

## **Det 28 of 2014**

**Whenever there is a qualification requirement , even if there is a note which provides for those not qualified, those with the qualification will be advantaged. The others can compete amongst themselves but seniority will only become relevant if their marks put them on the same footing. Experience and merit will be more important criteria, by virtue of PSC Regulation 14**

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

### **Appellants' Case**

The Appellant is a ... at the Ministry of .... He joined the service in ... He averred that he applied for various posts ... in the past. He was called for interview but he was never appointed. Instead, his junior colleagues were appointed.

In the present appeal, he conceded that he did not have a the basic requirement as regards qualification, but the two Co-Respondents who were appointed did not either. He found the fact that they were junior to him was unfair as he had been working in the section since ... and he had a clean record.

He had not made any appeal in the past as he expected that his turn would come for him to be appointed to a higher post but this never materialised.

His legitimate expectation had been thwarted as he had some 37 years in service.

### **Respondent's Case**

The Respondent averred that the post was filled by selection from among ... on the permanent and pensionable establishment of the Ministry who:

- (i) possessed the "basic certificate"
- (ii) have at least four years' experience in the appropriate techniques.

There was a Note in the Scheme of Service which said that "In the absence of ... Workers possessing the qualification at (i), consideration will be given to ... Workers who show proof of being literate".

The Respondent had delegated the power of appointment for the post of GNAT to the Ministry of ...

In this recruitment exercise, there was an advertisement by way of the Ministry's Circular dated ... and 28 applications were received. All the applicants were called for interview. Ten of the applicants met the qualification requirements and the rest qualified under the Note mentioned above.

The candidates were assessed by a Selection Panel which established the following criteria for the interview:

- (i) Qualifications
- (ii) Experience
- (iii) Knowledge of Work
- (iv) Personality
- (v) Work and Conduct

On the basis of the selection exercise a first batch of seven GNAT was appointed in... This was followed by another appointment of five officers in the grade as follows:

This was followed by the two Co-Respondents whose appointment took effect as from ...

The Appellant was contesting only the appointment of the two Co-Respondents and not the others.

The Respondent stated that this was a selection exercise and seniority was not a determining factor. All candidates were considered and assessed according to the established criteria.

The Respondent noted that the first ten appointees were those who had the required qualification and the two others appointed were allowed to compete under the Note.

The Respondent submitted that all procedures had been followed and moved that the appeal be set aside.

### **Determination**

The post of GNAT is filled by selection.

The Appellant was one of the 28 candidates who applied when the post was advertised. Ten of the candidates were holders of the basic qualification. The Appellant does not possess this qualification and was still considered under the Note in the Scheme of Service. The Tribunal finds that there was a first appointment of seven candidates who satisfied the full qualification requirement. They scored full marks under the criterion qualifications which made them way ahead of those not having the said qualification. The Appellant did not challenge these appointments even if there was a Notification dated ... to this effect. During cross-examination the Appellant stated that he was not aware of these appointments which averment did not convince the Tribunal. In any case he would have had little chance of upholding an appeal as he was not fully qualified.

It was when the second batch was appointed that he appealed. Here again the Tribunal notes that the Appellant did not appeal against the first three appointees but only against the two Co-Respondents. The reason seems to be that the Appellant is conscious that the three appointees had the full qualification requirement and it would be futile to challenge their appointment.

The Appellant focused his appeal against the two appointees who, like him, **were** not holder of the qualification. It is noted that when the five officers were appointed in a temporary capacity, there was a Notification dated ... The Appellant did not appeal at that time. He only appealed when there was a second Notification dated ... when these officers were confirmed in their appointment in a substantive capacity.

The question then is whether the Appellant should have appealed at the time of the Notification of the five officers on a temporary basis? Was it too late for the Appellant to challenge the appointment at the late hour when they were confirmed in their new position? The Tribunal is of opinion that the Appellant should have lodged his appeal when the five officers were appointed in a temporary capacity as there had been an appointment and the jurisdiction of the Tribunal would have been operational. The appeal in response to the Notification where the five officers are confirmed in their appointment is therefore out of time.

Even then to be fair to the Appellant, the Tribunal examined documents provided to the Tribunal under confidential cover and finds the Respondent has followed all the process for the selection exercise in a fair manner. There was a selection panel duly

set up and criteria were pre-established for the selection. The Tribunal finds that those who hold the basic qualification top the list and it is not surprising that they were appointed. As to the Appellant and the Co-Respondents, they do not possess the qualification and they got no marks under the criterion Qualification. The Co-Respondents scored higher marks than the Appellant on the other criteria and were appointed. The Tribunal cannot interfere with the assessment of the selection panel unless there is a flaw in the process which the Tribunal does not find. The Respondent averred that all the information provided in the application form by the Appellant were taken into consideration. The Tribunal has no reason to doubt this.

The Tribunal feels that even if the appeal was in order and submitted at the right time, this would not have changed the outcome of such an appeal. This should put the qualm of the Appellant to rest.

As to the legitimate expectations claimed by the Appellant by virtue of his long years of service, there is nothing the Tribunal can do. This was a selection exercise and seniority takes the backstage. It is unfortunate but the Scheme of Service is sacrosanct and binding.

The appeal is set aside.