

**A Responsible Officer can recommend the appointment of those who were fully qualified according to a Scheme of Service first before those who qualify under the first intake note. This naturally sets the seniority of the former over the latter which then results in the appointment of the former by the Public Body.**

Appellants are contesting the decision of the PSC to appoint the Co-Respondents, by way of promotion, to the post of DEMA, in a substantive capacity.

### **Appellants' Case**

Appellants are TE/STE employed by the Rodrigues Regional Assembly. Their main contentions are that the Co-Respondents have less years of service than them and they were recruited and trained after them. Appellants stated having worked as ETAS from 19...and were appointed as PTE in the year 19.... Trainee is not a promotional grade for the post of ETAS and therefore the appointment in that grade should be considered from the date they joined the service and not as a promotional post ranked before that of ETAS.

When they deponed before the Tribunal, one of the Appellants, explained that Appellants were allocated a place of work since the time they joined the service and that they worked on their own in a similar manner to the TE/STE.. Referring to the scheme of duties of TE/STE, the Appellants maintained having performed all those duties at the time they were retained as ETAS In..., while carrying on their own duties, the Appellants had to follow a course by correspondence and they were subsequently awarded a certificate. Those who were recruited as TE/STE also followed the course albeit on a full time basis in Mauritius.

Appellants also claimed having been in continuous employment with the Respondent. This was challenged by Respondent who, in cross examination, put it to Appellant that there were breaks in the Appellants employment period. A few of the Appellants however, denied the breaks and stated that they had been refunded for the months when they were not employed, after their trade union fought for them.

However, they were unable to state exactly for which periods they were paid and it seemed that they were paid for the months of December ... and ... only.

Several propositions put to the Appellant and she agreed to the following: Firstly that TRAT had to be holders of a Cambridge School Certificate with credit in at least five subjects including English, French, Mathematics and Science or another subject. Also, at the time that the ETAS were recruited, ie the Appellants, they did not possess the required qualifications for the post.

She also conceded that the Scheme of Service of Trainee... was amended on the ... where this note was inserted:

*“For the first intake, priority of consideration will be given to persons, who at ...were employed as ETAS to give assistance at TE/STE level even though they do not possess all the required qualifications. “* It was put to the Appellant that, when on the ... the PSC wrote to the RO informing him that there were four vacancies and the recruitment was to be made from those holding the post of TE/STE, only the four Co Respondents were eligible as they were the ones holding that post. Appellant stated not being aware of same.

Several Appellants also deponed personally before the Tribunal and clarified the following matters. One made it clear that he never applied for the post of TE and did not even think about doing so, irrespective of whether he had the qualifications or not.

Another one deponed and maintained that since she joined in ..., there were no breaks in her employment record. She was however not qualified to be TE/STE, as per the requirements of the Scheme of Service in force of that time.

Another Appellant deponed and explained that there were breaks in her employment until ... and she could not remember if she had been reimbursed the months she was not working while she was on a break.

Another one deponed and explained that she started in continuous employment as from ... and that she was not qualified for the post of TE according to the scheme or service.

Yet another Appellant deponed and confirmed that she started working in and did not hold the required qualifications for the post of TE.

Another one also deponed and confirmed not being fully qualified to be eligible to the post of TE.

The last Appellant who deponed confirmed not being qualified for the post of TE and that the Appellants received payments for the months of December in ...and ... when they were not actually working, after the intervention of the Trade Union.

### **Respondent's Case**

At the hearing, the Respondent maintained the content of its statement of defence as follows: According to the Scheme of Service prescribed on ..., the post of DEMA, Rodrigues Regional Assembly ... is filled by promotion on the basis of experience and merit, of officers in the grade of TE/STE. The Statement of Defence explains that, in letters dated ... and ..., the Responsible Officer *inter alia* reported 3 permanent vacancies in the grade of DEMA and recommended the promotion of three most senior TE/STE, the Co Respondents No 1 to 3, with effect from ...

The three recommended officers were appointed to act as DEMA and subsequently they were promoted to DEMA in a substantive capacity ...

In letters dated ..., the three officers, that is the Co- Respondents, were offered promotion as DEMA in a substantive capacity. It is important to understand the history behind this appointment. Respondent stated that, at the time, according to the Scheme of Service, TE were recruited from among candidates who were holders of a Cambridge School Certificate with credit in 5 subjects. Candidates were required to undergo two years training and on successful completion of their training, they would be considered for appointment as TE/STE. The enlistment of Trainee was advertised on .... Following the conduct of a selection exercise, on... seven candidates were enlisted as Trainees, with effect from date of assumption of duty. On ..., the Responsible Officer informed the Respondent that four of the Trainees had successfully completed the two- year course at the ... and recommended that they be offered appointment as TE/STE in accordance with the Scheme of Service for the post. On ..., the decision of Respondent for the appointment of the Trainees

as TE/STE with effect from ..., date of publication of results, was conveyed to the Responsible Officer. Co- Respondents were among the four Trainees.

