

PUBLIC BODIES APPEAL TRIBUNAL

No. D/ 08 of 2014

In the matter of:-

Appeal A

Dr. Chandradev BISSONAUTH (Appellant)

Versus

Public Service Commission (Respondent)

Dr. (Mrs) Kavita BEEDASSY (Co-Respondent)

Appeal B

Dr. Chandradev BISSONAUTH (Appellant)

Versus

Public Service Commission (Respondent)

Dr. Abdullah Rashid BOODHUN (Co-Respondent)

Determination

The two abovenamed cases are consolidated as they concern the same Appellant and the same selection exercise for the post of Medical Superintendent (MS).

In Appeal A and Appeal B

Appellant, who is a Medical and Health Officer (MHO), appealed against the appointment of Co-Respondents. His grounds of appeal in Appeal A were as follows:-

1. *Adverse discrimination by PSC/MOH on the ground tha (sic) I had been interdicted on 30.10.98. I was subsequently reinstated as from 3 November 1998, as the Charge was not proved. Yet the representative from MOH at the selection interview at the PSC on Wednesday 21 March 2012 at around 14.30 hours had the audacity to mention the issue.*
2. *Colleagues recently nominated to the post of Medical Superintendent have not had the experience of being appointed as Acting Medical Superintendent to deal with major health hazards of epidemic proportions as the Chikungunya outbreak in February to May 2006. I was posted to Mahebourg Hospital as Acting Medical Superintendent for this specific purpose on 15 February 2006.*

He filed a Statement of Case, and an amended Statement of Case. The Respondent objected to the fact that the amended Statement of Case was filed after a Statement of Defence had already been given. Further there were many averments which were either irrelevant or concerned persons outside the scope of the appeal. Parties agreed to have a final amended version filed and an amended Statement of Defence also filed in reply. For the purposes of clarity we will refer to the gist of the final documents and of what came out during the

hearing. Appellant swore as to the correctness of his Grounds of Appeal and amended Statement of Case. He stated that 5 officers senior to him and 10 junior ones had been appointed to the post of MS since 2007 and that this cannot be due to the fact that his qualifications were not 'good enough'. He maintained that it must be due to the fact that he was interdicted. During cross examination he maintained that the representative of the Ministry on the panel asked him whether he had been "laid off". He said that he did not explain that he had been reinstated as the representative knew this. Later when being cross examined by Co-Respondent's Counsel, he said that he did explain that he had been reinstated.

He averred that the charge had not been proved and that he had been reinstated in his post and the 'mentioning my interdiction was in gross contradiction" as his interdiction was well before 10 years and the application form (PSC Form 7) provides for this kind of information only for "the last 10 years". All other details regarding the interdiction were irrelevant to the present appeal and were removed.

He also averred that he was appointed Officer-in-Charge of Mahebourg Hospital from November 2002 to May 2004. He was appointed acting MS Souillac Hospital till June 2005 and again from November 2005 till September 2007 when a group of 10 MS were appointed. He emphasised that there were no Regional Health Director and no Specialist/Consultant and no Administrators there and he had to assume full clinical and administrative responsibilities.

He further stated that in 2006 when there was the outbreak of the Chikungunya epidemic, he was acting MS in Mahebourg Hospital. Appellant's Counsel filed several documents to support his appeal. These concerned changes in posting and actingship and assignment of duties which were not contested. Some documents related to persons not parties to the appeal. He also filed documents concerning the Chikungunya outbreak and the reports he sent to the Ministry.

He agreed during cross examination that he did get the chance to explain all that he had done, but questions put to him did not necessarily give him scope to speak about all his experience.

Respondent's Case Re Appeal A

Respondent averred in its amended Statement of Defence that Appellant's interdiction was not taken into consideration.

Respondent denied that Appellant was appointed Officer-in-Charge in Mahebourg Hospital, as there was no such post, but agreed that he was in charge of the hospital which was however under the responsibility of the Regional Director based in Rose Belle. It also denied that Appellant had been assigned the duties of Officer-in-Charge of Mahebourg Hospital from November 2002 to May 2004.

It averred that, on 12 October 2001 and 27 March 2012, the Responsible Officer (RO) of the Ministry of Health and Quality of Life reported two vacancies in the grade of MS. It was advertised among qualified officers. 24 applications were received. 15 candidates, including Appellant, were found to be eligible and were convened for an interview. Two Medical and Health Officer/Senior Medical and Health Officer namely Dr. Veeratterapillay and Dr. Maudhoo were appointed MS in a temporary capacity.

