

PUBLIC BODIES APPEAL TRIBUNAL

Det 24 of 2014

Whenever there is a selection exercise, the order of seniority is established anew. If the next exercise is a promotion, the new order of seniority will prevail despite the actual number of years of service of candidates.

The Appellant is challenging the decision of the Respondent to appoint the Co-Respondent to the post of SRDR.

Appellant's Case

The Appellant averred that she joined the civil service on ... and was posted in the ... Department as from that date up to ... From then on she was posted at the Ministry of ... till... She was also selected as... She was appointed SWR on ... at the ... until her present appointment in a ...Unit. The task in this Unit was always allocated to the ...by seniority. She claimed that she was before the Co-Respondent... However, when she enquired from the Establishment section of the..., she found that she was not the next one on the list to be appointed as She did not know that the Co-Respondent was her senior contrary to what she had always thought.

She further averred that the Co-Respondent before her appointment as ...was in a post which she stated was lower than her post of SWR as the latter post carried a higher salary.

In the course of the proceedings, she decided to drop all reference to seniority and issues related to it as she conceded that Co-Respondent was her senior, which she did not know before. She narrowed down her grounds of appeal only to the issue of merit, claiming that she joined the service before the Co-Respondent and she had gathered more experience during her 34 years of service as compared to only 22 years for the Co-Respondent. She had more certificates and more experience.

She prayed that the Tribunal should quash the decision of the Respondent and to restore her seniority on the establishment.

Respondent's Case

The Respondent averred that the post of SRDR was filled by promotion from among ... on the basis of experience in ... practice and procedure, merit and ability to do that specific work.

On ..., the Responsible Officer, reported a vacancy in the said post which occurred on ... and recommended that the Co-Respondent, ranking 1st in the grade of ... be promoted. The Co-Respondent was fully qualified for the promotion in accordance with the Scheme of Service for the post and she was assigned the duties of the higher post with effect from The Respondent agreed with the recommendation of the Responsible Officer and the Co-Respondent was offered promotion on ...

The Respondent stated that there was a selection exercise carried out in ... and the Co-Respondent and the Appellant were appointed Trainee ... in that order. They were appointed RDR with effect from ... in the same order.

The Respondent averred that the Co-Respondent, being senior to the Appellant, was appointed to the post of SRDR

The allocation of work was an internal arrangement for the performance of the duties...

The Respondent averred that according to regulation 2 of the PSC Regulations, the relative seniority as between officers of the same grade was established by "*reference to the order of merit determined by the Commission following that exercise....*"

The Respondent moved that the appeal be set aside

Determination

The fact that the post of SRDR is filled by promotion and not by selection is not disputed. This is clear in the Scheme of Service for the post which is effective since ... except that the post has been restyled.

As explained, during the hearing the Appellant dropped all reference to seniority and related issues in her grounds of appeal. She then grounded her appeal solely on merit, namely that she had 34 years of experience compared to 22 years for the Co-Respondent.

However, the Respondent rebutted the averment that her longer years in the service had given her seniority over the Co-Respondent. The Respondent stated that in ... there was a selection exercise for Trainees and the Co-Respondent ranked first followed by the Appellant. In 2005, they were confirmed as ... in the same order of seniority. There had been no protest over these decisions. The argument of the Appellant is that she was not aware at that time of her seniority ranking and thus did not contest her loss of seniority. It is a fact that before the creation of this Tribunal there was no established system to notify concerned officers of the appointments and the relative seniority rankings of those appointed. Now, after each appointment exercise there is a notification circular and aggrieved officers can lodge appeals to the Tribunal as from the date of this notification circular.

The fact remains that when there was the appointment of Trainees, the Co-Respondent became senior to the Appellant despite the fact the Appellant had been in service since ...while the Co-Respondent joined later. The longer number of years in service of the Appellant had not been to her advantage in that selection exercise. The seniority ranking was maintained when they were both appointed in the same year. The seniority of the Co-Respondent was, therefore, established there and then and had not been disturbed in the following years.

The Appellant also argued that she had better qualifications related to the post. It is noted, however, that both the Appellant and the Co-Respondent had to follow a one-year course in ... even if the Appellant already had a

certificate in the subject. In terms of training they were *at par* as regards the requirements of the post. In addition, the Appellant conceded that both she and the Co-Respondent are in the same office and doing similar work. The fact that the Appellant was chosen to do certain work is an internal arrangement, as was averred by the Respondent and not rebutted by the Appellant.

The Tribunal finds that the Respondent has proceeded by way of promotion for appointment as per the Scheme of Service for the post. The Co-Respondent is senior to the Appellant as per a selection exercise carried out earlier when they were appointed Trainee and confirmed as ... in ...

Seniority being a major criterion in promotion exercises, the Tribunal sees no reason to intervene.

The appeal is set aside.