

Det 45 of 2017

- It is not reasonable for Respondent to appoint an officer who had less experience of the job whereas Appellant had occupied higher positions of responsibility for a long time without any adverse report.
- Work experience in the job is THE most important criteria for certain specific jobs.

This is an appeal from a CCH of the Ministry of ... concerning the appointment of the Co-Respondent No.1 as SCCH (hereafter referred to as the Co-Respondent). There were six other Co-Respondents.

Appellant's Case

Appellant based his appeal on the following Grounds of Appeal:

“The decision of Respondent, is procedurally flawed and against the legitimate expectation of the Appellant in as much as:

1. *Regulation 14 of the Public Services Commission Regulations provides that, qualification, merit and **experience** is taken into account before seniority.*
2. *The scheme of service provides for a Cambridge School Certificate with credit in at least 5 subjects or an equivalent qualification acceptable to the Board;*
3. *Although both the Appellant and the Respondent hold the basic qualification entitling both to be recruited in the post of CCH, yet the Appellant reckons more than ... years in the public service.*
4. *It is not because the Appellant was initially appointed on the basis of a scheme of service for SWCCH whereby promotion was made on a seniority criteria that he is seeking to challenge the appointment of the*

Co-Respondent but more specifically because the post of SWCCH requires someone of experience as he will be dealing with vulnerable groups.

5. *Appellant has joined service as SWCCH/LFS on the ..., and before his appointment he was assigned duties as SWCCH/LFS from the The Co-Respondent was appointed much later.*

6. *The Appellant was further assigned higher responsibilities at the level of SCCH for different periods.*

7. *The Appellant avers that the Respondent has not acted fairly, and has ignored the years of hard earned experience of the Appellant. The Appellant was designated as officer in charge of the office (where he is still posted) since the ... and this has up to now, not been revoked.*

8. *The co-Respondent who has been appointed in the post of SCCH, is one of the junior most CCH in the list of CCH, all fields included and has always been working under the supervision of the Appellant.*

9. *Unless the Respondent is able justify an objective criteria why the Co-Respondent has been favoured to the detriment of the Appellant, the latter will always have a lingering doubt that the Respondent had already made up his mind to recruit the Co-Respondent at the expense of any other candidate.*

10. *The Appellant is now aged over 60 and this is his last chance to accede to a position which he believes he truly deserves.” (SIC)*

In his Statement of Case he laid emphasis on the fact that the Co-Respondent had been working under his supervision since he was appointed CCH in

He stated that “*the decision of Respondent, is procedurally flawed, unfair, illegal and in breach of the rules of natural justice and of the legitimate expectation of the Appellant in as much as:*

(i) *Appellant held the same acceptable equivalent qualifications as the Co-Respondent to be appointed in the post;*

- (ii) *The Appellant reckoned more experience and had acting management experience as officer in charge;*
- (iii) *It is only legitimate for the Appellant who is almost nearing retirement to aspire to be appointed in the post of SCCH."*

Appellant's Counsel, in aid of his contention, referred to the Supreme Court case of Appadu G and Ors v PSC and Anor (2003 SCJ 29 and 2002 MR 189) and cited as follows and maintained that "*seniority still remains a relevant factor where there is little else to demarcate the candidates*"

Co-Respondents' Stand

All the Co-Respondents decided to abide by the decision of the Tribunal.

Respondent's Case

Respondent's Representative solemnly affirmed as to the correctness of Respondent's Statement of Defence which provided as follows:

On 2 occasions, the Responsible Officer, Ministry of ..., reported ... vacancies in the grade of Senior SCCH and recommended that a selection be carried out. The vacancies were advertised on ... and candidates applied and many were found eligible and were called for interview. Some of them were appointed, following which one retired from service and the next meritorious candidate on the merit list was offered appointment. Another candidate from the appointees retired from the service on the grounds of age limit on Co-Respondent who was next on the list was appointed, thus this appeal.

Appellant was appointed SCCH/LFS in a substantive capacity on

He was assigned duties of SWCCH/LFS for several periods. In addition, the Respondent stated that the Appellant was assigned the duties of SCCH for several periods

But Respondent averred that assignment of duties was done for administrative convenience and does not give claim for appointment to the higher post. It also averred

that the post of SCCH was filled by selection even prior to the prescription of the present Scheme of Service. Seniority in that case was not an overriding criterion.

