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Candidates to a selection exercise must remember that seniority is not an overriding criterion unless all candidates are at par once the marking has been done on all the other criteria. Assignment of duty is also not enough to be appointed to a post.

The Appellants are ... at the Ministry of They have lodged an appeal separately to this Tribunal as the Respondent did not appoint them to the post of ATST and appointed the nine Co-Respondents instead. The appeals were consolidated after the case for each Appellant was closed, since the Co-Respondents were the same, the appeals concerned the same selection exercise and the Respondent had the same line of defence in both appeals.

Appellants' Case

The Appellants grounded their appeal on the fact that they had long experience in the Ministry as SCK, they were assigned duties in higher positions and they never had any adverse reports against them.

In Appeal A

Appellant was appointed as SCK on or about ... and was confirmed to that post on He was assigned the duties of HUR from He was also assigned the duties of ATST on several occasions.

Appellant averred that only two of the Co-Respondents No 1 and No 5 were senior to him. He appealed against the decision of the Respondent as the latter had not taken into account "my track record and my long standing service as a SCK" and "my assignment of duties as ATST".

In Appeal B

Appellant averred that he had more than 30 years as SCK. He had been assigned duties as ATST for more than one year and was still performing the duties at the time of the appointment exercise. He had no adverse report and those appointed had less years of service than him, and some never worked in the office where the job is to be performed and they were never assigned duties as ATST.

The Appellants appealed to the Tribunal for redress and, during proceedings Appellant's Counsel, wanted to obtain information regarding the following:

List of criteria; duration of the interview for each candidate and the respective number of years of service in the grade of each candidate as at the closing date of application, the number of members on the interviewing panel and whether the same members sat for each interview sessions. She also asked for the number of sessions. All this information was obtained from Respondent and was shared with Counsel for Appellant.

Respondent's Case

The Respondent averred that the post of ATST was filled by selection.

Appeal A

The Respondent agreed that Appellant was assigned the duties of ATST, but denied that the Appellant did so for the period as averred by the Appellant.

Appeal B

As regards Appellant, the Respondent stated that the latter was appointed as SCK with effect from ... and reckoned more 32 years' service. The Appellant was assigned the duties of ATST from... to ... On ..., the Responsible Officer had recommended the continued assignment of the higher duties which was still under consideration by the Respondent at the time of the appeal.

The Respondent averred that there were 17 vacancies in the grade of ATST as at ... and the Responsible Officer of the Ministry had recommended that a selection exercise be conducted and six suitable candidates be recommended for appointment. Following the advertisement of the post on ..., three additional vacancies were reported and the Responsible Officer recommended that nine vacancies be filled in that selection exercise.

On the..., the nine Co-Respondents were offered appointment for the post and they assumed duty on....

The Respondent stated in its Statement of Defence that out of the nine Co-Respondents:

- 3 had less than 10 years' service
- 4 had not worked in the office in question
- 5 had never been assigned the duties of ATST

Learned Counsel laid emphasis on the fact that it was a selection process and not a promotion and that seniority is the least important factor as opposed to qualification, merit and experience. She stated that it was the task of the interviewing panel to assess the suitability of the candidate based on the criteria that the selection panel had determined. Respondent stated that it had not breached any rule of natural justice and both Appellants had failed to prove any unfairness caused to them. Further, regarding assignment of duty, she stated that it does not give Appellant a claim, to a permanent post.

Determination

The filling of vacancies for the said post was by selection. This is not contested as this is provided for in the prescribed Scheme of Service.

It is quite normal for officers who reckon long years of service to feel frustrated when they find that, in an appointment exercise, colleagues who are junior to them are appointed. In this case three of the Co-Respondents had been less than 10 years in

service compared to their longer employment record, the more so that they had been assigned the duties of the post.

However, the present case does not refer to a promotion exercise where seniority assumes greater importance and is in fact a determining factor, provided that there have not been any adverse reports against the officer. In a selection exercise, seniority takes the backstage even if it still remains a factor that is considered when all candidates are at par under the other criteria. Therefore, by relying on their seniority, the Appellants fail to understand that there are other criteria that normally encompass a selection exercise. This is largely due to the fact that these criteria are not made available to them at all before the selection exercise contrarily to many other democratic countries where the practice has been adopted.

In the case of *Bye Ramatoollah Nayeck v the PSC and Ors* (2013 SCJ 455), the Supreme Court reiterated the fact that “seniority is not the most important criteria for appointment but remains a relevant factor where there is little else to demarcate the candidates”.

