

Regulation 17 (1) provides that “The Commission shall determine the procedure to be followed in dealing with applications for appointment to the public service...”.

The Appellant challenged the decision of the Respondent to appoint the Co-Respondent on the grounds that it “has not followed the procedures as provided for by the Public Service Commission Regulations for the appointment by selection”.

The Appellant averred that there should have been a fresh interview before the Respondent made the appointment of the Co-Respondent to the relevant post as circumstances had changed.

The Appellant gave a chronology of events prior to this appointment to support his appeal. He stated that the Respondent had advertised by way of Circular No. 36 of 2011 for the filling of vacancies in the grade of

The Appellant applied for the post and he was called for interview. The Respondent proceeded with the appointment of five candidates who had applied for the post. The Appellant was not selected.

Subsequently, two appointments were made following vacancies that arose. The Appellant conceded that he did not appeal against the decision of appointing a first applicant.

Later on, the Respondent made another appointment which led to the present appeal.

According to the Appellant, the Respondent should have advertised the vacancy afresh as circumstances had changed. Before that, the Respondent had offered appointment in a principal grade related to the post to four officers, making them in the process eligible for consideration for the filling of the concerned post in this case. Since these appointments came after the closing date for the filling of concerned post, these officers, including the Appellant did not have a chance to be considered for any vacancy that occurred after the appointment for the post of principal grade.

Appellant stated that he was fully qualified and his qualification had not been taken into account.

The Respondent averred that the post was advertised in June 2011 as stated by the Appellant and 29 candidates applied, including Appellant. Twenty six of the applicants, including the Appellant, were found eligible and were called for interview, following which five of them were appointed. Respondent further averred that all those convened for the interview were fully qualified for the post. All information regarding qualifications and experience as disclosed in their application forms were taken into consideration by the selection panel.

Then, there was the appointment of one first candidate and followed by the appointment of the Co-Respondent to the post as the Appellant averred. The appointments were made from the merit list that was established, following the interview exercise that had taken place and in which the Appellant had participated. It was the normal practice at the Public Service Commission to have recourse to the merit list. Such merit list was at the material time valid for two years and the appointments were made within this validity period.

The Respondent acted in all fairness in accordance with powers vested upon it by Section 89 of the Constitution and the provisions of the Public Service Commission's Regulations.

The Tribunal noted that it was not disputed that the filling of posts in the grade was done by selection. This was provided for in the prescribed Scheme of Service for the post. It was not disputed also that both the Appellant and the Co-Respondent were fully qualified for the post.

The Appellant's claim is that the selection exercise that was carried out earlier was no more appropriate as in the meantime circumstances had changed. The Appellant relied mainly on the fact that new appointments were made in the grade of Principal ..Officers who then became eligible for consideration for the concerned post. The Appellant did not state how the inclusion of the four newly appointed Principal..Officers would impact on his own appointment. If anything, the Appellant would have faced more competition.

The fact remains that there had been a selection exercise. The Respondent had established a merit list following the interview and the Co-Respondent was appointed from the merit list as he was the next person for consideration when a vacancy arose. The merit list was still valid at the time of appointment. The Appellant could not, therefore, challenge the procedure that Respondent had followed as this is the established procedure. Regulation 17 (1) clearly says that "The Commission shall determine the procedure to be followed in dealing with applications for appointment to the public service, including the proceedings of any selection board appointed by the Commission to interview candidates".

Since the Appellant did not contest the appointment of the first candidate which occurred earlier, that is, before the appointment of the Principal ... Officers which took place before, it was obvious that the change in circumstances in which he was making his case related to this factor. The Appellant was not challenging the interview exercise *per se*.

The Tribunal did not find any flaw in the way the Respondent had proceeded with the appointment of the Co-Respondent. It was done according to established procedure.

The appeal was set aside.