

Det 23 of 2012

**Re effective date of appointment: PSC Circular No.5 holds that when there is a break in the assignment of duties then the effective date is that of assumption of duty.**

The Appellant challenged the decision of Respondent to appoint her as from the date of her assumption of duty to the post and not at an earlier date as was the case for her other colleagues posted at the same time as her. The Appellant felt that her promotion should also be backdated to the same dates as her colleagues who were appointed at the same time as her or to an even earlier date as she was senior to them. When she received the letter assigning her to the post, it was never mentioned that the assignment of duties would lapse if she took up a post elsewhere. The Appellant believed that her assignment of duties was continuous until the time that she resumed duty to her prior post. But she conceded that she could not perform for the new post while she was not at the Ministry. When cross-examined, the Appellant was not aware of PSC Circular No.5 of 2008 regarding the determination of effective date of appointment for grade-to-grade promotion in the public service.

Respondent averred that given that Appellant had left for some time to take up employment elsewhere, her assignment of duties had lapsed automatically. With this break in her continuity of assignment of duties, her appointment to a higher grade could only take effect as from the date she assumed duty in that post in a substantive capacity. Respondent referred to PSC Circular Note No.5 of 2008 in this connection.

The Tribunal determined that “it is clearly spelt out that when an officer is assigned duties for a post and is subsequently offered appointment to that post then the date of appointment takes effect from the date the officer was assigned duties if there was a vacancy at that time or at a later date during the assignment of duties if the post became vacant at a later date”. The Tribunal has determined that the stand of the Appellant was farfetched and defied logic as no one can perform a job when not in the post. In this connection, the Tribunal could only brush aside the stand of the Appellant.

The Tribunal found it quite surprising that the Appellant was not aware of the contents of the PSC Circular No. 5 of 2008. It was also determined that the Appellant could not claim to a backdating of her appointment as was the case for the other appointees. There had been no break in their position until they were offered an appointment. Further the Tribunal determined that the Respondent was right to have appointed them as from the date they were assigned duties in the post and the Appellant could not unfortunately benefit from this decision. Although Appellant was senior to the other appointees before the appointment exercise, she had lost her seniority in the light of the new effective dates of the appointments. The fact that she had to forego her privileges as a result of the refusal of the Respondent to backdate her appointment was unfortunately a consequence of her own choices. In any case those lost privileges were not thrashed out before this Tribunal which is not mandated to deal with such issues but merely with the appointment exercise. The Tribunal set aside the appeal.