

If a change in ranking, due to a merger of grades, occurred long before the exercise which is the subject of an appeal, the Tribunal cannot intervene. It can only do so if the exercise itself has unfairly upset the seniority ranking.

The Appellant is challenging the decision of the Respondent not to appoint him to a post of senior... for which he had applied.

Appellant's Case

The Appellant was appointed He was appointed on the Permanent and Pensionable Establishment and on .., he was promoted to a post in a lower grade than the post for which he applied.

The Appellant stated that it had now been brought to his knowledge that in ...the grade was restyled. He did not know it at that time. But he conceded that he signed the Option Form signifying his agreement to the Pay Research Bureau Report 1993 without actually knowing what he was signing at that time. Further, he had been informed that, in .., there was a decision which was endorsed by Respondent to the effect that officers who were in post as at ...became senior to all those who were in the post that he was occupying and this disrupted his seniority. This was done without any consultation. He now found that those who joined after him had become his senior and, in a way he had been demoted when he joined the grade.

The appellant stated that if the Respondent had not found him fit, it should not have shifted him to the grade of ... Since the Respondent had decided to do

so it meant that he was fit for the post and he should be eligible for a promotion in the cadre, even if he did not hold the basic qualification.

Since appointment to that grade was by promotion, those who were junior to him were promoted following the disruption in seniority that occurred.

The Appellant's prayer was that the "Tribunal restores his seniority vis-a-vis his juniors and that adequate redress is afforded to him as might be just and equitable in the circumstances of the case".

Respondent's Case

The Respondent averred that the Appellant was appointed to a departmental grade on ... He was appointed to the restyled grade with effect from... This followed the recommendation of the Pay Research Bureau Report 1993 which recommended that two grades be merged. As a result of this recommendation, the Responsible Officer (RO) of the Ministry of ...wrote to the Respondent on ...claiming that the post, which is the subject of this appeal, was a grade to grade promotion and that prior claims to promotion as ...holding a substantive post as at ... be preserved. The RO recommended and the Respondent agreed, *inter alia*, that with effect from .., all substantive such officers in post as at ...should retain their seniority rank in the grade and former ... should rank next on the combined seniority list. The grade which appellant was has thus become an evanescent grade.

The Respondent stated that the post, at the time of the merger, required the incumbents to be holder of the Certificate ... The Appellant did not have the said certificate but he was able to join a cadre with a higher career prospect

which allowed promotion to the grade of Senior and ultimately Head whereas in his previous grade the Appellant had no further promotion possibilities.

On or about ..., the RO had reported seven vacancies in the grade. Seven officers had declined promotion and the next seven seniormost Officers were recommended for promotion. The Respondent gave approval on 28 December 2012. The Appellant was not among those promoted. The Respondent denied that the Appellant had been superseded or demoted. Appellant was not promoted as he was not among the seniormost and appointment in the grade was by promotion.

The Appellant had only been affected as far as his seniority was concerned. His other rights, such as his pension, were not affected as a result of the merger.

Co-Respondents' Case

The Co-Respondents maintained that they deserved to be appointed as they were higher in the seniority list than the Appellant.

Determination

The fact that the post of Senior ...is filled by promotion is not contested as this is according to the prescribed Scheme of Service.

What the Appellant is contesting is his position on the seniority ranking. He finds that he is lower in the seniority list and that those who joined the grade later than him are his senior. As explained by Respondent, the seniority ranking was the result of the merger of a department grade, namely that of ..., into the mainstream of ...so that there is only one cadre for the whole civil service for this category of officers. The decision regarding the combined seniority list was taken

in ...and this Tribunal cannot at this late stage intervene. The Tribunal can only intervene if in the present appointment exercise there were any circumstances which actually altered the seniority ranking of the candidates. The change in ranking occurred in ... The jurisdiction of the Tribunal is, therefore, ousted. In any case, the Tribunal cannot accede to the prayer of the Appellant to restore his seniority ranking, which it cannot do.

The Tribunal only wishes to place on record that it would have been fair if the Local Government Attendants were informed in ...that their seniority had been affected by the merger. This was seemingly not done and, if the averment of the Appellant is correct, they come to know of this at a late hour. It needs to be pointed out, however, that the merger in a way was in favour of those in the same grade as appellant, who were in a departmental grade with no prospects of further promotion. By joining the broader grade they increase their career path. But equally important, those who did not have the basic certificate got a chance to be ... as there is an elongated scale of

Be that as it may, if the Commission had communicated better with the Appellant and informed him at the time that all substantive Officers in post as at ...would retain their seniority rank in the grade and former ... such as Appellant would rank next on the combined seniority list, it would have spared the Appellant the confusing state in which he finds himself today. He would probably not have had to appeal in order to at least understand.

The Tribunal recommends that material information which has a direct impact on employees be properly communicated to them in future.

The appeal is set aside.