

PUBLIC BODIES APPEAL TRIBUNAL

No. 17 of 2012

In the matter of:-

S. Bissumbur

(Appellant)

versus

Public Service Commission

(Respondent)

Mr Pierre

(Co-Respondent)

Determination

Appellant is contesting the appointment of Mr. Pierre as Deputy Director, Nursing.

Appellant's Case

Appellant averred that he had 41 years of service in the nursing cadre.

He was called to the PSC for interview for the posts of Director and Deputy Director, Nursing. Two letters were issued to him, one for 9.30 a.m. for the post of Director and the second one for 11.45 a.m. for the post of Deputy Director on the same day, i.e. 6 October 2010. He was interviewed only once and questions related mostly to the duties of Director. Under cross examination, he did not accept that in an interview of 20 minutes he could have been assessed for the two posts which were different in nature. He denied that he was made aware of the fact that he was being interviewed for both posts.

The post of Director and that of Deputy Director are completely different as regards line of command and duties performed. He had gone through selection exercises in the past and had always been ranked before the Co-Respondent. For the post of Nursing supervisor he was 7th and Co-Respondent was ranked 11th. For the post of Nursing Administrator he ranked 3rd and Co-Respondent was appointed two months later while for the post of Regional Nursing Administrator he was 1st on the list and Co-Respondent came 3rd.

Both he and Co-respondent had the same qualifications and he was senior and therefore more deserving to be appointed Deputy Director, Nursing.

Respondent's case

Respondent averred that both officers joined the nursing cadre on the same date. The posts of Director and Deputy Director, Nursing are filled by selection as per the respective schemes of service.

All candidates received the same letters as Appellant and no specific time was given to individual candidates. At one point, after the first candidate Mr Sewraz was interviewed and had stepped out of the interview room, the selection panel decided to conduct one interview for both posts and therefore called him inside anew to interview him for the second post rather than call him again on the same day for interview.

When Appellant went in for interview, the selection panel took only one letter from him as it was only to check the particulars of the candidate and his identity and once this was done there was no need to take the second letter.

The interview was carried out for both posts consecutively to avoid the candidate waiting and coming into the interview room a second time. This explained why Appellant went in the interview room only once. Counsel for Respondent filed an affidavit in which the Deputy Chair of the PSC, who was also chairing the selection panel, certifies *inter alia* that Appellant's attention was drawn to the fact that the interview was to cover the two posts which Appellant applied for

There were two mark sheets, one for each post and candidates were marked according to different criteria for the posts. The criteria for the post of Director were: qualifications, experience, personality, communications/interpersonal skills, organization of training programmes, and managerial/leadership skills. For the post of Deputy Director, the criteria were the same except for the additional criterion of managerial/leadership skills.

Respondent stated that seniority was not the guiding criterion as this was a selection exercise and the provisions of PSC regulation 14 (1) (c) prevailed.

The five days of actingship as Deputy Director, Nursing did not give the Appellant any claim for substantive appointment to the post.

Respondent's Submission

Counsel conceded that two interviews were planned for Appellant as he applied for the post of Director and the post of Deputy Director. However, the panel found it convenient that candidates who applied for both posts should be interviewed consecutively at one sitting instead of making them wait for the second interview. She referred to the affidavit sworn by the Deputy Chair of the PSC where it is said that Appellant was **informed** about this.

Counsel further argued that when the PSC Usher, during the tea-break at 10.45, told Appellant and another candidate, who also applied for the two posts, that they could go and the interview they had gone through was for the two posts, they left without any complaint or protest that they had not gone through the second interview.

Counsel for Respondent refuted the argument of Appellant that, had he been given a chance to be interviewed for the post of Deputy Director, he would have obtained the job. Appellant had not shown that he was more deserving than Co-respondent.

The fact that Appellant was interviewed for only 20 minutes had no bearing on the outcome as it was the quality of the interview that matters.

Counsel said that it was nowhere said that the convocation letters should be taken from candidates. The Appellant was asked one of the letters to check his identity and once this was done there was no need to ask for the second letter from Appellant.

Counsel concluded and referred to PSC Regulation 14 (1)(c) to say that the fact that Appellant was senior to Co-Respondent was not a crucial issue as the appointment was by way of selection. Similarly, the fact that Appellant acted as Director Nursing for five days did not give Appellant any claim for substantive appointment.

