

Det 05. of 2014

Qualifications not submitted to the interviewing panel cannot be considered during an interview.

Irrelevant qualifications are not taken into account either.

The Appellant is appealing against the decision of the Respondent to appoint the Co-Respondents to the post of PRANT.

Appellant's Case

The Appellant joined the service as Mo..., in Two years later she was appointed as RANT. She averred that when she joined the Ministry she already had her School Certificate, a Higher School Certificate and a Bachelor of Arts degree. At that time the highest post in the RANT cadre was SRANT. She had acted as SRANT from ... to ... on several occasions and the Co-Respondents were working under her supervision.

Subsequently, the Pay Research Bureau recommended in its 2003 Report the creation of the post of PRANT and promotion to that post was to be by selection from among SRANT who had at least four years' experience in the grade. The reason for the creation of the post of PRANT was because the ... service was to be expanded to cater for new technology, the increase in the volume of work and the need for an additional level to supervise the work of the RANTs and SRANTs. The Appellant continued to act as SRANT from ... to At the same time, the Appellant improved her qualifications and completed *inter alia* her Computer Proficiency Programme organised by the National Productivity And Competitiveness Council and obtained a certificate in the specialised field from a specialised Institute

In May 2008, there were appointments to the grade of SRANT and five officers, comprising the Co-Respondents and the Appellant, were selected. The Appellant stated that she did not know that a seniority list was drawn up at that time and only came to know about it on or around.... She found that she ranked 5th on the seniority list. She objected to her ranking as this would deprive her of the chance to

act as PRANT. In a letter dated ... the Respondent informed her that she had no valid reason to question her seniority ranking.

The Appellant, however, had the chance to act as PRANT on three occasions. But since the Co-Respondents were senior to her they had more opportunities to act as PRANT

On or about ..., the Respondent advertised the vacancies in the grade of PRANT. She applied and was called for interview but was not selected. On ..., the Co-Respondents were appointed.

The Appellant believed that she should have been appointed as she was more qualified and had acquired more experience as RANT and had acted as SRANT and PRANT. She had an unblemished record and the implementation of the PRB Report should not have affected her acquired rights and legitimate expectations.

The Appellant averred that the Respondent had appointed the Co-Respondents based on the fact that they were senior on the seniority list. She stated that Respondent should not have done so as this deprived her of being appointed as she had been longer in service, was more qualified and had gathered more experience. The fact that the Co-Respondents were senior to her gave them better chances of acting as PRANT to her disadvantage.

The Appellant compared her qualifications with those of Co-Respondent No 1. She has SC and HSC certificates and a BA plus a certificate in the specialised field. She also completed successfully the Computer Proficiency Programme organized by the National Productivity and Competitiveness Council. She took the examinations of the Pitman Examinations Institute in Practical Data Processing and Word Processing and was awarded a first class in practical data processing. The Co-Respondent No 1 had only the School Certificate and GCE "A" level in one subject and the Certificate in the specialised field. The Appellant harped on the importance of ICT in modern technology in the specialised field and the advantage that the Appellant had over those who did not possess qualifications in ICT.

On cross-examination, the Appellant conceded that she had not put her qualifications in ICT and computer proficiency in her application form when she applied for the post.

The Co-Respondent No.2 stated that she had the Certificate in the specialised field but did not put it in her application form as she felt it was not necessary as the Scheme of Service for the post did not require this qualification.

The Appellant called on the Tribunal to quash the decision of the Respondent to appoint the Co-Respondents and that she should be promoted PRANT in line with her legitimate expectations.

Respondent's Case

The Respondent averred that the post of PRANT was filled by selection as per the Scheme of Service for the post that was prescribed on

The Respondent gave the chronology of events leading to the appointment of the two Co-Respondents, which was similar to that given by the Appellant in her Statement of Case. The two Co-Respondents assumed duty as PRANT on The Appellant was fully qualified for the post but she was not selected.

The Respondent conceded that the Appellant had acted as PRANT on four occasions but that the Co-Respondents being senior to the Appellant had done more actingship as the Appellant herself conceded. However, actingship did not give an edge on the incumbent when a substantive appointment was to be made and that was always made clear to those who were given such actingship.

The Respondent averred that the selection was done in all fairness among the eligible candidates and was based on the requirements of the post, the criteria for selection as determined by the Respondent, the requirements of the Scheme of Service the performance at the interview and the provisions of PSC Regulation 14 (1) (c) which put qualifications, experience, merit and suitability before seniority.

