

Det 24 of 2015

The Tribunal will not intervene if the interviewing panel has been fair to candidates in respect of the criteria of selection and candidates' performance during the interview.

The Appellant has appealed before this Tribunal under Section 6(1)(a)(b) of the Public Bodies Appeal Tribunal Act 2008 against a decision of the Public Service Commission (PSC). The decision appealed against is the offer of appointment by selection of the Co-Respondent to the post of FESR in a temporary capacity. The Appellant's grounds of appeal are as follows:

- (i) "That he is more experienced than the Co-Respondent as he has been with the Ministry of ... since ...;
- (ii) That he had been assigned duties of the post without any adverse report;
- (iii) That the Co-Respondent has never performed the duties of the post;
- (iv) That he is better qualified than the Co-Respondent in terms of certificates and years of service; and
- (v) That he has never been reported for misconduct or insubordination."

Appellant's Case

On the ... the post was advertised and the Appellant was one of the applicants for the job. However, the post was given to another applicant whom the appellant believed was less qualified than him. It is the Appellant's contention that he had all the merits for the post and should have been appointed.

The Appellant joined the Ministry of ...in the year ... as CAL and had completed 25 years of service. He admitted that he was not aware of the educational

qualifications and past experience of the Co-Respondent. He maintained that he was the most senior applicant for the post. Furthermore, the Appellant was of the view that the Respondent failed to give due consideration to his work experience and clean record while deciding on allocating the post.

The Appellant admitted that he was wrong to state that he possessed the ... Certificate while in fact he possessed a ... Nonetheless, the Appellant highlighted that the vacancy advertisement mentioned that the post was open to applicants holding different qualifications.

With regards to his workload and scope of responsibilities, the Appellant confirmed that he had been occupying the post of FESR “for the period from ... to ... and that he had been reassigned to that post from the ... until date of hearing. Furthermore, the Appellant stated that he was currently handling the workload of two FESR. As such, he was in charge of supervising a total of eight sites in the Southern region while the usual number of sites for a FESR was four sites. He maintained that he had managed the workload and exercised his supervision duties efficiently and that explained his re-assignment to the post.

The Appellant stated that the interview for the post of “FESR was done to his satisfaction and highlighted that it was its outcome that was being contested by him.

Respondent’s Case

The Representative for the Respondent deposed and confirmed that the Statement of Defence was filed by the Respondent on the ... Upon questioning from the Respondent’s Counsel, she explained that the interview for the post of had been carried out by the Ministry of ... She stated having liaised with the Responsible Officer of that Ministry in relation to the vacancy but that she had no personal knowledge of the applications made or procedure followed to reach the final appointment decision. She maintained having taken cognisance of the outcome of interviews through the Circular that all Ministries submit to the PSC on a half-annual basis.

Finally she admitted that the Appellant had more work experience than the Co-Respondent.

Representative for the Ministry of ...

The Representative for the Ministry deposed and confirmed that the advertisement for the post had been made by the Ministry of... She declared that she was one of the members of the interviewing panel for the post. It was also confirmed that the Appellant was senior-most in the list of applicants for the post.

She explained that the temporary assignment of duties of the Appellant has arisen due to ten more senior officers' refusal to take on the assignment. The Ministry had no choice but to offer the temporary assignment to the Appellant. Furthermore, she explained that the second assignment had arisen under similar circumstances and that the Ministry, again, had had to offer the assignment to the Appellant as all officers senior to him had refused the responsibility when it was offered to them. She maintained that the temporary assignments had been more a matter of coincidence than one of choice for the Ministry. She then confirmed to the Representative for Appellant that there had been no adverse reports against the Appellant for the duration of his two assignments.

The Representative further clarified that Co-Respondent, prior to being employed in the Ministry, had been an employee of the ... Council. The said organisation was recognised under the ... Act and as such, fell under the aegis of the Ministry ...The Co-Respondent has been occupying the post of ..., later restyled FESR at the ... Council for a period of 15 months which she maintained was nearly equivalent to the Appellant's duration of work experience as a FESR.

With regards to the assessment criteria during the interview, the representative stated that both the Appellant and the Co-Respondent satisfied the qualification requirements while the Appellant has 18 months of experience for the post and the Co-Respondent had 15 months of experience. It was highlighted that the representative had no other means of ascertaining the extent of responsibilities held by the Co-Respondent except on the basis of what he replied during the interview. The representative of the Ministry also explained that the job was allocated based on performance at the interview. She maintained that the Co-Respondent performed better than the Appellant. It was further highlighted that the same questions were put to both the Appellant and the Co-Respondent and the latter had given better answers to the questions put to him. However, upon queries by the

Tribunal, the Representative of the Ministry admitted that there was no written trace of the questions asked and that as such there was no proof that both the Appellant and the Co-Respondent had been asked the same questions at the interview.

When questioned in relation to the workload of the Appellant, the representative of the Ministry admitted being unaware of whether he was handling the work responsibilities of two FESR.

Chairman of Interview Panel

The Chairman of the interview panel for the post of FESR deposed. It was confirmed that he had acted as Chairman of the panel and as such, had been questioning all applicants. His questions were mainly geared towards the technical knowledge required for the post. He explained to the Tribunal that questions, in relation to the scope of duties of FESR were asked and that, while the Appellant had briefly answered this question, the Co-Respondent had managed to list the duties and explain them in detail. The Chairman of the interview panel further re-affirmed that the Co-Respondent had better performed at the interview than the Appellant and confirmed to the Tribunal that, in relation to the other criteria of assessment, the marking sheets for the interview could be provided. Finally, the question of the length of the interviews was addressed and he stated that the interview lasted 8-12 minutes but could be shorter if the applicant had no answers to questions put to him.

Determination

The Tribunal has not only had the benefit of listening to the versions of both sides but has also requested and obtained, under confidential cover, the list of criteria and weightage attached to each criterion that the interviewing panel had borne in mind. The marking sheet was also provided to the Tribunal and a cursory glance at it enabled the Tribunal to see that the qualifications and work experience of the Appellant were fully considered and highly marked by the panel. However, under the criteria of supervision, knowledge of work and performance during the interview, the Appellant scored slightly less than the Co-Respondent. Other documents with regards to the experience of each candidate were also communicated to the Tribunal including the Scheme of Service of the post of the Co-Respondent from the ...

Council where it can be seen that one of his duties was to supervise and maintain discipline among the workers. We are satisfied that the interviewing panel has rightly taken the work experience of the Appellant into account and the Appellant has scored equally with the Co-Respondent on that factor. Factors such as supervision, knowledge of work and performance at the interview are subjective elements and the interviewing panel is best placed to determine and assess same. Having heard the Chairman of the interview panel and the criterion on which he made his selection and the reason why his panel marked the Co-Respondent with higher marks, we find that we have no cause to intervene.

The Appeal is therefore dismissed.