

Det 24 of 2012

Although an allegation of bias is difficult to prove regarding the attitude of the interviewing panel, a perusal of all information provided by Respondent to the Tribunal confidentially does shed light on such allegations.

The Appellant challenged the decision of the Respondent to appoint Co-Respondent to a higher post. He averred that he had been assigned duties to that post in the past and felt aggrieved as he had higher qualifications than Co-Respondent. The Appellant believed that he would have got the job if the selection procedure had been “fair, related to successful job performance and desirable behavior”. He felt that one member of the interviewing panel treated him in a rude manner and this could have vitiated the assessment process and deprived him of the appointment. He conceded that he made two mistakes in his application form but that was no reason for the panel member to react the way he did and even called the Appellant a liar. The Appellant said that this reaction left him “shattered” and affected the way he answered questions from the panel. The Appellant prayed that the decision of the Respondent be set aside “in the interest of merit, principle, equity and justice”.

Respondent averred that the post was filled from officers in a specific grade who reckoned at least 3 years’ service in a substantive capacity and who had a thorough knowledge of issues pertaining to the specific field of work. The other requirements mentioned in the Scheme of Service were that the candidates should also possess good administrative and supervisory skills, leadership skills, good communication and interpersonal

skills. Respondent averred that the post was filled by selection and candidates were assessed as per the requirements of the post and performance at the interview while taking into account Regulation 14 and Regulation 19(6) of the PSC Regulations. The Respondent conceded that the Appellant was fully qualified for the post but the Co-Respondent was found to be a better candidate. It noted that the Appellant ranked third among applicants and he was junior to Co-Respondent who held the same post as him. Further the Appellant's assignment of duties did not give him any claim for appointment. The representative of Respondent explained that the Appellant had made incorrect inputs on his application form and could not say anything about the incident in the interview room as she was not there. The Respondent noted that the Appellant conceded that he had not performed well at the interview and denied that an "element of bias had set in".

Co-Respondent had intimated to the Tribunal that he would abide by its decision.

The Tribunal determined that the apprehension of possible bias on the part of one member of the interviewing panel is a serious matter and if it proved correct, the duty of the panel to act fairly would have failed. However, this was a difficult task given that the Appellant was alone before the panel and had nobody else to corroborate his version. The Tribunal did not have the benefit of hearing and assessing the version of any member of the Respondent's interviewing panel. This would have been crucial to

decide whether the apprehension of bias was real and not mere speculation or suspicion from somebody who had not been successful in a selection exercise. Upon perusal of information pertaining to the qualifications of the Appellant and the Co-Respondent, the criteria used for the assessment of the candidates and above all the marks given by each member of the interviewing panel to see whether there had really been bias in one way or the other, it was not possible to see whether there had really been bias, whether Appellant had been given lower marks compared to the other candidates. According to the Respondent, the interviewing panel submitted a consolidated mark sheet to the Commission. The Tribunal expressed scepticism as to whether this is a transparent way for the panel to submit its report as each member is supposed to act independently and their individual assessment should have been kept separately. Hence the Tribunal suggested that it might be wise to reconsider the practice so as to enable the Tribunal to look into any allegation of individual bias as claimed by Appellants in the future.

The Tribunal also found that the additional qualifications of the Appellant, which were one of his main grounds to state why he should have been selected, was given due consideration in the assessment and this had been taken care of under the criterion "additional qualifications". On the overall assessment, the Tribunal did not find any distortions or blatant anomaly which could give rise to any apprehension that the Respondent erred in any way in the selection exercise. The appeal was set aside