

**Unreasonableness, unfairness and bias, if invoked in Grounds of Appeal, must be proved. The mere fact that there were two slightly different panels of interview does not vitiate the selection automatically**

The Appellant has lodged an appeal before this Tribunal against the decision of the Respondent to appoint the Co-Respondent to the post of Deputy Director of AITD (hereafter referred to as “the post”).

**Appellant’s case**

Appellant, a qualified CEFA since ..., currently holds the post of Assistant Director of AITD at the NTD office. Appellant has been in charge of a Division at the NTD office since..., managing a portfolio of ... assignments.

On ..., Respondent issued a Circular Note No... advertising the vacancy for the Post of Deputy Director of AITD (the “Post”). Subsequently, Appellant applied for the aforementioned vacant post and by letter dated..., was called for an interview on the.... At the said interview there were ... candidates, including Appellant and Co-Respondent. The latter was given an offer of appointment to the post in a temporary capacity with effect from .... Subsequently, candidates for the post were notified as per Office Circular ....

The Appellant lodged the present appeal against the decision of the Respondent appointing the Co-Respondent to the said Post.

The appeal is based on the fact that the appointment exercise was unreasonable, most unfair and biased, inasmuch as it was not done on the basis of relevant qualifications, experience, merit and suitability for the Post, as required by the Public Service Commission Regulations (the “PSC Regulations”). Appellant set out his other grounds in an “addendum” to Form 1 most of which did not correspond to Grounds of Appeal except the last three paragraphs.

«31. I should have been appointed to the post by the mere fact that I have been doing the duties of the job for several years.

32. I believe that the appointment of Co-Respondent to the post has not been done on ground of relevant qualifications, relevant experience required for the post and merit and is most unfair to me.
33. I prayed (sic) that the decision of the PSC be set aside "*in the interest of merit, principle, equity and justice*" and the PSC would remedy the unfairness that had been caused to me since the date the post was declared vacant.»

In a Statement of Case Appellant also raised several points as follows:

«9. *The appeal is in a gist based on the fact that the appointment exercise was unreasonable, most unfair and biased inasmuch as it was not done on the basis of relevant qualifications, experience, merit and suitability for the post of Deputy Director of AITD as required by the Public Service Commission Regulations 1961 ("PSC Regulations").*»

He further stated at point 12 (ii) and 12 (iii) as follows:

« 12(ii) *The selection process was carried out by two differently constituted panel for the interview of the candidates such that there is doubt as to whether same weight was given to each of the criteria enumerated in Regulation 14 of the PSC Regulations by the two differently constituted panel; and*

*12(iii) The selection process was flawed by the participation of the Director of AITD in the interview inasmuch as she has prepared an ad hoc report on each candidate and submitted a PSC Form 22 in which she may have recommended one of the candidates prior to the interview*»

The Respondent raised two points in law in its Statement of Defence : At paragraph 4(i) «*the grounds that the appointment was allegedly unreasonable, most unfair and biased are new grounds which Appellant had not raised in his grounds of appeal, and Respondent moves that they be disregarded;*»

At paragraph 7, «*In relation to paragraphs 12 (ii) and 12(iii), Respondent avers that these are new grounds of objection which were not previously raised by the Appellant in his Grounds of Appeal and moves that they be disregarded.*»

Co-Respondent also raised a Preliminary Objection in her Statement of Defence but as she did not swear to the correctness of same these will be disregarded.

The Tribunal considered that point 9 was acceptable. Regarding Section 12(ii) this was also accepted on the grounds that the Tribunal would be able to see why there were two panels and whether it did have an impact upon the markings of Appellant.

However Section 12(iii), which relates to the participation of the Director of AITD, will not be considered by the Tribunal. The point raised herein is completely new and relates to a regular practice where the Responsible Officer acts as adviser in the selection panel for the filling of higher posts in the hierarchy. It raises the issue of bias on the part of the Director of AITD which, however interesting it may be, could have been raised as a proper ground of appeal within the legal delay. It is therefore not going to be considered by the Tribunal as such, that is, the very participation of the Director of AITD on the selection panel cannot be questioned. Nor the fact that she may have given a Report on the applicants.

