

Det 21 of 2017

- **The number of years of service does not necessarily equate to greater experience.**
- **The length of an interview is not an indication of how a candidate was in fact assessed.**

The Appellant, an EDRS at the Ministry of ... (the Ministry), is challenging the decision of the Respondent to appoint Co-Respondents Nos 1 and 2 to the post of Senior EDRS

Appellant's Case

The Appellant grounded her appeal on the following:

"1. The Ministry of ... and the Public Service Commission has (sic) failed to consider the following criteria for the appointment of the above mentioned post: (a) seniority (b) qualification (c) years of experience

2. I should have been appointed based on PRB report 2013 as seniority became a criteria (sic) for the post" (SIC)

The Appellant averred that she joined the service as Technical ITR in... . She was designated Head of Department in A and DN from ... to date. According to the Respondent, the Appellant became EDR (Grade B) on ... and EDR (Grade A) after she crossed the Qualification Bar on....

The Appellant averred that she satisfied all the criteria for appointment and was the most suitable candidate for appointment to the post. She had the following qualifications:

- (i) ... Diploma awarded in... ;
- (ii) Degree of Bachelor of ... awarded in... ; and
- (iii) Masters of Science in ...and ...awarded in ...

She was more qualified, more experienced and was dedicated to work.

On cross-examination, she conceded that she was not aware of the qualifications of the Co-Respondents. She also conceded that she was not aware of the work experience of the Co-Respondents.

The Appellant averred that the questions asked by the interview panel were not such as to gauge her experience for the post. She was not aware of the questions put to the other candidates for the post. She agreed that she had put all the information regarding her duties and experience in her application form when she applied for the post.

The Appellant urged the Tribunal to seek all the documents from the Respondent pertaining to the appointment exercise (reports, marks sheets etc.), declare the Respondent's decisions null and void, direct the Respondent to promote her to the post or make such other order as the Tribunal may deem fit in the circumstances.

Co-Respondents' Case

The Co-Respondents decided to abide by the decision of the Tribunal.

Respondent's case

The Respondent did not dispute the career path of the Appellant at the Ministry.

The Respondent averred that the post was filled by selection from among candidates who met the requirements of the Scheme of Service for the post. Appointment was made based on the following:

- (i) The requirements of the post
- (ii) The criteria for selection as determined by the Respondent
- (iii) The requirement of the Scheme of Service
- (iv) Performance at the interview
- (v) The provisions of Regulation 14(1) (a), (b) and (c) of the PSC Regulations, taking into account qualification, experience, merit and suitability for the post before seniority.

The Scheme of Service provided as follows:

“By selection from among officers in the grade of EDRS who reckon at least 24 years’ service in a substantive capacity in the grade and who –

- (i) are qualified to cross the QB in their salary scale;*
- (ii) have good organising and administrative potential; and*
- (iii) have the ability to communicate effectively and interact with others.”*

Seniority was not a determining criterion in a selection exercise. All candidates who were convened for the interview including the Appellant were qualified and eligible for the post. All relevant information regarding qualifications and experience as disclosed in the respective application forms of the eligible candidates were given due consideration by the selection panel.

Counsel for Appellant cross-examined the representative of Respondent to seek clarifications as to the way the Respondent determines the suitability of candidates in the selection exercise. The Representative of the Respondent was not able to reply.

The Respondent averred that it acted in all fairness and in conformity with the powers vested upon it by section 89 of the Constitution and the provisions of the PSC Regulations. All candidates were considered in a fair and impartial manner.

The Respondent would provide to the Tribunal confidential and privileged documents and information relating to the selection exercise as and when called for.

The Respondent submitted that the appeal had no merits and should be set aside.

Determination

Ground of appeal 1(a) relates to the issue of seniority. The Appellant feels that she has very long years of service, even if she has only some ... years in the post of EDR (Grade A). As such she should have an edge over the other candidates. The Appellant decided to drop ground 2 of the appeal and rightly so as this was not correct. The ground also related to seniority.

