

Det 11 of 2017

- **Having applied several times for a post does not give any claim for appointment.**
- **Assumption of duty does provide experience but this needs to be assessed at the interview.**

Several appeals were lodged before this Tribunal with respect to the decision of the Respondent to appoint the Co-Respondents to the post of DECEV in various local authorities. The filling of vacancies was done following circular No. ... of ... inviting candidates for the post. The Appellants and the Co-Respondents applied for the post and were interviewed in a selection exercise that lasted four days, from ... to In the first instance, ...vacancies were filled and Co-Respondents Nos ... were appointed with effect from.... Subsequently, there were two more vacancies and Co-Respondents Nos ... and ... were appointed from the merit list of the same selection exercise and their appointment took effect as from....

Since these appeals refer to the same selection exercise, they have been consolidated.

Appellant No ... lodged an appeal against the appointment of Co-Respondents in the first batch but she did not contest the appointment of Co-Respondent No When there was a second round of appointments, she filed two appeals with this Tribunal, one against Co-Respondent No ... and another one against Co-Respondent No

Appellant No ... appealed against the appointment of Co-Respondents Nos ... in the first instance followed by another appeal against Co-Respondents Nos

Appellants Nos ...appealed against the appointment of Co-Respondents Nos....

According to the Scheme of Service for the post of DECEV which was effective as from..., appointment is made:

“(A) By selection from among ACEV in the Local Government Service reckoning at least five years’ experience in the grade

(B) Candidates should:

- (i) Possess good analytical skills and be able to adopt a multi-disciplinary approach to problem solving;*
- (ii) Be versatile and adaptable to different work situation and conditions;*
- (iii) Be familiar with modern trends and techniques in management;*
- (iv) have a high sense of responsibility and maturity; and*
- (v) be computer literate”*

The Appellants and the Co-Respondents were all ACEV.

Appellants’ Case

Appellant No 1 averred in her Grounds of Appeal (GOA) that she had more merit and experience than the first five ACEV who were appointed in the first batch. She satisfied all the qualifications listed in the advertisement. She reckoned ... years as ACEV, was ... on the seniority list and had served the local government service since ... There was no adverse report against her and she had performed her duties with due diligence. She stated that Co-Respondent No ... had been on leave without pay for two years from ... to She never went on leave without pay during her ... years of dedicated service in the local government service. She therefore claimed that Co-Respondent No ... had less merit and experience as compared to her.

Concerning Co-Respondent No ..., she averred that the officer was ... on the seniority list and she could not understand why the officer was appointed and not her. He had been on study leave from ... to Co-Respondent No ... had very short periods of assignment of duties as DECEV totalling ... days while she was assigned duties of

DECEV...for ... days. Similarly, in her second and third appeal, she stated that Co-Respondent No ... was assigned duties of DECEV for ... days and Co-Respondent No ... for ... days.

She applied for the post of DECEV...times and she was never appointed. She was never told of any weakness or failings during the interviews. As from..., she was qualified to be a potential DECEV and she was waiting for her turn.

She further averred that there was a gender bias and there were ... male candidates and ... female candidates and all those appointed in the ... batch were males. During cross-examination, Appellant was told that in the second batch of appointments the two appointees were women and she replied that they were not the most meritorious.

In her second and third appeal, the Appellant repeated the main points raised in the Grounds of Appeal of the first appeal. She pointed out that Co-Respondent No ... was ranked ...th on the seniority list of ACEV and she was appointed ACEV in or about ... and during the period ... and ..., Co-Respondent No ... had taken leave without pay. Co-Respondent No ... had been assigned duty of DECEV for short periods and she therefore had less merit and experience than her.

As regards Co-Respondent No ..., she was appointed ...in or about ... compared to Appellant who was appointed to the post in.... She was ...th in the seniority list of.... Co-Respondent No ... was assigned duties of DECEV for a lesser period and therefore she had less experience and merit than the Appellant.

During cross-examination, Appellant conceded that the Co-Respondents met the requirements for the post as per the Scheme of Service. She also agreed that she was not

aware how the Co-Respondents performed at the interview. Further, she was confused as regards qualifications and did not understand the difference between qualifications which are required for eligibility and other academic qualifications. She agreed that she also attached her own BSc Hon. in ... to her application form. Regarding experience and merit, she maintained that this could not have been assessed during an interview which only lasted a few minutes.