The Respondent gave the criteria used by the selection panel as follows:

- Experience as SRANT

- Responsibilities of the post
- Personality
- Communications and Interpersonal skills
- Organising, training and supervisory skills ,and
- Aptitude

The Respondent denied that it based itself on the seniority list to appoint the two Co-Respondents. In fact, this was a selection and seniority was not the determining factor.

The Respondent did not dispute the averment of the Appellant that she performed the duties of SRANT and gave the periods of such assignment of duties ...The Respondent stated that the appointment of the five SRANTs in May ...was on the basis of a selection exercise and there was a ranking of the appointees and according to that seniority list the two Co-Respondents ranked 1st an 2nd while the Appellant was 5th. The Appellant had contested her ranking but the Respondent did not find any valid reason to change the seniority list.

As regards the qualifications of the Appellant, the Respondent considered that the B.A. degree of the Appellant had no relevance to the post applied for. Her experience as disclosed in her application form when she applied for the post had been duly taken into account.

The duties of PRANT were to monitor the work of both the RANTs and the SRANs which required more managerial skills from the incumbents. The appellant could not have been assigned the duties of PRANT prior to the date on which the Scheme of Service was prescribed.

The Respondent stated that the Appellant was considered fairly in the selection exercise and the appeal should be set aside.

Determination

There is no dispute that the post of PRANT is filled by selection. This is clear from the Scheme of Service for the post which was prescribed on

The main argument of the Appellant is that the post of PRANT was recommended in the Pay Research Bureau Report 2003 but it was only in ...that the Scheme of Service for the post was prescribed. In the mean time she was assigned the duties of SRANT until she was appointed SRANT in a substantial capacity in 2008 together with the Co-Respondents. The Appellant is of the view that while she was doing the duties of SRANT, she was in a way doing more or less the duties of a PRANT as the duties of the two posts are almost identical with the exception that the PRANTs have to also supervise the SRANTs. The Appellant claimed that all the time she was assigned the duties of SRANT she was in fact gathering experience for the post of PRANT. According to her, when Co-Respondent No-1 was appointed SRANT she was posted to ... where she had no RANTs to supervise as she was the only one there. At the hearing the representative of Respondent gave the list of criteria used by the selection panel and one of the criteria is in fact experience as SRANT. From the information made available to the Tribunal under confidential cover, the Tribunal finds that the Appellant and the Co-Respondents were ranked *pari passu* as they met the 4 years experience as required by the Scheme of Service.

Counsel for the Appellant submitted that in this era of information technology someone with qualifications in ICT and computer proficiency has definitely an advantage and this should be taken on board in the assessment. The Appellant herself conceded that she did not put her qualifications in ICT in her application form and there is no way for the selection panel to have taken these in their markings at the interview.

The Appellant claims that she has been for a long time acting as SRANT and she has acquired experience over the Co-Respondents. This is an argument which comes up regularly in appeals before this Tribunal. The Respondent always counteract by stating that assignment of duties is done for purely administrative convenience and does not give the incumbents any claim for permanent appointment. Such assignment of duties is given on the basis of seniority. In this particular case, the Appellant was junior to the Co-Respondents following the selection exercise for filling the post of SRANT in In fact, she was 5th on the seniority list while the Co-Respondents were 1st and 2nd on the list. The

Co-Respondents had more opportunities for assignment of duties as PRANT. The Respondent, however, states that these assignments of duties did not give an edge to the Co-Respondents over the Appellant.

Since this was a selection exercise, the fact that the Appellant joined the service before the Co-Respondents is not relevant as seniority is not a determining factor in a selection exercise. It was argued that it is not fair that for the selection exercise only the confidential reports of the previous three years are taken into account which in effect hide the good work of the Appellant in the preceding years, the more so that the Appellant had been in post for a longer period. However, the Tribunal cannot interfere with the appointment process of the Respondent. The power to appoint public officers is vested with the Respondent under section 89 of the Constitution. The Respondent, under section 17 of its Regulations, determine its own procedure “ in dealing with applications for appointment to the public service, including the proceedings of any selection boards appointed by the Commission to interview candidates”.

The Tribunal finds no procedural impropriety in this appointment exercise.

The appeal is set aside.