

**Appellants cannot rely on their subjective belief that they performed well at the interview and admit that they do not know how the Co-Respondent performed. They must show that they had MORE merit.**

The Appellant, a MASOR, has appealed against the decision of the Respondent to appoint Co-Respondent No ... to the post of ICER/Senior ICER. There were four appointees in this selection exercise.

### **Appellant's Case**

The Appellant has grounded his appeal as follows:

*"1. On the... I was appointed as CLER/Higher CLER at Municipal Council of .... After having worked at the Correspondence Section of the Council, I was posted to the ... Section on.... It would be now almost ... **years** since I am working in the ADT Section of the Council and I have acquired a lot of experiences relating to the functioning of the unit compared to the appointee and I am very conversant with the day to day management of the section.*

*2. I have been on Actingship as ICER/ Senior ICER (ICO/SICO) for a period of approximately ... years compared to the appointee. All the experiences that I have acquired as **MASOR** and as **Ag.** ICER/Senior ICER have enabled me to develop analytical, technical and interpersonal skills together with the ability to demonstrate initiatives in various situations. Additionally, I have always been updating my academic qualifications. I am holder of a Post Graduate diploma in..., a BSc (Hons) in ...and I am actually in my final semester in order to qualify for a MBA ...*

*3. I have given my level best for the interview".*

The Appellant did not submit a Statement of Case to expatiate on his grounds of appeal.

On cross-examination he conceded that he was not aware how the Co-Respondents performed at the interview before the selection panel.

### **Co-Respondents' Case**

Co-Respondent No 1 was represented by Counsel and she swore to the correctness of her Statement of Defence. Her appointment was not contested by the Appellant. Co-Respondent No 4 whose appointment was contested decided to defend her own case. She swore to the correctness of her Statement of Defence. Appellant's and Respondent's Counsel did not cross-examine the Co-Respondents.

### **Respondent's Case**

The representative of Respondent solemnly affirmed to the correctness of the Respondent's Statement of Defence to which was annexed the Scheme of Service which provides that:

"A: By selection from among serving officers who hold a substantive appointment and who have:

successfully completed all papers of ...

*or*

obtained the Certificate in ...

*or*

An equivalent qualification acceptable to the Local Government Service Commission.

B. Candidates should be computer literate and conversant with ...

**Note:** In the absence of qualified candidates in the Local Government Service, by selection from among candidates possessing the qualifications at A and B above “

The Respondent averred that the Appellant and Co-Respondent No 4 joined the service as CLER/ Higher CLER on ...and ..., respectively and both were appointed MASOR on ....

The Appellant was posted in the ...Section in ... and posted in the ... Section from ... till now. Co-Respondent No.... had worked in the ... the ... Section, the ... Department and at the ...in the ... Department.

The Respondent averred that the post was filled by selection but “experience is not a criterion for selection for the post”. Immediately after that the Respondent stated that the Respondent had given due consideration to Regulation 13 (1) (b) of the LGSC Regulations which read as follows:

*“In exercising its powers in connection with the appointment or promotion of officers in the Local Government Service, the Commission shall have regard to the maintenance of the high standard of efficiency necessary in the Local Government Service and shall .....*

*(1) (b) In the case of officers in Local Government Service, take into account qualifications, experience and merit before seniority in the Local Government Service” ( emphasis ours)*

The Appellant had been assigned the duties of ICER/Senior ICER for several periods:

Co-Respondent No 4 was not assigned higher duties as such opportunity did not arise where she was posted.

Respondent stated that assignment of duties was done in the interest of departmental efficiency and was based on administrative convenience and did not give the person who had been assigned the duties any claim to permanent appointment.

The qualifications of the Appellant and the Co-Respondent were listed:

The Respondent averred that all procedures had been scrupulously followed by the Commission during the selection exercise and the other candidates performed better than the Appellant.

The Respondent moved that the appeal be set aside.

### **Determination**

It is accepted that in a selection exercise seniority gives way to qualifications, experience, merit and suitability. The Appellant accepts this. Similarly, the Appellant accepts that assignment of duties does not give claim to permanent appointment to the higher post.

However, it was puzzling, to say the least, to hear the Respondent's averment that experience was not a criterion in this selection exercise, only to say afterwards that it relied on its regulation 13 to determine the best candidates. Regulation 13 gives importance to *inter alia* experience.

The Appellant laid emphasis on his qualifications and the experience he acquired during his work and in particular during the one and a half years he was assigned the duties of ICER/Senior ICER.

The Tribunal, therefore, asked for the markings of the Appellant and the Co-Respondents. It is noted that candidates were assessed on the following criteria:

- (i) Qualifications,
- (ii) Personality
- (iii) Sense of Discipline/Attitude and Integrity
- (iv) Interpersonal & Communications Skills
- (v) Knowledge of Job

The Tribunal has obtained confirmation that experience was not on the list of criteria.

On the Qualifications criterion, the Appellant scored less than Co-Respondent No .... The latter met the qualifications requirements for the post but the Appellant became eligible for consideration because he obtained an exemption to ... on the basis of his degree in.... Similarly, the criterion Knowledge of the Job had high weightage and Co-Respondent No 4 scored more than the Appellant.

These criteria were given a high weightage by the selection panel which helped the Co-Respondent in the overall markings. The Tribunal has no say on the weights given to the various criteria as the Respondent determines the procedure in dealing with applications, including the proceedings of any selection board appointed by the Commission to interview candidates as per its regulation 17.

However the Tribunal highly recommends that experience should always be a criterion in order to respect Regulation 13(1)(b) of the Local Government Service Regulations.

Counsel for Appellant had raised the point that there were notes in the advertisement which were not in accordance with the prescribed Scheme of Service. But it was clear that these notes were for the guidance of candidates for filling in the application forms and were not related to eligibility concerning the qualifications requirements for the post.

This being so, the Tribunal does not find any reason to allow the appeal.

The appeal is set aside.