

Det 25 of 2014

When a statutory body closes and its workers are redeployed, their number of years of service will unfortunately be lost when competing for promotion with employees of the Ministry where they started working, even if they were employed to do the same job.

The five Appellants in the two appeals are LADAN at the Ministry of ... (hereafter referred to as the Ministry). They are challenging the decision of the Respondent to appoint the Co-Respondents to the post of Senior LADAN in the Ministry. All the appeals have been consolidated as they refer to appointment exercises in the same grade under similar circumstances.

Appellants' Case

In Appeal A the Appellants averred that they were LADAN at the former Development Works Corporation (DWC) for many years before they joined the Ministry of ... in the same function. The Co-Respondent was a Development Worker at the DWC and was working under the supervision of the Appellants before his transfer to the same Ministry. The Co-Respondent only became LADAN after he was transferred to the Ministry.

In Appeal B the Appellant averred that he was transferred as LADAN from the Development Works Corporation to another Ministry ... on ... and to the Ministry of ... as LADAN on He claimed that he had longer term of service, was better qualified and had assumed higher responsibilities and he should have been appointed to the post.

The Appellants felt aggrieved that they were LADAN before the Co-Respondents and all their previous years experience had not been taken into account when the PSC regulations put qualifications, experience and merit before seniority for an appointment.

The Appellants sought redress from the Tribunal for what they considered to be an unfair decision on the part of the Respondent.

Respondent's Case

The Respondent averred that Senior LADAN was a Departmental post. In other words, it was on the establishment of the Ministry and appointment to that grade was from among LADAN of the Ministry who reckoned at least five years experience in a substantive capacity in the grade. The post was filled by promotion. The Co-Respondent was the most senior in the grade of LADAN in the Ministry and as he met the requirements for the post, he was appointed.

The Respondent explained that the Appellants and the Co-Respondents were all at the now defunct DWC. The Co-Respondent in Appeal A was transferred to the Ministry before the Appellants. At that time he was still a Development Worker. However, he was appointed LADAN in a substantive capacity in the Ministry on ...

The Respondent stated that since the Co-Respondent in Appeal B was appointed LADAN on ..., he was senior to the Appellants in the Ministry ... and as the post was filled by promotion it was in order for the Respondent to do so.

The Respondent rebutted the argument of Appellant number 1 that there was a difference of only three months between his appointment as LADAN in this Ministry from that of Co-Respondent and his experience had not been taken into consideration. The Respondent was adamant that a difference of only one day was sufficient to determine the seniority ranking.

The Respondent submitted that this was an appointment by promotion and since the Co-respondent was senior-most, he was appointed. (details as to respective dates of appointment were provided)

Determination.

The post of Senior LADAN is filled by promotion and since the Co-Respondents were senior to the Appellants in the Ministry ... they were appointed. This decision, therefore, cannot be challenged.

The only grey area concerns the way the seniority list has been established which left the Appellants in doubt.

It is not disputed that the Appellants and the Co-Respondents were all working at the DWC and the Co-Respondents were junior to the Appellants there.

However, there was a Government policy decision to close the DWC. Former workers of the DWC were gradually transferred to the various Ministries. The Co-Respondents were transferred before the Appellants in both Appeal A and Appeal B. The Tribunal does not have to find out why this was so. It is also a fact that in Appeal A the Co-Respondent while he was at the Ministry was appointed as LADAN.

When the Appellants joined the Ministry the Co-Respondents were already LADAN and the Appellants came after them in the seniority list. This is irrespective of their previous experience and position at the DWC. They moved from a statutory body to the central government establishment and they lost their seniority privilege of their previous employment. In the case of Appeal B, the Appellant conceded that when he was appointed as LADAN on the Permanent and Pensionable Establishment of the other Ministry of ...in ..., he kept his posting at the DWC until the DWC was closed down in 2006. The post of Senior LADAN is a departmental grade in the Ministry of Environment and Sustainable Development.

This is an unfortunate situation for the Appellants which has been caused by the implementation of a policy decision to close the DWC. It may appear unfair that the previous experience of the Appellants has not played in their favour. However, the appointment is by promotion and seniority is the determining factor.

The Respondent cannot be found to have erred in its decision.

The appeal is set aside.