Appellant No ... submitted the same Grounds of Appeal in both his appeals. He averred that there was no valid and justified ground to appoint persons with lesser experience, merit and qualifications ahead of him. This was not in line with Regulation ... of the Local Government Service Commission Regulations. He had been in this post for ... years and had more experience than those appointed. His first appeal was against the appointment of Co-Respondents No. ... and his second appeal was against Co-Respondents Nos ... and He served as ACEV for the last ... years and was assigned duties of DECEV for ... days.

Appellant admitted that he was suspended for .. working days in ... but this should not have influenced the selection panel. He also conceded that he was called at a disciplinary hearing for having refused a warning but this could not at any rate prevent him from being appointed. This disciplinary proceeding was still ongoing.

Under cross examination, he stated that he did not have adverse reports prior to current disciplinary proceedings and that nowhere in the law does it say that a candidate was expected to have a clean record for at least five years.

He averred that he applied for the post on four occasions and he was not told of any failings/weaknesses on his part.

He was assigned the duties of DECEV but he was reverted to his substantive post of ACEV in ...after a disciplinary committee findings and his suspension. He was later transferred to the District Council of ...and was assigned the duties of DECEV but the assignment was stopped in ... as he was before a disciplinary committee for not accepting charges against him.

He had also been assigned duty as restyled DECEV from..... to ... whereas some of the Co-Respondents were appointed and joined service as ACEV and assigned duties as DECEV only recently. He therefore claimed more experience and merit. He gave a list of qualifications which have not been taken into consideration though annexed to his application form.

Appellant No 3 was on leave when the first batch was appointed and she was time-barred to appeal when she resumed work. Her appeal, therefore, concerned only the appointment of Co-Respondents Nos ... and ... The Appellant averred that she met all the qualifications for the post. She reckoned more than ... years in the post of ACEV and performed her duties with due diligence. She never had any adverse report against her. She was assigned the duties of DECEV for four and a half years since ... almost continuously except for ... days in ... when she attended a training course.

When she was assigned the duties of DECEV there were no ... in the ...District Council or the Municipal Council of ... where she was posted, resulting in more work and responsibilities for her. She performed the duties without any adverse report.

Appellant averred that she joined the local authorities in ... while the two Co-Respondents joined in ... and She spent more time on assignment of duties as DECEV than the two Co-Respondents and therefore had more experience. Appellant averred that she was more meritorious and should have been appointed. She referred to her participation in a competition by all local authorities in Mauritius where she won the first prize. Appellant listed her qualifications.

Appellant did not appreciate that the same questions were put to all the candidates which she considered unfair and unreasonable. She felt that the candidates interviewed on the following days would already know the questions and better prepare themselves.

The Appellant found that two of her junior colleagues with less experience and merit had become her seniors and she was unjustly made to stay in the same grade, which affected her career.

During cross examination, she explained that, prior to..., assignment of duty was for administrative convenience. After that, there was a reshufflement of all ACEVS who were assigned duties in the 12 local authorities and this was based on seniority.

Appellant No 4 averred that he satisfied the qualifications for the post. He had been ... years as ACEV as he had more experience than Co-Respondents ... and He was assigned the duties of DECEV from ...to ...and from ...to.... He did not have any adverse report.

He had more responsibilities as he was working in a District Council and was responsible for many village councils, contrary to those who were appointed and who were working in municipal councils.

He also raised the point that the same questions were put to all the candidates.

He mentioned that he was awarded the “best employee of the year” by the Municipal Council of ...in....

He was appointed ACEV in ... while Co-Respondent No ... was appointed to the post in ... and Co-Respondent No ... in.... While his confirmation to the post of ACEV was not deferred, that of Co-Respondent No ... was deferred.

Co-Respondent No.8 had been appointed ASTY on ...but after ... months, the temporary appointment was extended until ...to give her an opportunity to improve. However, his Counsel did not pursue this line of cross examination and agreed that afterwards she did not have a bad record.

He averred that the selection exercise appeared to be biased, unreasonable and against the principles of equity, justice and fairness.

Appellant averred that he received a letter dated ...from his Chief Executive concerning an anonymous letter regarding an incident which took place on This was received after the selection exercise and the case is still pending.