On 7 September 2012, the RO reported one additional permanent vacancy in the grade of MS and recommended that it be filled by appointment of a suitable candidate from the last selection exercise.

On 19 September 2012, the Respondent informed the RO that it had decided that Co-Respondent Dr. Beedassy be appointed in a temporary capacity for 6 months. On 24 September 2012, Co-Respondent was offered appointment as MS.

Respondent recognised that Appellant was the seniormost in the grade of Medical and Health Officer/Senior Medical and Health Officer and that Appellant had been assigned duties as MS, on the ground of administrative convenience,

on several occasions. He was made aware that such assignments did not give him any claim for permanent appointment as MS.

On May 2009 Appellant was offered assignment of duties of MS at Brown Sequard Mental Health Care Centre but he declined to act as MS there.

During cross examination he explained that he did not want to act anymore but he wanted to be appointed in a substantive capacity. In fact he filed a document to that effect.

Respondent further averred that Appellant possessed the required qualification laid down in the Scheme of Service that he was convened for the interview, but was not selected.

Respondent averred that Co-Respondent Dr. Beedassy was appointed Medical and Health Officer/Senior Medical and Health Officer from June 1986. She had been appointed to act as MS nine times since January 2007. Respondent averred that the appeal had no merit and should be set aside. During cross examination Respondent maintained that actingship did not give any claim to being appointed. She could not however say if repeated actingship over a number of years would lead to Appellant having a legitimate expectation.

Respondent's Case Re Appeal B

All averments were the same except for a few paragraphs as follows:

Respondent averred that after the appointment of Dr. Beedassy, the RO reported another additional vacancy and recommended that it be filled by the appointment in a temporary capacity of a suitable candidate from the last selection exercise.

On 04 March 2013 the RO was informed that Dr. A. R. Boodhun be appointed MS in a temporary capacity for a period of six months.

Respondent averred that the interdiction of both Appellant and Co-Respondent Boodhun was not taken into consideration by the Interviewing Panel.

Co-Respondent's Case in Appeal A

Originally the Co-Respondent had filed a Statement of Defence which included a plea *in limine litis*. This related to the issue of jurisdiction of the Tribunal as it was averred that the Appellant had failed to lodge his appeal within 21 days of the original selection exercise. Counsel for Co-Respondent then dropped this issue after taking cognizance that Appellant had lodged his appeal following receipt of the notice of appointment of Co-Respondent which he received. He was not contesting the selection exercise *per se*.

The Co-Respondent laid emphasis on the irrelevant aspects of the Statement of Case. The Co-Respondent stated that she joined the public service in 1981 as Medical Health Officer/Senior Medical Health Officer and had been appointed as acting MS on various occasions.

She listed all the experience that she had gathered and her involvement on specific protocols. She confirmed to the Tribunal that she had submitted all her qualifications including additional ones. She submitted documentary evidence and confirmed that during the interview she was asked questions on her professional history.

Grounds of Appeal in Appeal B -

The Appellant gave his grounds of Appeal as follows

1. *Adverse discrimination by PSC/MOH on the grounds that I had been interdicted on 30.10.98. I was subsequently reinstated to my post on 03.11.98, as the charge was NOT proved. Yet the representative from MOH at the selection interview at the PSC on Wednesday 21st March 2012 at around 1430 hours had the audacity to mention this issue. To add insult to injury, the nomination of Dr. Abdullah Rashid Boodhun on 06.03.13 to the post of Medical Superintendent is a totally provocative and backward step. (a) This doctor is junior to me by more than a decade. (b) He had*

been interdicted in a case where a patient had died an unnatural death at SSRN hospital.

2. *Dr. A. R. Boodhun does not have experience comparable to me as Acting Medical Superintendent especially to deal with major health hazards of epidemic proportions as the Chikungunya outbreak in February to May 2006. I was posted to Mahebourg Hospital as Acting Medical Superintendent for this specific purpose on 15th February 2006.*

Statement of Defence of Co-Respondent.

Co-Respondent stated that he had no knowledge concerning whether the interdiction of Appellant was taken into account by Respondent. Co-Respondent in this second appeal also averred that the surrounding facts of Appellant's interdiction were irrelevant to the appeal before the Tribunal.

