

Det 20 of 2015

The Tribunal does not have the power to see if examinations papers are fair.

Appellants cannot raise new grounds of appeal in their statement of case. An averment that some examiners may have been related to some candidates must not only be raised as a ground of appeal but must also be proved and not merely averred.

The Appellants have lodged an appeal before the Tribunal contesting the appointment of Co-Respondents to the post of HRESE

Their grounds of appeal are as follows:

- “1. I have attempted all the questions and to my belief they are well answered.*
- 2. I have worked in the relevant Section for about seven years and I am conversant with most of the relevant matters.*
- 3. The way the examination paper was set, it required an exposé to cover the relevant Principles and practical knowledge of the subject which I believe I have. Also see Annex 1.*
- 4. Officers with lesser years of service and experience have been appointed even those who have not worked in the relevant section and on their first attempt.*
- 5. Most of the questions were practical and required on the job practices to be able to be answered by candidates.” (sic)*

Appellants' Case

Both Appellants in this present matter deponed before the Tribunal and affirmed as to the correctness of the Grounds of Appeal and Statements of Case which can be summarised as follows:

1. By virtue of a circular dated ... the Respondent invited applications for the post of ... but did not state the number of posts to be filled. This practice was, according to the Appellants, against the concept of appearance of fairness. The criteria to qualify for the said post were laid down in the said circular.

2. Appellant No.1 who was an OFMTA since ..., having about seven years' experience in HR section, applied for the said post. Previously he was a ...Officer and an ... Officer

Appellant No.2 was an OFMTA since.... Previously she was an... and ... Officer. She holds a BSc in the subject matter and applied for the said post.

3. The Respondent conducted a written examination on to assess the candidates and Appellants took part in the said examination. The examination questions covered the core principles of the subject and practical knowledge.

4. The Appellants were confident that they had replied to all the questions set in the examination correctly and properly as they were conversant with the core principles of the subject and practical knowledge of the subject in view of their experience.

5 The Appellants who had not been selected for the post were of the view that all the 106 officers who had been offered appointment could not get better marks than them. Furthermore the names of those who set the

examination papers and those involved in the correction process were unknown. The possibility that one of them was related to one of the candidates could not be excluded and therefore the possibility that there had been a breach of the principle of natural justice and fairness could not be excluded.

During cross-examination, both Appellants reiterated that they had attempted to answer all the questions asked during the examination and that to their belief, they answered them well.

Appellant No 1 stated that he had worked in the relevant section for about 7 years and was conversant with most of the relevant matters. The Appellant No 2 stated that she had had exposure to the relevant practices for 2 years. Nonetheless, both Appellants agreed that as per the Scheme of Service, experience was not a requirement for the post.

Appellant No 2 nevertheless pointed out that, as she was the holder of a BSc in the subject matter, she had answered the questions at the level of BSc holder and was convinced that what she wrote related to the practical aspects of the subject. She further questioned how one could only be assessed on the practical day-to-day running of the subject and not asked questions on approach, human development or policy making in the section.

Both Appellants stated that the examination paper was based on the practical knowledge of the subject only and that there were no questions on the theoretical aspects. The first Appellant further stated that, in the instructions to the examination, it had been written on what grounds they would be assessed.

Appellant No 1 agreed that vacancies were to be filled by a selection process and that selection was to be made from officers who held a substantive appointment in the grade, as mentioned in the Scheme of Service. He further stated that the

Scheme of Service provided for a written examination. He was however, not aware that the Responsible Officer of the Ministry ... reported 106 permanent vacancies in the grade of ... and recommended that they be filled by a selection exercise and only became aware after the examination and when results were declared. Appellant No 2 highlighted that the Scheme of Service stated that selection would be by a competitive examination and that no interview would take place. Even though both Appellants did agree that it was for the examiners to assess the candidates, they both felt that they should have been appointed, as they had both answered the questions correctly. The Appellant No 2 did however agree that other candidates could also have had the required exposure to the job as they had.

During re-examination, both Appellants stated that in the Scheme of Service, it was mentioned that candidates would need to have both theoretical and practical knowledge of Human Resource principles. Appellant No 2 further maintained that it was mentioned in the Scheme of Service, that candidates should have knowledge of ... on both the practical and policy side. Despite this, both Appellants confirmed that the questions were only based on practical day to day issues and there were no theoretical questions asked.

Appellant No 1 stated that he was not claiming to be better than any of the other 106 candidates, but that he was as good as them. Furthermore, he was not suggesting that two of the other candidates should leave for him to be appointed instead.

Appellant No 2 was not contesting that the Co-Respondents were not as good as she was and she stated not having any personal grudge against anyone. She was only contesting the decision of Respondent not to appoint her.