He did not agree that the questions put during the interview could test his analytical skills and how he manages stressful conditions.

Co-Respondents’ Stand

Co-Respondent No. ...filed a Statement of Defence (SOD) in the appeals entered by Appellants Nos. ... and ... concerning the first batch of appointees, including himself. He solemnly affirmed as to the correctness of his SOD.

Regarding the averment of Appellant No. ... concerning gender bias, he stated that 'selection cannot be made solely on gender as it is tantamount to discrimination on the basis of sex (SIC)'. Co-Respondent admitted that he was on leave without pay from ...to ...but stated that this '*does not disqualify or debar me from being eligible to stand as candidate for the post of ...as I fully satisfy the requirement of a minimum of 5 years' experience as laid down in the Scheme of Service*'. In fact, he reckoned ... years' experience as ACEV. He gave a list of the periods when he was assigned duty.

He also stated that seniority was not the only criterion for the selection to the post of DECEV. He stated having acquired 'vital experience both in the Local Government Service as well as in other sectors (both at local and international level)'. For the rest of the averments, he left it to the LGSC which was better placed to reply.

He cross examined Appellant No.... to the effect that, when he faced disciplinary proceedings he had the chance to defend himself and also to appeal against the decision of the Committee, to which Appellant No.... conceded.

Co-Respondents Nos., ..., ... and ..., who were represented by Counsel, filed Statements of Defence in all the appeals which they solemnly affirmed to. They made a few clarifications.

Co-Respondents Nos. ... and ... also solemnly affirmed to the correctness of their SOD.

They all stated that they had the required qualifications, merit and experience to be appointed DECEV. They listed their additional qualifications and stated that seniority, gender, assignment of duties are not prerequisites for selection.

Co-Respondent No. ... stated that Appellant No. ... was not challenging his appointment but only those of Co-Respondents 1-5 as clarified in her Statement of Case (SOC).

No one cross examined Co-Respondents but Counsel for Co-Respondents Nos..., .., .., .. and ... did have a chance to cross examine Appellants throughout the Hearing.

Respondent's Case

The Respondent averred that appointments were made for this post by selection. The Appellants could not ground their appeals on the issue of seniority as Regulation 13 of the LGSC Regulations prevailed. This Regulation reads as follows:

“13. (1) In exercising its powers in connexion with the appointment or promotion of officers in the local government service the Commission shall have regard to the maintenance of the high standard of efficiency necessary in the local government service and shall –

(a) give due consideration to qualified serving officers in the local government service;

(b) In the case of officers in the local government service, take into account qualifications, experience and merit before seniority in the local government service.”

The Respondent also rebutted the arguments of the Appellants that they had been assigned duties of DECEV for longer periods and that they therefore should have an edge over those who were not assigned such duties or only for shorter time. It was clear that each time an officer was assigned higher duties, the letter to the officer stated that such assignment of duties would not give any claim for appointment to the higher post. Such assignments of duties were made for administrative convenience. The Respondent nevertheless gave the records of assignments of duties for both the Appellants and Co-Respondents and averred that experience gathered was evaluated during the interview and varied depending on each candidate.

In rebuttal, the Respondent also stated that it was not the practice for the Commission or for the interview panel to explain to candidates their weaknesses or failings at an interview and it did not give advice as it would have been most unfair to other candidates.

The Respondent stated that the Appellants and the Co-Respondents were all eligible and were called for interview and assessed in a fair and unbiased manner

according to the criteria of selection, following which Co-Respondents were appointed based on their performance at the interview. The Respondent further stated that all Co-Respondents had favourable reports.

Re Appellant No 1: The Respondent admitted that Appellant No... had no adverse report and she was ... on the seniority list of ...The Respondent confirmed the averment of the Appellant that Co-Respondent No... was on leave without pay from ... to The same applied for Co-Respondent No ... who was granted leave with full pay to follow a course in India from ... to . However, Co-Respondent No... and also Co-Respondent No ... (who was ... on the seniority list) met the requirement of the Scheme of Service with respect to the minimum five years in the grade of ACEV. The Respondent agreed that the Appellant had applied for the post of DECEV five times in the past but was not appointed. Respondent stated that she could not contest her non-appointment in the previous appointments as they were time-barred. The Respondent had taken into account all information contained in Appellant's application form when she applied for the post including a BSc in ...awarded to her....

