

Ranking forms part of the appointment process and can therefore be challenged.

An appellant must establish that the decision of Respondent is manifestly unreasonable in the Wednesbury sense in order to succeed.

The present appeal concerns the ranking of the Appellant following an appointment exercise for the post of MINOR made by the Public Service Commission (“**Respondent**”). On the date of the hearing the Tribunal queried from all Counsel appearing for the parties as to whether this Tribunal had jurisdiction to hear the present appeal having regard to the provisions of section 3(1) of the Public Bodies Appeal Tribunal Act which entitled a public officer to appeal against a decision of the Commission “*pertaining to an appointment exercise or to a disciplinary action taken against that officer*” and that the Appellant was contesting his ranking.

All Counsel agreed that this Tribunal had jurisdiction to hear the present appeal inasmuch as the issue raised by the Appellant in his appeal related to the appointment exercise following the Respondent’s Circular Note No. ... (“**Circular**”). The Tribunal agreed that the ranking formed part of the appointment exercise and therefore held that it had jurisdiction to hear the present appeal.

Case for Appellant

The Appellant confirmed his Statement of Case under solemn affirmation. It was the case for the Appellant that the ranking of the newly appointed MINORS/ Deputy HCR did not represent a fair ranking having regard to his qualifications, proven experience (including assumption of higher responsibilities in the grade of MINOR and

above), dedication to the service, merits, aptitudes and suitability. The Appellant was of the view that he did not deserve to be at sixth position in the ranking established by the Respondent following the appointment exercise for the post. During the course of his examination-in-chief, the Appellant stressed on his academic qualifications which he considered to be better and higher to those held by the Co-Respondents who had been ranked above him. In particular, he stated that his Master degree obtained in the subject matter of the job was evidence of his wide knowledge of the subject to be dealt with. He also emphasized on the fact that he had been discharging the duties of CHPL on different occasions and he had given instructions on protocol matters to missions where the Co-Respondents had been working.

Case for the Respondent

The Respondent objected to the appeal made by the Appellants. The Respondent did not press on its preliminary objection that the present appeal had been lodged outside delay in breach of section 3(2) of the Public Bodies Appeal Tribunal Act.

The representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence for the Respondent. It was the case for the Respondent that based on the candidates' overall performance at the interview the Respondent had established an order of merit/ranking/seniority of candidates found suitable for appointment to the post. It was not disputed that Appellant had been assigned the duties of CHPL which was not an established position in the Civil Establishment Order but was a designation conferred upon an officer in the ... cadre who is called upon to head the Directorate. The Respondent did not agree that the Appellant ought to have been allocated a higher ranking and stated that it had taken all relevant qualifications and work experience as disclosed by all the seventeen candidates (including the Appellant) who applied for the post of MINOR/ Deputy HCR.

Issue

The issue before us is whether the ranking of Appellant by the Respondent is manifestly unreasonable in the Wednesbury sense.

Analysis

The Circular inviting applications from qualified officers of the Ministry of ... for appointment as MINOR/ Deputy HCR in the Ministry sets out the following qualifications requirements:

“2. Qualifications:

By selection from among officers in the grade of First Secretary who reckon at least five years’ service in a substantive capacity in the grade and who:-

- (a) have sound administrative and managerial abilities;*
- (b) have a wide knowledge of international affairs; and*
- (c) are skilful negotiators and communicators with demonstrated qualities of maturity and integrity”.*

Out of seventeen candidates who applied for the post, sixteen (including the Appellant) were found to be eligible and were convened for an interview. On ..., the Respondent informed the Responsible Officer of the Ministry that, having considered the suitability of the qualified candidates, that six officers in the appropriate grade be appointed MINOR/Deputy HCR: Appellant ranked sixth.

Co-Respondents No.6 and No.7 were appointed at a later date.

When cross-examined by Learned Counsel for Respondent, Appellant could not say what ought to have been his ranking. He, however, did not agree with the sixth position attributed to him in the order of merit/ranking/ seniority established by the Commission. He further agreed that it was not his case that he had been unfairly treated during the interview exercise.

For the purposes of this appeal, we had requested the Respondent to provide us, in strict confidence, information relating to:

- (a) the criteria used for the selection exercise and ranking;
- (b) the weightage attached to each criterion;
- (c) the marking obtained by each of the parties in the present appeal;
- (d) the experience of each of the parties as provided by them in their respective application.

We have scrutinised the mark sheets of each of the 4 members who composed the Interviewing Panel, namely that of the Chairperson, two members and the Adviser and this is what we have found. Marks were allocated by the Chairperson and two members for 'Relevant Experience as FSC', 'Knowledge of the relevant subject', 'Negotiation & Communication Skills', 'Personality, Maturity & Integrity', 'Responsibilities of the Post', 'Administrative and Managerial Abilities', and 'Aptitude'. The Adviser, on the other hand, has given marks for 'Quality of Response', 'Communication', Basic degree and Masters. We find that the Appellant has generally scored lesser marks on the various criteria than the Co-Respondents in the first appointment exercise. Co-Respondent No. 5 who ranked fifth in order of merit/ranking/seniority of candidates found suitable for appointment had low marks on the criterion "Experience as FSC" presumably because of his shorter years of service but he scored higher marks on the other criteria, including the criterion of 'Aptitude". Given that the 'Aptitude' criterion entails a subjective assessment after having heard a candidate, we cannot substitute ourselves in the place of the members of the Interviewing Panel in deciding on the marks to be given. As regards the marks obtained by the Appellant and Co-

Respondents under the other different criteria for assessment, we have not found anything perverse or manifestly unreasonable in the Wednesbury sense.

Determination

For the reasons given above, we hold that the Appellant has failed to establish that the Respondent's decision is manifestly unreasonable in the Wednesbury sense or had acted in an unfairly manner that he was no given a fair treatment. The decision of the Respondent is therefore upheld.