

## Det 05 of 2015

**An officer who is given a choice to join a new grade may accept “under protest” in order to preserve his rights for the future.**

**This is still an acceptance.**

The Appellant, a HRETO at the Municipal Council of ....., is appealing against the decision of Respondent not to appoint her to the post of OMTAT.

The situation arises from the implementation of the Errors, Omissions and Anomalies Committee Report (EOAC) on the Pay Research Bureau Report 2013. The EOAC recommended the creation of a new grade of OMTAT on the establishment of all local authorities and that the grades of HRETO and ETO be made evanescent. Officers in these two grades were given the option to join or not to join the new grade of OMTAT. The Option Form was clear on the options, namely:

- I hereby inform you that I accept to join the new grade of OMTAT.
- I hereby inform you that I do not accept to join the new grade of OMTAT.

The Appellant had struck out the second option but she added (Under Protest) at the end of the first option.

This led to her disqualification for appointment to the new post of OMTAT. The Appellant requested the Respondent in a letter dated ... to reconsider its decision and to appoint her as OMTAT with effect from .... However, the Respondent replied to the Appellant in its letter of ... that “... the Commission maintains its decision not to appoint you as OMTAT as you have accepted to join that grade under protest.”

### **Appellant's Case**

The Appellant's grounds of appeal were as follows:

*"1. The Respondent's decision not to appoint the Appellant is wrong because the appellant was entitled to be appointed as Office OMTAT and she accepted the appointment. The fact that she accepted 'under protest' cannot disqualify her.*

*2. The applicant has the right to opt under protest to preserve her rights to make representations regarding any anomaly as per the Errors, omissions and Anomalies Committee Report 2013 concerning the conditions of service of HRETO in the Local Authorities as compared to those in the public service.*

*3. The decision of the Respondent not to appoint the Appellant on the ground that she accepted her appointment under protest is wrong in law, ultra vires and unreasonable.*

*4. Because the Appellant had the right to be appointed as OMTAT following the recommendation of the Pay Research Bureau."*

The Appellant averred at the hearing that she had accepted the offer of appointment as OMTAT. However, she felt that her post of HRETO should not be equated with that of OMTAT and her post of HRETO had been downgraded in the process. She was not being treated like her colleagues in the public service. She had inserted 'under protest' at the end of option 1 to give her a chance to contest the issue when the next PRB salary review exercise would come up.

The Appellant stated that she accepted the offer of appointment and she should have been appointed.

### **Respondent's Case**

The Respondent had initially raised an objection in law to the effect that the appellant had no *locus standi* in the present matter and that the Appellant was not an aggrieved party. However, it agreed that this point be taken up when the case would be heard on the merits.

The Respondent averred that the Appellant was given a chance to join the grade of OMTAT. However, when the Appellant filled in the option form she had written '*under protest*' in her option form. The Respondent considered this as non-acceptance to join the grade.

The Respondent averred that all procedures had been scrupulously followed and the Appellant had herself opted not to join the new grade.

### **Co-Respondents' Case**

Counsel for nineteen of the Co-Respondents opined that since the Appellant had signed the option form accepting the PRB Report 2013, she was not in a position to contest its recommendations at this late stage. The Appellant should not have accepted the offer under protest.

### **Determination**

The whole issue boils down to whether the Appellant had accepted the offer of appointment as OMTAT.

The option form that accompanied this appointment exercise is therefore crucial. It is evident that the Appellant had accepted the offer as she struck out option 2 which referred to non-acceptance of the offer. Had she decided not to accept the offer she would have struck out option 1 which she did not.

The question then is whether acceptance under protest is an acceptance which would qualify the Appellant for appointment. This Tribunal has heard many cases where public and local government officers had accepted offers of employment but then made appeals to this Tribunal as they were not happy with certain terms and conditions such as the effective dates of their appointment. The respective Service Commissions have always rebutted that these officers accepted their offers without any protest and the Tribunal was not in a position to adjudge in favour of these officers.

This Tribunal feels that public officers or local government officers have a right to accept an offer of appointment under protest. This is the only way these officers can

contest the terms and conditions of such appointments and can have recourse to this Tribunal. Officers are often given one week to accept or decline an offer of appointment and within such a short delay, they must be able to preserve their rights.

In this case, the Appellant accepted the offer for appointment but she was not satisfied that she did not have a similar treatment as her colleagues in the public service. In fact, the EOAC report for the public service says in its Volume ... Part ... page ... *“The Committee recommends the grade of HRETO be merged with the grade of OMTE and be restyled OMTE”*. The post of OMTE is a higher post in the hierarchy and carries a higher salary than that of OMTAT. She avers that according to Section 69(3)(b) of the Local Government Act 2011, *“conditions of service applicable to the public service shall apply to an officer”*.

The Tribunal finds that the point of law raised by the Respondent does not hold as the Appellant was eligible for consideration and she was not appointed. She is an aggrieved party and has a right of appeal as per section 3(1) of the PBAT Act 2008.

The Tribunal adjudicates in favour of the Appellant. She should have been on the list of the 60 appointees for this new grade.

The matter is remitted to the Respondent for a decision that is fair to the Appellant.

The Respondent is requested to report to the Tribunal, within two months, on action taken.