

## Det 04 of 2015

- An Applicant who avers that her superior officer was biased against her must prove such bias.
- Not protesting when the officer sat on the panel bars any challenge on that ground later.

The Appellant, a SANT at the ... Division of the Ministry of ... is challenging the decision of the Respondent not to appoint her to the post of Senior SANT.

The post of Senior SANT was filled by selection from officers in the grade of SANT who reckoned at least two years' service in a substantive capacity in the grade and who:

- “(i) Possess effective communication, interpersonal and organizing skills;
- (ii) Have strong commitment and leadership qualities; and
- (iii) Have conceptual, analytical and creative skills, including the ability to identify relevant issues and priorities.”

The way the post was to be filled is not disputed as this is as per the prescribed Scheme of Service.

There was an advertisement to fill vacant posts on .... Initially there were four vacant posts. However, on ... the Responsible Officer of the Ministry reported a fifth vacancy.

There were 35 candidates who applied for the post and 21 of them, including the Appellant, were found eligible and were interviewed on...This led to the appointment of the five Co-Respondents in Appeal A.

Subsequently, there was another vacancy and this was reported to the Respondent by the Responsible Officer on ... The Respondent decided to appoint the Co-Respondent in Appeal B. Appellant lodged appeals regarding both appointments.

Since the two appeals relate to the same selection exercise and covered the same grounds of appeal it was agreed that the two appeals be consolidated and be termed Appeal A and Appeal B.

### **Appellant's Case**

The appeal relied on four grounds.

- (1) The Appellant was more qualified as five of the six Co-Respondents had only a Bsc. degree and the sixth one an Msc. She was holder of a Diploma, a Bsc. and an MBA.
- (2) The Manager of the department was biased against her. The Appellant cited cases namely:  
...
- (3) The Appellant was the only officer, who within a few months, had received 4 different postings, namely the ... Some employees were not going through the process of rotation in posting as they had the Manager's favour. She was being shifted around on a regular basis.
- (4) Some of the appointees had been drawing an allowance for performing the duties of Senior SANT whereas she never received any such allowance. She claimed that she had been doing the duties of Senior SANT.

The Appellant moved "*that the decision of the Respondent be reviewed and that she may be awarded the post of Senior SANT*".

### **Respondent's Case**

The Respondent averred that the Appellant had no case and rebutted the averments of the Appellant on the four grounds as follows:

Ground 1: The Appellant had an MBA while the Co-Respondents, with one exception, had only a first degree. However, the possession of a post graduate qualification was not a requirement according to the prescribed Scheme of Service.

Ground 2: The Manager of the Department was called as a witness to give clarifications regarding the allegations of bias by him towards the Appellant. The Manager explained that outposting of officers of the Department was done in consultation with receiving parties. Very often these institutions requested the Department to maintain the serving officers in their institutions for longer periods as they were involved with specific programmes and it was essential that they were required they remain to complete the exercise. The Department had to comply, resulting in officers spending longer time in their outposting.

On the “kettle “issue, the Manager intended to initiate disciplinary action but was advised by his parent Ministry to find an amicable settlement with the Appellant, which he did. At the end of the meeting he had with the Appellant, the latter had written to him to say that the matter was closed.

The Manager also stated that approval of leave was first considered at the level of the Technical Manager and only referred to him for final approval. He was, therefore, not directly involved with approval of leave which was always conditional on exigencies of the service.

Ground 3: As explained above, the Manager of the Department again stated that outposting of officers was done in consultation with receiving institutions and not decided solely by the Department.

Ground 4: The Appellant was never assigned officially the duties of Senior SANT and therefore could not be given any allowance. The Respondent also stated that three SANT were given assignment of duties of Senior SANT but they were not appointed as assignment of duties did not give any claim for permanent appointment to the post. Among the Co-Respondents only one had been assigned the duties of Senior SANT.

The Appellant had averred that the presence of the Manager in the interview panel had played against her as she felt that the Manager was biased against her. On cross-examination, she conceded that she did not protest during the interview or even after the interview and only brought up the issue when she appealed against the decision of the Respondent.

It was also put to the Appellant that the Manager had been Technical Manager since ... and the Appellant had obtained appointments to higher posts and this could only had happened because she got good reports from the Technical Manager, to which she acquiesced.

## **Determination**

The post of SSA is filled by selection. The Tribunal sought and got under confidential cover information regarding the criteria for assessment, their weightage and the marks allotted to the Appellant and the Co-Respondents. The criteria used were as follows:

- Additional relevant qualifications
- Experience in actual post
- Experience in post applied for
- Personality
- Communications and Interpersonal skills
- Responsibilities of the post
- Organising, leadership and Supervisory Skills
- Aptitude

In addition, the Adviser who happened to be the Manager of the Department, gave marks which were added to the marks of the other members of the panel who assessed the candidates on each criterion.

From the information provided, the Tribunal finds that the Appellant and the Co-Respondent who had an M.Sc. were given more marks than the other Co-Respondents on the criterion Additional Relevant Qualifications. Thus even if post graduate qualifications were not required, the Appellant got bonus marks for her MBA. Her averment that her MBA was not considered in Ground 1 of her appeal does not stand.

As regards the issue of bias on the part of the Manager in Appellant's Ground 2, the Tribunal finds the explanations given concerning granting of leave and outposting to other institutions convincing enough as this is usually the practice in any public organization. In the end the kettle issue and the use of the word "animal" did not have any impact on the relations between Appellant and her Manager. The Appellant herself did not protest on the presence of the Manager on the interview panel. She also agreed that the Manager, when he was Technical Manager, gave favourable reports on her when she was considered and given appointment to higher positions in the Department. All this defeats her allegations of bias. It is interesting to note that the Manager, as Advisor in the selection panel, gave her high marks. Only one Co-

Respondent got one more mark from the Advisor. A proof, if needs be, that the Advisor did not act against her interest. Ground 2 is, therefore, not sustained.

The Respondent has explained the way outposting is done. The Tribunal accepts the explanation given. Ground 3 is put aside.

As regards Ground 4, the Respondent has shown that the Appellant had not been assigned the duties of Senior SANT even if she had been performing work of a Senior SANT. What matters is whether the officer had been officially given such assignment of duties. The Appellant agreed that she was never given a letter to that effect. It is a fact that assignment of duties does not give an officer any claim for appointment to the post. In the present case this is particularly evident as neither the Appellant nor five of the Co-Respondents were assigned duties of Senior SANT. On the other hand three candidates for the post had been assigned the duties of Senior SANT but they were not selected for appointment. It is also pertinent to highlight that the Appellant and the Co-Respondents did not score marks under the criterion "Experience in Post Applied For".

The Tribunal finds that the four grounds of appeal have not been borne out by arguments presented to it.

The appeal is set aside.