Appellant could not say that he was treated unfairly and the appointment of Co-respondent was unjustified.

Counsel moves that the appeal be set aside

Appellant's submission

Appellant submitted that he applied for the post of Director and also that of Deputy Director. He had a legitimate expectation that he would be interviewed for the two posts as he was convened to the PSC to be interviewed at two different times for each post. It was only when the panel stopped the interviews for tea that the Usher came to inform him that he could go as the interview was for both posts. There was no reason why Appellant should have waited if it were not for the interview. The fact that a second candidate was also waiting tended to support his impression that there was going to be a second interview for the post of Deputy Director.

He found it unreasonable that he was interviewed for 20 minutes only for the two posts while other candidates were interviewed for a much longer period.

Appellant said that he did not complain when he was told to go as he was also told that the interview would count for both posts. But he still strongly believed that there should have been two separate interviews.

Determination

The fact that the posts of Director and Deputy Director, Nursing were to be filled by selection was not disputed. This was as per the respective schemes of service.

The issue is what happened on the 6 October 2010 when candidates were called at the PSC for interviews. There is no doubt that there was going to be two interviews for those who applied for the two posts. The letters issued to Appellant were clear about this and Counsel for Respondent agreed that this was so. The matter became blurred when the selection panel took the decision to combine the interviews for the two posts into one in which the candidates were to be interviewed consecutively for each post. However this is not at all illogical but should have been decided as far back as at the time when candidates were called for **interview and the candidates should have been informed accordingly.**

The version of Respondent was that Appellant was told during the interview itself that he would be interviewed for the two posts at one go to avoid making him wait for a second interview. This had been supported by way of a sworn affidavit. Unfortunately, the Appellant has not been able to cross examine the maker of the affidavit and therefore the Tribunal has to consider the weight to be attached to it especially since the affidavit relates to the crux of the matter which is the subject of the present appeal. The version of Appellant was that he was not told about this change during the interview and was only informed by the Usher later that he can leave and that the interview would be used for both posts. This was also the case for another candidate who had applied for the two posts. It is clear from Appellant's submissions and stand throughout the case that, in his opinion, at the time he was interviewed by the panel, the latter had not already decided to carry out one interview for both posts but that they took this decision subsequently after interviewing another candidate.

The Tribunal cannot but wonder why the Appellant would sit and wait for a second interview if he had earlier been informed that he would not be interviewed again. Further, one could wonder why the Usher was subsequently asked to tell Appellant to leave, after the tea-break and after the Appellant was interviewed, if he

had already been told at the interview that the interview was going to be for the two posts.

It was apparent from the demeanour of Appellant during the whole hearing that he was genuinely unaware that he was being interviewed for the two posts at the same time in the interview room. Had the selection panel decided to interview candidates for both posts, it would be legitimate for the Appellant to wonder whether the panel had borne in mind all relevant criteria relevant to the second post while examining and assessing him. Appellant had the impression that he was being interviewed for the post of Director.

The Tribunal is aware that the Public Service Commission is the sole body responsible for appointment in the public service and according to its Regulation 17 *“The Commission may determine the procedure to be followed in dealing with applications for appointment in the public service, including the proceedings of any selection board appointed by the Commission to interview candidates”*.

The post of Deputy Director, Nursing is filled by selection and Appellant cannot play on the element of seniority. The mere fact that he was senior to Co-Respondent was not enough to get him the job in a selection exercise. Respondent applied PSC Regulation 14 (1)(c) and several criteria were assessed in the selection exercise. In fact there was a string of criteria and on which ones the Appellant faulted is not known. Appellant has not pressed the point. It looks dubious though that Appellant had an edge on all the previous selection exercises over Co-Respondent to find himself ousted in this final leg. This could have been plausible if for the post of Director the criterion of managerial/leadership skills, where there is an element of subjectivity, was taken into consideration. In the case of Deputy Director, the criteria seem standard elements in the assessment of officers in the technical cadre. Respondent agreed that the Appellant had been doing better than the Co-Respondent in all the previous selection exercises.

The Tribunal finds that there are grey areas as to the way the interview was conducted which can leave doubts as to whether the process has been fair to Appellant.

The appeal is allowed.

S. Aumeeruddy-Cziffra (Mrs)
Chairperson

Wong So
Member

P. Balgobin-Bhojru (Mrs)
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.