Similarly, the Appellants have based themselves on the fact that they had been assigned the duties of the post to make a case that they deserve appointment on this ground. Here again, the Appellants are oblivious of the letter given to them at the time they were asked to perform the duties of the post, namely that such assignment of duties will not give them any claim to permanent appointment when the vacancies in the post are filled.

In the present case, there were many criteria as follows:

1. Additional Qualifications
2. Computer literacy
3. Experience in the Grade of SCK (> 4 years)
4. Knowledge of Duties and Responsibilities of the post
5. Knowledge of First Aid

6. Experience in the job
7. Assets Management
8. Planning and Supervisory Skills
9. Personality
10. Communications and Inter-personal Skills
11. Aptitude

The only criterion where the long years of service can be given bonus marks is on experience (criterion 3). The Tribunal is very alive to the observations made by the Supreme Court in G. Appadu v/s Public Service Commission (2003 SCJ 29):

“Learned Counsel for the respondents submitted that since the scheme of service mentions that the proposed appointment as Senior STSC was to be effected by Selection from among officers in the grade of STSC who reckoned at least four years’ service in a substantive capacity in the grade, the number of years in excess of those four years was not material. We disagree. Although there is a minimum requirement of 4 years’ service before a candidate could be qualified for consideration for the promotional post *in lite*, the very text and spirit of the **Public Service Commission** Regulations, as well as the format of the assessment sheet indicate the need to make some allowance for “previous relevant experience” which is normally related to seniority. It is of course up to the Commission to decide on the benchmark to be adopted in filling up the particular column in the assessment sheet, but a submission that respondents nos 3 and 4, who reckoned some 8 years’ experience at the time the selection was made, should on that score be considered at par with applicants nos 1 and 4 who, at the relevant time, reckoned 15 and 16 years of service respectively cannot “*ex facie*” be considered as a reasonable and fair proposition. In the same way, although Regulation 14(1)(b) of the **Public Service Commission** Regulations states that in the Commission’s quest to maintain a high standard of efficiency in the public service, it shall take into account qualifications, experience

and merit before seniority, the underlying message is that seniority still remains a relevant factor where there is little else to demarcate the candidates. Again it will be up to the **Public Service Commission** in discharging its duties in the promotion of public officers to work out and implement a formula which effectively takes account of all the relevant and well-known criteria of promotion including the one of experience.”

Indeed this Tribunal would like to stress on the fact that the PSC Regulation 14 should be applied in a way to ensure that long years of service are not simply swept under the carpet and are given their due consideration, amongst other criteria.

The Tribunal, therefore, sought information from the Respondent on the criteria, their weightage and marks given. These were provided to the Tribunal under confidential cover. The Tribunal finds that, on this count, the Respondent has acted fairly towards the Appellants who were given full marks under experience, together with only one of the Co-Respondents who had nearly 28 years’ service. The other Co-Respondents scored low marks under this criterion. However, the Appellants obtained lower scores on the other criteria which led to their non-selection.

Counsel for the Respondent referred to the fact that officers who were assigned duties of higher posts were always told that such assignments of duties would not give them any claim for permanent appointment. She produced the Supreme Court Judgment S. Rampersad v Public Service Commission (2009 SCJ 189) where it was said “ *Likewise, the assignment of duties, as an administrative expediency and for short periods, does not confer any right on the applicant to claim permanent appointment nor, we may add, any advantage over other candidates*” .This of course has been the stand of the Supreme Court on this issue as contained in judgments of the Supreme Court such as Dr. G Naidoo v Public Service Commission (2007 SCJ 77) and G. Appadu v Public Service Commission (2003 SCJ 29).

The Respondent has also always argued that, in a selection exercise, the Commission takes into account qualification, experience, merit and suitability of the candidate before seniority under its Regulation 14. This has led to many appeals before

this Tribunal from officers who are aggrieved because they have been for very long in service and find themselves side-lined by much younger colleagues. The Respondent very often has a long list of criteria and the criterion dealing with experience of candidates remains only one of many other criteria on the list. In the present case, there are 11 criteria. This provides ample opportunity for junior colleagues to score marks on other criteria than experience which can explain the outcome of the present selection exercise where those with greater years of service have not necessarily been selected. The Tribunal having not found any flaws in the selection process cannot thereby entertain the appeals of the Appellant.

The appeals are set aside.