

Seniority is not a predominant criteria in a selection exercise where qualification, experience and merit are considered more important. Other criteria are also chosen by the public body which has full leeway to choose its procedure for appointment to any given post. It now also assesses the suitability of each candidate for the post

In June 2010, the Appellant lodged an appeal against the decision of the Public Service Commission to appoint by selection 29 to the post of DRA. She annexed to her application her full CV which included her qualifications and experience.

The case was processed but on 14 November 2011, the Supreme Court delivered a judgement in the matter of PSC v PBAT in the presence of Mrs Man Lan Wong Chow Ming (2011 SCJ 382) which had, as consequence, the re-opening of the present case. The Supreme Court, basing itself on the rule *audi alteram partem*, impressed on the Tribunal the need to call all appointees as Co Respondents so that they could be given a chance to be heard. Indeed as determinations of the Tribunal could impact on appointees, the Tribunal had to summon all appointees in all cases still pending before it.

In the meantime, the Tribunal had to be reconstituted. The new bench had to hear the matter anew. But the Grounds of Appeal were kept. The Tribunal summoned the Appointees who became Co-Respondents. The Appellant was requested to file an amended Statement of Case and the Respondent to file an amended Statement of Defence, to incorporate the names of the Co Respondents in the heading, which they did in May 2012.

In this case, the Tribunal had to give two Rulings before the case was heard on the merits. The first ruling concerned the argument of Counsel for some of the Co-Respondents that they could not be summoned outside the delay of 21 days and that it is not for the Tribunal to summon the appointees as Co Respondents.

In a Ruling given (Website refetrencce ER3 of 2012) the Tribunal did not uphold these points and Co Respondents were invited to submit a Statement of Defence.

The second Ruling given on (website reference FR1 of 2013) concerned a point of law raised by Counsel for Respondent regarding the fact that the Grounds of Appeal were not «set out concisely and precisely» as per section 6(1) of the PBAT Act 2008. She also said that « the Tribunal shall not entertain any ground of appeal not raised in the grounds of appeal » as provided for in section 6(5) of the PBAT Act. This was raised at the last hour, after almost two years, and when a Statement of Defence and an amended Statement of Defence had already been put in. The Tribunal used its discretion in allowing the appeal to proceed on the basis that tacitly everyone, including the Respondent, understood what the grounds were.

Appellant's case

In her Statement of Case, Appellant alleged that she was suffering from compound discrimination but she finally withdrew that leg which had not in fact been mentioned as a ground of appeal.

She stated that she is a degree holder in ..., had a Masters in ...and a Postgraduate Diploma in Human Resource Management. She also alleged that she had wide experience in many other fields and was a committed person.

It was agreed before the Tribunal, that the two grounds to be relied on were her qualifications and more relevant experience. She deponed to the fact that only two out of the 29 Co-Respondents were more qualified than her. She named them. She said that nine of the Co-Respondents had less than 10 years experience. She identified them.

The Tribunal drew her attention to the fact that the requirement of the Scheme of Service did mention the number of years of experience.

It was then agreed that the Tribunal having the relevant information concerning qualification and years of experience, will do an exercise to see how far the Appellant's averments are relevant.

Under cross-examination she tried to explain that one candidate did not possess a basic qualification before her degree. But she agreed that this candidate in fact did

satisfy the Scheme of Service in that she did possess alternative relevant qualifications acceptable to the PSC in the proper order.

Respondent's case

The Respondent's case was based on the following averments contained in the Statement of Defence which the representative of the Respondent swore as to its correctness:

On 15 April 2009, the vacancies for the post of DRA were advertised among qualified officers in the grade of ... There were 501 applications and 444 candidates, including Appellant, were found to be eligible and were convened for an interview. The appointment was made by selection based on a Scheme of Service which provided that candidates must have «5 years ...experience (after graduation) in a ... institution for candidates having successfully completed a one year post graduate course in ...or possessing an equivalent qualification acceptable to the PSC

Or at least eight years' ...experience (after graduation) in a ...

It was also averred that the experience and all academic and professional qualifications of Appellant had been considered.

Respondent, having considered the suitability of the candidates, decided to appoint 29 of the candidates to the post of DRA. Respondent explained that consideration was given to the requirements of the post, the criteria which it had determined, the requirements of the Scheme of Service, performance at the interview and the provisions of PSC Regulations 14, 15, 17(1) and (2). Further, as provided for by Regulation 19(5), it also determined the suitability of the selected candidates. Even experience gathered during actingship had been considered. However, it averred that «head of department» was not a post and was not a criterion for selection. The confidential reports for the last three years were considered as per PSC Regulation 18.

Determination

This is the third time that the Tribunal is called upon to hear appeals with regard to the post of DRA. Clearly, in this field, there has always been high expectations from candidates who have worked for a long number of years that they would be chosen and move in their career path.

In all these cases, the Tribunal has had the opportunity to analyse the most important information which can help it to scrutinise the exercise to see if the Respondent had overlooked a major element in favour of a candidate who had not been chosen, or had acted illegally, unreasonably, or unfairly.

What would strike any independent observer concerning such an exercise is that the modern trend is now to look for suitable candidates and judge their performance at the interview. Seniority, we know, is not an important criterion when it concerns a selection exercise, as it comes after qualification, experience and merit as per PSC Regulation 14. It is not disputed that this was indeed a selection exercise.

The Tribunal found that there were 12 criteria, determined by the Respondent as per its mandate, on which marks were given during the interview and they were as follows: School Certificate, Higher School Certificate, first degree, second degree, additional relevant qualifications, experience in actual post, actingship as Deputy ..., personality, communication skills, school management and leadership skills and aptitude.

We know that candidates annex their qualifications and other relevant documents to their application form. There was some doubt that Appellant had provided all the information which was given to the Tribunal to the interviewing panel, but she maintained that this was so. Be that as it may, the fact remains that, after perusing the mark sheets, the Tribunal found that she had been given marks for all her qualifications, including her first degree, her second degree and her additional relevant qualifications. Marks were also attributed to her for her experience in the actual post. But she did not score higher marks than the Co-Respondents on the other criteria and her overall markings were not enough for her to be selected.

There was no evidence that Respondent had acted unfairly towards Appellant.
The Appeal is therefore set aside.