

Det 39 of 2013

If a Scheme of Service provides for the effective method of calculating the date of a substantive appointment, this is the method that will prevail.

The Appellants are challenging the effective date of their substantive appointment to the grade of SOF at the ... Office.

The following facts are not disputed by the parties.

According to the Scheme of Service, the post of SOF is filled from among officers holding a substantive appointment in the grade of COF/HCOF or OF and who possess the Cambridge Higher School Certificate (HSC) with passes in at least two subjects at Principal level including Mathematics obtained on one certificate or Passes in at least two subjects including Mathematics obtained on one certificate at the General Certificate of Education "Advanced Level" (GCE A level) or an equivalent qualification acceptable to the Public Service Commission (PSC) and who possess the skills and abilities as laid down in the Scheme of Service. It is further said that selected candidates for the post will be appointed in a temporary capacity in the first instance and will then be considered for appointment in a substantive capacity on obtention of the Ordinary Certificate in ...of the United Kingdom Royal ...Society (RSS) or an equivalent qualification acceptable to the PSC.

On or about ..., a selection exercise was carried out for the post of SOF. Following this selection exercise, 34 officers were offered appointment in a temporary capacity on ... Of these, 32 accepted the offer of appointment.

Three subsequently left the grade. Thus 29 Officers , including the 12 Appellants, assumed duty on ... except one who assumed duty on the ...

The appointees wrote to the RSS regarding the issue of equivalence of the qualifications in an individual capacity and at difference times and they received their replies separately and evidently also on different dates.

The Respondent chose the date when the last appointee submitted his equivalence of qualifications, that is., as the effective date for appointment for the whole batch of the 29 remaining officers in the grade.

Twelve of the appointees have challenged this decision while the other 17 officers remained quiet on the issue. However, the Tribunal has decided that these 17 officers must be joined in the appeal as the determination of the Tribunal will necessarily impact on them as well. They are, therefore, the Co-Respondents in this appeal even if the Appellants are not contesting their appointment. In fact, both the Appellants and the Co-Respondents share a common interest as regards the effective date of their appointments.

Appellants' Case

The Appellants averred that, at the time they assumed duty on .., their academic qualifications were already equivalent to the RSS Ordinary Certificate. However, they wrote individually to the RSS to ascertain this and received the replies on different dates. They stated that it was unreasonable for Respondent to wait until it obtained the submission of the confirmation of equivalence from the RSS of the last appointee to fix the effective date for all of them based on that last submission received.

According to the Appellants, the Scheme of Service stated clearly that they would be considered for appointment in a substantive capacity on

obtention of the Ordinary Certificate in ... of the RSS or an equivalent qualification acceptable to the Public Service Commission. For the Appellants, they should have been appointed in a substantive capacity as soon as they received their reply from RSS as to the equivalence of their qualifications. They should not have been made to wait until all the appointees got their equivalence to decide on the effective date. Indeed should one of the appointees receive his/her equivalence after a long delay, all the others would have been unfairly penalized. Nowhere was it said that the appointees would be appointed in a substantive capacity at the same moment. (underlining is ours)

Counsel for the Appellants conceded that the different effective dates of appointment in a substantive capacity could disrupt the seniority ranking at the time of selection, but that was a situation which parties could live with instead of penalizing all the appointees with a common date which did not do justice to those who obtained their equivalence earlier.

Respondent's Case

The Respondent maintained that the appointment of the Appellants in a substantive capacity had to be according to the qualifications requirement of the Scheme of service for the post which required the appellants to have the RSS Ordinary Certificate or an equivalent qualification. The Appellants did not have the equivalence certificate at the time they joined the grade on ... and their appointment could not be backdated to that date. The Respondent had to obtain the necessary equivalence certificate and the Appellants had to apply to the RSS for same.

On the .., the Responsible Officer (RO) had informed the Respondent that 21 of the Temporary SOF had submitted certificates of attestation from the RSS, to the effect that their qualifications were equivalent to the RSS Ordinary Certificate. He recommended that they be appointed in a substantive capacity. However, in conformity with the provisions of the Scheme of Service, the Respondent decided to appoint the 29 officers in a substantive capacity with effect from the last date on which the certificate of attestation was issued by RSS, to an officer, in the batch in which the Appellants were i.e The Respondent averred that it had to wait for all the certificates of attestation as the RSS had granted equivalence on the basis of different qualifications of the Appellants and not solely on the basis of an HSC with Mathematics.

