

The Tribunal cannot request the Respondent to appoint anyone in any job as this power vests solely in the Public Service Commission under section 89 of the Constitution.

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

Appellant's case

The Appellant averred in her grounds of appeal that she was “contesting all selected candidates as they are underqualified, unexperienced and less in seniority than me “.

The Appellant stated that she joined the public service as CASA on ... She had her Certificate of Primary Education and studied up to Form 3. She followed a “Receptionist and Telephonist” course amongst other subjects

Besides her duties as CASA she was also performing tasks of an administrative nature. Two months after she joined the Ministry she started to perform the duties of receptionist.

On ..., she requested for an acting allowance as Receptionist/Telephone Operator and her request was acceded to by the Ministry.

During the period ..., the Appellant was posted at the ...Services Division of the Ministry to perform the duties of telephone operator and she was also attending duties pertaining to LABA work on a daily basis.

She applied for the post of LABA and she was called for interview. She averred that she did well at the interview and she was told later by the chairman of the selection panel, that “...*she does not have to worry as she is one of the selected officers to work as Laboratory Attendants*” The Appellant was not selected for the post.

The Appellant claimed that she had “*reasonable grounds to believe that her proven experience in the discharge of the duties of receptionist where she was called upon to take phone calls either in English and French language and solid*

experience in attending duties of LABA during the period ...when she was posted at the Division of the ... ought to have weighed heavily in her favour during the selection exercise, the more so, amongst those who have been offered the position of LABA, a few have very minimal experience..."

The Appellant also referred to Co-Respondent No 5 who, she believed, had attended the duties of LABA for a very short period contrary to the stated period of three years. She stated that in the PSC Form 7 it was said that "*incomplete, inadequate or inaccurate filing of the application form may cause elimination of candidates from the competition*".

As regards the mechanics who had been appointed as LABA she believed that they did not have proven experience in the post.

The Appellant requested the Tribunal to "(a) *quash the decision of the public body concerning those officers who ought not have offered the position of LABA A(b) remit the present matter, subject to such conditions as it may determine, to the public body, for further consideration with a view to settling the matter and/or (c) make such other order as it deems appropriate, in particular, making a recommendation to the public body that, having regard to the evidence on records, an offer for the position of Laboratory attendant must be made to the Appellant*".

Respondent's Case

The Respondent had raised a point of law to the effect that the Tribunal should set aside prayer C of the Appellant. However, the Respondent agreed subsequently that the issue be taken up when the case would be heard on merits.

The Respondent averred that the post of LABA was filled according to the Scheme of Service "*by selection among serving employees on the permanent and pensionable establishment of the Ministry who possess at least a pass in Biology or Chemistry or Physics obtained at the Cambridge School Certificate or the General Certificate of Education "Ordinary Level" or an equivalent qualification acceptable to the Public Service Commission*"

There was also a Note 1 in the Scheme of Service which said that:

"In the absence of qualified candidates, consideration will be given to employees on the permanent and pensionable establishment of the Ministry

who have proven experience of LABA work although they do not possess the above qualifications”

The vacancies for the post were advertised on ... A selection panel was constituted by the Ministry as the selection was being done under delegated powers.

There were forty applications but six of the applicants did not attend the interview. Nine of them were selected but three did not accept the offer of appointment (namely Co-Respondents Nos.3, 6 and 9). The Appellant attended the interview and her application was duly considered. However, she was not selected.

The Respondent admitted the averment of the Appellant as regards her qualifications, save that the Appellant did not attain Form 3, as she averred. The Respondent stated that the Appellant joined Form 1 in January 1989 and left in the same year. The Appellant did not deny this statement from the Respondent.

The Respondent also denied that the Appellant was working in the post on a daily basis and referred to a letter from the ... Officer dated ... which Appellant herself produced to the Tribunal, where it was said that *“In the course of her duties at..., she attended, at times, to some activities pertaining to LABA....”*. The Appellant did not rebut this on being cross-examined.

The Respondent referred to what the Appellant averred that the chairman of the panel had told her. However, the latter who appeared as witness, denied forcefully that such a statement was made by him to the Appellant. He stated that he had no right to tell candidates about the interviews as he had no say in the decision to appoint any candidate.

The Respondent explained that not all the candidates met the core qualifications requirements by the Scheme of Service. For some of them, it had to resort to Note 1 of the Scheme of Service. The Respondent explained the procedures for scrutinizing the application forms by the Human Resource Section of the Ministry and relied on such scrutiny, except when there were adverse reports in which case the selection panel asked for the personal files available at the Ministry.

Among the Co-Respondents, some had passed the science subjects mentioned in the Scheme of Service but others, including the Appellant, did not.

They were considered under Note 1. The two mechanics who were selected met the core qualifications.

The Respondent stated that consideration was first given to those who met the core qualifications as per the Scheme of Service.

The Respondent submitted that it followed all the procedures and the appeal should be set aside.

Determination

The Scheme of Service is clear. The post is filled by selection and seniority is therefore, not a determining factor.

The Respondent was in order when it considered the candidates who met the core qualifications requirements and cannot be challenged on this. In fact, in the course of the hearing, the Appellant stated that she was not contesting the appointment of the Co-Respondents who accepted the offer, except for Co-Respondents No 5 and No 7 whom she claimed did not have the experience of LABA work as required. The Tribunal sought confirmation from the Respondent as to the time these two Co-Respondents spent on related activities and finds that Co-Respondent No. 7 had been officially assigned duties of LABA six times for a total of about 125 days while Co-Respondent No. 5 had been officially assigned such duties on one occasion for a period of about 40 days. The Appellant has never been officially assigned duties of LABA. The selection panel has been flexible in its interpretation of “proven experience of LABA work” in Note I. But Co-Respondents No. 5 and No. 7 have more in their favour than the Appellant on this count.

The averments that the Appellant studied up to Form 3, that she provided assistance on a daily basis in the LABA work and that she had an edge over others as she was answering the phone in English and French were not sustained during cross-examination by the Respondent.

The Appellant herself did not meet the core qualifications requirements and was considered under Note 1.

As regards paragraph C, this Tribunal has no jurisdiction to make a recommendation to appoint Appellant. Section 89 of the Constitution vests power to appoint in the public service with the Public Service Commission.

There was no evidence that a merit list had been drawn. If and when Respondent advertises a vacancy, Appellant will be free to apply anew.

In the light of the above, the Tribunal finds that the Appellant has no case.

The appeal is set aside.