

- **It is the prerogative of Government to decide on organizational restructure (abolition of office, merger of grades etc ...)**
- **Vacancies are filled when the posts appear in the Civil Establishment Order and funds are available.**

The Appellants, both Acting Assistant REGA in the REGA's Department are appealing against the appointment of the two Co-Respondents as Assistant REGA in a temporary capacity.

### **Appellants' Case**

The Appellants' Grounds of Appeal (GOA) were similar as follows, except that Appellant No.1 avers that she has acted as Team Leader as from ... and Appellant No.2 has done so as from year ...:

(1) Because I, as a Chief REGO in a substantive capacity, have been given a legitimate expectation, prior to the merging of the posts of Chief REGO and Principal REGO (PRB Report), to be appointed Assistant REGA as selection would have been made between two eligible Chief REGOs only. Unfortunately at that time, there was no vacancy. I cannot therefore now be bypassed for a post which I was eligible before ...

(2) Because, although seniority is not a criteria, it is unreasonable for the Public Service Commission to brush aside more than 10 years of seniority and experience to appoint as Assistant REG a junior who never acted as Team Leader (in charge of a section) or another who acted as Team Leader for less than 2 years.

(3) Because the Public Service Commission failed to take into account the fact that I have acted as Team Leader repeatedly as from year ...(for several years)

(4) Because 2 posts of Assistant REGA have been filled when application was invited only for 1 post in June 2016. Upon information gathered from the Human Resource Manager, we were made to believe that the second post would be filled after a new invitation for application."

In their Statement of Case they described how the appointment process took place after having detailed their background:

1. Prior to the merging of the posts of Chief REGO and Principal REGO, application for the post of Assistant REGA was invited from candidates reckoning at least 2 years in a substantive capacity as Chief REGO.
2. Up to the year ... all the posts at management level were filled i.e The REGA, 2 Deputy REGA and 5 Assistant REGA Following the retirement of One Assistant REGA during the year ..., the post was not filled and it was declared vacant only in mid-September ... i.e 10 yrs after. (sic)
1. As from the year ... the candidates for the post of Assistant REGA, should, in addition to the above criterion, possess a Diploma in Legal Studies or Law and Management from a recognised institution or an alternative qualification acceptable to the Public Service Commission.
2. As a Chief REGO since July ... and in possession of the required academic qualification since the year 2001, I had a legitimate expectation to be appointed as Assistant REGA.

Appellants further alleged that, prior to the merger mentioned above, a meeting was held at which the REGA, the Chief REGO and Principal REGO as well as representatives of the REGTOR Union were present. When the two Appellants were sounded on the proposed merger, they said they were against it as their chances to be appointed to the higher grade would be reduced through greater competition. They averred that they were assured by the REGA that the proposed merger would not adversely affect them as it would be mentioned in the new Scheme of Service that the two Chief REGO would be considered for the first intake and a recommendation to that effect would be made to the Pay Research Bureau (PRB).

The above assurance, they averred, fortified their legitimate expectation.

#### **Co-Respondents' stand.**

Both Co-Respondents had informed the Tribunal that they would abide by the determination of the Tribunal.

## **Respondent's case**

The Respondent gave its own version regarding Appellants' background and admitted that they had both been assigned duties as Assistant REGA in the years ....

In June ...the Respondent through its Circular Note No. ... dated ... invited applications for the post of Assistant REGA in the REGA's Department. The Scheme of Service for the post, prescribed on 23 July 2014, stipulates that the vacancy would be filled

*"A. By selection from among officers in the grades of –*

*(i) Chief REGO; and*

*(ii) Principal REGO/Chief REGO who reckon at least five years' service in a substantive capacity in the grade or an aggregate of at least five years' service in a substantive capacity in the grade of Principal REGO/Chief REGO and in the former grade of Principal REGO.*

*B. Candidates should -*

*(i) possess a diploma in Legal Studies or Law and Management from a recognised institution or an equivalent qualification acceptable to the Public Service Commission;*

*(ii) have a sound knowledge of matters relating to duties and taxes and ... registry;*

*(iii) have the ability to lead and motivate a team of officers;*

*(iv) possess good administrative, interpersonal, communication and organising skills; and*

*(v) be able to work under pressure and meet deadlines."*

Then follows a list of thirteen duties which the incumbent in post would have to perform.

Respondent averred that Appellant No.1 was assigned the duties of Assistant REGA from ... to ...

