

Even if there is a perception that the adviser on an interview panel may have been biased, an examination of the markings by the other members of the panel may show that in fact a candidate may not have been marked higher than the other candidates by them either.

The Appellant is Head (CONASU) at the Department of CADET. He is challenging the decision of the Respondent to appoint the Co-Respondent as Deputy Director of the Department.

Appellant's Case

The Appellant averred that he was more qualified than the Co-Respondent as he was holder of a degree in..., a Master of Philosophy in ... and a Doctor of Philosophy in ... while the Co-Respondent held only a Bachelor degree.

The Appellant grounded his appeal on the fact that the Deputy Director of the Department was also acting as Director at the time of the interview and he sat on the interview panel for the filling of the post.

First he felt that, as the post being filled was that of Deputy Director and the acting Director's substantive post was that of Deputy Director, the latter had "*personal interest as to who is appointed as another Deputy Director of the Department of ... as this successful candidate will be competing against him for the post of Director*". He should have declared his interest and withdrawn from the selection exercise. "*The conduct of Mr PN showed calculated intention on his part to embarrass the Appellant*".

Second, the Appellant further averred that "*Mr PN has strained and conflicting relations with the Appellant which would disqualify him from forming part of the interview panel. Mr PN failed to reveal his strained relationship and to withdraw*".

At the interview, the questions put to the Appellant were from one section of the Department only, ... where clearly the Appellant was least at ease, whereas only a few questions were put on ... services, thus favouring the other candidates. Mr PN "*interfered*

constantly and unnecessarily, unfairly and/or maliciously disallows the answers of the Appellant or commented on the answers of the Appellant on questions raised by other members of the panel just to cause confusion”.

For these reasons the Appellant moved that the decision of the Respondent be quashed.

Respondent’s Case

The Respondent averred that the post of Deputy Director was filled by selection as per the Scheme of Service for the post as prescribed. There were three candidates, including the Appellant and they were interviewed by a panel of three members, one of whom was Mr PN, acting as Advisor.

The Respondent stated that the decision to appoint was based on performance at the interview and the provisions of regulation 14 of the PSC Regulations. The Respondent had to determine the suitability of the candidates as per regulation 19 of its regulations.

The Respondent denied that the interview panel was improperly and unfairly constituted. The Respondent was guided by regulation 17 to determine the manner in which the selection exercise was to proceed. Mr PN was the Ag Director of the Department and, as the most senior officer, he assisted the selection panel given that the Scheme of Service required candidates who possessed specific qualities and technical skills. The Appellant had not made any complaints with regards to the composition of the panel at the interview but it was only upon not being appointed that he made a complaint in his appeal.

The Respondent stated that questions were set in accordance with the criteria of selection and the provisions of the Scheme of Service for the post. All the candidates received the same treatment and the selection was done in a fair manner and no prejudice was caused to the Appellant. The Respondent denied that Mr PN interfered the way in which the Appellant described.

The Respondent stated that the appeal had no merits and moved that it be set aside.

Determination

The whole appeal is centred around the presence of Mr PN, the Ag Director on the selection panel. The other grounds relating to qualifications do not hold as these were not requirements for the post in the Scheme of Service.

The ground concerning the choice of Mr PN on the panel is in fact the most important one. It is not disputed that the choice of the advisor was made by the Respondent. The Respondent had requested the Responsible Officer of the parent Ministry to submit the names of three officers of the Department who could advise the selection panel for this appointment exercise. As the post to be filled was that of Deputy Director, the only person higher in the hierarchy was the Acting Director. The name of the latter was submitted to the Respondent accordingly and Mr PN was chosen. Counsel argued that other persons could have been chosen as advisor as was done in ..., when one person from the parent Ministry sat on the selection panel. However, since the Respondent requested for names from officers of the Department only, the name of Mr PN was submitted. The choice of Ag Director *per se* is not to be contested as he was the most senior officer of the Department and the Respondent has followed established practice.

The Appellant is not right when he says that, if he is appointed, he will be a threat to Mr PN when the post of Director will be filled. Mr PN is already Deputy Director and the post of Director is filled by promotion. Mr PN already has an edge over the Appellant even if he was appointed Deputy Director because he is more senior.

What is a cause of contention is the presence of Mr PN in particular on the selection panel and a likelihood of bias which could have been against the interest of the Appellant. The Appellant has been adamant that Mr PN had very strained relationship with him and there were exchanges between them, verbal or by way of exchanges of memos. Mr PN was summoned by the Tribunal and his stand was that, as the immediate supervisor of the Appellant, he had to draw the latter's attention whenever he was not performing as expected but such actions were work-related and were not personal.

The Appellant maintained that he was unfairly treated: Projects were assigned to officers who were junior to him by Mr PN during the period ... when the Appellant was working directly under his supervision.

During cross-examination, each time Counsel for Appellant ran down the list of projects where other officers junior to Appellant were assigned project management, Mr PN replied that he did not remember. However, Mr PN remembered that the Appellant worked with him on the ... project but he was quick to point out that he was the project manager and the Appellant was working only on one item of equipment.

When Mr PN was confronted with the fact that after ..., the Appellant started to manage projects, he replied that after this date the Appellant was working with another Deputy Director.

As to the question put to Mr PN as regards his interference when the other members were asking questions, he explained that he had to intervene when the Appellant was not giving correct answers to technical questions put by the panel.

In order to decide whether the perception of the Appellant that he did not get a fair deal in the selection process with the presence of Mr PN on the interview panel was justified or not, we have decided to ask for the markings of the selection panel.

The Tribunal sought additional information from the Respondent on the criteria, weightage and markings of the members of the interview panel as well as the experience of all candidates. The criteria were:

- (1) Previous relevant experience
- (2) Managerial Capability
- (3) Personality
- (4) Communication and Leadership Skills
- (5) Aptitude

The Tribunal finds from the information provided under confidential cover that Mr PN did give 12 marks to the Appellant and 16 marks to the Co-Respondent and another candidate. However, the total marks of the Co-Respondent and the third candidate were far above that of the Appellant who did not do so well under the other criteria. Even if Mr PN had given the full 20 marks to the Appellant, his total score would still be lower than those of the two other candidates by a significant marking and he would not have been appointed.

The Tribunal finds that, despite the Appellant's perception of strained relationship between him and the Adviser, this did not affect the final outcome.

The appeal is set aside.