

Det 22 of 2015

If irrelevant matters are considered by an interviewing panel and some material evidence is considered in favour of some candidates and not for others, the process is flawed and the decision will be quashed.

The Appellant is challenging the decision of the Respondent to appoint the Co-Respondents to the post of DVR5

Appellant's Case

The Appellant is a HCAT in the Ministry of.... He averred that he joined the public service on ... and that after 11 years in service he had never been given any promotion. He alleged that promotions were made to candidates who did not deserve to be promoted but who had political patronage. He claimed that he was more meritorious given his qualifications, experience, his assignment of duties as DVR and the fact that he had all the relevant permits. Among those promoted, some had only a permits of a lesser value.

He could not understand why he had never been selected for the posts he applied for in spite of the fact that he had all the requirements.

Respondent's Case

The Respondent averred that there was a selection exercise that was carried out internally in the Ministry, under delegated power, in ... for the filling of vacancies in the grade of DVR5. There were 72 applications and the Selection Board found 61 applicants qualified. A list was established in order of merit based on performance at an interview. Since there were 32 funded vacancies the first 32 candidates on the merit list were offered appointment with effect from ... After one of them declined the offer, another one was appointed with effect from ...

The Appellant was called for the interview. However, he was not selected for appointment as the Selection Board found that he was not suitable to perform the duties of the post for the following reasons:

1. Appellant was reprimanded by the Public Service Commission on following his conviction by the District Court of ... on the charge of ...(related to his job)
2. Appellant was presently involved in another case of ...

The Respondent averred that the appeal had no merit and moved that it be set aside.

Co-Respondents' Case

The Co-Respondents stated that they would abide by the decision of the Tribunal. They were explained the implications of their decision, which they maintained.

Determination

The post of DVR is filled by selection among eligible candidates as per the Scheme of Service for the post. This is not disputed. The Appellant is only saying that he is more qualified, more experienced and he had been assigned the duties of DVR during a period of three years.

At the hearing he conceded that his experience as ... was before he joined the service. Only experience in the service is considered when candidates are assessed by the selection committee.

As to his assignment of duties, the Respondent shows that the Appellant officially performed the duties only on three occasions namely during the periods as well as for three months as from ... and not for three years as averred by the Appellant. The latter said that he was doing such duties even if he was not given any letter assigning him the duties of DVR but the Respondent is right to point out that only the time he is officially assigned duties counts for the selection exercise.

Regarding qualifications, the Scheme of Service only requires candidates to possess a.... The selection committee found that the candidates called for interview, including the Appellant, met the qualifications requirement.

The Appellant has not denied the two police cases against him. He had given written explanations to his employer about the incidents and the circumstances which led to him to commit these. But, in spite of this, he was reprimanded. The Appellant conceded that when he received this letter he did not protest. The Appellant asked whether it was fair for the selection panel to take into consideration the police case which dates as far back as However, it was made clear that the Respondent could refer to such cases falling within a period of ten years. This is clearly specified in the standard PSC Application Form 7. Even if in this case the Ministry used its own Application Form, the same principle applies.

The Appellant said at the hearing that some of the Co-Respondents were involved in accidents but he was not in a position to give names and other details. This averment cannot hold as the onus of proof before this Tribunal is on the Appellant. In spite of that, the Tribunal did find out from the Respondent whether the Co-Respondents had police cases against them. The information provided under confidential cover in a letter dated ... from the Ministry of ... which acted under delegated power indicates that some of the Co-Respondents indeed had been prosecuted and sentenced by the Court.

In the same letter, the Tribunal was apprised that the second charge of against the Appellant was struck out before the District Court of ... and the Police Department informed the Ministry accordingly on ...

The Tribunal notes that only one conviction stands against the Appellant. It remains a fact that the second charge was before the Selection Board and may have impacted on the decision. After the second charge was struck out, this puts Appellant in no worse condition than some of the other Co-Respondents who had been convicted on similar charges.

The Tribunal has taken the liberty of comparing the marks obtained by the Appellant and the four Co-Respondents with police case referred to above. The selection Board had three criteria, namely (i) Qualifications (10 marks) (ii) Personality/Aptitude (10 marks) and (iii) Knowledge of Work/Experience/Knowledge of ...System (15 marks). The Tribunal notes that they all scored more or less the same marks under the first two criteria. However, there was wide divergence on the third criterion which carried higher weightage. The Appellant only scored 5 marks while three of the Co-Respondents under reference scored 12 marks and one had 11 marks. All Co-Respondents who had accidents had been reprimanded when Court Records were received. This was also the case for the Appellant. However, the Appellant's offence was compounded by the fact that the incident occurred while he was not authorised to ...This could have played against his suitability for appointment as per PSC Regulation 19(6).

The Tribunal further notes that on the marks sheet (shown to the Tribunal under confidential cover) there was a Remark Column and for the four Co-Respondents it was shown that they were assigned the duties of DVR but for the Appellant it was blank, when the Respondent had indicated at the hearing before the Tribunal that the Appellant had been assigned the duties of DVR on three occasions.

The Tribunal finds that there have been procedural flaws in the selection exercise to the extent that:

- (i) The Respondent took into consideration a matter which it should not have considered, i.e. the second charge of which was in fact struck out by a Court of Law; and
- (ii) The Respondent in the mark sheet did not show that the Appellant had performed assignment of duties on three occasions which it should have considered while for the Co-Respondents their assignment of duties were clearly

shown. While assignment of duties does not give claim for permanent appointment it must have an impact when assessing experience

For these two reasons, the Tribunal finds that the Appellant was not given a fair chance in the selection exercise.

The appeal is allowed and the decision of the Respondent is quashed.