

## Det 23 of 2015

**Although qualifications are not included in a Scheme of Service, the Respondent may include additional relevant qualifications as one of the criteria for selection and thus the balance may be tipped in favour of candidates who possess such qualification.**

The Appellant, a SAT at the ... Division is challenging the decision of the Respondent to appoint the Co-Respondent to the post of Senior SAT.

The background to this appointment and to the present appeal is as follows:

- The Respondent was notified by the Ministry of ... of vacancies for the post of Senior SAT on...,
- There was an advertisement among eligible officers on ... to fill the vacancies. In the meantime another vacancy occurred and the Ministry recommended to the Respondent that this vacancy be also filled under the same appointment exercise
- Following the advertisement, there were 35 candidates, including the Appellant and 21 of them, also including the Appellant, were found eligible for consideration
- Interviews of candidates took place on ...
- The Respondent recommended that five SATs be appointed and they assumed duty on the ...
- On..., one additional vacancy was reported to the Respondent
- On ..., another SAT from the previous interview exercise was appointed and she assumed duty on the ...
- On ..., one additional vacancy occurred and it was recommended to the Respondent that it be filled from the same selection exercise. This resulted in the appointment of the Co-Respondent to the post of Senior SAT, thus this appeal. The Co-Respondent assumed duty on ...

- There was another appointment made on ... after the appeal was lodged and the Appellant did not challenge that appointment.

This chronology of events is not disputed.

### **Appellant's Case**

The Appellant averred that he had been 35 years in the public service. He had wide experience and was involved in complex duties in important institutions. He provided training to junior colleagues and had the opportunity to follow a specialised related course abroad. He had performed his duties well and when he reached his top salary he was granted three increments as recommended by the Pay Research Bureau Report which showed that he performed his duties and achieved a standard higher than just the minimum.

He had been assigned the duties of Senior SAT on two occasions. This was an information provided by the Respondent itself in its Statement of Defence.

The Appellant was not a holder of a University degree but he averred that in previous appointments non-degree holders were appointed even if among the eligible candidates there were degree holders.

On cross-examination, the Appellant stated that he did not appeal for the first two appointments as he did not want to embarrass his colleagues who were appointed. He also stated that he did not appeal after another appointment was made after he had lodged his appeal as he thought that he could not do so as there was already an appeal before the Tribunal. He later added that when the notification of that appointment came out he was not in the country and by the time he came back the 21 days delay had expired.

He concluded that he made this appeal because he had written to the Manager of the ... explaining why he thought he deserved a promotion but he never got a reply. In the meantime, the Co-Respondent was appointed. As he was nearing the age of retirement he thought that he would not get the chance of getting to the next higher grade thus his appeal.

## **Respondent's Case**

The Respondent averred that the Co-Respondent was also involved in complex duties and she was active in the Ministry of ... which dealt with sophisticated tools. Like the Appellant, the Co-Respondent was involved in training of Support Staff on new processes and like the Appellant she had never been adversely reported upon by management. The Appellant on cross examination agreed with the averments of the Respondent.

The Co-Respondent had a B.Sc. in ... in addition to a Diploma in ...

The Respondent stated that a degree was not required for the post. The Scheme of Service only said that the post would be filled;

*“By selection from among officers in the grade of SAT who reckon 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 issues and priorities”*

Therefore candidates who did not possess a degree could still be appointed as such a qualification was not required as per the existing Scheme of Service that was prescribed .The present appointment was done under this Scheme of Service.

There was another Scheme of Service that was prescribed earlier where although the requirement for a degree was not a criterion, there was a note which said that preference was given to holders of a degree in ... This was not the case in the present Scheme of Service.

On further cross-examination, the Appellant conceded that the Co-Respondent was qualified and that he was not claiming that he had a better chance for appointment than the Co-Respondent but at least he had an equal chance.

The Respondent moved that the appeal had no merits and that it should be set aside.

### **Co-Respondent's Case**

The Co-Respondent stated that she would abide by the decision of the Tribunal. She provided information on her work and experience in support of the averments of the Respondent.

### **Determination**

The whole issue rests on the question of additional relevant qualifications. The Co-Respondent had a B.Sc in ... and the Appellant did not have a degree.

At the Hearing before the Tribunal, the Respondent listed the criteria for selection which were as follows:

- Additional Relevant Qualifications
- Experience in actual post
- Experience in post applied for
- Personality
- Communication and Interpersonal Skills
- Responsibilities of the post
- Organising, Leadership and Supervisory Skills and
- Aptitude

There was an advisor on the selection panel who also gave marks.

The Tribunal finds that even if qualifications were not mentioned in the Scheme of Service, yet one of the criteria was Additional Relevant Qualifications. This was of course not known to the Appellant when he applied for the post nor after the appointment was made. He only came to know about it when he lodged his appeal to the Tribunal.

The Tribunal sought the mark sheet of the selection panel from the Respondent and same was provided under confidential cover. It immediately showed that the Criterion of Additional Relevant Qualifications was the determining factor. Both the Appellant and the Co-Respondent were almost at par on all the other criteria with one having a slight margin over the other depending on the criteria but with these criteria combined they were at par. The only difference is when the Additional Relevant Qualifications criterion was added. The Appellant got no marks and the Co-Respondent obtained three marks. As a result the Co-Respondent had an advantage of only 1.5 marks over the Appellant in the total marks. Had this criterion not been in the list of criteria, the Appellant would have scored more than the Co-Respondent by 1.3 marks.

The Tribunal has no jurisdiction in the way the assessment is done except if the Respondent has erred in its assessment. However, the Tribunal wants to caution the Respondent on the way it treats additional relevant qualifications as its stand has not been consistent before this Tribunal. Often when Appellants lodge their grounds of appeal, they state that they have more advanced qualifications and the Respondent is quick to rebut that the Schemes of Service for such posts do not demand additional qualifications and therefore this factor cannot bring any advantage to those holding such qualifications. In other cases, the Schemes of Service do not mention qualifications, as in this one, but the Respondent still finds it fit to include it in the list of criteria when assessing candidates. This is unfortunate as candidates are not aware of the criteria of selection before they apply for a post.

The Tribunal invites the Respondent to explore ways in which the candidates can be made aware of the selection criteria as is common in other countries such as Canada where they have a Statement of Merits Criteria.

The appeal is set aside.