According to records available, ETAS who did not meet the requirements for the post of Trainee, TE/STE were recruited by the Commission for employment to give ... assistance in ... in Rodrigues in order to suit local conditions and help solve the shortage of staff in Rodrigues. In .., about 22 ETAS in post started following a two- year part time correspondence course run by the... On..., the Responsible Officer recommended that 18 of them who had successfully completed the course be appointed as TE/STE According to the Scheme of Service for Trainee, a first intake note was inserted for those ETAS.

Respondent decided that the 18 ETAS who were employed to give assistance ...and who have followed the correspondence course, were eligible for appointment as TE/STE for services restricted to Rodrigues. The Responsible Officer was informed accordingly in the letter dated ... Appellants were among the 18 ETAS. Those who were offered appointment on two years' probation with effect ...in the letter dated ... were ranked 6<sup>th</sup> to 16<sup>th</sup> on the seniority list.

Co- Respondents ranked before Appellants on the list as Appellants' names were submitted afterwards, that is on .... As Co- Respondents were the 3 most senior officers in the grade of TE/STE eligible for promotion and as the Responsible officer reported 3 permanent vacancies, they were promoted *vice* these vacancies as DEMA in a substantive capacity.

Before the Tribunal, the Respondent reiterated that the Appellants were not qualified according to the Scheme of Service and were therefore not eligible to be appointed as TE/STE at the outset. With regards to the existing seniority list, the representative of the PSC explained that the Co Respondents ranked first on the list and before the Appellants because their names were submitted to the RO first as they were fully eligible for the post as per the scheme of service. Respondent also drew the attention of the Tribunal to the fact that the scheme was subsequently amended in order to enable the Appellants to be appointed as TE despite the fact that they were never appointed as Trainee. Because the names were submitted in two batches, the Appellants' names in November, while the Co Respondents' names were submitted in October, the seniority differed and those who had been

recommended for appointment in October became senior to the ones whose names were recommended in November. The Scheme of service clearly states that appointment to the grade of DEMA should be made on the basis of experience and merit, in accordance with the seniority list of officers in the grade of TE/STE after they have successfully completed their training.

### **Appellant's Submisisons**

Counsel for Appellant submitted that seniority means the relative seniority of officers and, except as may be otherwise provided by the Commission or in its Regulations, shall be determined by and shall be regarded as having always been determined as follows: as between officers of the same grade or class.

Referring to the dates on which they respectively entered the grade, the representative of the PSC confirmed that both groups entered the grade as from.... On ..., the Responsible Officer recommended that for the post of TE/STE, vacancies should be filled by the Co-Respondents and the Appellants on the same day but the Appellants and Co respondents were not given their letter in the same month and this impacted on their seniority.

Counsel submitted that, since it is mentioned in the letter that the appointment will take effect from ..., it means from the outset that the two groups of people, the Co-Respondents and the Appellants are, in terms of seniority in that grade, at par. If they are at par, seniority and the date they joined service, individual experience, skills, dexterity and so on have to be borne in mind and must be taken into account by the PSC. He further submitted that it has to be borne in mind that they had a full-fledged responsibility in their job that ...they also followed the full fledged training... He submitted that the Appellants had been penalised because the administration has been arbitrary towards them. He stressed on the fact that, in many cases they worked up to November, their employment terminated in December and they were asked to come back in January. Most of them were recruited in..., joined service in ... and the Co-Respondents joined much later.

### **Respondent's Submissions**

Counsel for Respondent submitted that Co-Respondents were senior on the seniority list and since there was no adverse report against any of them, they were

appointed to the post first. She highlighted the fact that the Appellants were not qualified for the post of TE/STE and they have in fact been positively discriminated against when they were promoted to the post. They never held the post of Trainee ...as specified in the scheme of service. In brief, the Respondent could not be faulted for having recommended the appointment of Co-Respondents first, for having subsequently selected the Co Respondents as they were senior on the list and they were qualified for the post.

### **Determination**

The Tribunal has carefully considered the arguments offered on both sides. We find that the Respondent has not faulted in its appointment of the Co-Respondents to the post of DEMA.

Although history and records referred to point to the fact that Appellants have played a crucial role at the time and contributed greatly to their specialised sector in Rodrigues when there was a shortage of staff, there are factors that need to be considered nonetheless when effecting an appointment to the post of DEMA

The fact that the Co-Respondents were senior on the list, held the post of Trainee in the past and were qualified as per the scheme of service are criteria that were rightly borne in mind by the Respondent. Counsel for Appellants has raised the point that it is a fact that seniority of the Appellants and Co-Respondents differ simply because the recommendation of the Responsible Officer (RO) to appoint them has been taken on different days. The Tribunal finds that there is no reason to question the decision of the RO to recommend the appointments of those who were fully qualified first and to subsequently recommend the appointment of those who met the requirement because of the first intake note.

In the light of those factors, we cannot find fault in the appointment by way of promotion of the Co- Respondents to the post in question,

The Appeal is therefore set aside.

