



These two appeals refer to the appointment exercise that led to the appointment of the Co-Respondent, an ODT, to the post of RTOR (hereafter referred to as the post). They were heard separately but the Tribunal decided to give one determination to apply to both cases.

### **Appellants' Case**

In Appeal A, the Appellant, a LAT, averred that he was the senior-most and he had higher qualifications than the Co-respondent. He had all the qualifications required for the post and he even had a degree in .....

At the hearing he focused on point 6 of his Statement of Case which was to the effect that he:

*wrote to Human Resource to express his willingness to get assignment of duties for the post of RTOR following the departure of the incumbent but did not receive any reply.*

The Appellant stated that as senior-most in the grade of ..... he should have been given the assignment of duties. This would have given him the experience on working with the equipment. He referred to the Scheme of Service for the post which stated that *"Experience in the operation of ..... would be an advantage."* He was not given this chance and this played against him in the selection exercise.

In Appeal B, Appellant averred that he was recruited by the Municipal Council of ..... in .....as..... He was promoted to the post of ..... in ..... He was asked to act in the post of RTOR on the ..... and he did so up to the filling of the vacancy when the Co-Respondent was appointed.

He had his School Certificate, GCE A level in three subjects and he was following a course leading to a degree in .....

He was appointed .....in ..... while the Co-Respondent was appointed to the same post later. The vacancy for the post was advertised on ..... and the interview of candidates took place on..... The Appellant found it unfair that the Co-respondent was assigned the duties of RTOR as from....., that is after the post was advertised and two weeks before the interview for the post.

On cross-examination, the Appellant stated that he had nothing to reproach regarding the way the interview was conducted. He was aware that in a selection exercise many criteria were taken into account in order to select the successful candidate.

The Appellant's contention was that the Co-Respondent had no experience in the operation of the equipment at the time she applied for the post and it was he who coached her on the use of that equipment only to find that the person he trained was appointed and he was not.

### **Respondent's Case**

The Respondent averred that the post was filled by selection as required by the Scheme of Service. The vacancy was advertised on ..... amongst serving officers in the Municipal Council of..... Seven candidates were found eligible for the post and they were convened for interview on..... The Co-Respondent was appointed to the post in a temporary capacity with effect from..... She possessed all the requirements of the post and all procedures had been followed as per the Scheme of Service.

In Appeal A, the Respondent denied that Appellant did not receive a reply to the letter he wrote to the Human Resource section of the Municipal Council. The Respondent produced a letter dated ..... which the Chief Executive of the Municipal Council sent to the Appellant which said that "*Please refer to your letter dated 13 June 2013 and I wish to inform that the contents have been noted*". The Respondent considered this as a response to the Appellant's letter.

The Respondent further stated that the Appellant's Degree in .....had no relevance to the duties of the post.

As regards the averments of Appellant in Appeal B, the Respondent conceded that he was senior to the Co-Respondent and had been acting as ..... as stated. The Respondent did not deny that the Co-Respondent was made to act as RTOR after the vacancy for the post was advertised. However, the Respondent averred that experience in the operation of the equipment would only give an advantage to a candidate and the candidates were assessed in their overall performance while taking into account experience and merit before selecting the right candidate.

While the appeal was in process Appellant in this Appeal was appointed to the post of RTOR on..... . The Respondent had moved that his appeal be set aside as it had no "*raison d'être*". In any case there was no further post higher than the present post to which the Appellant or the Co-Respondent could aspire and where the seniority element will play against the Appellant.

The Respondent had moved that the two appeals be set aside.

### **Determination**

The motion of Respondent to deny Appellant in Appeal B the right of appeal after he was appointed is not tenable. As pointed out by Counsel for the Appellant there are other benefits attached to the post if he had been appointed in the initial appointment exercise which the Appellant will not now obtain. The Tribunal shares this view and has allowed the appeal to proceed on the merits.

It is not disputed that the post is filled by selection. The Scheme of Service is clear about this.

The Scheme of Service of ..... specifies that the duties of the .....includes, *inter alia*, "to operate a ..... and related equipment". This duty does not appear in the Scheme of Service for LAT of Appellant in Appeal A.

