

PUBLIC BODIES APPEAL TRIBUNAL

No. D/13 of 2015

In the matter of:-

Dewanand GUNOORY

Appellant

v/s

Public Service Commission

Respondent

and

Vedanand SAURTY

Co-Respondent

Determination

Appellant has lodged an appeal to contest the appointment of Co-Respondent to the post of Deputy Registrar of Civil Status.

Appellant's Case

Appellant based his appeal on the grounds that Co-Respondent was less qualified than him, had no organizational or managerial skills, no experience in National Identity Card (NIC), no clean record and that he was not the seniormost officer.

He stated that he was the most senior after the Registrar. He was most qualified in terms of experience and qualifications. He further averred that the following factors were not taken into consideration: his “interimat” and the fact he was responsible for the NIC for three years. He explained that he was in charge of all the identity cards including those of Rodrigues and Agalega. Regarding qualifications, he stated that in the PRB Report 2013 there was no such thing as qualification. Since there was a lack of “qualified” officers, it was decided that this criterion would not count until 2016 although in 2008 the PRB recommended its inclusion.

Appellant said that he was asked many questions but not on his experience at the NIC division.

Appellant also laid emphasis on the fact that the new Registrar, coming from the judiciary, did not know much about civil status matters. He submitted therefore that the Deputy must have the experience and knowledge in order to help the Registrar.

Respondent’s Case

The Respondent stated that *“according to the Scheme of Service, the post of Deputy Registrar of Civil Status in the Prime Minister’s Office (Civil Status Division) is filled by selection from among officers in the grades of:-*

- (i) Principal Civil Status Officer; and*
- (ii) Senior Civil Status Officer who reckon at least seven years’ service in a substantive capacity in the grade*

And who –

- (i) are conversant with all legislations relevant to the Division;*
- (ii) have considerable organising skills and management abilities in matters relating to civil status and national identity; and*

(iii) *are capable of leading and motivating teams of officers.”*

On 22 April 2013, the Responsible Officer (RO) reported a permanent vacancy in the grade of Deputy Registrar of Civil Status and recommended that a selection exercise be conducted to fill the vacancy.

Appellant was found eligible for consideration along with four other candidates and he was convened for interview. One Mr A. Y. was selected. When the latter retired, the RO reported a vacancy in the post anew and recommended that the vacancy be filled from the last selection exercise. Pending the filling of the vacancy, the Appellant was offered acting appointment in the post from 6 March 2014 to 27 April 2014.

Co-Respondent was then appointed and assumed duty on 28 April 2014.

Respondent stated that seniority is not an overriding criterion in a selection exercise.

It further stated that “consideration was given to the requirements of the post, the criteria of selection determined by Respondent, the requirements of the Scheme of Service, performance at the interview and the provision of regulation 14(I)(c) of the Public Service Commission Regulations. Moreover, in exercising its powers in connection with appointment or promotion in the Public Service, Respondent had, as laid down in regulation 19 (6) of the Public Service Commission Regulations, determined the suitability of the selected candidates”

It averred that Co-Respondent’s performance at the interview was better than that of Appellant and that all relevant experience, skills, knowledge and activities as required by the scheme of service were assessed for all candidates.

Determination

Whenever Respondent avers that a candidate performed better at the interview than another, the Tribunal has little capacity to ensure that this is true. It is impossible for the Tribunal to have a good understanding of how this exercise was held.

The Tribunal has sought as much information as possible in order to see how the interview was carried out. In this case the Tribunal requested for:

- (i) The list of criteria
- (ii) The weightage attached to each criterion
- (iii) Marks allocated
- (iv) Experience of each candidate.

The reply given under confidential cover showed that Co-Respondent had no markings under the criterion “relevant experience” whereas Appellant did get the maximum marks allocated to candidates under this criterion. In fact, Mr A. Y. had the same mark as Appellant under this criterion. Co-Respondent had more marks on some of the other criteria but beat the Appellant by 0.5 points only. In view of the fact that, despite the fact that he had no experience, he was given high marks by the adviser, the Tribunal felt that it was important to know more on the selection as it could not fully appreciate the process. The Tribunal then sought the following information:

- (i) How was the Public Service Commission Regulation 14(i) (c) complied with regarding qualification and experience?
- (ii) How was the Public Service Commission Regulation 19(6) complied with?
- (iii) Apart from the markings allocated under each criterion, in what respect Co-Respondent’s performance at the interview was better than that of Appellant?
- (iv) What were the questions asked regarding Appellant and Co-Respondent in order to assess their knowledge of legislation (criterion v), their ability to

lead and motivate teams of officers (criterion vii) and their aptitude (criterion viii)

- (v) Were any other factors taken into consideration to assess the parties on criteria (v), (vii) and (viii)?

Unfortunately, the Respondent never replied directly to any of the questions put. It contented itself with repeating what the Scheme of Service required and that marks were allocated under each of the eight criteria of selection which the Tribunal already knew. It has been unable to give at least an idea of the questions put so that the Tribunal could assess if same or similar questions were put to all candidates in a fair manner. Respondent also repeated that it based itself on Regulation 14 and 19(6) of Public Service Commission Regulations without saying how this was done.

The Tribunal notes that Co-Respondent was appointed Principal Civil Status Officer on 02 April 2013, that is 20 days before the Responsible Officer reported the present vacancy which was advertised on 15 May 2013. At that time, Appellant already had two years experience as Principal Civil Status Officer having been appointed on 14 September 2011, as was confirmed by Respondent.

The Co-Respondent on the other hand, had little experience in the previous grade. Indeed he had no marks under the criterion “relevant experience”. The Tribunal being satisfied at this point that the Appellant had discharged its burden of proof, it was essential for the Tribunal to assess the selection process properly in order to be able to determine if Appellant’s averments were correct or not. Yet, Respondent only repeated that it respected Regulation 14 of Public Service Commission Regulations which in fact relates to qualifications, experience and merit.

The Tribunal feels very strongly about the fact that Respondent merely referred to its Regulation 14 and 19(6) without in fact showing how it respected them. Everyone must have known that candidate A.Y, who came out well above the other candidates, was on the point of retiring on the ground of age and that, in a few months' time, the next candidate on the merit list would have to be appointed.

In view of the fact that Co-Respondent had no experience, and given that the Tribunal has not been able to gauge whether the Respondent had properly assessed the candidates, including the Appellant and Co-Respondent, the Tribunal has no alternative than to quash the decision of the Respondent. It remits the matter to Respondent for it to carry out a fresh selection exercise which is more transparent and fairer and to report to the Tribunal within two months on action taken.

S. Aumeeruddy-Cziffra (Mrs)
Chairperson

Wong So
Member

P. Balgobin-Bhojru (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.