

**The Tribunal has no jurisdiction regarding the appropriateness of Schemes of Service. If a diploma is a requirement for selection, those who do not possess this diploma will not be selected even if they have more experience in the field than those who have the said**

The nine Appellants are challenging the decision of Respondent to appoint the six Co-Respondents to the post of ES

Initially, there were 25 appellants. However, in the course of proceedings five of them decided to withdraw their appeals. In addition, the Tribunal gave a ruling to the effect that eleven other appellants had no *locus standi* as they did not apply for the post when it was advertised and could not therefore contest the decision. (website reference FR 14 of 2013)

The remaining 9 appellants were then heard on the merits. They were represented by Appellant No. 1.

### **Appellants' Case**

The Appellants averred in their grounds of Appeal and Statement of Case that they had been working in their specialised fields on secondment. Some of them were holders of University degrees. Yet, when the vacancies were filled for the said post, their experience in such posts was not taken into consideration. Others who had little experience in the specialised field or no experience at all were appointed simply because they had a Diploma in that specialised field.

The Appellants found this most unfair as in the Pay Research Bureau Report 2008, it was recommended that those who had been sent on secondment to the Specialised department should be given a chance to be appointed to the post of provided they had been given an appropriate training as they already had the experience. It was not specified whether the training referred to the Course held at the ... leading to the specialised Diploma.

The Appellants further averred that the Diploma was not the appropriate qualification as the course content did not include certain specialised topics. The

Scheme of Service also mentioned that candidates for the post needed to have only “four years’ service in a substantive capacity” and not necessarily in Specialised departments.

The Appellants felt that the Co-Respondents had a “red carpet rolled before them” as the vacancies were advertised only a few days after the Co-Respondents were awarded their Diploma.

They stated that injustice had been caused to them as their experience in the specialised departments had not been taken into account and the Ministry of ...had failed to mount the special training course as recommended in the PRB Report. It was not mentioned that they had to be holders of the specialised Diploma

Under cross examination, the representative of the appellants (hereinafter referred to as Appellant), was questioned with regards to the various PSC Regulations he referred to in his grounds of appeal. He had questioned whether section 19 (1) of the PSC Regulations was adhered to. Section 19 (1) reads as follows:

19. (i) (a) *Where a vacancy occurs or it is known that a vacancy will occur in any public office in any Ministry or department or general service, the responsible officer shall, if he desires the vacancy to be filled, report the fact to the Secretary, certifying at the same time that the details of the vacancy have been verified and that there is no establishment or financial or other objection to the vacancy being filled.*
- (b) *The report shall include a recommendation as to the manner in which the vacancy should be filled and whether or not the vacancy should be advertised, and a copy of the report of the vacancy shall be forwarded to the Secretary to Cabinet and Head of the Civil Service.*
- (c) *The responsible officer shall, as may be required by the special or general directions of the Commission, constitute a promotion board to advise him on the matter.*

It was put to the Appellant that this was exactly what the Responsible Officer (RO) of the Ministry did in this case. He stated in reply that, as elaborated under section 1 (a), he had made representations to the Ministry several times that the advertisement for the post before the training of non specialised officers would cause a huge injustice in the sector. Those objections were never taken into account. He made the first formal verbal representations in ... and they were made to the Director for Human Resource and Desk Officer for the specialised sector at that time. Another objection was made in ... when the Trade Unionists were present. He submitted written

objections to the Tribunal and those were dated as from ... The letters mentioned the fact that there were no suitable officers for the post. It was however put to him that this does not constitute a protest.

Appellant wrote to the Supervising Officer of the Ministry ...in ...about the inexistence of a Diploma Course. He stated not being agreeable to the fact that his letter was not considered as an objection but simply a protest. The case was taken before the Conciliation Service of the Ministry of Civil Service and Administrative Reforms and this did not lead anywhere as the Ministry refused to backpedal. He went there after the Scheme of Service was prescribed. It was put to him that he went to the Conciliation Service to protest against the fact that the post was advertised and that he was not eligible. He denied challenging the Scheme of Service. He maintained that they went to the Conciliation Service because the post was advertised and "we were being segregated from the post". He questioned the fact that the qualifications required were important to maintain a high service. He stated that the qualifications taken on board are not correct. He stated initially not being aware that the Trade Unions were consulted before changing the Scheme of Service but later conceded that the Trade Unions were consulted.

### **Respondent's Case**

The Respondent averred that, according to the Scheme of Service for the post that was prescribed on ..., the post of ... was filled by selection from among officers in the grades of TE/STE and EDP who :

- (i) Reckon at least four years' service in a substantive capacity in their respective grades or an aggregate of at least four years' service in a substantive capacity in the grades of TE/STE and EDP ; and
- (ii) Possess the specialised Diploma from a recognized institution or an equivalent qualification acceptable to the Public Service Commission.

On .., the Responsible Officer (RO) of the Ministry of ...reported 34 vacancies for the post and recommended to the Respondent that these be filled by selection from among qualified officers of the Ministry. The advertisement for the filling of the said post came out on ...There were 66 applications but only eight were found eligible and

they were convened for an interview on .... The eight candidates were offered appointment on .... Five of them assumed duty on ... and one on .... Two candidates declined the offer of appointment.

The Appellants applied for the post but they were not found eligible because they did not possess the specialised Diploma or did not have the four years' service in a substantive capacity as required in the Scheme of Service for the post.

The Respondent averred that it acted in all fairness in accordance with powers vested upon it by section 89 of the Constitution and the provisions of the Public Service Commission Regulations.

