

PUBLIC BODIES APPEAL TRIBUNAL

No. D/34 of 2017

In the matter of:-

1. Bharat BALGOBIN
2. Madew PONCHYE
3. Raj MOHABEER

Appellants

v/s

Public Service Commission

Respondent

and

1. Maniswar SAMMA
2. Vinaye JOOTY
3. Mamade Saleck SOOGUN (declined offer)
4. Oogesh APPALASAMI (declined offer)
5. Parmanand GOBIN
6. Soonilduth BEERBUL (declined offer)

Co-Respondents

Determination

The Appellants are contesting the appointment of Co-Respondent No 5 to the post of Tradesman Assistant. Three of the appointees in this appointment exercise declined the offer of appointment.

Appellants' Case

The Appellants averred that Co-Respondent No 5 did not have the required skills and experience for the job. They had been assigned the duties of Tradesman Assistant Painting for the past 8 years and they themselves possessed the experience and skills required.

Appellant No 1 averred that he joined the Ministry of Health on 16 April 2009 as General Worker. As from 1 July 2009 he was assigned the duties of Tradesman Assistant (Painter) and was paid a responsibility allowance. He performed these duties and was never adversely reported upon for misconduct or insubordination. He acquired experience over the years unlike the Co-Respondents. He conceded that he did not possess a Certificate of Primary Education (CPE). He said that he passed the Trade Test in painting.

Appellant No 2 did not produce a Statement of Case. He averred, however, that he was holder of a CPE. He was assigned the duties of painting.

Appellant No 3 joined the service at the National Trust Fund for Community Health on 28 March 1989 as Handy Worker. He later joined the Ministry of Health as Handy Worker and performed the duties of painter. He performed his duties to the satisfaction of one and all. He never had any adverse report against him for misconduct and insubordination. He conceded that he was not holder of a CPE. He wanted the Tribunal to *“have a correction concerning my post of handy worker to Tradesman Assistant Painter”*.

Respondent’s Case

The Respondent referred to the Scheme of Service to say that the post was filled by selection. There were six vacancies for the post and there was a call for candidates by the Ministry. There were 36 candidates. Three did not attend the interview and 8 were not found suitable as they did not hold a CPE and did not show proof of being literate.

The Ministry, which acted under delegated powers, even though it had sufficient candidates possessing a CPE, decided to call candidates not possessing a CPE for the interview as well. This was done under Note 1 of the Scheme of Service.

The Respondent gave the criteria for selection as follows:

- (i) Academic qualifications
- (ii) Length of service
- (iii) Knowledge of appropriate trade and
- (iv) Aptitude/interest/motivation/ personality

The Respondent gave the record of Appellants No 1 and No 2 relative to the assignment of duties to the higher post of Tradesman Assistant. Appellant No 3 was never assigned the duties of the post.

The Respondent also agreed that the Appellants and the Co-Respondents had no adverse report against them.

The Respondent reiterated that the Appellants were not eligible for the post as per the Scheme of Service.

The Respondent stated that the appeals had no merits and moved that they be set aside.

Determination

The Respondent had raised a point *in limine* in that the Appellants did not hold a CPE and were not eligible for the post as per the Scheme of Service. Their appeals should not be entertained. This point was resisted by the Appellants as they were called for the interview and could not be said not to be eligible. It was agreed that this point should not be argued *in limine* but be taken on the merits.

In fact, the Scheme of Service stipulated that the post was to be filled:

“By selection from among employees on the permanent and pensionable establishment of the Ministry who –

- (a) possess the Certificate of Primary Education; and*
- (b) have knowledge of the appropriate trade*

Note 1

In the absence of candidates possessing the Certificate of Primary Education, consideration will be given to candidates who show proof of being literate.

Note 2

Tradesman's Assistants will be required to pass the appropriate trade test to be eligible for appointment as Tradesman.

Candidates should produce written evidence of knowledge claimed."

The Appellants were called for interview under Note 1 of the Scheme of Service.

There seems to have been some confusion in the application of Note 1 of the Scheme of Service. Note 1 says clearly that it will be applied in the absence of candidates possessing a CPE. (underlining ours) In the present case there were enough candidates having the CPE which makes the decision of the Ministry to invite those without the CPE uncalled for. The Respondent itself in its Statement of Defence averred that the Appellants were not eligible as per the Scheme of Service for the post.

The Ministry, acting on behalf of the Respondent, erred in inviting those without a CPE for interview and in the process flouted the requirements of the Scheme of Service. The Tribunal, then, has to ascertain that, in the process, candidates without a CPE, including the Co-Respondents, have not been appointed. At the hearing the representative of the Ministry confirmed that all the Co-Respondents were holders of a CPE.

This leaves us with Appellant No 2. According to the Respondent he did not have a CPE but Appellant said the contrary. At the hearing the Appellant produced a statement concerning his participation in the CPE examinations and it showed that the Appellant did not have a full CPE.

The representative of the Ministry stated that candidates with or without a CPE were called for interview as often candidates would say that they were holders of a CPE when in fact they were not as was the case of Appellant No 2. However, those who did not have a CPE but passed through a literacy test were interviewed. This should not have been the case. It is possible that in the merit list there could be candidates without CPE and this could cause unnecessary problems.

It is clear, however, that the Appellants do not have a CPE while the Co-Respondents are all holders of a CPE. Therefore, the mistake of the Ministry to

interview those without a CPE is not fatal at this stage. The problem may arise in future appointments if the merit list is used.

Appellant No.3 stated that he wanted the Tribunal to change the appellation of his post of handy worker to Tradesman Assistant (Painter). This is not within the jurisdiction of this Tribunal.

The appeals are, therefore, set aside.

S. Aumeeruddy-Cziffra (Mrs)
Chairperson

Wong So
Member

P. Balgobin-Bhojrul (Mrs)
Member

S. Vithilingem
Member

Date:

Note: This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. Since the case was withdrawn, the Determination of the Tribunal stands good.