tasks do not get any allowance. This practice helps the local authorities to have a pool of workers do the job of DRR. However, this creates expectations when vacancies in the post of DRR have to be filled. The Respondent must review this situation as then expectations are thwarted when these workers do not get appointed. In this case, the Appellant had been called upon to do the job a long time ago.

The Tribunal asked for information on the criteria, their weight and the markings. These were provided under confidential cover, except the criteria.

The criteria used by the selection panel were:

- (i) Qualifications
- (ii) Personality and Presentation
- (iii) Attitude (Politeness, Trustworthy and conduct)
- (iv) Interpersonal and Communications Skills and
- (v) Knowledge of the Job

On the criterion Qualifications, the Appellant and the Co-Respondents scored the same marks as they possess the basic qualification, except that Co-Respondents Nos 1 and 2 obtained additional marks because, according to the Respondent, they sat for the another examination.

On criteria (ii) (iii) and (iv), the Co-Respondents scored slightly higher marks on all three criteria, small differences that cumulatively gave the Co-Respondents a head start over the Appellant.

Again on criterion 9 (v), Knowledge of the Job, the Tribunal finds that the Appellant's score was lower which finally tipped the balance in favour of the Co-Respondents. The Tribunal wanted to see why the Co-Respondents obtained higher marks than the Appellant on this criterion. The only way to do this was to ask for the relevant documents. From a cursory look at these, the Tribunal finds that the Co-Respondents except Co-Respondent No.3 had been assigned duties related to the job which justify the markings given to them. The Appellant himself conceded that the Co-Respondents had been offered assignments as DRR. Even if he was given more marks on this criterion alone, the Appellant will not have been able to catch up on the lower markings of the other criteria.

Co-Respondent No.3 scored higher marks on criteria (ii), (iii) and (iv) than the Appellant.

The Appellant feels that the fact that he applied for the post five times in the past and did not get the job, there may be a bias against him and he has not been treated fairly. However, since the selection each time has been done by a different selection panel, this feeling does not hold.

The Tribunal does not find any flaw in the appointment process by the Respondent. The appeal is set aside.