It is a fact that to be eligible for consideration for the post of Senior EDRS, one needs to reckon at least 24 years in service which is a long period. The PRB Report 2013 did consider this and recommended that this period be reduced to 15 years. However, this was only a recommendation from the PRB but it was not made operational by any amendment to the Scheme of Service for the post. This does not obviate the fact that seniority is not of prime consideration in a selection exercise. Appointment remained by selection. Ground 1 (a), therefore, falls.

As regards ground 1 (b) regarding qualifications, the Appellant has a Master of ... degree and she claims that she is better qualified. She concedes that she is not aware of the qualifications of the Co-Respondents. The Tribunal can only ascertain how she was treated on this matter from the markings of the candidates.

On the third ground 1 (c) "Years of Experience" the Tribunal has again to rely on the marks sheets of the selection panel. However, it needs to be pointed out that the number of years of service needs not necessarily be equated with experience even though Appellant may have gathered experience over the years.

In her prayer, the Appellant asks that the Tribunal directs the Respondent to appoint her to the post. The Tribunal has no jurisdiction on the matter as the power to appoint rests solely with the Respondent as per Section 89 of the Constitution.

The Appellant raises the issue of the short duration of 15 minutes for the interview. This is, however, a moot point. The duration of an interview is not an indicator of performance. A short interview may mean that the candidate has been direct, concise and to the point and he may obtain a good score. A long interview time may mean that the candidate has been long-winded and has indulged in circumlocution or has not been precise and has needed prodding from the selection panel, thus stretching the interview time. The Tribunal will be slow to conclude that the duration of an interview can cause prejudice to a candidate. The Tribunal notes in any case that the Appellant was interviewed for 26 minutes, Co-Respondent No 1 for 25 minutes and Co-Respondent No 2 for 20 minutes.

On the issue of suitability of candidates for a post, it is apposite to note that the Respondent lays great emphasis on this criterion. In the revised PSC Regulations 2010, the criterion “suitability” was added to its regulation 14 (c) which now reads “*in the 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). This has been done even if regulation 19 (6) says clearly that “*No appointment or promotion to a vacancy in the public service may be made before the Commission has determined the suitability of the person concerned.*” The representatives of the Respondent have always been at pain to give satisfactory explanations on how Respondent in fact determines suitability. The Pay Research Bureau (PRB) Report 2008 did make recommendations regarding tests of suitability at paragraph 9.14 (a) which says that “*recruitment and selection procedures be supplemented with competency, personality and other psychometric tests, wherever desirable and particularly in strategic areas at the professional and managerial levels and for areas such as the disciplined services*”. However, this recommendation was not implemented. The PRB Report 2013 simply states that “*11.10. The essence of those recommendations was also aimed towards assisting the Commission in appointing the best candidate with the right ability, temperament and willingness to perform the job. However, those recommendations could not be implemented in view of structural problems*”. This leaves us no wiser as to how the Respondent then determines the suitability of candidates. The Respondent needs to address this issue to avoid the perception that the suitability test is shrouded in mystery.

In order to adjudicate on the appeal, the Tribunal sought additional information from the Respondent which was provided under confidential cover.

The Tribunal finds that the selection panel had assessed the candidates on the following criteria:

- (i) Relevant experience
- (ii) Knowledge of duties and responsibilities of the post
- (iii) Personality
- (iv) Communication and Interpersonal Skills

- (v) Organising and Administrative Skills
- (vi) Pedagogical and Counselling Skills
- (vii) Aptitude.

There was also an advisor who gave marks.

The Tribunal finds that qualifications were not a criterion for the selection exercise.

On relevant experience, the selection panel gave the Appellant and the two Co-Respondents the same marks.

The Co-Respondents obtained more marks on the other criteria which brought their total marks higher than that of the Appellant.

The Tribunal has no reason to find that the Respondent has erred in the selection process.

The appeal is set aside.