

Det 11 of 2015

If a candidate is called for interview after he protests there is a suspicion of unfairness.

If during the selection process his Responsible Officer writes to seek explanations from him for matters on which he had already replied in writing previously and such new replies are sent to the interviewing panel, this mars the process even further.

The Appellant, a PDLO, is challenging the decision of the Respondent to appoint the Co-Respondents to the post of Head of the relevant Department in the in the Local Government Service.

The said post is filled by selection from among officers in the grade of PDLO. The qualifications requirements as per the Scheme of Service which became effective as from ... were as follows:

“A. By selection from among officers in the grade of PDLO of Local Government Service reckoning at least four years’ post qualification experience in the Public or Private Sector.

NOTE 1:

In the absence of qualified candidates, by selection from candidates possessing:

- (i) A degree in ... from a recognized institution or an equivalent qualification acceptable to the Local Government Service Commission; and*
- (ii) At least four years’ post qualification experience in the field in the Public or Private Sector.*

B. Candidates should:

- (i) Possess sound administrative and organizing abilities and supervisory skills;*
- (ii) Have good communication and strong interpersonal skills and leadership capabilities;*
- (iii) Be committed, proactive, visionary and strategic thinkers; and*
- (iv) Be computer literate”.*

There were three vacancies and the Respondent advertised for the filling of the vacancies on The interview was carried out on the

Appellant’s Case

The Appellant averred that Co-Respondent No 2 was on leave for a period of approximately one and a half years to follow a Masters Degree in Australia. The latter could not have met the four years requirement as he was appointed PDLO in Further Co-Respondent No 2 had never been assigned the duties of Head. The Respondent confirmed that Co-Respondent No 2 had in fact taken two years study leave from ... and not one and a half years as averred by Appellant. However, Co-Respondent No 2 was eligible for consideration for the post as the four years were to run as from the date a candidate obtained his qualifications for the post and not as from the date of appointment to the post of PDLO. In the case of Co-Respondent No 2 that was in The Appellant did not press further on this ground of his appeal.

The Appellant reported that although he was eligible for the post of Head he was not called for interview initially. It was after he wrote to the Respondent on ..., through the Acting Chief Executive of the ... District Council where he was posted, that he received a letter on ... to attend an interview on ... when the other candidates had received their convocation letters a few days earlier. This had put him at a disadvantage vis-a-vis the other candidates. He was less prepared for the interview and he was under stress. He found this unfair as he had been convened earlier for interview for the same

post. He found that there had been a clear intention to exclude him from the selection exercise.

After the interview, the Appellant received a letter from Ag Senior ... of his District Council requesting him for explanations on adverse reports against him and to do so by ... at the latest, i.e. within a short delay of three days. He complied with the request and submitted his reply on time. However, he was surprised by this request as he had to reply on issues that had been raised with him in ... to which he had already given written explanations. In fact his Chief Executive had written to him on delays in dealing with one matter and he had replied to that letter following which he was "*instructed to ensure that there is no such recurrence.*" He received another letter on ... to which he replied on In ..., he was given two letters on ... and he gave explanations on time. He found that the letter issued after the interview on ... was not warranted as the said letter and his reply were sent to the Respondent by the Responsible officer of the District Council and this impacted on the decision of the Respondent, the more so that no such letter was sent in respect of the other candidates as they were from different District Councils and different Responsible Officers.

The Appellant further averred that, at the time he was issued the letters, he was under assignment of duties as Head and such assignment of duties was not terminated. He was even asked to supervise the work at another District Council on two occasions in spite of the letters that were issued to him. Further he explained in his reply that he was doing his best with limited resource in his Department and that the Council had never complained about the department.

The Appellant found two flaws in the selection process namely, that he was ousted from the interview exercise and was finally brought back in the process because of his protest. Further, the letter issued to him after the interview, but before the final decision for appointment, was unfair and to his detriment.

He moved for the quashing of the decision of the Respondent to appoint the Co-Respondents to the post of Head.

Respondent's Case

The issue of eligibility of one of the Co-Respondents was cleared to the satisfaction of the Appellant.

The Respondent averred that the decision taken initially not to call the Appellant for interview was taken following the "assessment" of his Responsible Officer. However, following the letter of protest from the Appellant, the Respondent re-assessed the application and decided to call Appellant for the interview of

Following the advertisement for the vacancies there were 8 candidates, including the Appellant. There was an interview as the post was filled by selection as per the Scheme of Service and the three Co-Respondents were appointed. The Respondent averred that it followed strictly regulation 13(1)(b) of the LGSC Regulations 1984.