The Respondent stated that, had the appointment been made as and when the Appellants got their certificate of attestation, this would have disrupted the seniority ranking established at the time of the selection exercise.

The Respondent further averred that the Appellants had accepted the offer of appointment on the terms and conditions stipulated in the letter to them. This included the proviso that substantive appointment would be conditional on the obtention of the RSS Ordinary certificate or an equivalent qualification.

The Respondent stated that the Appellants had no reason to appeal and moved that the appeal be set aside.

Determination

The whole issue revolves around the Note in the Scheme of Service which reads as follows:

“Selected candidates will be appointed in a temporary capacity in the first instance and will be considered for appointment in a substantive capacity on obtention of the Ordinary certificate in ... of the Royal ... Society or an equivalent qualification acceptable to the Public Service Commission.”

It is clear, therefore, that the appointment process will be in two steps. First, the officer is appointed in a temporary capacity and in the second step consideration is given to the appointment of the officer in a substantive capacity. This is usually the practice in the public service and appointment in a substantive capacity is conditional on such things as performance at work during the probationary period. In the case of SOF, there is the special requirement as per the Note in the Scheme of Service.

The question is “what does obtention of the RSS Ordinary Certificate or an equivalent qualification mean? “The Oxford dictionary defines “obtention” as “the action of obtaining something”. It means that to get the RSS Ordinary Certificate, one has to take the examination leading to that certificate, pass the examination and obtain the certificate. In the present case, the Appellants, and for that matter also the Co-Respondents, did not take part in any RSS examination and there was no obtention of an RSS certificate. They relied on the equivalence of their qualifications vis-à-vis the RSS Ordinary Certificate. The Tribunal has to determine how or when the equivalence is obtained and how to apply this to the effective date of substantive appointment.

The Appellants are of opinion that, as soon as they had received the reply of the RSS as to the equivalence of their HSC certificates, they should have been appointed. In other words, their substantive appointments should have been effective as from these dates. This means, as the Respondent pointed out, that there would be different effective dates of appointment

which bear no relation to any parameter except the dates of the replies from the RSS. In the process, the seniority ranking established at selection, which is based on a set of rigid criteria, would be distorted by the haphazard order of the replies from the RSS. It stands to reason that the prayer of the Appellants, if it is accepted by the Tribunal, will lead to a chaotic situation. The order of seniority as established at selection is sacrosanct and must not be disturbed. One of the Co-Respondents was against the request of the Appellants, as she had her RSS Ordinary Certificate and her equivalence later than some of the Appellants, who were lower in the original seniority list, and she would lose her seniority placing. The Tribunal cannot accede to that prayer of Appellants.

The Tribunal now turns to the interpretation of the term “obtention “of the certificate or its equivalence. The Respondent has taken this to mean the confirmation of the equivalence of the Ordinary Certificate of the RSS, and has taken the decision to wait for the last one to obtain the equivalence to establish a common date, so as to keep the seniority rankings of the appointees as originally established. This seems a logical decision if the obtention of the equivalence is taken, as the Respondent contended, as the date when the officers got their replies from the RSS.

It should be borne in mind however that all the officers are holders of the HSC with Mathematics as Principal subject or other qualifications as per the Scheme of Service. They all applied to the RSS and they invariably got the reply that their HSC was equivalent to the RSS Ordinary Certificate. The question then is whether they obtained their equivalence as a result of the reply from RSS or whether when they got their HSC, they already had their equivalence and the RSS reply was only to confirm this fact. The Responsible Officer (RO) believes that the fact that the officers had their HSC as per the

Scheme of Service, that is with Mathematics at Principal level, they already had the equivalence. She recommended to Respondent that the effective date of appointment should be the date they joined the ...Office as SOF that is ... This was not accepted by the Respondent.

The Tribunal is of the opinion that, while the officers had the required qualifications on the date they joined as SOF, they did not have the equivalence as at that date. The Tribunal is further bound by the ordinary meaning of the word 'obtention.' The only reading possible of the Note in the Scheme of Service is that the candidates will be appointed in a substantive capacity on obtention of the equivalence.

The appeal is set aside.