

Det 43 of 2017

- *If a Scheme of Service provides a minimum qualification for eligibility to a post, there is no need for Respondent to give a marking under that qualification.*
- *If a Scheme of Service provides that a higher qualification would be an advantage, it is quite proper for Respondent to give additional marks for such higher qualification.*

Determination

The Appellant is an AAT at the Ministry of ... He has lodged three appeals in connection with the decision of the Respondent to appoint the Co-Respondents to the post of TSFA (Shift) (formerly known as GH). The appointments were made by the Ministry under delegated powers from the Respondent.

Appellant's Case

In the first appeal (against Co-Respondents Nos 1 to 20), the Appellant had given as Grounds of Appeal his seniority in the service. He also questioned the fact that the Scheme of Service mentioned under academic qualifications the possession of a Primary School Leaving Certificate (PSLC) and the Cambridge School Certificate (SC). He could not understand why the Scheme of Service had to include a Primary School Leaving Certificate when a Cambridge School Certificate was required.

In his second appeal (against Co-Respondent No 21), the Appellant had put in his Grounds of Appeal as follows:

- “(1) *Seniority join service*
- (2) *anomaly of scheme of service*
- (3) *anomaly post apply between GH and TSFA*

- (4) *Requirement on Scheme of Service is Primary School of Cambridge.*
- (5) *Request for their Cambridge certificate each person mentioned in the nominated post if requirement is pass Cambridge or fail'. (SIC)*

In his third appeal (against Co-Respondents Nos. 22 to 34), the Appellant's Grounds of Appeal were as follows:

“(1) Qualification

(2) Job knowledge

(3) Merit

(4) Some officers have bad conduct (absence)

(5) 5 minutes interview we were asked describe yourself, I wish to know if we get mark for this

(6) The marking of each candidate must be viewed by the Chairperson and members to see if the PSC was fair to me” (SIC)

The Appellant did not produce a Statement of Case in the first two appeals to expatiate on his appeals but he was given full opportunity to explain his case at the Hearing. However, he produced a Statement of Case for his third appeal.

He also stated that he had no problem as regards to the appointment of those who joined the service prior to him. He was not contesting the appointment of those who had higher qualifications than him.

On cross-examination, the Appellant decided to drop his ground regarding seniority as he understood that seniority was not an overriding criterion. He had himself studied up to ... but had to stop attending school because, being the eldest child, he had to support the whole family.

The Appellant averred that he could not understand how the Respondent could appoint (1) those who had only the Certificate of ...; (2) those who had only 7 or 8 years' service while he had been in employment for some 15 years and (3) why one of the

appointee in the third batch was not attending work on a regular basis and yet was appointed instead of him.

The Appellant found that the Respondent had been unfair to him and he should have been appointed.

Respondent's Case

The Respondent in reply to the two appeals averred that:

"1) *as per the scheme of service for the post of GH, (restyled AAT) (Shift), the qualifications required of candidates are as follows:-*

"A. Primary School Leaving Certificate or an alternative qualification acceptable to the Public Service Commission

B. Ability to speak and write simple English and French

C. Good Personality.

Note

Preference will be given to candidates who show proof of having sat for the Cambridge School Certificate".

Following vacancies in the post of AAT, the post was advertised on ... A selection exercise was carried out internally for the filling of 20 funded vacancies. There were 208 applications, out of which 16 were not found eligible. The remaining 192 candidates were called for interview, 44 candidates did not attend the interview and 5 candidates who attended the interview were disqualified. One candidate informed the interview panel that she was no longer interested in the post.

The remaining 142 candidates were assessed on the following criteria:

- (a) Qualifications;
- (b) Ability to speak and write simple English and French;
- (c) Personality; and

(d) Aptitude, interest and motivation.

The interview board drew up a merit list and as there were only 20 funded vacancies, the first 20 candidates were appointed in a temporary capacity. Co-Respondent No. 3, however, declined the offer of appointment and the next candidate on the merit list namely, Co-Respondent No. 21, was offered appointment, which he accepted. The second appeal of the Appellant referred to the appointment of Co-Respondent No. 21.

The Respondent averred that since this was a selection exercise, seniority was not an overriding criterion. The Respondent stated that the Appellant and the Co-Respondents were all eligible for the post but the Co-Respondents were offered appointment as they were the most deserving candidates as they came immediately after the appointees on the merit list for the first two appeals. As regards to the third appeal (concerning Co-Respondents Nos. 22 to 34), they were next on the merit list.

The Respondent further averred that the Tribunal had no jurisdiction to delve into matters relating to Schemes of Service and amendments thereto. Therefore, Grounds 2, 3 and 4 in the second appeal should be disregarded. Furthermore, the Respondent found these grounds too vague.

The Respondent averred that the appeals had no merit and moved that they be set aside.

Determination

The point raised by the Respondent concerning the jurisdiction of the Tribunal concerning Schemes of Service is valid. Appointments to post in the public service are made in accordance with the prescribed Schemes of Service at the time the posts are being filled. This cannot be challenged. The Tribunal, therefore, has no jurisdiction on the matter and the grounds 2, 3 and 4 in the second appeal are discarded.

There is also some confusion on the part of the Appellant regarding reference to the qualifications requirements in the Scheme of Service. This led the Appellant to ask why the Primary School Leaving Certificate was required if the higher qualification of

Cambridge School Certificate was also expected from candidates. However, it is clear from the Scheme of Service for the post that the basic requirement was a Primary School Leaving Certificate. It is only under the NOTE in the Scheme of Service that mention is made that candidates would be given an advantage if they showed proof that they sat for the Cambridge School Certificate, irrespective of whether they passed or not.

From the confidential information provided to the Tribunal, it is noted that the selection panel awarded marks under the criterion "Qualifications" as follows: PSLC/CPE (10 marks) and an additional 5 marks for those who passed the SC and only 2 marks for those who sat the SC but did not pass. The markings for the PSLC/CPE were superfluous as all the eligible candidates who were called for interview had to have a PSLC/CPE and they would all get the 10 marks and this marking would be of no use to demarcate candidates. The Appellant did not obtain the additional marks as he had studied only up to Form IV. As regards those who only had the PSLC/CPE, they performed better than the Appellant on the other criteria and obtained higher overall marks.

The Appellant had stated at the Hearing that one of the Co-Respondents in the third batch was not regular at work and that he had exhausted his sick and vacation leaves. However, from confidential information made available to the Tribunal by the Respondent, all the 13 Co-Respondents in the third batch had good reports regarding work, conduct and attendance.

The Tribunal finds that the appeals have no merit and they are set aside.