

Det 35 of 2017

In very specialised fields, Appellant must not only show that they are fully qualified but that they are more qualified and experienced than Co-Respondent because the competition is harsh. The Tribunal needs to see a flagrant flaw to quash the decision of the Respondent.

Appellants, GOMI in the Ministry of ... hereafter referred to as “the Ministry” (SAYA Office) have appealed against the appointment of Co-Respondents to the post of ... (SAYA & GOMY) in the same Ministry.

Initially there were two appointees but one declined the offer.

The Tribunal decided, with the consent of the parties, to consolidate the appeals as they concerned the same selection exercise and Co-Respondents and were based on the same set of facts. The Tribunal would give only one determination.

Appellants’ Case

Appellant No 1’s Grounds of Appeal (GOA) are as follows:

“1. Wider and more experienced in supervisory duties

I have been assigned the duties of Senior TER on several occasions. The first assignment was on ... for ... days. Thereafter I was assigned duties of STO on ...and....

On..., I was occupying the post of Temporary Senior TER till ... on which date I was nominated as GOMI (Nearly 5 years of Assignment of Duties as Senior TER).

I also occupied the post of Technical Manager from ...till

My experience as GOMI is also of high importance.

2. Better qualified to carry out the duties of Scientific Officer (SO)

In addition to holding a diploma in GOMY, I am also the holder of a diploma in DMD grading which enables me to perform the duties of grading of DMD, one of the principal duties of SO.

3. Duties other than those prescribed in my Scheme of Service

When I acceded to the post of GOMI, I have been more than once solicited to perform the duties of Internal Auditing for ISO 17025: 2008 and I have always performed to expectations. Internal Audits is listed as a main duty in the Scheme of Service of SO.

4. What I want the Tribunal to do

The Tribunal is solicited to act upon the decision of the PSC for the appointment of two officers who are not qualified for the post of Scientific Officer. The Tribunal is requested to look into every detail which led to appointment of SO by PSC because I found myself being sidelined by PSC although I have merits, experience and qualifications. The Tribunal is thus sought after to reverse the decision of the PSC and to disapprove the appointment of those officer as per the annex Internal Memorandum, in my favour.

Appellant No 2 had lodged two distinct appeals, Ref. (PBAT/PSC/...) & (PBAT/PSC/...) the first against Co-Respondent No 1., appointed on ... and the second against Co-Respondent, No 2. appointed on....

Appellant No 2's Grounds of Appeal (GOA)-PBAT/PSC/891 are as follows:

"1. More qualified in the field

2. More experienced

3. Appointees do not qualify for Scheme of Service

2nd case

1. *More experience*
2. *Has performed in a higher post than Appointee*
3. *More skilled and qualified in the field.”*

In his statement of Case he expatiated on these grounds as follows:

Compared to the Co-Respondents who might have the minimum qualifications for the post of Scientific Officer, he was more qualified in GOMY as he held a degree in CEL Engineering, a Diploma in GOMY and a Diploma in DMD Grading and Assortment. He also had a Certificate in STGS and ... Identification

In view of the duties prescribed in the Scheme of Service in relation to the conduct of tests and verification of GS and the grading of GS, DMD and PLS, he was more qualified in the field and his qualifications were more relevant.

He joined the SAYA Office before both Co-Respondents who had worked as TER/STER while he had been working from ... to ... as TER and during that period for a couple of times, he was called upon to perform the work of Senior TER. He was then promoted GOMI (...). Since, he had been working as GOMI and Head of the GOMY Laboratory. In the absence of the Assistant Director, a rank above GOMI and Scientific Officer, he was called upon as the most senior officer to supervise and co-ordinate the work of both GOMI and TER/Senior TER.

Moreover, he had also performed as Assistant Director, an actingship which was given to him for three weeks in 2016. During that period *“I was given the responsibility to manage both the SAYA and GOMY laboratories”* and to carry out the different tasks of the Assistant Director.

Neither of the Co-Respondents 1 and 2 had ever worked in a GOMY Laboratory and they did not have any experience in both testing of PML and GS identification.

He averred that the Co-Respondents did not qualify for the job.

Co-Respondent No 1 does not possess any qualification in GOMY or DMD grading.

Co-Respondent No 2 possessed only a Diploma in GOMY and no qualification in DMD grading. Whilst the Scheme of Service stated that the Scientific Officer should conduct testing and verification GS and identify and grade GS, DMD and PLS.

Co-Respondent No 2 may have the minimum qualifications for the post of Scientific Officer but he was more skilled and qualified since over and above the Diplomas in GOMY and DMD Grading and Assortment, he possessed a Degree in CEL Engineering. He added that he also had a certificate in STGSD identification after a one-month training in Thailand. As a result, he can distinguish between natural and synthetic GS.

