

Det 07 of 2017

When a circular specifies that preference will be given to applicants who have specialised experience, those who do not have such experience cannot be assessed higher under the criteria knowledge and experience than those who have years of such experience.

The Appellants are HOCA in the Ministry of ... (the Ministry). They are challenging the decision of the Respondent to appoint the Co-Respondents to the post of WAT.

Appellants' Case

Appellant No.1

The Appellant's grounds of appeal were:

- “ (i) Seven years' experience in psychiatric ward
- (ii) No absent unauthorized leave
- (iii) Meritocracy”

The Appellant applied for the post but she was not appointed.

The Appellant did not submit a Statement of Case.

During the Hearing she said that some of the Co-Respondents who had not worked in a specialised ward had been appointed and experience in handling of persons of a certain category would be an advantage. She referred to Co-Respondents Nos....., ... and ...

Appellant No.2

The Appellant applied in response to the advertisement “*but to my great astonishment my name is not illustrated in the list which was disclosed on the I assumed duty on ... and most of my colleagues of the same period are promoted. I would be most grateful if necessary actions are initiated to find out the reasons or if by error my name has been omitted*”.

The Appellant did not submit a Statement of Case. When she was asked to explain the reason for her appeal she stated that she was senior to those appointed and that she had experience.

Appellant No.3

The Appellant challenged only the appointment of Co-Respondents Nos... and ... He had no problem with the other appointees. His concern was that “*mo envie kone qui fer mo pan nommé. Vu qui mo ena ... ans de service cette annee’ a Mo ena l’experience comme ... depuis le ...*”.

He did not submit a Statement of Case but he explained that his point was that he had been in post for a long time and had experience in handling these specialised cases.

At the hearing, he decided to withdraw his appeal as there were vacancies that remained to be filled and he believed that he was well-positioned for the next appointment round. The representative of the Respondent confirmed this.

Appellant No.4

The grounds of appeal of this Appellant were that (i) *contrary to notice of vacancy No ... three Co-Respondents did not fit the criteria and (ii) that the three referred persons under ground (i)*” have no experience in a specialised unit.

The Appellant averred that these three nominees did not work at the specialised department and had no experience in dealing with the specific category of persons.

Respondent's case

The Respondent averred that the post was filled by selection from HS of the Ministry who were previously holders of the post of HS on the basis of experience and merit. Preference was to be given to officers who have had experience in the handling of a specific category of persons. There were ... vacancies in the grade and these were advertised on There were ... applications and ... were found eligible. They were called for interview on ... and Only ... came for the interview. They were assessed on the following criteria:

- (i) Length of service in general,
- (ii) Length of service as HS
- (iii) Knowledge/experience
- (iv) Aptitude/Interest/Motivation

The selection was done by an interview panel at the Ministry under delegated powers given to the Ministry by the Respondent.

Initially, there were ... candidates chosen for appointment following the interview. However, four of them obtained adverse reports from their respective ... administrations and were removed from the list and four others were added to bring it to the desired number to be recruited. They constituted the list of Co-Respondents in this case. Out of these ... candidates retained, two decided not to accept the offer of appointment, namely Co-Respondents Nos.... and The remaining ... selected accepted the offer and were appointed.

The Respondent averred that all procedures had been scrupulously followed and the appointment to the post of WAT was made by selection and not by promotion as per the Scheme of Service.

The Respondent moved that the appeals be set aside.

Co-Respondent's Case

The Co-Respondents decided to abide by the decision of the Tribunal.

Determination

The vacancies in the grade were filled by selection and this was done at the level of the Ministry under delegated powers.

The main issue raised by the Appellants is that they had longer service and they had experience as they worked with persons of a certain category contrary to some of the Co-Respondents. They had in mind in particular Co-Respondents Nos....., ... and Under cross-examination the Respondent agreed that ... of the ... Co-Respondents had worked at the specialised department. Of the four Co-Respondents whose nominations are challenged two of them, namely Co-Respondents Nos ... and ... worked in non specialised department where there were no specialised units. Co-Respondents Nos.... and ... worked non specialised department ... where there were specialised units and were, therefore, exposed to working with specific persons of a certain category.

Appellant No ... was ... on the merit list and was not appointed.

Appellant No ... was ... on the merit list and was not appointed.

Appellant No ... was ... on the merit list but he was not among the ...appointed as there was an adverse ad hoc report against him. He is now 3rd on the waiting list. However, there are only two vacancies that remain to be filled.

Appellant No ... was ... on the merit list and was not appointed.

Since the Scheme of Service says clearly that preference will be given to those who have experience in handling persons of a certain category, the Tribunal will need to see how Co-Respondents Nos. ... and ...performed in terms of experience as they never worked with such persons. Similarly, it needs to be seen how Co-Respondents Nos.... and ... were assessed and were appointed as they had more limited exposure working with such persons than those who worked at the specialised department.

In the same vein, the Tribunal wants to know how the Appellants fared in the assessment and selection exercise given their experience. Appellant No.... will not be considered as he has withdrawn his appeal.

The Tribunal requested the Respondent to provide information under confidential cover regarding the weight given to the criteria and the markings.

It was confirmed that all the Appellants had worked for a long time at the specialised department and that Co-Respondents Nos...., ..., ... and ... had worked at other places. In fact, they were transferred from other places when they were appointed.

It is noted that the advertisement for the vacancies in the grade of WAT was made on ... and the interviews were carried out on ... and ..., at which time Co-Respondents Nos.... and ... had no experience working with persons of a certain category. Co-Respondents Nos . and ... could have acquired such experience. The other Co-Respondents were working at the specialised department for a number of years. It is not reasonable that Co-Respondents Nos. 35 and 36 obtained quite good marks on Knowledge of Work/Experience. The Scheme of Service is clear that

preference will be given to officers who have had experience in the handling of persons of a certain category.

The Tribunal finds that the Respondent has not been fair to the Appellants who had more than six years' experience working with persons of the relevant category and favoured Co-Respondents Nos. 35 and 36 who had no such experience.

The Tribunal, therefore, quashes the decision of the Respondent to appoint Co-Respondents Nos 35 and 36.