Co-Respondent admitted having been involved in the management of an in-patient who died of an unnatural death. He averred that Appellant's reference to the said episode of his career is irrelevant and pernicious as this occurred more than 10 years before the application to the post of MS. The Co-Respondent also attempted to explain the circumstances of his interdiction. He listed his experience and stated that the appeal was devoid of substance, has no merit and should be dismissed.

Counsel who was originally appearing for Co-Respondent had raised a point in law that the appeal had been made outside the statutory delay of 21 days. The Tribunal ruled that, since Appellant had received the notification of appointment on the 9 March 2013 and he entered his appeal on 29 March 2013, he was just within the statutory delay.

Co-Respondent in Appeal B filed several documents to prove his experience in AIDS, rehabilitation of drug addicts and alcoholics and that he had followed a training of trainers course in family planning.

Determination

We have weighed the evidence of all parties concerned and gone through the documents filed by each one of them. We have also sought and obtained confidential information regarding the selection exercise carried out by Respondent with regard to the appointment of MS. It must be pointed out that the Appellant in this case did not enter an appeal when the original selection exercise took place on 21 March 2012. Yet he was among the 15 candidates found eligible to apply for the post of MS advertised among qualified officers of the Ministry of Health and Quality of Life on 08 December through PSC Circular Note No. 60 of 2011.

At the time he may not have felt aggrieved. But when Co-Respondent Dr. Beedassy was appointed, he filed his appeal within the 21 days statutory delay after receiving the notice of appointment. The Tribunal had declared that he would not be allowed to question the selection exercise *per se*. It is however impossible for any Appellant who feels aggrieved after the nomination of a colleague not to go back to the original exercise to a certain extent. This is due to the fact that the PSC has established a procedure to the effect that a merit list is drawn up from which candidates are picked up for new vacancies that occur within a prescribed delay. Before we were told that this delay was of two years. Then suddenly we were informed that the delay is now of one year. The PSC has informed us that this is just an internal policy and is not communicated to anyone.

In fact when candidates are interviewed, they have no idea that such a list exists and for how long it will be considered for appointment. They do not know either that ranking on such a list will affect their seniority. Many appeals are lodged before the Tribunal because of this lack of transparency.

The Tribunal recommends that the Respondent gives some thought on how to improve its procedures even though it has powers under Section 89 of the Constitution "to appoint persons to hold or act in any officers in the Public Service". We are now living in a world where good governance is important. The

very fact that the PBAT was set up is an indication of the general feeling that Constitutional Commissions cannot function in an opaque environment and cling to old tenets of power.

That being said, it is important to see if the Appellant has been able to support his grounds of appeal.

Regarding Appeal A, he has been unable to show that his interdiction and reinstatement played any role at all in the selection process. He may have had this feeling and even if we were to believe him on the comment of the adviser, there is no evidence that the interviewing panel has taken this into consideration. The members of the panel have clearly assessed each candidate on the following criteria: Relevant experience, personality, communication and interpersonal skills, Management of Human Resources (performance discipline and training) Management of hospital assets (infrastructure, equipment and other facilities, aptitude). He scored the highest marks on relevant experience and the adviser did not give him marks which were excessively lower than for Dr. Beedassy for example. Regarding ground 2 in his appeal against Dr. Beedassy, he laid emphasis on his greater experience and indeed he scored higher marks under that criteria, but much less on other criteria. Of course, the fact that those junior to him were appointed, is not a good ground since in a selection exercise, qualifications, experience, merit and suitability for the post have more weight than seniority. Further, assignment of duty does not give any candidate an edge over others.

There is nothing in the markings to show that he had been victimized because of the issue of interdiction. Respondent has strongly denied this. The Appellant has not done so badly as compared to other candidates who were not appointed. But Co-Respondents in both appeals have scored higher marks on different other criteria and the sum total of their markings is higher than his.

As regards his second grounds of appeal in Appeal B, having scored the highest marks on the criteria of experience was not sufficient for him to be preferred to Dr Boodhun who had better marks on other criteria.

We have no reason to believe that Respondent has erred in the selection exercise.

The appeals are set aside.

S. Aumeeruddy-Cziffra (Mrs)
Chairperson

Wong So
Member

P. Balgobin-Bhojrul (Mrs)
Member

Date:

Note: This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. Since the case was withdrawn, the Determination of the Tribunal stands good.