

## Det 10 of 2017

**When circumstances are such that Appellant was penalized because of the fault of other departments the PBAT may refer the matter to the Respondent for a settlement under section 8(4) (c) of the PBAT Act 2008.**

The Appellant is acting DRE in the Ministry of .... He is contesting the decision of the Respondent regarding the appointment of the Co-Respondents to the post of DRE in the Ministry.

### **Appellant's Case**

The Appellant applied for the post of DRE following an advertisement. He was requested to attend an interview together with the Co-Respondents. He averred that the interview process was unfair towards him as questions were put to him regarding the fact that he was previously arrested. He stated that he informed the interview panel that the case was a provisional charge which was struck out by the court on.... He felt that the fact that the file before the panel indicated that he was still under report had been unfavourable to him and that was the reason he was not selected.

He stated that by the questions put to him and the demeanours of the members of the panel, he realised that the members were already biased and this caused prejudice to him. He was told that he was still under report.

He averred that he had the highest number of years acting as DRE He had the permits required for the post. He stated that there was a breach of his Constitutional right, that he is presumed to be innocent until proved guilty.

During cross examination, he stated that Respondent may not have known that he had been arrested but they knew that he had a case.

He averred that after the provisional charge was struck out, he informed the Human Resource Section of the Ministry about it but nothing was done. He was thus

deprived of income as well as his position of seniority in the grade. He was penalized and he missed an opportunity to be appointed.

### **Respondent's Case**

The Respondent averred that the post was filled by selection after the vacancies were advertised on.... The Appellant was eligible and was called for interview.

The Respondent denied that questions were put to Appellant about any previous arrest. There was nothing in the file to show that the Appellant had allegedly been arrested and no such communication was made to the panel. The Appellant was treated fairly.

The Respondent averred that on..., the Police Department had informed the Responsible Officer (RO) of the Ministry that the case of ...in which the Appellant was allegedly involved had been forwarded to the Director of Public Prosecution (DPP) on ... for advice. On the... , the Police Department informed the RO that the DPP had on ... advised that no further action be taken in the alleged case of ... involving the Appellant.

However, the Respondent averred that it was duty bound to inform the selection panel of the alleged involvement as at the time of the interview the Director of Public Prosecutions (DPP) had not yet imparted his decision to the Commission. The Respondent further averred that it usually dealt with the Police Department only when there is a police case and not the DPP's office and that it was kept informed by the Police. Each time, the Respondent was told that the inquiry was still on.

The Respondent stated that, since this was a selection exercise, seniority was not a determining factor and the fact that the Appellant acted as DRE did not give him a claim for appointment. The Co-Respondents also acted as DRE.

The Respondent averred that the appeal had no merit and moved that it be set aside.

## **Determination**

The crux of the problem revolves around the way the case of ... was dealt with by the Respondent and the Appellant's Ministry.

This appointment exercise was carried out by the Ministry under delegated powers.

The Police had informed the Ministry on ... about the case ... in which the Appellant was allegedly involved. This was a provisional charge and Appellant stated that it was p.s.o., meaning "provisional charge struck out", on .... However, the Police Department did not communicate this decision to the Ministry. As Respondent averred, it was each time told by Police that the enquiry was still on.

This was because after the p.s.o., the Police still continued with its inquiry and had not closed the case. Thus, when the interview of the Appellant took place on ..., the Appellant was still under report and this was communicated to the selection panel. It would be useful at this stage to be reminded of the long dates in relation to the charge against the Appellant. He was arrested on... , the provisional charge was struck out on ... and the DPP only communicated its stand on ... to the Police Department almost six years later.

Surprisingly, the Respondent denied that the panel asked questions related to Appellant's arrest referred to by the Appellant and stated that this was not within the knowledge of the panel. Yet this is clearly an arrestable offence and the Appellant spent one night in custody. Questions were put regarding the police case to the Appellant and whether mention was made of him being arrested or not is not so relevant to the question of whether the panel was influenced by the fact that he had a case against him or not .

The question then is whether the Appellant has been unfairly treated in this appointment exercise. It is true that the interview panel was told that the Appellant was under report and a cursory glance at the marks the Appellant has got at the interview clearly shows that the panel did bear in mind that he had a police case. The question

that remains is whether it could have done otherwise as the DPP had not yet communicated its final stand.

It is noted that the Ministry had continuously been asking the Police to report progress in this case and it kept getting the same reply that the enquiry was still going on.

The Appellant's barrister even wrote to the Ministry drawing its attention to the forthcoming selection exercise and that the pending police case may impact on the outcome.

The case of Appellant is unfortunate. Had the DPP reverted back expeditiously and before the interview, the outcome of the exercise may have been different. This has definitely played against the Appellant but the Commission cannot be blamed for the bottleneck that has occurred elsewhere and that has led to this unfortunate state of affairs for the Appellant.

Having found that the Respondent followed the adequate procedures and had no choice in the circumstance than to disclose the charge against the Appellant to the panel, the Tribunal remits the matter to Respondent under section 8(4) (c) of the PBAT Act 2008 to further consider the case of the Appellant and to try and settle the matter in all fairness to Appellant.