

**The Tribunal cannot intervene concerning excessive delays in determining cases related to discipline even if this may affect an applicant unduly, after he has been cleared but lost his seniority ranking.**

The Appellant averred that he should have been appointed instead of the Co-Respondent as he was senior to the Co-Respondent on the original seniority list when he joined the service. The Appellant stated that he joined the public service together with the Co-Respondent and he was originally senior to him. He and the Co-Respondent were promoted subsequently on the same day. Following an alleged incident, he was convened before a disciplinary committee but all the charges levelled against him were dismissed. While the disciplinary committee was on, the Co-Respondent was appointed to a higher post and the Appellant felt that the Co-Respondent should have been assigned the duties of the post instead of being appointed to the post, pending the determination of the disciplinary committee.

The Appellant was himself appointed at a principal level. He made representations to his parent Ministry to reinstate him to his original ranking as senior but he was merely informed that the matter was under consideration. Further, the Appellant felt aggrieved that the Respondent had decided to appoint the Co-Respondent at management level in the specific field instead of him, being given that, according to him, he should have been reinstated well before the appointment of the Co-Respondent. He felt that his rights to be promoted at management level before the Co-Respondent should have been safeguarded, especially given that no adverse report had ever been made against him.

The Respondent averred that the Appellant was appointed one day later than the Co-Respondent in the same grade and the fact that both the Appellant and the Co-Respondent were appointed to a higher post following promotion was not disputed, even if the promotion of Appellant was done later. The Respondent also agreed that a disciplinary committee was set up to investigate the charges levelled against the Appellant and that these charges were not proved and the Appellant was informed accordingly. The Respondent stated that, according to the prescribed Scheme of Service, the post at management level was filled by promotion, on the basis of experience and merit, of officers who reckoned at least three years' service in a substantive capacity in the grade at assistant management level and who have undergone advanced training in the specific field and who have the knowledge, skills and abilities as laid down in the Scheme of Service.

The Tribunal determined that the whole issue probably arose from the fact that the Ministry took so long to finalise the disciplinary case against the Appellant which took more than two years. The question was whether it was fair for an officer to wait for so long, and in the meantime junior colleagues were being promoted. The Tribunal was not concerned with the fact that the officer may be guilty or not. But a balance needed to be struck between fairness to the Appellant, the need for a disciplinary hearing to look into charges against the Appellant and the need to effect appointments which might need to be made in the meantime but which might adversely affect an officer who was facing disciplinary charges in his chances of being appointed to a higher position. This was a difficult issue on which the Tribunal commented.

The Tribunal had seen a few cases where disciplinary proceedings had been dragging on, and in the meantime, appointments were made which debarred officers who were under investigation from being considered for appointment. The Tribunal determined that even if it might seem unfair to the Appellant that he had lost his seniority because of the delays of the Ministry, the fact remained that by the time the Appellant was cleared of all charges and could be promoted to the post, Appellant was no longer senior to the Co-Respondent and since appointment was by promotion, seniority became the determining factor. Since Co-Respondent was first on the list, his appointment was in line with the Scheme of Service.

The Tribunal was unfortunately not able to intervene as regards the excessive delay in determining disciplinary cases. But the Tribunal recommended that the Respondent established guidelines to ensure that such disciplinary committees would be held within a fixed delay in order not to penalise officers unduly. The appeal was set aside.