

- **“Ability, which is a subjective element, can be properly gauged at an interview”**
- **The power to appoint public officers rests in the PSC [Section 89 (1) of the Constitution] and the Tribunal does not have that mandate.**

The Appellant has appealed against the appointment of the Co-Respondent as ... on the grounds that he is more meritorious in terms of qualifications, seniority and performance.

The Appellant reckoned 23 years service. He applied three times for the post and was never selected. For his third application, he was called for interview but found that the Co-Respondent, who reckoned only seven years of service, was chosen for the job. He averred that the Permanent Secretary of the Ministry wrote to his supervisor to enquire about his ability to perform the work and that the latter gave a positive reply.

Appellant averred that he had significant experience and had obtained a number of certificates related to the field of work.

Appellant asked that the Tribunal “considers his appointment as ...”.

The Respondent averred that the post was filled by selection in accordance with the Schedule of Duties. The Respondent had delegated the power to appoint to the Ministry. There were 26 applications, of which two were received after the deadline. The 24 eligible candidates were interviewed by a Selection Board at the Ministry and, following this exercise, a candidate was selected.

Subsequently, another vacancy occurred and the Co-Respondent, who came just after the selected candidate on the merit list, was offered appointment and he assumed duty.

The Respondent further averred that the Appellant had never been assigned duties related to the post but only those related to other positions. These assignments of duties were not relevant to the duties of the post in question.

The Respondent stated that the appeal had no merit and should be set aside.

The Co-Respondent averred that there was a selection and his appointment was based on his performance at the interview. He had been in service for twelve years. Further, he had been assigned the duties related to the post on several occasions which enhanced his experience and helped him at the interview. He had also followed several courses and the Appellant could not claim that he was better qualified.

The Tribunal found that the Schedule of Duties clearly states that the post is filled by selection. The Appellant cannot base his appeal on the fact that he had longer years of service to support his case. In a selection exercise, PSC Regulation 14(1)(c) provides that the criteria are “qualifications, experience, merit before seniority”. The interview was, therefore, a crucial part of the selection exercise in addition to information which candidates put in their application forms. In fact, the interview determines the ability of the candidate to deliver as is said in *S Ramparsad v The Public Service Commission (2009) SCJ 189*:

“Ability, which is in fact the capacity to do something, is a subjective element which can properly be gauged at an interview”.

The Tribunal could not substitute itself to the selection board and carry on a new selection exercise. The Tribunal would only intervene if there was anything perverse that had been done, such as elements which should have been considered but were not considered or matters which had been considered but which should not have been. The onus of proof rested with the Appellant but he had not raised any issue with regard to any undue process or unfairness or illegality. He merely showed that he had an expectation based on his seniority and qualification.

The Co-Respondent was appointed from a merit list that was drawn following the interview that took place five months before the appointment. On the issue of appointment from a merit list, this is what the Supreme Court said in *Mahesh Ramjeeawon v The Public Service Commission* “**(2013 SCJ 194)** ...we are of the view that reasons could not be reasonably expected to be given with regard to a selection exercise which proceeded on a merit list already drawn up in the course of a first selection exercise effected six months earlier”. Moreover, it is the current practice that the merit list remains valid for a period of two years.

As to the prayer of the Appellant that the Tribunal “considers his appointment as ...”, this was not within the power of the Tribunal. The power to appoint public officers is vested in the Public Service Commission under section 89 (1) of the Constitution.

The Tribunal, therefore, found that the Respondent had followed the selection procedure and the Appellant could not challenge the decision of the Respondent in the absence of any proof.

The appeal was set aside.