

Neither seniority nor assignment of duty can be grounds of appeal in a selection exercise

The Appellant, an ADTS in the Ministry of ..., appealed in virtue of Section 3 of the Public Bodies Appeal Tribunal Act 2008 against the appointment of Co-Respondent, equally ADTS, to the post of PADT in a Specialised Unit in a temporary capacity in the same Ministry.

Appellant's Case

The Grounds of Appeal (GOA) were as follows:

"The PSC failed to give sufficient weight to the following undeniable features, namely:

- (1) my seniority over the successful candidate;*
- (2) my acquired experience in the exercise of the functions of the post from ... onwards without interruption;*
- (3) the fact that I had been assigned the duties of the post from ... to... ; and*
- (4) the fact that I have performed the aforesaid functions **and** duties from ... onwards without interruption **and** without any adverse report."*

The Scheme of service in the advertisement, in so far as qualifications are concerned, read as follows:

*"By selection from among employees in the grade of ADTS **on the permanent and Pensionable establishment** of the Ministry who reckon at least three years' service in the grade.*

Experience in handling of citizens for specialised care is desirable."

Part III of the Scheme of Service entitled Duties listed twelve ... tasks related to the post.

Under cross-examination, Appellant admitted that, unlike the Co-Respondent, although he joined the service in ..., he had spent significant time outside the Ministry, first, at the ... Authority to perform duties of OADT and second, at the Ministry to perform duties of PURO respectively. He agreed that he had actually started performing the duties of PADT only on.... Appellant also admitted that unlike him, Co-Respondent reckons continuous service in the Ministry of ... since ... and had started performing as PADT in a Specialised Unit contemporaneously with him.

The other ground of appeal relates to the time that the Appellant was assigned the duties of PADT. The Appellant stated that he and the Co-Respondent were assigned each six months to the post. However, as the Co-Respondent was frequently absent, he was given assignment of duties over and above the six months. He claimed that he thus gathered more experience. However on cross-examination, he conceded that the nature of his work did not change when he was assigned the duties of PADT.

Co- Respondent's Case

Co-Respondent, who had intimated in writing to the Tribunal that he would abide by its decision, signified his intention to put a couple of questions to the Appellant. The Tribunal, out of fairness to him, did not object. He averred that Appellant did not replace him when he was on leave and had never worked in the special unit.

Respondent's Case

The Respondent had on..., by way of Circular No 28 of 2015, advertised vacancies in the post of PADT in a Specialised Unit on a temporary basis to be filled by selection. On ... Respondent informed all applicants, through their Heads of Division/Section of the appointment of the Co-Respondent as PADT in a Specialised Unit in a temporary capacity

The Representative of the Respondent swore to the correctness of the Statement of Defence which stated as follows: There had initially been ... Applicants out of which

... were rejected outright for lack of eligibility. The remaining ... were convened for interview at the Ministry. Three of them were removed from the list as they either did not attend or were not interested. The remaining eight candidates were assessed against a set of criteria viz. length of service, knowledge of work/experience in handling patients for ... care, interest and motivation. Three candidates were found suitable for the post. A merit list was drawn up based on overall performance at the interview. Co-respondent topped the list while Appellant, who also did well, was placed third. As there was only one funded vacancy on the Ministry's establishment, Co-Respondent was appointed in a temporary capacity for a period of six months. Respondent's representative also averred that both Appellant and Co-Respondent had been favourably reported upon.

As the selection exercise was done by the Ministry under delegated powers, the representative of the Ministry provided clarifications/additional information as required.

The Tribunal received at its request supplementary information from the Ministry of ...wherein it is stated that Appellant was assigned duties of PADT in a Specialised Unit against payment of a responsibility allowance for certain periods of time:

Further it is admitted that Appellant did not enjoy any vacation leave whereas Co-Respondent has proceeded on vacation twice for over a month each time, during which periods Appellant replaced him.

Determination

It is agreed that appointment to the post was by selection and there was delegation of powers to the Ministry to carry out the selection exercise.

The Appellant has grounded his appeal, *inter alia*, on seniority. However, under PSC Regulation 14, seniority is not a determining factor. Regulation 14 says clearly that:

"in case of officers serving in the public service, take into account qualifications, experience, merit and suitability for the office in question before seniority" (emphasis ours).

It is not contested that both the Appellant and the Co-Respondent joined the Specialised Unit on the same day that is ...when the Unit became operational. The Appellant was not in fact senior to the Co-Respondent in the Unit.

Appellant's claim that he had more experience based on his longer time of assignment does not hold. In any case, each time an officer is given assignment it is stated in the letter to him that this does not give him any claim for permanent appointment to the post. Further the fact that he replaced Co-Respondent while the latter went on leave and that he never took any leave, cannot be a ground for quashing Co-Respondent's appointment.

Having carefully sifted the evidence from both parties, the Tribunal finds no reason to disturb the decision of the Respondent.

The appeal is set aside.