The appointment to the post of was made after a selection exercise was carried out amongst eight eligible candidates and consideration was given to the requirements of the post, the criteria of the selection determined by the Respondent, the requirement of the Scheme of Service, performance at the interview and the provision of regulation 14 (1) of the PSC Regulations. Moreover, in exercising its powers in connection with appointment or promotion in the public service, the Respondent had, as laid down in regulation 19 (6) of the PSC regulations, determined the suitability of the selected candidates for appointment as ...

Under cross examination, the Respondent was questioned as to whether any member of the interviewing panel was qualified with regards to the specialised field and the representative of the Respondent stated not being aware. It was put to him that none in the interview panel was better qualified in the specialised field and the best qualified only had a diploma.

A question was put to Respondent as to whether the PSC verified if the required qualifications at the time of recruitment were appropriate and equivalent, and would enable the person to carry out its activities properly. The Respondent stated that this was done at the time of preparation of the Scheme of Service and that, at the time of recruitment, it was already prescribed. With regards to the equivalence, the Respondent could seek the advice of the Mauritius Equivalence Council and he was not aware if this was done in this case.

Respondent replied that the points raised by the Trade Union were sent to the Conciliation Division but there was a 'deadlock'. Subsequently the Respondent was requested to fill in the vacancies.

### **Co-Respondent No. 1**

**Co-Respondent No. 1** filed a Statement of Defence.

Appellant had challenged the fact that she could cope in the specialised field by referring to specific subjects. She stated having a Diploma in the specialised field

### **Appellant's Submissions**

Appellant submitted that representations were made to the Ministry and those were discarded. He also regretted that when the post was created there was no requirement for a Diploma. Since the Co-Respondents were appointed, they would become senior to the Appellants. It was also his submission that the candidates to the post needed a Diploma from a recognized institution and he challenged the diploma given by the ... as it did not tally with the duties to be performed by appointees to the post. The Co-Respondents graduated in December and the post was advertised in January just after they graduated.

The Respondent was unable to answer the question as to whether they had checked the equivalence and he explained that, according to him, the course content of the ... was inadequate and not in accordance with the general requirements that are needed for a Diploma. He stated that he had more experience working in the sector and he doubted the fact that those with the Diploma could do better than him.

### **Respondent's Submissions**

*Respondent referred to the Scheme of Service:*

He stressed on the fact that in Mauritius the only institution that delivered the training in the specialised field was the .... Referring to the representations made by the Appellant to the Ministry of..., two unsigned documents, submitted to the Tribunal by Appellan, simply mentioned the shortage of staff in the field.

Referring to the section 7(3) of the PBAT Act, he reminded the Tribunal that it was up to the Appellant to prove his case on a balance of probabilities and he stated

that the Appellant failed to do so. It seemed that the Appellant aimed at challenging the Scheme of Service since the Appellant's objections referred to the diploma requested in the Scheme of Service. This was outside the purview of the Tribunal and outside its jurisdiction.

Section 3(1) of the Public Bodies Appeal Tribunal Act 2008 clearly states that the Tribunal is only concerned with appeals on appointment and disciplinary actions.

None of the Appellants met the requirements of the Scheme of Service. He produced a document which contained information required, 'their dates of appointment and their qualifications'.

Respondent also wondered in what capacity the Appellant was challenging the content of the qualifications of the..., the latter not being an expert in the field.

Finally, referring to section 89 of the Constitution and the provisions of the Public Service Commission Regulations, he stated that the Respondent never travelled outside its parameters.

### **Co-Respondent No. 1's submissions**

Co-Respondent No. 1 stressed on the fact that she was already working in the specialised Department before she applied for the post

### **Determination**

The Appellants feel aggrieved that they have not been found eligible for the post although they have been posted on secondment in the Specialised department, and have been dealing with those in need of such specialised care. Some have been there for many years and some even have university degrees. They have over the years gathered experience in dealing with such persons in need. They find that when it comes to appointment for the post, they have been left behind in favour of those who have little or no experience in the field, by the simple reason that they do not have a Diploma. They claim that the Diploma delivered by the... is not the appropriate one for the specialised job. This issue had been raised by the Union with the Ministry.

They find that the Co-Respondents who were their juniors have now become senior to them and will have an advantage when there will be vacancies for higher posts in the cadre.

This is an unfortunate situation for those who have taken the challenge to accept secondment in Specialised departments. It is also unfortunate that the Ministry of ... has not taken heed of the need to train these officers as recommended by the PRB Report 2008 which was accepted *in toto*. This would have established a level playing field for them vis a vis those who went for the Diploma while having little or no exposure in the specialised field. The situation is even more dramatic as, though there were 34 vacancies, only eight of the candidates were found eligible and only six accepted and were finally appointed. Had the Ministry taken action to train these officers, they would have had a chance of being appointed; more important also the dearth of qualified officers for the sector would have been lessened .

Be that as it may, the point remains that, in the filling of vacancies, the Respondent has to comply scrupulously with the Scheme of Service. The Scheme is very clear that candidates to the post must have a Diploma from a recognized institution. It does not say that it has to be the ... Diploma. The Appellants have queried the appropriateness of the qualification stating that it is lacking in some components. Unfortunately, this Tribunal has no mandate to explore the course contents given by institutions and their completeness or inadequacies. This is best left to other bodies. Should any party feel that there are problems in the qualifications or other requirements of a Scheme of Service this should be raised by the Unions with the authorities and thrashed out at their level.

The Respondent has rebutted the averment of the Appellants that it could have considered their applications for the post on the basis of their experience as this would have meant going against the provisions of the Scheme of Service for the post.

This Tribunal finds that there has been no procedural impropriety by the Respondent in this appointment exercise. It has acted as per the requirements of the Scheme of Service.

The Appellants may understandably feel aggrieved because of the given circumstances but this is a matter which cannot be cured by this Tribunal. The Appellants must find other avenues to pursue their struggle.

The appeal is set aside.