

Appellants challenging an appointment MUST show that they were better than the appointees on several criteria, and not just one as markings are given on the sum of marks on all criteria

This is an appeal to the Public Bodies Appeal Tribunal by the Appellant, a GANT, against the appointment of the Co-Respondents as LARY (formerly LAT) in a temporary capacity on ... in the Ministry of ... (the Ministry). The selection exercise was carried out by the Ministry under delegated powers.

Appellant's Case

The Ministry had, by way of internal advertisement, notified vacancies in the post of LARY. Ten officers had been appointed in a temporary capacity. Appellant averred that according to the Scheme of Service, he was more qualified than all the Co-Respondents except one and that he had acted as LARY in all the Specialised Units of the Ministry.

Appellant was appointed GANT in a substantive capacity on...

The Appellant relied on his grounds of appeal and did not submit a Statement of Case.

He argued that, if the Co-Respondents were more qualified, proof should have been produced. He also said that a practical test should be given to all the Co-Respondents to check their competence. He conceded that by practical test he meant that candidates had to understand some terminologies used in the Specialised Units.

He further admitted that Co-Respondent No 1 was the most qualified appointee and he did not challenge his appointment.

During cross examination he said that he had been posted in the Specialised Units in the ALCY Division from ...to as GER.

He admitted having been appointed GANT on 05 June 2015.

He produced a document to show that he spent four months at BESN. He said that he was still working there but in a specialised section and that he had been removed from the Specialised Unit since he entered the appeal before the Tribunal.

He also said that he had worked in the ENY division in the FDO Specialised Unit.

He contested that the Co-Respondent, apart from Co-Respondent No 9 worked in Specialised Units. He specifically mentioned Co-Respondent No 6 who was merely sweeping the offices at the Unit where he worked.

Co-Respondents' Case

All the Co-Respondents decided to abide by the Tribunal's decision except Co-Respondent No 1 who gave a Statement of Defence.

Respondents' Case

The Respondent averred that the post was filled by selection and not by promotion.

According to the Scheme of Service the post of LARY is filled as follows-

“By selection from among employees on the permanent and pensionable establishment of the Ministry who possess at least a pass in ... or ... or ... obtained at the Cambridge School Certificate or at the General Certificate of Education “Ordinary level” or an equivalent qualification acceptable to the Respondent.

Note 1

In the absence of qualified candidates, consideration will be given to employees on the permanent and pensionable establishment of the Ministry who have proven experience of Specialised Unit work although they do not possess the above qualifications.

Note 2

For the first intake, consideration will be given to SPRS who have proven experience of Specialised Unit work, although they do not possess the above qualifications.”

Respondent admitted that the Appellant had been assigned duties of LARY for very short periods. Respondent, however, averred that assignment of duties did not give rise to a claim to permanent appointment and that fact was, invariably, made clear in all letters assigning duties to officers.

During his cross examination, it became clear that, except for Co-Respondent No. 1, he had no knowledge of the Co-Respondents' qualifications and experience.

He was himself not qualified under the core qualifications of the Scheme of Service, but was considered under its Note 1.

With regard to the selection exercise which was carried out by three officers of the Ministry assisted by a Secretary, the representative of the Ministry who was called by the Respondent gave evidence that the Selection Committee had used five criteria (Academic qualifications, knowledge and experience of work, conduct/ attendance personality/ interpersonal skills and performance at interview) to assess the suitability of the candidates.

Determination

Co-Respondents were considered under Note 1, namely candidates who had experience in Specialised Units. Also not all Co-Respondents had the basic qualifications and those who did not have the basic qualifications had to show proof that they were literate and were asked to read a short text in English and in French.

The Tribunal was provided with the markings of the Appellant and the Co-Respondents at the interview as well as the qualifications of all Co-Respondents and their performance as LARY.

The Tribunal found it odd that “performance at the interview” was a criterion in itself instead of being the sum of all the other criteria, as is usually the case for

interviews conducted by Respondent. The Tribunal recommends that Respondent should inform those to whom it delegates its power to harmonise their selection criteria with those of the Commission.

The Tribunal found out that Appellant did get the maximum of marks for experience but did not do so well on the other criteria.

Appellant, who was not assisted by Counsel, was given every opportunity to vindicate his alleged superiority over some of the Co-Respondents. He failed to do so.

The Tribunal did not find that Respondent had erred in its assessment.

The appeal is set aside.