

**.The Tribunal has no power to nominate any candidate. Only the PSC has this mandate as per the Constitution.**

**.An appointment is made according to the Scheme of Service and cannot be by promotion if the Scheme provides that it is by selection.**

The Appellant is challenging the decision of the Respondent to appoint the Co-Respondents to the post of ...

### **Appellant's Case**

The Appellant averred that he was a F... He was appointed to that post in ... following a written examination organised by the Respondent. He had passed the Certificate Course in the subject matter, organised by the University of Mauritius. He had been assigned the duties of Deputy F on several occasions. He reckoned 11 years as ...and nearly 23 years as F...

The Appellant further averred that he was regular in his attendance at work and had never received any adverse report. He claimed that he did well in the interview for the post of Deputy F...but he found that two colleagues who were junior to him had been appointed and he was not appointed.

The Appellant contested the fact that the appointment was by selection as he felt that in a ten minutes interview, the Respondent could not deprive an officer of a promotion and allow junior officers to be appointed. He believed that the appointment should have been as per the seniority list.

The Appellant appealed to the Tribunal "to nominate the officers who have participated in the interview as per the seniority list".

## **Respondent's case**

Respondent had raised a Preliminary Objection in law: to the effect that the Appellant has failed to state precisely and concisely the grounds upon which he is relying.

The Respondent however decided not to argue the matter before the hearing and rather take it on the merits of the case, if need be.

The Respondent averred that on ...2012, the Responsible Officer reported four permanent vacancies in the grade of Deputy F. and recommended that a selection exercise be carried out. The vacancies were advertised among eligible candidates on ...2012. There were 26 candidates of which 22, including the Appellant, were found eligible. They were convened for interview on 19 and 20 December 2012. Four of them, including the Co-Respondents, were offered appointment and they assumed duty on ... 2013.

The Respondent stated that the Appellant was fully qualified for the post and all the information provided by him in his application form to the Respondent was taken into account but he was not selected.

The Respondent did not dispute the fact that the Appellant had been assigned duties of Deputy F on several occasions for short periods. However, each time he was given assignment of duties, he was told that such assignment of duties would not give him any claim for permanent appointment to the post.

The Respondent concluded that the post was filled by selection as per the Scheme of Service and all procedures had been followed in accordance with PSC Regulation 14 and performance at the interview.

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

## **Co-Respondents' Case**

Co-Respondent No 2 averred that he joined the service as G...in 1980 and he was promoted F after a qualifying written examination carried out by the Respondent. He had followed the Certificate Course in the subject at the University of Mauritius ... From 2005 to 2012, he had been assigned the duties of Deputy F as and when required. He never had any adverse report against him. He was appointed in ..2013 after a selection exercise and he believed that he was rightly appointed to the post by Respondent.

Co-Respondent No.1 did not submit a Statement of Defence.

## **Determination**

The Appellant firmly believes that appointment to the post of Deputy F should have been on the basis of seniority. This is why he has not appealed against the first two of the four appointees in this exercise as they are senior to him. He has appealed against the two appointees who joined the grade of F... after him.

The Appellant finds it difficult to understand how his junior colleagues who were working with him, doing the same job as him, could be appointed and not him, the more so that there had never been any adverse report against him. He stated that in the previous appointments to the post of Deputy F, same were done on the basis of seniority.

The Appellant is, unfortunately, wrong. Appointment to the post of Deputy F...is done by way of selection as is clear from the Scheme of Service that was effective as from 2004. As pointed out by Respondent, in a selection exercise, the interview panel takes into account many criteria. PSC Regulations 14(1) c provides that, while seniority is one of the criteria, it is not a determining

criterion and it gives way to qualifications, experience, merit. The panel also assesses each candidate's suitability for the post.

The Appellant cannot ground his case on the fact that he is senior to the Co-Respondents. The Tribunal has no power to nominate any candidate. Only the PSC has this mandate which it has exercised as per the Scheme of Service.

The appeal is, therefore, set aside.