As regards Co-Respondent No ... in the Appellant's second appeal, the Respondent admitted that she was ... on the seniority list of.... Co-Respondent No ... proceeded on leave without pay from ...for twelve days, from ...to ... and from ... for ... days compared to the Appellant who never took leave without pay during the 35 years in service. There was no adverse report against Co-Respondent No ... who was assigned the duties of DECEV from ... to

Concerning Co-Respondent No ... in the Appellant's third appeal, Respondent stated that she was ACE in a temporary capacity on ...and her substantive appointment took effect as from the same date of.... However, in the Statement of Defence in the appeal of Appellant No 4, the Respondent divulged the fact that the “ *appointment was extended until end of ... to provide her with an opportunity to improve her performance, conduct and attendance. Mrs ...was thereafter appointed ... in a substantive capacity with effect from.... Since ..., there has been no unfavourable report on....*”(Note ...was restyled ACEV). Co-Respondent No ... was assigned the duties of DECEV from ... to ...,

from ... to ... and from ... to ... when her assignment of duties was stopped as she was transferred to the District Council of

Re Appellant No 2: Respondent averred that the Appellant joined the service as ...on ...and reckoned ... years of service. He was ... on the seniority list for the post.

Previously, he was posted at the Municipal Council of ...from ...and assigned the duties of ...until ...when the assignment of duties was stopped following disciplinary proceedings taken against him.

On..., Appellant was suspended from work without pay for a period of ...days starting from ... to ... on the following charges:

- “(a) Having in his reply dated ...made gratuitous allegations against the ...as regards the running of the affairs of the administration;
- (b) Making voluntary, unlawful, malicious and defamatory statements and/insults towards the...; and
- (c) Behaving disrespectfully towards his senior in rank, to wit, the....”

Appellant was assigned the duties of ...at the District Council of ...on ...but he was reverted to his post of ...with effect from ...due to several disciplinary cases against him.

Appellant was administered two warnings under Regulation 42 (2) of the LGSC Regulations on ... and ... respectively.

Respondent also averred that Appellant was currently being subject to ongoing disciplinary action under Regulation 42 (1) of the LGSC Regulations.

Under cross examination, Respondent’s Representative stated that *Ad hoc* reports submitted by the RO were consulted after the interview.

Re Appellant No 3: Respondent admitted that the Appellant had been assigned the duties of ... as averred but stated that Co-Respondents Nos ... and ...had also been assigned such duties on the dates shown above. Respondent did not agree that the fact

that the same questions were asked was unfair. According to Respondent *“an interview is not an examination. Questions put to candidates are specifically designed to test the personality of the candidate, his/her communication and analytical skills, his/her leadership qualities as well as his/her knowledge of work and sense of responsibility and maturity. The whole interview is often an occasion to assess how officers react to a slightly stressful situation. Moreover, the way an officer deals with questions put to him rather than the replies which matters”*.

Under cross examination, Respondent’s representative could not state what were the questions. Regarding qualification, he explained that Part A of the Scheme of Service concerned eligibility. He could not explain what qualifications would have been taken in consideration under the criterion “Qualification”. He also confirmed that assignment of duty was given for administrative convenience, sometimes based on seniority and sometimes not.

Re Appellant No 4: Respondent moved to amend its SOD regarding his behaviour and attitude at work and confirmed that this had not been taken into consideration during the selection exercise.

Respondent stated that the Appellant was assigned the duties of ... from ... to ... and from ... to ... and again from ... to

Respondent averred that Co-Respondents Nos ... and ... were qualified for the post and in this appointment exercise, it adhered to Regulation 13 of the LGSC Regulations.

Again, on the issue of same questions being asked to all candidates, it repeated the same point as in reply to Appellant No

Respondent averred that, for any appointment exercise, a candidate was expected to have a clean record for the last five years and not be subject to any disciplinary action.

Respondent also stated that all Co-Respondents had been assigned the duties of ... and it provided all the details concerning assignment of duty of all candidates.

Respondent further averred that experience and academic qualifications were not the only criteria for selection. However, Respondent had taken into consideration all qualifications disclosed in Appellant's application form.