Under cross-examination, Appellant stated being aware that the Post was filled by a selection exercise from amongst officers in the grade of Assistant Director of AITD. However, he confirmed that under the PSC Circular No..., the requirement for academic qualifications was not listed. Furthermore, Appellant confirmed being responsible for carrying out the ... of the ... for the financial year of..., ... and .... However, he agreed that these were only 2-3 years later, as he was overburdened by the management responsibility of the office.

Appellant confirmed that in ...he was a trainee EOAC. Furthermore, during the period ... to..., that he was on leave and did not work at the.... He further confirmed that he was posted as SAOR at the ... Authority in ... and stayed there for one and half years. Subsequently, he agreed that since ... Co-Respondent was qualified as CEFA and that he only became a CEFA in ..., after the Co-Respondent. He further agreed that he was appointed in the post of ACT in ... and became an ADTR at the ... in .... Moreover, he agreed that he only became a Principal ADTR in..., whereas Co-Respondent had been a Principal ADTR, five years earlier. He agreed that both he and the Co-Respondent were then appointed on the ... as Assistant Directors of AITD.

Appellant also stated being aware that the Co-Respondent fulfilled duties as Temporary Deputy Director of AITD from ... to ..., as there was a vacant post. Appellant agreed that the Scheme of Service did not require the Deputy Director to hold an MABA. However, he stated that he was better qualified than Co-Respondent because of his MABA. Appellant explained that to assess the governance of an organization one has to be a person who understands and practices management and that by having an MABA, he is better qualified at this.

When put to Appellant whether or not the Scheme of Service required that one should have passed the CHISAM, he stated that this was impliedly required, not expressly mentioned. Moreover, he did agree that he passed the CHISAM, after the job was advertised and after the closing date.

Appellant agreed that Co-Respondent was the team leader of the ... Board of ADTR. However, he did not agree that this was a high-level position and stated that he has held high-level positions, such as, Chairman and Board Member of the Mauritius Institute of PROA and member of the FIRC. When put to him, he did not agree that these positions were irrelevant in the field of AITG and were only relevant to the profession of ACNG, as AITG forms part of ACTY. Appellant stated that at the AITD office all staff have to do their AITD in line with the International ...Standards. Therefore, being a member of the FIRC is of direct relevance to the office. Appellant agreed that Co-Respondent has also acquired experience in her duties as ADTR, having been involved with many workshops and with being a member of a regional Board of ADTR and team leader of the Board of ADTR. However, Appellant maintained that he was still better qualified, as he has his various certificates.

Appellant agreed that one of the duties of Assistant Director of AITD is to manage the divisions of the National AITD Office. He agreed that both he and Co-Respondent were managing a division. Appellant further agreed that this involved assisting the Director and Deputy Director in day-to-day management and supervision of AITD Assignments. However, he stated that he still had more experience and was better qualified for the job than the Co-Respondent and did not agree that the latter had the qualifications, experience and did better at the interview and selection process.

With regards to the selection process being carried out by two different panels, Appellant maintained that the process was unfair and that the Chairperson,

knowing that he was going to have an interest in one of the candidates, should not have applied from the beginning to be a part of the panel.

### **Co-Respondent's Case**

Co-Respondent did not depone on the day of the hearing and all her averments in her Statement of Defence would not therefore be taken into consideration by the Tribunal.