The Respondent rebutted the averment that Co-Respondent No 2 was not assigned the duties of Head. In fact, he was assigned the duties of Head from ... to The Respondent added that the Appellant had also been assigned the duties of HEAD on three occasions i.e. from ... to ...and from ... until further notice. But the Respondent reiterated that assignments of duties would not give an officer any claim for permanent appointment to a post. This was always made clear to officers in their letters assigning them duties to a higher post.

The Respondent stated that the Appellant attended the interview and at no point at the interview or after the interview did he object to the late convocation to attend the interview and to the date thereof. He could have asked for more time which he did not. It was only after the Appellant found that he was not appointed that he raised the issue.

The Respondent pointed out that the letter of ... to the Appellant did not originate from it but it was a letter from the District Council itself. But the Respondent conceded that the letter together with the reply of the Appellant were received by the Respondent on the ... and were therefore available to the members of the interview panel before the final decision on those to be appointed or not.

The Respondent also made the point that this was a selection exercise and any reference to seniority would not hold as seniority would not be a determining factor.

The Respondent moved that the appeal be set aside.

Determination

The fact that there has been an interview to recruit at the level of Head is not disputed.

The Appellant is more concerned about the way he was treated in this appointment process. He strongly believes that there has been an attempt to “pin” him down. This refers to his last minute inclusion on the list of interviewees after he wrote a letter of protest and the letter issued to him after the interview but prior to the decision to appoint.

The first issue concerns the interview itself. The Appellant was initially ousted from the list of those who were to be called for the interview. The explanation of the Respondent was that the Appellant was assessed by his Responsible Officer not to be fit for the post of Head. The Tribunal finds this explanation not called for. Under section 4 of the Local Government Service Commission Act, the power to appoint is vested exclusively in the Commission and shall not in the exercise of its functions be subject to the direction or control of any other person or authority. By relying on the “assessment” of the Responsible Officer, the Respondent has allowed itself to be unduly influenced by the Responsible Officer. It was more the case of the tail wagging the dog. Had the Appellant not written to the Respondent, the latter would have been denied the chance of being considered for the post. The Tribunal cannot understand why at the time of scrutiny of candidates’ applications it did not find the Appellant was eligible for consideration and this only came out after a “re-assessment” after the Appellant’s protest.

The Tribunal finds that the Respondent has erred in this first step and his last minute convocation may have handicapped the Appellant at the interview and affect his performance. Whether it did in fact impact on his performance is not for the Tribunal to

say but what is important is that there can be a perception of unfairness on the Appellant.

As regards the letter of ... that was issued to the Appellant after the interview the Tribunal is perplexed about this initiative of the Responsible Officer. The Tribunal does not see the reason why a letter was sent on issues which were raised in the letters a year earlier, for which the Appellant had already given written explanations. The feeling of the Appellant is that it was only a ploy by the Responsible Officer to pin Appellant down. The Tribunal is of the opinion that it was unfair to issue that letter and its timing was inappropriate. Further, only the Responsible Officer of the Appellant issued such an unfavourable letter while the selection process was on, whereas the Responsible Officers of the Co-Respondents did not issue any letters. There was therefore a situation of uneven level playing field and one cannot avoid the perception that this could have played against the Appellant. The more so that the interviews were carried out on the ... and ... but the members of the panel signed their report much later as was revealed in the confidential documents sent by Respondent to the Tribunal. The Tribunal notes once more that the Respondent is not sending to it the markings of each candidate under each criterion but rather the overall markings of each member of the interviewing panel. By doing this, the Respondent is depriving the Tribunal from the ability to scrutinize its proceedings to see under which criteria Appellant has failed. The rest is too subjective. The Tribunal therefore invites the Commission to review its procedure so that it is more transparent.

The Respondent also needs to review its system of feedback and in particular whether it is fair that for the same selection exercise reports should emanate from a host of Responsible Officers and each using elastic non-comparable yardsticks.

The Tribunal, therefore, finds that the Respondent has erred in the selection process which can give rise to perceptions of unfairness and mar the appointment process.

For this reason the Tribunal allows the appeal and remits the matter to the Respondent for a fresh selection exercise which is based on objective criteria and markings under each criteria.