

The fact that a candidate had been given a warning in the past does not preclude the Respondent from appointing him if he qualifies for the job and is the best candidate

Mr A. Jeebodhun has appealed before the Tribunal against the decision of the Respondent to appoint Mrs R. Bissessur, as Deputy Director in Valuation and Real Estate Consultancy Services on 7 June 2011. He has done so on the following grounds:

- “1. *I am more qualified than Mrs Roshnee Bissessur (hereinafter referred to as “the appointed person”).*
2. *I am senior in experience to the appointed person.*
3. *I have never subject of any adverse report while in the public service.*
4. *The appointed person is subject of adverse reports.*
5. *My performance at the interview was excellent and I have answered all questions – whether technical questions or otherwise – to the satisfaction of the Interview Panel consisting of Messrs Soobhagawatee DHUNOOKCHAND (Deputy Chairperson of the PSC), Cyril Louis Benjamin FRANCHETTE (Commissioner of the PSC) and Yodhun Bissessur (Chief Government Valuer/Director, Valuation and Real Estate Consultancy Services).*
6. *On a consideration of qualifications, experience and merit, I am better qualified to discharge the duties of the post of Deputy Director, Valuation and Real estate Consultancy Services as prescribed in PSC Circular Note No. 32 of 2010.”*

Appellant’s Case

The Appellant drew the attention of the Tribunal to his qualifications and to his seniority and experience in the field of valuation. He holds a Bachelor of Business in Property after having studied for a period of three years and he is also an Associate Member of the Australian Property Institute. He stated having vast experience in the field of valuation as he joined the service as Valuation Assistant on the 25th October 1978 and helped in the preparation of valuation reports for the

government valuers. He was therefore confident that he could discharge the responsibilities of the Deputy Director which are as follows:

1. To deputise the Chief Government Valuer as and when required and to assist him in the management of Valuation Office
2. To coordinate the work of the professional and technical sections.
3. To be responsible for investigation work.
4. To perform valuation work including Rating Assessment under the Local Government Act 1962 as subsequently amended, as instructed by the Chief Government Valuer and Valuation Officer.
5. To keep the Chief Government Valuer informed of current market trends.
6. To be responsible for the preparation and updating of "Chapters of Instructions".
7. To appear as expert witness before:
 - (i) Boards of Assessment constituted under the Land Acquisition Act, 1973, in all matters under dispute.
 - (ii) The Tax appeal Tribunal constituted under the Land Duties and Taxes Act.
 - (iii) The Valuation Tribunal constituted under the Local Government Act, 1989.
 - (iv) Any other appropriate board or tribunal set up or to be set up in relation to assessment and/or valuation purpose.

Following his interview at the PSC, he was of the impression that he performed very well and, therefore, could not understand why he was not selected. He maintained having never had any adverse report. He stated, however, having been interviewed by the ICAC under caution and that, following an enquiry, a provisional charge had been lodged against him before the District Court of Rose Hill. The Co-Respondent for her part, had received adverse reports on two occasions in 2006 and 2007.

Under cross examination, Appellant confirmed having been appointed on the same day as the Co-Respondent as Government Valuer, i.e. 22 April 1999. He conceded that the Co-Respondent

was the holder of a Masters Degree whereas he only had a Bachelor Degree. In relation to his seniority, he explained having joined the service earlier than the Co-Respondent and that he had great experience as a Valuation Assistant. To a question put to him by Counsel for Respondent, he stated being aware that the Respondent at the time of the selection exercise, requested for his confidential reports dating back to three previous years as was the standard procedure.

Co-Respondent's Case

Mrs Bissessur, the Co-Respondent took strong objection to the fact that the Appellant was aware of the content of her confidential reports. She stated having appealed against the sanction imposed by the Responsible Officer in year 2007 but that the Respondent nonetheless had maintained the sanction. She stressed on the fact that her experience dates back to 2005 when she was appointed temporarily to the post of Deputy Director until 2010 when her appointment was quashed by the Supreme Court. She, therefore, had greater experience than the Appellant.