Regarding Co-Respondent No...'s leave without pay, Respondent reiterated its stand taken in the first Appellant's appeal.

Determination

The appeals are grounded mainly on the issue of seniority in grade of ...and on assignment of duties to the higher post of

From information provided by Respondent, it appears that Appellant No ... was first on the seniority list, followed by Co-Respondent No ... and Appellant No ... was.... It is also true that Co-Respondents Nos, ... and ... were lower in the seniority ranking, being in the ...th, ...th, ...th position. However, it is clear from LGSC Regulation 13 that seniority is not a determining factor in a selection exercise.

Similarly, assignment of duties to the post of ...does not give the incumbent any claim for automatic appointment to the higher post. This is made clear in the letter giving assignment of duties to officers each time.

In a selection exercise, there are criteria which the Respondent sets for the interview of candidates. In the present exercise, the criteria were:

- (i) Qualifications
- (ii) Personality
- (iii) Communication Skills
- (iv) Knowledge of the Job
- (v) Analytical Skills
- (vi) Versatility
- (vii) Multi-Disciplinary Approach to Problem Solving and
- (viii) Sense of Responsibility

The Respondent provided under confidential cover a list of qualifications of all parties concerned as well as the weight given to each criterion and the markings.

On the criterion “Qualifications”, Appellant No ... obtained full marks as he has several post graduate qualifications. Co-Respondents Nos ... and ... also obtained full marks as they had a post graduate degree and they were more qualified than Appellants Nos...,and

When perusing the other criteria, we must bear in mind the issues of seniority and assignment of duty, particularly with the criteria of experience, here described as “knowledge of the job” and also that of “sense of responsibility”. True it is that one who has worked for a long time has inevitably gathered experience. The modern trends of recruitment in the public sector are that there must be a selection exercise and each applicant must satisfy the panel that they deserve to be appointed. Otherwise, there would have been a promotion exercise and those who have been in jobs for long periods would just climb up thus preventing young officers who can deliver better from getting a chance to show their capacity.

We must take it that the Commissions have reflected on this issue and weighted the pros and cons before deciding in which cases it is better to appoint by promotion and in which ones selection is desirable. It is their prerogative to choose the method. Further before a Scheme of Service is prescribed, Trade Unions are invited to comment on it and make proposals.

The role of the Tribunal is to ensure that the process, whichever one it is, is fair and that no candidate has suffered from any bias, mistake, unreasonable inference, injustice or other discriminatory or illegal practice.

What is however clear in our minds is that officers should not be made to work in posts on assignments of duty for very long periods as this naturally gives rise to a legitimate expectation. When they are not appointed despite their dedication and their clean record, they are frustrated and that is not only bad for them but may also affect the service. The Tribunal recommends to the LGSC to refrain from assigning duties for long periods for administrative convenience. Whenever that is unavoidable, then officers must

be closely monitored and not just be left to do the work routinely. Their attention needs to be drawn on their shortcomings for them to improve and not just for giving them a bad record. The LGSC could be inspired by Circular 2 of 2006 of the PSC which provides that *“acting appointment/ assignment of duties made on the ground of administrative convenience should not be of a long duration and should, as far as possible, be restricted to a period not exceeding six months.”* (underlining ours)

Appellant No ... raised the ground gender bias in the appeals against the first batch of appointees. At no time however, did she bring any evidence that she had personally been discriminated against as a woman. She went as far as to speak in favour of other women candidates. When she was confronted with the fact that two women had in fact been appointed (Co-Respondents Nos ... and ..., then she stated that they were not meritorious, which is very contradictory. That ground does not hold either and she was made aware that the two Co-Respondents were on a merit list following the same selection exercise and that she would also be on that list.

Further, the margin between Co-Respondent No 8 and one of the Appellants is very slim. This goes to show that most of the Appellants were assessed positively and very little separated them.

On the other hand, the Tribunal notes that the Appellants have applied for the post of DCEV several times and they were assessed by different selection panels and different LGSC boards. This rules out any perception of possible bias against the Appellants.

The Tribunal will not step in the shoes of the Respondent in this selection exercise given that a cursory look at the markings does not show that there was any bias or flagrant unfairness or unreasonableness on the part of the panel composed of five members who each assessed candidates separately.

In the circumstances, the Tribunal dismisses the appeals.