

**. Det 9 of 2014**

**Officers often have to follow their career path within the division where they were originally posted and cannot be considered for appointment if they do not have the required experience in that division as required by a scheme of service.**

The Appellant, an STCO at the Ministry of ...is challenging the decision of the Respondent to appoint the Co-Respondent to the post of SSTCO

**Appellant's case**

The Appellant averred that the post of SSTCO is a promotional post as per its prescribed Scheme of Service which was effective as from .... It implied that the senior-most candidate in the grade of STCO should be appointed provided that the latter satisfies the specified criteria as per the Scheme of service.

The post of SSTCO was thus opened to all STCOs. There was an overall seniority list of STCOs irrespective of the Division to which they were posted.

The Appellant, therefore, contested the appointment of the Co-Respondent which she claimed was in violation of the rules of fairness and equity and was procedurally improper inasmuch as the Co-Respondent was not the senior-most and thus did not meet the requirements of the Scheme of Service.

The Appellant again harped on the fact that there was no mention in the prescribed Scheme of Service that promotion and seniority should be determined division-wise for the post. The number of STCOs could be more than one as in the case of ...Divisions and none as in the case of ... Division.

The Appellant averred that, in carrying out the appointment, the Respondent misinterpreted the prescribed Scheme of Service. The Respondent should have considered the overall seniority of all Officers concerned and not proceeded on seniority division-wise.

She was senior to the Co-Respondent and should have been appointed instead of him. According to her, the Respondent had failed to observe the provisions of Regulation 14 (4) of the PSC (Amended) Regulations of 2010 which read as follows:

*“Recommendations made to the Commission for promotion, in cases other than those covered under paragraph (5) , shall state whether the person recommended is the senior public officer in the particular class or grade eligible for promotion and , where this is not the case , detailed reasons shall be given in respect of each person in that same class or grade over whom it is proposed that the person recommended should be promoted”*

*The reasons for promoting the Co-Respondent had not been given as required under Regulation 19(3)(b) :*

*“Where a recommendation made under paragraph (a) involves the supersession of any officer, the responsible officer shall forward a list of all eligible officers who are senior to the recommended officer, together with the particulars of service and give reasons for recommending their supersession”.*

The Respondent was bound to rely exclusively on the prescribed Scheme of Service to determine the suitability of the person to be appointed in this appointment exercise.

The Appellant called on the Tribunal to quash the decision of the Respondent to appoint the Co-Respondent and to instruct the Respondent to proceed with a fresh promotional exercise to avoid her supersession.

### **Respondent’s Case**

The Respondent averred that the post of SSTCO was filled by promotion according to the Scheme of Service for the post which was prescribed on ...

The Scheme of Service for the post of SSTCO reads as follows:

*Qualifications: A. By promotion, on the basis of experience and merit, of officers who hold a substantive appointment in the grade of STCO and who-*

*(a) Possess good interpersonal and communication skills;*

*(b) Have ability to work in teams; and*

*(c) Have technical knowledge and skills in the respective skills.*

*B. Candidates should possess-*

***(i) For the ...Divisions***

*At least four years' service as STCO in those Divisions*

***(ii) For the ...Division***

*At least four years' service as STCO in the ...Division*

The Ministry of ... had seven such Divisions.

The Respondent stated that STCO were appointed for specific Divisions and appointment to the post of SSTCO was made from within the specific Division as shown in the Scheme of Service for the post. As regards the Appellant, she was appointed STCO ...in the ... Division in a temporary capacity with effect from and in a substantive capacity with effect from ....

The Appellant ranked 3rd on the seniority list of STCOs for the ...Division at the time the appeal was lodged.

The Co-Respondent was the only officer on the seniority list of STCOs for the ... Division.

As the vacancy occurred in that Division the Co-Respondent was appointed to the post of SSTCO. The Responsible Officer of the Ministry had certified that the Co-Respondent possessed all the skills and capabilities as required by the Scheme of Service.

The Respondent averred that the Appellant did not have at least four years' service as STCO in the relevant Division. The Appellant conceded that she did not meet that requirement of the Scheme of Service.

The question of supersession did not arise. The Respondent averred that the appeal had no merit and moved that it be set aside.

### **Determination**

The appeal revolves around the interpretation of the Scheme of Service for the post.

The Appellant firmly believes that the STCOs are the same irrespective of the Divisions in which they are posted. There is a common seniority list and when it comes to an appointment to the grade of SSTCO the senior-most in that common seniority list should be appointed as the post is filled by promotion.

The Respondent is of a different view. According to the Scheme of Service there are two parts for Qualifications. Part A is general but part B gives the specific requirements division-wise. An officer cannot claim for promotion unless and until he or she has acquired the number of years in the specific field of specialization.

The question that was asked was whether STCOs could move from one Division to another. This would have meant that a STCO could have moved to a Division in anticipation of a likely vacancy that may arise. The Respondent stated that this is not possible as STCOs have to follow their career path within the Division they were posted at the time of initial appointment as STCO. The Respondent refers to the case of the Appellant herself, who was transferred to another Division for one month or so, but she was reverted to her original Division upon pressure exerted by the Trade Union. It is clear that the principle of autonomous Divisions for promotion purposes is well-established in the ... services and has the full support of the Trade Union which agreed to the Scheme of Service in the first instance.

The Tribunal finds that there has been an appointment made and Respondent followed the requirements of the Scheme of Service. There has been no supersession which would have required the Respondent to follow the steps listed under PSC Regulation 14 (4) and Regulation 19 (3) (b) as requested by the Appellant.

The appeal is set aside.