Counsel for the Appellants argued that when dealing with candidates who were supposed to have knowledge of both the theoretical and practical aspects, if

questions were only asked on one side, a proper and fair assessment could not be made.

Respondent's case

Respondent solemnly affirmed to the correctness of the Statement of Defence which can be summarized as follows:

1. According to the Scheme of Service prescribed on ..., the post of ... was filled by selection from officers who held a substantive appointment in the grades as mentioned in the Scheme of Service and who had the required knowledge and skills as laid down in the Scheme of Service.
2. The Scheme of Service provided that the candidates would be required to take part in a written competitive examination conducted by the Public Service Commission designed to assess their potential and aptitude for work relating to ... matters and their ability for problem solving.
3. On the..., the Responsible Officer of the Ministry of ... reported 106 permanent vacancies in the grade of ... and recommended that they be filled by way of a selection exercise. The vacancies were advertised on ... among qualified serving officers of the Ministry as per Public Service Commission Circular Note.... 308 applications were received in response to the circular and 258 candidates, including Appellants, were found to possess the required qualifications and were convened for a written competitive examination on
4. Following the examination, the offer of appointment as ... a temporary capacity was made to 106 selected candidates on ... Notification of Appointment by Selection to the post of ...was issued on the ...

5. Regarding Appellants' averments in respect of the number of vacancies to be filled, Respondent stated that as this issue was not raised by the Appellants in their Grounds of Appeal dated ..., Appellants could not now raise any new ground of appeal.
6. Respondent challenged Appellants' version to the effect that the 106 officers who were appointed could not get better marks than the Appellants.
7. Respondent stated that the appointment to the post of ... in a temporary capacity was made: -
 - (a) on the basis of the performance of the candidates at the written competitive examination;
 - (b) taking into consideration the number of vacancies to be filled;
 - (c) taking into consideration the provisions of regulation 14 of the Public Service Commission Regulations; and
 - (d) taking into consideration the requirements of the post and the Scheme of Service.
8. Respondent was adamant that the allegations that those who set the examination papers and those involved in the correction process might be related to the candidates, were not raised in the Appellants' grounds of Appeal dated the ... and the Appellants could not at that stage raise any new ground of appeal.
9. Respondent averred that all the candidates convened for the written competitive examination were fully qualified and all information regarding qualifications and experience as disclosed by the candidates in their application forms were taken into consideration by the

Respondent. Appellants were eligible for the post of ..., but were not selected for the post following the written competitive examination.

10. Respondent maintained that it acted in all fairness and in conformity with the powers vested upon it by section 89 of the Constitution and the provisions of the Public Service Commission Regulations.

Under cross-examination, the representative of the Respondent stated that she had not seen the examination paper set for the candidates and therefore, was not able to state the nature of the questions asked. Referring to the Scheme of Service, she confirmed that a candidate would need to provide advice on the relevant matters. Respondent also agreed that the Rules and Regulations pertaining to the relevant subject would be theoretical, but that it would need to be applied in practice. Respondent could not say whether or not the questions were only of a practical nature and whether or not it was the same person that corrected all the papers.

Respondent confirmed that the qualifications of the candidates were irrelevant at selection stage as candidates were selected following the examination.

Counsel for Respondent did not believe that the Tribunal was the proper forum to question an examination paper.

Determination

It is clear that the bone of contention in this matter is whether the examination should have contained more theoretical questions or not. It has also been contended in the statement of case that some candidates are familiar with those who set up the examination papers and therefore this could explain why some Appellants did better than others. With regard to the last issue, it is pertinent to note that this was not raised in the Appellant's grounds of appeal. Section 6(5) of the Public Bodies Appeal

Tribunal Act 2008 states as follows: “The Tribunal shall not entertain any ground of appeal not raised in the grounds of appeal.” Moreover, no evidence or serious averments were made during the hearing of the case by either of the Appellants to that effect. This issue is therefore purely and simply disregarded.

With regard to the main issue relating to whether the content of the examination paper was appropriate, the Tribunal is of the view that it is not within its ambit to go through examination papers set by the Respondent and to state whether the content is relevant or appropriate. The Respondent is the sole body entitled and responsible for the carrying out of interviews/selection exercises and carrying out appointments and we cannot substitute ourselves for the Respondent.

The Tribunal’s mandate is very specific. In cases of “appointment” the Tribunal can look at the procedures and processes and make sure that the selection exercise was carried out in all fairness. This does not extend to, in our opinion, reviewing examination papers and the questions they contain. In any case, the main complaint of Appellants being that the questions were too practical, we bear in mind that all candidates were already qualified for the post and are already at the level of ... and we find no reason therefore to challenge the wisdom of the decision to test the candidates on the practical aspects of the job rather than the theoretical aspects of it.

The appeal is set aside.