### **Respondent's case**

According to the Respondent's Statement of Defence, the Post is filled by selection from among officers who hold a substantive appointment in the grade of Assistant Director of AITD and who possess the knowledge and skills, as laid down in the Scheme of Service prescribed on the.... The Post was advertised on the ... by way of PSC Circular Note No. ... among qualified officers of the ...and ten applications were received. However, only eight candidates were found eligible and they were then convened for an interview on the..., including the Appellant and Co-Respondent. After having considered the suitability of candidates convened for the interview, the Respondent decided, in the exercise of the power vested in it by Section 89 of the Constitution, to appoint Co-Respondent to the Post in a temporary capacity for a period of six months in the first instance, as from the date of the latter's assumption of duty. The Respondent informed the Responsible Officer accordingly on the ... and Co-Respondent was offered appointment on the... , on which date she assumed duty.

Furthermore, in an amended Statement of Defence, the Respondent stated that applications of all eight candidates who were eligible were duly considered. Moreover, that due consideration was given to the requirements of the post, the criteria of the selection determined by the Respondent, the requirements of the Scheme of Service, performance at the interview and the provision of regulation 14(1) of the PSC Regulations. The Respondent has also determined the suitability of the candidates for appointment as per Regulation 19(6) of the PSC Regulations.

In response to the question raised in the Ruling of the Tribunal, Respondent stated that the Acting Chairman, who formed part of the selection board as set up by Respondent, had declared interest when Appellant came for the interview and he was thus replaced by a Commissioner of the PSC, in accordance with the PSC Regulations. Moreover, even though the Acting Chairman was replaced by a

Commissioner, the new panel acted in accordance with the PSC Regulations. All candidates were interviewed according to pre-established criteria and the marking was done in the same manner by the two differently constituted panels and the same weightage was given to each criterion by both panels.

Under cross-examination, the Representative for the Respondent confirmed that the decision regarding suitability of the eight candidates was based solely on the interview. Furthermore, that in assessing suitability, the PSC also took into consideration qualification, experience, merit and suitability for the post, in order to come to a decision to appoint the best suitable candidate. This criterion is based on PSC Regulation 14.

### **Determination**

Appellant's averments that he was more qualified cannot be retained by this Tribunal. No specific academic qualification was requested under PSC Circular No ... and the PSC has confirmed under confidential cover to the Tribunal that there were no requirements of additional qualifications. The candidates to the present post were all qualified and eligible. The fact that he had an MABA did not attract additional marks.

Appellant also highlighted his relevant experience, stating that Co-Respondent did not have the relevant experience for the post. However the evidence on record shows the contrary. Not only had Co-Respondent become a CEFA before the Appellant but she also became Principal ADTR before him. She also held various positions of responsibility across the years and Appellant was therefore not the only one who had gathered experience by being active on other fronts related to the office. While the Appellant reminded the Tribunal that he had managed a division, it is a fact that was borne out during proceedings that the Co-Respondent also managed a division. During cross examination it was also borne out that the Appellant was posted at the ... Authority for one and a half years as from ....

The Appellant also took strong objection to the fact that two different constituted panels held interviews for the present post and that he was the only one interviewed by a different panel. It is a fact that the Acting Chairman, having declared his interest in relation to Appellant, had not participated in the interview of the Appellant and had been replaced by a Commissioner. However, one member of the

panel sat in all the interviews and it can be assumed that his presence helped in moderating the marks allocated to each candidate by the two different panels and to ensure consistency in the markings of the candidates. A cursory look at the mark sheet communicated under confidential cover to the Tribunal by the Respondent has not revealed anything inconsistent with the evidence that was ushered before the Tribunal in relation to both candidates. The weight attached to the criteria was the same.

In any case, we bear in mind section 89 of the Constitution that states that:

**89. “Article 89. Appointment of public officers**

- (1) Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.”

Further Regulation 17 of the PSC Regulations states that

**“17 (1) The Commission shall determine the procedure to be followed in dealing with applications for appointment to the public service, including the proceedings of any selection board appointed by the Commission to interview candidates.**

**(2) The Commission shall determine the forms to be used in connection with the discharge of its functions.”**

The Tribunal finds no reason to intervene with the decision of the Respondent. The appeal is dismissed.