

**Det 13 of 2014**

**The mere averment by an appellant that his health problem has impacted negatively on his candidature is not enough if this is not substantiated. He must also prove that he was more qualified and deserving than the officer who was appointed. He cannot either cite any adverse report which dates back to more than 10 years.**

The Appellant, a Deputy COER at the Ministry of ... is challenging the decision of the Respondent to appoint the Co-Respondent to the post of COER of the ... Service at the Ministry.

### **Appellant's Case**

The Appellant averred that he reckoned 40 years service at the Ministry of ... where he started as FPER and had been appointed Deputy COER. He even acted as COER which was the highest post in the Service. Further, he never had any adverse report throughout his career.

He claimed that he was more meritorious as the Co-Respondent had to repay for the loss of a tool when he was in charge of the ...in his capacity as Assistant COER. The Co-Respondent was also in charge of a training school and the project had to be closed down because of various problems.

The Appellant stated that *"...while I was working as Principal FPER he I suffered a stroke which lead to a physical disability. When I postulated for the post of Assistant COER I was not appointed. After several written representations I was appointed from a short list. I firmly suspect, once again, that I have not been appointed by the P.S.C. because of my appearance and physical disability"*

He requested the Tribunal to *"consider my appeal in order to set things to their right standards"*

### **Respondent's Case**

The Respondent averred that the post of COER was filled by selection from amongst officers holding a substantive appointment in the grade of Deputy COER in the ... Service and who possess the abilities, skills and capabilities as laid down in the Scheme of Service.

The Responsible Officer reported a permanent vacancy in the grade of COER on ... and recommended that a selection be conducted for the filling of the vacancy. The post was advertised on ... as per PSC Circular Note ... Three candidates applied for the post and an interview was carried out on .... The Co-Respondent was selected and he was offered appointment in ... in a temporary capacity for a period of six months in the first instance as from ..., which is the date when he assumed duty.

The Respondent stated that the appointment was made as per the requirements of the Scheme of Service. The fact that the Appellant had acted as COER while the Co-Respondent had not, was immaterial as acting appointment is made on the basis of administrative convenience. The Appellant was informed that the assignment of duties would not give him any claim for appointment.

The Respondent had taken into consideration all the information that the candidates had put in their application forms. The Respondent stated that the fact that the Co-Respondent had to repay for the loss of the lost tool could not be held against him as this took place more than ten years earlier and any offences committed before this time would not be recorded in the application as it would have lapsed. Section 14 of the PSC Form 7 required applicants to state only offences “...*during the last ten years*”. All the three applicants had the required qualifications for the post and were eligible for consideration. However, the Appellant was not selected.

The Respondent took into consideration the requirements for the post, the criteria for the selection as determined by the Respondent, the requirements of the Scheme of Service, performance at the interview and the provisions of Regulation 14 of the Public Service Commission Regulations.

The appointment was done under powers vested with the Respondent as laid down in Regulation 19 (6) of the Public Service Commission Regulations for the determination of the suitability of the selected candidate for appointment to the post.

The Respondent moved that the appeal be set aside.

### **Co-Respondent's Case**

The Co-Respondent explained the loss of the outboard engine and also detailed his involvement with the training school where he was seconded for duty as Assistant Instructor. The project was under the management of an expert from abroad and the Co-Respondent was not in charge of the project.

He was holder of a degree.

### **Determination**

The appointment to the post of COER is by selection. This is not disputed as it is as per the Scheme of Service for the post.

The Appellant relies on two grounds for his appeal, namely his seniority and that he has no adverse report against him.

As regards seniority, it is clear that this is not a determining factor in a selection exercise as PSC Regulation 14 (1) (c) puts "*qualifications, experience, merit and suitability for the office in question before seniority*". His long years of service was not a determining factor and other criteria carried more weight. Appellant had been promoted to higher positions but, according to his own Statement of Case, he had difficulty to be promoted to the post of Assistant COER

On the issue of adverse report, there was the shortcoming of the Co-Respondent regarding the loss of the tool. However, the Respondent stated that the offence took place more than ten years earlier and according to the PSC 7 Form the candidates for the post had to indicate any offence "during the last ten years" (emphasis ours). Therefore, the offence of the Co-Respondent was not taken into account by the Respondent.

As to what happened at the training school, the Co-Respondent had averred that he was not in charge of the project and could not be made to bear the brunt of the closing down of the project. This was not rebutted by the Appellant.

The Respondent submitted information to the Tribunal under confidential cover. The Tribunal finds that the candidates for the post were assessed on the following criteria :

- Relevant experience
- Knowledge of Duties and Responsibilities for the post

- Personality
- Communications and Interpersonal Skills
- Administrative, Managerial and Leadership Skills
- Long Term of the... Sector and ability to implement reforms
- Creative and innovative Skills
- Knowledge of the specialised field and laws and regulations
- Aptitude

The Appellant averred that he had been in service for a long time and had acquired more experience than the Co-Respondent. From the markings, the Tribunal notes that the Appellant did get more marks on relevant experience than the Co-Respondent. However, since there were nine criteria, the relevant experience criterion was not sufficient to tip the balance in his favour as the Co-Respondent performed better under the other criteria.

The Appellant has not shown that there was any procedural impropriety in the selection exercise and his averments with respect to the Co-Respondent have not been substantiated.

The Tribunal will not delve on the averment of the Appellant that his health problem could have impacted on his non-selection for the post as there was no evidence adduced on this.

The appeal is set aside.