

**Respondent is perfectly entitled to draw from a merit list established after the same selection exercise as long as this list is still valid and circumstances have not changed.**

These two appeals had been consolidated as they referred to the same appointment exercise to the post. The Appellant was challenging the decision of the Respondent to appoint the two Co-Respondents.

The Appellant averred that applications to the post were invited from qualified officers for selection from officers in the grade at principal level and officers in the grade at senior level who reckon six years of service in a substantive post in the grade and possessing either a degree, or a diploma in the relevant field together with a degree in administration.

The Appellant held the post in the principal grade in a substantive capacity and he had been assigned actingship for nearly two years. He was senior to both Co-Respondents.

The Appellant claimed that the vacancies should not have been filled from the "waiting list" which had been drawn up following the advertisement for the post in the higher grade but there should have been a re-advertisement to ensure equity and justice in the appointments. Since he was senior to the Co-Respondents, there had been supersession, causing him prejudice.

The Appellant submitted that the Tribunal should make such orders as were fit and necessary and that the appointments to the post in the higher grade be quashed and a new exercise be carried out with a fresh advertisement.

The Respondent averred that the post in the higher grade was filled by selection, according to the Scheme of Service. Those eligible for the post were:

- (i) Officers in the grade at principal level
- (ii) Officers in the grade at senior level who reckon at least six years service in a substantive capacity in the grade and who possess the required qualifications as laid down in the Scheme of Service.

There was an advertisement for the filling of five vacancies in the higher grade. Following a selection exercise, five applicants to the post were appointed.

Subsequently, the Responsible Officer (R.O) of the Ministry reported one additional vacancy and one officer was appointed. The Appellant appealed against this decision.

Later on, the R.O reported another vacancy in the higher grade and another officer was appointed. Again the Appellant challenged this decision.

The Respondent averred that the appointments of the two Co-Respondents were made from the merit list that was established following the original interview carried out. This was in order as the merit list was valid for a period of two years, and the Respondent acted as per Regulation 14 of the PSC Regulations which puts qualifications, experience, merit and suitability before seniority, and Regulation 19(6) which required the Respondent to determine the suitability of candidates for the post before making an appointment.

The Respondent had acted in accordance with established procedures and therefore asked the Tribunal to set aside the appeal.

The Tribunal found that the appeals lodged by the Appellant followed other appeals in the same selection exercise.

When the first appointment of five officers was made, there were three appeals, namely from three Appellants, one of whom was the Co-Respondent in the appeals then under consideration.

Subsequently, one officer was appointed, which led to another appeal against the Respondent by another officer and an appeal by the Appellant in the present appeals.

When it was the turn for the officer who had contested the appointment to be appointed, the Appellant again appealed against the decision.

In the present two appeals before the Tribunal, the Appellant was primarily contesting the fact that the Respondent should have re-advertised the vacancies and allowed him to compete again for the post. The issue of seniority and the interview were not being addressed in this determination as the Tribunal had given its determination in the preceding appeals where it had explained PSC Regulation 14 and regulation 19 (6). In considering the appointments made to the same post in the previous appeals lodged before this Tribunal, the Tribunal had found nothing that could have been seen to be unfairness or error of appreciation on the part of the Respondent. The Tribunal had set aside all the previous appeals.

The Appellant could not allege that there had been supersession as in a selection exercise, there is no supersession.

There remained only the opinion of the Appellant that the Respondent should not have made use of the merit list and instead should have re-advertised the vacancies. Here again, this Tribunal has given many determinations to say that the Respondent has an established practice of drawing from a merit list for appointments as long as it is within the validity period of two years, as had been the case so far. The Appellant had "*not shown that there has been any material change in the circumstances subsequent to the first selection exercise... that would call for fresh invitations to be made by the first Respondent*" (Vide Ramjeeawon V/s Public Service Commission 2013 SCJ 194).

The appeal was set aside.