Appellant No 2. was assigned duties of Assistant REGA from ... to ...

Respondent however averred that assignment of duties was done for administrative convenience and did not give a claim for appointment to the higher post.

Regarding the allegations of Appellant under “Appointment process”, Respondent stated that a vacancy for a post of Assistant REGA arose in the year ... and was advertised but Appellants were not qualified as they did not reckon two years’ service in the grade of Chief REGO as per the requirements of the Scheme of Service.

Two vacancies were reported by the Responsible Officer (RO) on ... and .... The present appointment was based on the Scheme of Service of the year .... The RO reported that the second post had not yet been established and recommended the filling of the post in a temporary capacity. Both Appellants and the Co-Respondents were eligible and were called for interview along with five others. Following the interview, the two Co-Respondents were appointed in a temporary capacity.

The Respondent further averred that all qualifications and experience as disclosed by the candidates were considered as well as the requirements of the post, the selection criteria, performance at the interview, suitability and Regulation 14 of the Public Service Commission (PSC) Regulations.

### **Determination**

Concerning the meeting prior to filling of the post and the promise made to Appellants, the Tribunal cannot pronounce itself as it is concerned only with the official Scheme of Service. Other matters should have been thrashed out at the level of Appellants’ department and the PRB and incorporated in the revised Scheme of Service; this was not done. The Tribunal could only note that this assurance was borne out by the notes of meeting at the REGA’s Department on.... Thereafter the REGA recommended same to the PRB in their letter of the.... The PRB did not accede to the recommendation.

We shall now deal with the GOA seriatim:

Ground 1- The issue of legitimate expectation has already been canvassed twice in the GOA. However the short answer to this is that, the Government has the prerogative to decide on organizational restructure covering matters such as abolition of office or merger

of grades. The Government must have had sound reasons to merge the two grades of Principal REGO and Chief REGO. It is often inevitable that some officers may suffer in the process, unless provision is made in an amended Scheme of Service that, for the first intake, some officers would be given priority of consideration. In the instant case, this was not done. The Tribunal cannot interfere in such matters.

Ground 2- Appellants agree that seniority is not an overriding criterion, they still aver that Respondent should not have disregarded “*10 years of seniority and experience and appoint juniors who have acted as Team Leaders for very short periods of time.*” When cross examined by Counsel for the Respondent, Appellants admitted that the post of Team Leader is not an official position and appointment thereto does not give rise to any claim for promotion. This was confirmed by the representative of the Respondent.

Ground 3- This is a repetition of Ground 2 and must suffer the same fate.

Ground 4- The Tribunal is satisfied that vacancies are filled as and when the circumstances require them to be filled, funds are available and the relevant posts appear in the Civil Establishment Order (CEO). If the posts do not appear in that Order, they may be filled in a temporary capacity. The Responsible Officer of a Ministry may advise the Respondent to proceed with a selection exercise when vacancies arise and need to be filled.

Some important matters that cropped up during the proceedings were also considered. Appellants could not understand how in a 15-minute interview where they were put at most three or four questions, the Respondent was able to assess the candidates' suitability for the post.

Although this was not raised as a Ground of Appeal, the Tribunal allowed it the more so as Counsel for Respondent did not object. Instead he asked if they knew how long the interviews of the Co-Respondents lasted, what and how many questions were put to them and whether the Co-Respondents had any adverse reports, The Appellants could not answer. The Tribunal has ascertained that the Public Service Commission interviewed both the Appellants and the Co-Respondents each between 8 and 13 minutes. To a

question from Counsel for the Appellant, the representative of the Respondent confirmed that the following criteria were taken into consideration for the selection:

- (i) Basic qualifications;
- (ii) Additional Qualifications;
- (iii) Relevant work experience;
- (iv) Communication and Interpersonal Skills;
- (v) Knowledge of work; and
- (vi) Managerial and Organisational Skills.

Another matter which was raised was the filling of the vacancies of Assistant REGA before the merger. It came to light that when a vacancy was advertised in ..., both Appellants were not eligible as they did not reckon two years of service in a substantive capacity in the grade of Chief REGO as per the requirements of the previous Scheme of Service.

The Tribunal, having sifted the evidence adduced by the parties, is satisfied that the Respondent strictly followed its rules and regulations in the selection exercise and does not find any ground for upsetting its decision.

The appeal is, therefore, set aside.