

All those who work in the same department doing the same or an equivalent job must be called for interview if they qualify under the Scheme of Service. A certificate from the RO of a local authority may be misleading as facts showed before the Tribunal. An appeal in this case was allowed. The Tribunal can direct a Public Body to carry out a fresh exercise.

The Appellant has lodged an appeal to this Tribunal concerning the appointment of WSE at the Municipality of He was aggrieved as he had not been called for the interview which led to the appointment of the Co-Respondent.

Appellant's Case

The Appellant joined the Municipality of Port Louis as AME in ... and was posted at the In..., he was appointed Assistant TME and became TME in

In ..., he was appointed FOE and was still posted at the same unit. He was called to supervise all the WED works carried out by a team of WEDs posted at the Unit as from the year.... He was also given the responsibility for the proper distribution of materials to various sites as well as the provision of transport as instructed by the Department.

He averred that he followed a ... Course organized by the Training Centre in.... He passed the Test in the specialised field by the Industrial and Vocational Training Institute in ...

He was assigned the duties of Supervisor from ..., then for one month in... and again for a few days in

He failed to see why he was not convened for the interview as he was in the Division as was also the Co-Respondent and he was in charge of the WED section.

Respondent's Case

The Respondent agreed with the averments of the Appellant as regards the various positions held by him at the Municipal Workshop of the Municipality of ...and

the assignments of duties given to him. However, the Respondent denied that the Appellant was posted at the Unit. The Respondent averred that the Responsible Officer (RO) of the Municipality of ... had confirmed that the Appellant was posted in the ... Section in the ... Department and his base of operation was located in the compound of the Municipal ...elsewhere., where is also located the various other units. It was further averred that the Appellant was assigned with the task and responsibility for the supervision of a team of WEDs for the manufacture of various structures. This includes the work carried out by them, It also entailed the daily distribution of construction materials from the stock yard to different construction sites under the responsibility of the Highway Section in the Public Infrastructure Department, in accordance with the Scheme of service for the post of FM.

The Respondent also denied that the Municipal Council ...had sponsored the Appellant to the specialised course as averred by the Appellant. It maintained that the Appellant made a request for sponsorship which was turned down by the Municipality.

The Respondent averred that the post of WSE was filled by selection from officers who were working in the ... as per the Scheme of Service. The Appellant was not working in the ...and there was no reason to consider him for the post and to call him for the interview.

The Co-Respondent was fully qualified and he was appointed.

The Respondent averred that it followed all the procedures and it was guided by regulation13 (1) (b) of the LGSC Regulations which put “qualifications, experience and merit before seniority in the local government service” in its selection exercise.

The Respondent averred that the appeal had no merit and it should be set aside.

Co-Respondent was questioned by the Tribunal and confirmed that he worked in the ...section and that this meant that he had to take certain specific decisions

Determination

The whole issue in this appeal rests on where the Appellant was working. The Scheme of Service for the post of WSE states that the post is filled “By selection from officers in the grades of working in the ... workshop, reckoning at least two years service in the grade and...”.

The parties do not dispute that both the Appellant and the Co-Respondent meet the other requirements of the Scheme of Service.

It is not disputed that the Appellant has always been in the specialised field. He has moved from AME to TME then FOE. He had been assigned the duties of Supervisor on three occasions as averred by the Appellant and agreed by the Respondent itself.

It was agreed that the Appellant was in the ...Division, so was the Co-Respondent as conceded by the latter himself. It appeared from what was said at the hearing that while being in the same division they were both dealing with matters concerning the specialised workshop. The wording “working in the specialised Workshop” is very vague as it seems to apply to everyone then working in the specialised Workshop.

In the case of the Appellant, the RO had informed the Respondent that he was not working in the specialised workshop. However, in the same vein, the RO states clearly that the Appellant was in charge of a team of WEDs. So, as Counsel for Appellant rightly pointed out, where can they be doing that job if not in the workshop? It is presumed that the workshop is not limited to a building but also to the yard or other places in the vast compound that the Municipality occupies at It also includes work that is being done on site, so that those working in the specialised workshop are not confined to those inside the compound but also to those who perform site work outside the said compound.

The Tribunal finds on a balance of probabilities that the Appellant is in fact working in the specialised workshop and actually supervising works done there. His status is no different from that of the Co-Respondent who conceded that he works in

the same Division but entrusting works to and supervising works done at the specialised Division.

There was an issue as to whether the course in ...which the Appellant followed was sponsored by the Municipality. The Respondent stated that a request for sponsorship was refused. Counsel for Appellant insisted that the certificate of attendance for the course was addressed to the Town Clerk of the Municipality of ... and it implies that the training institution was dealing with the Municipality. It is difficult to know the truth regarding this issue, the more so as the Respondent's representative could hardly reply to most questions *during* cross examination. The Municipality did not send a representative to respond to issues of credibility like this. However, there is no need to dwell further on this as it has no bearing on the core issue which is where the Appellant was working.

The Tribunal feels that the Appellant and the Co-Respondent should have been treated *pari passu* being both posted in the same Division and at the same time working in the specialised Workshop. The Appellant should have been called for the interview.

The Tribunal, therefore, allows the appeal and directs the Respondent to carry out a fresh selection exercise and the Appellant be given the chance to compete for the post.