

- **A mere perception that an Appellant has been penalised for having entered an appeal before this Tribunal will not be sufficient without evidence**

The Appellant, a PADOR in the Local Government Service, is challenging the decision of the Respondent to appoint the Co-Respondents to the post of Head, LAUPA Department (hereafter referred to as Head).

This is the second attempt for the Respondent to fill vacancies in this post. A first attempt was made in ... when ... candidates applied for the post. The three Co-Respondents in the present appeal were appointed. However, the present Appellant had challenged the appointment exercise before this Tribunal. The appeal was allowed and the appointments were cancelled.

The present appointment was in response to an advertisement calling for applications dated ... and following an interview exercise, the three Co-Respondents were again appointed.

Appellant's Case

The Appellant averred that he satisfied all the requirements for the post. He stated that in the first attempt to fill the vacancies there were eight candidates including the Co-Respondents and himself, and they were all called for interview in one day. For the present exercise, the candidates were divided in two groups for the interview and interviewed on two different days but by the same interviewing panel. Those appointed were in one group and those not appointed were in another group. Appellant felt that the Respondent had already decided on who to appoint and who not to appoint.

He averred that he had been assigned the duties of Head for several months while Co-Respondent No ... was assigned such duties for only a few months.

He also averred that the fact that there was an adverse report against him which dated before the first selection exercise and which was before the selection panel played against him.

The Appellant felt that he was being penalized because he had filed an appeal with the Tribunal in the first selection exercise.

Respondent's Case

The Respondent averred that the filling of the post of Head was by selection and it followed regulation 13 of the LGSC Regulations where seniority is not a determining factor. There were other criteria that were used and these were:

- (i) Qualifications
- (ii) Personality
- (iii) Communication Skills
- (iv) Leadership, interpersonal and organizational skills; and
- (v) Knowledge of Job

The Respondent did not deny that the Appellant had been assigned the duties of Head as he averred. However, assignment of duties did not give the incumbent any claim for permanent appointment to the higher post. This was clear each time an officer was assigned such duties. The duration of assignments of duties should not be confused with experience acquired for the post.

The Respondent denied that the fact that the candidates were grouped in two batches and the fact that those appointed (who were the same as those appointed in the previous exercise) were in the same group and interviewed on the same day implied that the Respondent had deliberately chosen who to appoint. The Respondent stated that this was simply a coincidence. Candidates were assigned index numbers as their applications came in and this determined the order in which they were called for interview. The allocation of index numbers was done by another section at the LGSC.

The Respondent also denied that the adverse report against the Appellant was brought to the attention of the selection panel.

The Respondent stated that Co-Respondents Nos... and ... were holders of a Master degree while the Appellant had only the basic qualification requirement for eligibility to the post.

The Respondent moved that the appeal be set aside.

Determination

The post of Head was filled by selection and the grounds of seniority and assignment of duties are not determining elements in the appointment exercise.

The main point on which the Tribunal needs to adjudicate is the averment of the Appellant that the Respondent had already taken a decision and the selection exercise was a mere sham as Appellant strongly felt that the Respondent resented the fact that he had appealed to this Tribunal in the previous selection exercise. Appellant referred to the fact that candidates were put in two groups and that those appointed were in one group and those not appointed in another group as an example of Respondent's ill intentions. The Respondent stated that if this was so, it was pure coincidence and explained how these two groups were constituted.

The Tribunal, therefore, sought information on the sequence the Respondent received the applications and the order in which candidates were called for interview.

The Tribunal finds that the candidates were interviewed in the order they sent their applications. It is a coincidence that the Co-Respondents sent their applications after the Appellant and the other three unsuccessful candidates.

The averment of the appellant that there could have been a wilful action on the part of the Respondent to engineer a pre-determined outcome is not borne out by the sequence of the interviews. The Tribunal finds no oblique motive on the part of the Respondent as may be perceived by the Appellant.

The appeal is set aside.