During cross-examination Appellants agreed that the appointment exercise was by selection and that seniority was not an overriding criterion. Appellant No 1 also admitted that the post of Scientific Officer was for both SAYA and GOMY. And the Scheme of Service for the post combined the two duties.

Appellant No.1 admitted that the post of Scientific Officer was at supervisory level just below the posts of Assistant Director and Director and the holder was expected to demonstrate supervisory and knowledge and skills in GOMI.

Co-Respondents' stand

Both Co-Respondents had intimated that they would abide by the Tribunal's determination.

Respondent's Case

Respondent laid stress on the nature of the appointment exercise which was by selection rather than promotion. Respondent retraced the career paths of both Appellants, their training and technical qualifications. Respondent also stated that all the candidates convened to an interview were fully qualified according to the Scheme of Service and the job advertisement. Appellants' stress on their long years of service was

irrelevant as the minimum period for eligibility was four years in a substantive capacity in the post. Respondent explained that selection was based on a number of criteria including performance at the interview, possession of supervisory and technical skills and qualifications.

The assessment sheet for the exercise is now available. It shows that all the candidates scored more than 50% of the marks but the two Co-Respondents did slightly better.

On being cross examined by Appellant No 1, the representative of the Respondent explained that the post of Scientific Officer was at supervisory level and he was expected to be familiar with both SAYA and GOMY. As regards auditing, he added that that was a skill expected of all officers in the SAYA Office.

Appellant No. 2 questioned the representative of the Respondent on how Co-Respondent No 1 had been appointed when he did not possess the technical qualifications for the post of Scientific Officer. The reply was that Co-Respondent No 1 in fact, holds a Diploma in grading of DMD and another in GOMY among other qualifications and was therefore qualified for the post.

Counsel for Respondent called his witness. Mr M., the Director of the SAYA Office. Witness affirmed that he had been on the interview panel. He denied that Appellant No. 1 had been sent abroad for 100 days to set up the GOMY laboratory. Actually, he was sent to be trained in the field of GOMY.

Mr M. explained that officers are all expected to engage in the training of their colleagues at an informal level but that formal or institutional training was his sole responsibility and he had a training plan for his staff. Thus he had sent Appellant No 1 who was the most senior officer abroad.

He added that he himself had been to ... for five days to have a global view of GOMY operations as well as the relevant policy framework and institutional arrangements. Indeed, when he asked Appellant on his return from training to start the groundwork for the relevant law, Appellant told him he had not been trained in that aspect of GOMY. Appellant's averment that on his return, he had headed the GOMY

Laboratory was rebutted by the representative of the Respondent who denied there was such a post on the Ministry's establishment. The witness who was on the selection panel as Technical Adviser stated that all the candidates' suitability for the post was considered and the selection was done strictly according to the Respondent's regulations, the Scheme of Service and the selection criteria. The qualifications of all candidates were considered and they were all eligible. Appellant agreed that the GOMY Laboratory started functioning before the posts of GOMI were created. However, his main contribution had been to help in the design of the Laboratory, and the selection and procurement of the right equipment. He also helped the Director prepare the legislation and start the technical work together with Appellant No.2.

Determination

The Tribunal has heard the evidence of the Appellants and endeavoured to do justice to their contentions. But confronted with the evidence from the Respondent and its witness, Mr M., the Director of SAYA, it became clear that Appellants could not convince the Tribunal that they did better at the interview and were more meritorious than the Co-Respondents. When pressed, to say why they considered themselves better than the other Co-Respondents, Appellants could understandably not give a satisfactory answer, except that they were senior to them and had more and higher qualifications and experience. But the Scheme of Service provides that

- A. By selection from among officers who hold a substantive appointment in the grades of-*
- (i) GOMI; and*
 - (ii) TER/Senior TER (SAYA Office) who reckon at least four years' service in a substantive capacity in the grade or an aggregate of at least four years' service in a substantive capacity in the grade of TER/Senior TER (SAYA Office) and the former grades of Senior TER (SAYA Office) and/or TER (SAYA Office)*

and who possess a degree in CTY or CTY Engineering from a recognised institution or an equivalent qualification acceptable to the Public Service Commission.

B. Candidates should

- (i) have good organising skills and administrative abilities; and*
- (ii) possess effective communication and interpersonal skills.”*

The Tribunal has examined closely the oral and written evidence from both sides and the markings at the interview and find no reason to interfere with the selection exercise. First of all, the Tribunal has in mind the requirements of Regulation 14 of the PSC Regulations, in particular the relative importance of “seniority” in a selection exercise, the Respondent’s strict observance of the Scheme of Service and its own selection criteria. Appellants have not been able to find any fault with the selection. The Respondent has taken into account the qualifications of all the candidates, their record of service and their performance at the interview. The only disturbing feature is that one of the Appellants had a degree apart from his two diplomas and this has not allowed him to do better in the selection exercise. But the Respondent’s selection was based on more than one criterion.

For all the reasons set out above, the appeals are set aside.