The post is filled by selection from all serving officers possessing:

- (i) *The Cambridge School Certificate or an alternative qualification acceptable to the LGSC*
- (ii) *The ability to express oneself clearly in English and French;*

(iii) *Good hearing and a pleasant voice*

All officers of the Municipal Council, including ..... and LATs, are equally eligible for the post. It is surprising that Appellant in the first Appeal was not given the chance to perform the duties of the post when the opportunity arose as he averred he was senior-most. He wrote to the Municipal Council and he merely received a reply that it had taken note of his letter. However, even if he had performed the duties of the post this would not have given him an edge for the post. The Co-Respondent herself had been performing the duties of the post for only ten days by the time she went for the interview.

Similarly, seniority does not have a determining role in a selection process. The fact that the Co-Respondent was appointed Attendant in 2011 while Appellant in Appeal A was appointed LAT in 2004 and Appellant in Appeal B as ..... in 1998 is immaterial.

It is true that in the Scheme of Service for the post there was a Note saying that experience in the operation of the relevant equipment would be an advantage. However, it is clear that this was not an essential requirement but only an asset requirement that can give some additional marks on the experience criterion. This Tribunal sought information on the criteria, weightage and markings of candidates at the interview.

From the information provided to the Tribunal under confidential cover, the Tribunal finds that there was no established set of criteria for assessing the candidates at the interview. There was a panel of five members and the candidates “were allocated marks out of a maximum weightage of five (5) marks by each member of the panel” “The Co-Respondent had 0.6 marks more than one of the Appellants and 1.2 marks more than the other Appellant.

The Tribunal finds that the way the selection panel assessed the candidates was not proper. No criteria were agreed upon before the assessment was done at the interview. It is therefore difficult, not to say impossible, to say how the Co-Respondent was found better than the other candidates. She could be a better candidate but for the other candidates they are at a loss to know where they failed. They could have found relief if an explanation could be given to them in the

determination of the Tribunal. Unfortunately, this is not the case. The Tribunal cannot explain how the Co-Respondent, who had fewer years of service than the Appellants, and who had no experience in the operation of the relevant equipment was found a better candidate for appointment. The fact that the Co-Respondent was made to operate the relevant equipment after she applied for the post and just before she went for the interview adds suspicion in the minds of the candidates as to the fairness of the selection process.

By being unable to make available to the Tribunal the markings of each member of the panel and submitting only a final consolidated rating, the Respondent is depriving the Tribunal from exercising its function which is to scrutinize the appointment exercise. The fact that the only criterion considered at the interview stage was “performance at interview” is far too vague as no independent person can in fact assess how fair and reasonable the exercise was. Further, the Respondent failed to answer two queries raised by the Tribunal as follows:

- (i) Did candidates pass a voice test at the interview?
- (ii) How was good hearing assessed?

Yet these relate to the Scheme of Service. The Respondent merely stated in reply that the competencies mentioned in the Scheme of Service were assessed by the panel in the course of the interview.

It is apposite to quote from the Supreme Court judgement (2011 SCJ 382) in the case of the Public Service Commission v/s the Public Bodies Appeal Tribunal in the presence of Mrs. Wong Chow Ming regarding the powers of the Tribunal to enquire into the merits of the decision of the PSC but which also apply to the LGSC:

*“It is significant to note that (1) the hearing of an appeal is not limited to reviewing the decision of the Public Service Commission on the basis of the record or affidavit evidence only but the hearing takes the form of an oral hearing with the hearing of witnesses as was done in the present case; and (2) there is an unrestricted right of appeal which is not limited only to a review of the decision-making process of the PSC but it has full powers to enquire into the merits of the decision of the PSC”.*

The Tribunal quashes the decision of the Respondent, remits this case to it under Section 8 (4) (b) of the PBAT Act and directs the Respondent to carry out a fresh selection exercise that is more transparent, with a proper set of criteria and relevant ways of assessing the competencies, allotting marks on each criterion and test.