

Det 02 of 2017

Those who are eligible under a note in the Scheme of service need not be treated *pari passu* with the candidates who qualify under the core requirement. They will be assessed with regard to their qualifications, experience and merit.

These appeals are in relation to an appointment exercise by the Respondent for the post of CHIW in the local government service.

Appellants Nos 1 and 3 are appealing against the appointment of Co-Respondent No1.

Appellant No 2 is appealing against the appointment of both Co-Respondents.

Appellants' Case

Appellant No 1:

He joined the local government service in ... while Co-Respondent No 1 joined in ...He was promoted Senior SOW in ... and Co-Respondent No 1 worked under his supervision until the latter was promoted in...He reckoned more than ten years as SOW whereas Co-Respondent No1 had less than four years in that post.

He possessed qualifications in all the main fields essential for the smooth running of the Department...

He also questioned the composition of the panel of interview and the fact that one member of the interview panel had provisional charges against him which, according to him, vitiated the decision of the panel. This point was taken *in limine litis* and the Tribunal gave a ruling to the effect that the constitution of the panel was in order and the fact that one member had charges against him should not prevent the appeal to be heard on the merits unless the Appellant could show proof of bias by that member.

Appellant No 2:

The Appellant averred that he was senior to both Co-Respondents in terms of years in the service and in the grade of SIW. He was more experienced and qualified than both of them. He had a diploma in Communication and Public Relations which is appropriate for the post as the Scheme of Service required the candidate to possess "good communication and interpersonal skills". Both Co-Respondents did not have such qualifications.

He also raised doubts about the integrity of the interview panel following the arrest of one of the members.

He pointed out that Co-Respondent No1 had for a certain period been a SLGI. He added at the hearing that this limited his scope of activity.

Appellant also stated that he possessed a ... Certificate and an Advanced ...Certificate in ... He had a clean record compared to Co-Respondent No 1 who had reports against him for frequent absence. This was denied by Co-Respondent No 1 who stated that he had health problems and he had authorised leave to cover his absence due to illness. The Respondent also confirmed that neither the Appellants nor the Co-Respondents had any adverse reports against them.

He laid emphasis on the fact the advertisement for the post said clearly in a Note that: SOW in post as at 30 June 2008 will also be considered for appointment to the post of CHIW". Such officers should be considered *pari passu* with those who were fully qualified under the core qualifications.

Appellant No 3:

The Appellant challenged the appointment of Co-Respondent No 1. He was senior as he was appointed SOW earlier than Co-Respondent No 1.

He had more experience as Co-Respondent No1 was working under his supervision at the ... Municipal Council before the latter was transferred to the ... District Council in ...There was an amendment to the Schemes of Service. However, there were

representations and there were further amendments... .. duties were added to the Scheme of Service of SOW. The Note referred to above was added to the Scheme of Service of CHIW which was prescribed in ...The Appellant was refused sponsorship for a course on ... at in ... while another officer Mr R. was sponsored for the course. That officer had been interdicted when there was contestation over the Schemes of Service. The Respondent explained that Mr R. was interdicted from the exercise of power and functions of his office on ... and was re-instated to his post on ... Mr R. followed the course as from October ... in view of his seniority.

The Respondent also said that there were allegations against the Appellant in November ... and a panel was set up to look at these allegations but these were not proved. There was a complaint by one employee against the Appellant and it was agreed that the employee be transferred to another section under the supervision of another SOW.

Respondent's Case

The Respondent averred that the post of CHIW was filled by selection as per the Scheme of Service for the post. There were two vacancies and there was an advertisement calling for. Those who were found eligible and were convened for the interview. The two Co-Respondents were appointed in a temporary capacity as from ...

The Scheme of Service stipulated that the post should be filled by selection from among officers in the grade of SOW reckoning at least two years in the grade and possessing a diploma in a number of professional fields listed in the Scheme of Service. There was a Note however which allowed those who were in post as at ... to apply even if they did not meet the qualifications requirement.

The three Appellants were found eligible for consideration under the Note. The Co-Respondents were fully qualified.

As this was a selection exercise, seniority was not an overriding criterion as per LGSC regulation13 which states that, in connection with the appointment or promotion

of officers in the local government service, the factors to be taken into account are “*qualifications, experience and merit before seniority...*”

The Appellants and the Co-Respondents did not have adverse reports against them. At the selection exercise, all the reports and ad hoc reports were taken into consideration.

The Appellants had not made any complaints at the office of the Respondent regarding the composition of the interview panel at the material time and same could not be raised as it constituted a new ground of appeal which was beyond the prescribed time limit.

The Respondent averred that it acted fairly and in an impartial manner and in conformity with its regulation 13.

The Respondent moved that the appeals be set aside.

Co-Respondents' Case

Co-Respondent No 1 solemnly affirmed as to the correctness of his Statement of Defence which highlighted his career path and his qualifications and refuted allegations of his frequent absence from work. He explained that he had health problems and he proceeded on authorised sick leave and there was no adverse report against him.

Co-Respondent No 2 chose to abide by the decision of the Tribunal.

Determination

The salient points in these appeals are as follows:

- (i) The three Appellants did not meet the core qualifications requirement of the Scheme of Service. They were found eligible because the new Scheme of Service had a Note which allowed them to compete. The Appellants stated that since they became eligible under the amended Scheme, they need to be treated *pari passu* with those fully eligible. This

is not denied but it concerns only eligibility for consideration. The fact that they were called for interview justifies this.

- (ii) The Co-Respondents were fully qualified as they hold a diploma as required.
- (iii) The Appellants and the Co-Respondents did not have adverse reports against them.
- (iv) It is a fact that the Schemes of Service for OW, SOW and CHIW were amended and prescribed in 2012. This is immaterial to the case before this Tribunal as appointments are made according to the Scheme of Service in force at the material time.
- (v) It is not contested that Appellant No 2 was appointed SOW before the two Co-Respondents. Appellants No1 and 3 were appointed SOW before Co-Respondent No1 but after Co-Respondent No 2. However, seniority is not a determining element in a selection exercise.

With the above background, the Tribunal sought information under confidential cover from the Respondent regarding the criteria, the weight given to each criterion and the markings of the Appellants and the Co-Respondents.

The criteria used by the selection panel were:

- (i) Qualifications
- (ii) Personality
- (iii) Communication and Interpersonal Skills
- (iv) Leadership and Organisational Skills
- (v) Supervisory Skills
- (vi) Knowledge of Job

The weight given to the first criterion Qualifications is overwhelming, accounting for 50 % of the total marks. As a result, the Co-Respondents who met fully the core

qualifications requirements scored very high marks on this criterion. The Appellants whose eligibility was by the Note in the Scheme of Service not surprisingly got very low marks on this criterion which eliminated them from the race to appointment.

The Tribunal does not find any procedural flaw in the way the assessment was made. The Respondent acted under powers given to it by regulation 17 namely that the Respondent determines “*the procedure to be followed in dealing with applications for appointment to the local government service, including the proceedings of any selection board appointed by the Commission to interview candidates*”.

The appeals are set aside.