Respondent's Case

Ms Nundloll, the representative of the Respondent, deponed and explained that both Appellant and Co-Respondent had relevant qualifications for the post and were, therefore, eligible. Both were appointed to the post of Valuation Officer on the 22nd April 1999. She confirmed that the Co-Respondent had adverse reports in her confidential reports in the years 2006 and 2007. She explained to the Tribunal that the criteria used by the selection panel were qualifications, experience, communication skills, knowledge related to policies and guidelines, leadership and managerial skills and aptitude for the post. Moreover, according to her records, the Co-Respondent was better qualified than the Appellant as she sat for the final examinations of the Incorporated Society of Valuers and Auctioneers and is an Associate of the Incorporated Society of Valuers and Auctioneers and Professional Associate of the Chartered Surveyors, in addition to her MSc in Real Estate from the University of Reading (U.K.)

Moreover, she also had greater experience as she was appointed Lead Government Valuer on 10 November 2001 whereas the Appellant was appointed to the same post on 12 February 2005. She ranked 2nd on the staff list whereas the Appellant ranked 4th in the grade of Lead Government Valuer.

In 2005, after Mrs Bissessur was appointed Deputy Chief Government Valuer (now Deputy Director) Mrs Sewgobind who was one of those not appointed, applied by way of judicial review to the Supreme Court to have the decision quashed and the appointment of Mrs Bissessur was quashed in 2010.

However, Mrs Bissessur was again assigned the duties of Deputy Director as from 2 August 2010 until filling of the vacancy on 7 June 2011. Her experience therefore dates back to 2005. The Appellant on the other hand, was assigned the duties of Deputy Director for shorter periods on the grounds of administrative exigency of service.

The fact that the Co-Respondent was reprimanded in 2007 was in the confidential reports of Co-Respondent that was communicated to the interview panel but this did not debar Co-Respondent from being appointed to the post.

Under cross examination, the representative of the Respondent clarified that the Co-Respondent was reprimanded in 2007 and a warning was issued to her in 2006. Under PSC Regulation 42, the Responsible Officer is entitled to issue warnings at his level and take disciplinary action. Reprimand is the lowest sanction that can be effected and the highest action is deferment of increments. If a Responsible Officer feels that the person's attention needs be drawn but that a sanction is not needed, a warning is usually issued and a copy placed in the file.

At the time of the selection exercise, adverse reports on the candidates for the last three years were communicated to the panel and since the reprimand inflicted on Mrs Bissessur dated back to 2007, this was reflected in the 2007 confidential report before the panel. At the time of the

interview, the Respondent was therefore aware of the reason why the Co-Respondent was reprimanded in her capacity as Deputy Director.

Findings

The Tribunal has carefully considered all the evidence adduced before it. It is clear that one of the grounds on which the Appellant is challenging the appointment of Mrs Bissessur is that of seniority. In addition to seniority not being an overriding criterion that is taken into consideration in a selection exercise, it is also obvious that the Co-Respondent was more senior than the Appellant at the time of the selection. The Appellant also contended before the Tribunal that he was better qualified than the Co-Respondent. A cursory glance at Mrs Bissessur's qualifications reveals, however, that Co-Respondent has higher qualifications than the Appellant.

The Appellant has laid emphasis on the fact that the Co-Respondent was reprimanded in the past. It is pertinent to note that Mr Yodhun Bissessur, Chief Government Valuer, who reprimanded the Appointee in 2007, sat on the interview panel. The members of the selection panel were in possession of the Co-Respondent's confidential reports and were at liberty to confer with Mr Yodhun Bissessur regarding the reprimand he inflicted on the appointee. Yet, they still thought it fit to appoint her.

Having carefully considered all the various elements put forward by the Appellant in this matter, the Tribunal finds no reason to intervene and the appeal is therefore set aside.

- *** 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. The Supreme Court upheld the determination of the Tribunal which has now become final.**