The Respondent also averred that the Appellant was designated as officer in charge of an office for a period. Appellant was posted to another office and was designated as officer in charge for a period. Appellant was thereafter posted back to the previous office where he was designated as the officer in charge of the office. During these periods, Co-Respondent, who was posted at the office, was working under the supervision of the Appellant. The Respondent stated that “officer in charge” was not an established post in the Civil Establishment Order but was only a posting on the different sites of work of the Ministry.

A document produced before the Tribunal specified that “*such responsibilities are entrusted to the Officers as per the organisational structure of the system under the recommendation of the Director*”.

Co-Respondent joined service on ... and was appointed CCH on Respondent admitted that Co-Respondent did indeed work under the supervision of Appellant at the office where Appellant was still the officer in charge.

Co-Respondent was never assigned duties of SCCH nor been entrusted the duties of officer in charge. Respondent denied that “*the Scheme of service provides for a Cambridge School Certificate with credit in at least 5 subjects or an equivalent qualification acceptable to the board*” as stated by Appellant in his Statement of Case.

The Respondent averred that the present appeal had no merit and moved that it be set aside.

Determination

The post of SCCH was filled:

“*By selection from among officers in the grade of CCH who reckon at least five years’ service in a substantive capacity in the grade or at least five years’ service in a substantive capacity in the former grade of CCH and who possess different skills*”.

At the Hearing the representative of the Respondent produced the list of criteria that were used by the selection panel which were as follows:

- (i) Academic qualifications
- (ii) Work Experience as CCH
- (iii) Communication and Interpersonal Skills
- (iv) Organisational and administrative Skills
- (v) Training and Supervisory Skills and
- (vi) Leadership Skills

The Respondent provided to the Tribunal under confidential cover the weights and markings given by the selection panel. The Tribunal finds that:

- (i) The Appellant scored full marks under the criterion Experience while the Co-Respondent did not even score half of the marks allocated for this criterion,
- (ii) On the other criteria the Co-Respondent was given more marks which led to the former being appointed.

The Tribunal notes that the Appellant, who joined the grade of WCCH before the Co-Respondent, obtained full marks for experience as CCH. Although seniority is not a determining factor in a selection exercise, it cannot be denied that the number of years one spends in a grade does provide an opportunity for the incumbent to acquire experience. In this selection exercise the selection panel did recognize and accept that the Appellant was a fully experienced CCH contrary to the Co-Respondent. The Tribunal finds it therefore strange how a person who lags far behind in terms of experience as CCH can be found more suitable for the higher position of SCCH.

On delving further into the markings, the Tribunal finds that the Co-Respondent was found to be better than the Appellant on several skills. The Respondent had itself stated that the Appellant was made to perform the duties of WCCH on a few occasions well before he was appointed to that position in a substantive capacity. On appointment as WCCH he was assigned the duties of SCCH on several occasions, at times for periods of up to six months or until filling of vacancies. The Appellant as CCH was

designated to be the officer in charge of the office for five years. He was then made officer in another office for three years before being posted back to the first office again as officer in charge. The Respondent conceded that the Co-Respondent was never assigned the duties of SCCH or officer in charge.

It is a fact that when an officer is assigned higher duties the letter assigning such duties always caution the person that such assignment of duties will not give any claim for permanent appointment to the higher post. For the position of officer in charge, the Respondent states that this is not an official post in the Civil Establishment Order. This is true but the post of officer in charge carries higher responsibilities where management skills and organizational abilities are required and assignment of duties gives exposure to the nature and responsibilities of the higher post.

The Tribunal finds it most unreasonable that the Co-Respondent who worked under the supervision of the Appellant at the office can be found to be more deserving. If the Respondent was paying allowances to the Appellant for the assignments of duties, and for performing duties of officer in charge and he was not up to the required standard for such long periods the expenses incurred by the Ministry would then be nugatory. But more important still, the Respondent would be flouting its own Regulation 14 which says that *“In exercising its powers of appointment and promotion, including, subject to paragraph (5), promotion by selection , the Commission shall –*

- (a) *Have regard to the maintenance of the high standard of efficiency necessary in the public service*”

The Tribunal is more prone to believe that the assessment was flawed given that there were no adverse reports against the Appellant while he was under assignments of duty or performing the duties of officer in charge. It is surprising that the selection panel could have found that the Co-Respondent had better skills than the Appellant who was heading the two offices for so long while the Co-Respondent was all along working under his supervision.

The Tribunal finds that the Respondent has been unreasonable in its assessment which no right-minded person will find fair.

The Tribunal allows the appeal and quashes the decision of the Respondent to appoint the Co-Respondent for reasons explained above and does not question the appointment of the other Co-Respondents. The Tribunal remits the matter to the Respondent for justice to be done.