

**Refusal of the Public Body to provide supplementary information to the Tribunal is not acceptable. Even if Appellant has to prove his case, the onus of proof shifts when some information is only available to Respondent**

The Appellant is a CAMR at the ... District Council. He has lodged an appeal to this Tribunal contesting the decision of the Respondent to appoint the Co-Respondent in the said District Council as FOM instead of him.

The post of FOM was filled:

*“By selection from among TAM/FSVR possessing*

- (a) The Certificate of Primary Education :*
- (b) At least a Trade Test Certificate*
- (c) Appropriate skills to lead and supervise workers performing different kinds of trade;*
- (d) Having at least 8 years’ service as TAM/FSVR*

*Note: Proven knowledge of different trades would constitute an advantage”*

This was as per the Respondent’s Circular ... advertising the vacancy.

It is not disputed that both the Appellant and the Co-Respondent met the qualifications requirements as they were both convened for the interview.

### **Appellant’s Case**

The Appellant averred that he was more meritorious and better qualified than the Co-Respondent.

He claimed that the fact that he had followed a course on “Leadership and Team Management” would have made him a more apt person to undertake the job.

He further stated that he had performed work in different trades which should give him an advantage as per the Note in Circular No ....

In addition, he was aware that seniority was not a determining factor in a selection exercise and the fact that the Co-Respondent was assigned the duties of FOM should not give him any advantage.

He felt aggrieved by the decision of the Respondent and moved that the decision be quashed by the Tribunal.

### **Respondent’s Case**

The Respondent averred that in response to its circular, there were 25 candidates for the post. Eleven of them, including the Appellant, were found eligible for consideration and were called for interview to assess their suitability for the post. Following the selection exercise, the Co-Respondent was appointed.

The Respondent stated that the post was filled by selection and seniority was not an overriding consideration. The candidates had to show that they had “appropriate skills to lead and supervise workers performing different kind (**sic**) of Trade”. The appointment was “*based on the performance of the qualified candidates during the interview*”.

The Respondent denied that the Appellant was a holder of the Diplomas as averred by him but was holder of a “Certificate of ...”

The Respondent averred that as per the Responsible Officer (RO) of the District Council, the Appellant performed duties in the ... section and assisted fellow workers in ... and ... as and when required.

The Respondent reiterated in the Statement of Defence that communication, supervisory and leadership skills were part of the selection criteria for the selection

exercise. The Respondent added that “there is a difference between theoretical and practical knowledge, which candidates were required to prove that they possessed”.

The Respondent gave information as to the assignment of duties of the Co-Respondent as FOM but pointed out that such assignment of duties was done on grounds of administrative convenience and the Co-Respondent was told that such assignments of duties would not give him any claim to permanent employment as he would not be automatically appointed to the post.

The Respondent averred that the appeal had no merit and moved that it be set aside.

### **Co-Respondent’s Case**

The Co-Respondent averred that he was fully qualified for the appointment to the post of FOM. He held the necessary qualifications as required by the advertisement of the relevant Local Government Service Commission Circular.

Hence he had more than 8 years’ experience as a TAM. He was assigned the duties of FOM since ....

He moved that the appeal be set aside.

### **Determination**

The main point in this appeal relates to the assessment of the “*appropriate skills to lead and supervise workers performing different kind (sic) of trade*” which appears in the Scheme of Service for the post and on which the Respondent took some time in its Statement of Defence and at the Hearing. The point is how this was assessed in the selection exercise. The Tribunal refers to the Respondent’s Statement of Defence itself which is quite revealing. At its paragraph 6 (e) of the Statement it says:

*“Respondent avers that by letter dated..., the Responsible Officer was requested to confirm whether employees who have applied for the post of FOM possess the appropriate skills to lead and supervise workers performing different kind of trade. The Responsible Officer of the District Council of ..., has in a letter dated ..., reported that*

*he could not confirm whether the appellant possesses the appropriate skills. Consequently, Appellant was convened for an interview to assess whether he possesses the appropriate skillsto lead and supervise workers performing different kind of trade, amongst other criteria”.*

At the interview, Appellant stated inter alia, that he possesses the ability to lead and supervise workers performing different kinds of trade. Following the interview, by letter dated..., the Responsible Officer was again requested to confirm whether Appellant has the ability to lead and supervise workers performing different kinds of trade. The Responsible Officer again stated that he could not confirm whether appellant had the ability to lead and supervise workers performing different kinds of trades given that he has never been assigned any supervision works.

Here we find that the RO who is closer to the Appellant was not in a position to say whether the Appellant had the appropriate skills to lead and supervise workers performing different kinds of trade. The RO not only said this prior to the interview but he maintained this position when he was again asked by Respondent after the interview. The question then is how the selection panel of the Respondent could give marks for this criterion when the Respondent itself emphasized in its Statement of Defence that “there is a difference between theoretical and practical knowledge”. How in the short time of an interview, couldthe selection panel assess the practical knowledgewhich the RO himself could not do?

The other point concernsthe qualifications issue.The Appellant seems on paper to have more qualifications than the Co-Respondent, even if the Respondent showed that for two of the qualifications, they were not at Diploma level as averred by the Appellant.

The Tribunal, therefore, sought information from the Respondent on the assessment of candidates under confidential cover and it showed that the selection panel comprised four members.Each member had to give a maximum of 5 points for each of the five criteria, namely:

- (i) Qualifications
- (ii) Personality/ aptitude
- (iii) Discipline
- (iv) Communication skills and
- (v) Job knowledge

On Qualifications the members of the panel gave full marks to both the Appellant and the Co-Respondent and they both therefore scored 20 points.

On Job Knowledge, the Tribunal could not understand how the members of the selection panel each gave more than 5 points to both the Appellant and the Co-Respondent when the maximum they could give was 5 points.. As a result, the Co-Respondent got 34 points and the Appellant scored 30 points over 20 !!! The question then is whether the difference of marks between the Appellant and the Co-Respondent is because the Co-Respondent had been assigned duties of ... as certified by the Responsible Officer and the same RO could not confirm whether the Appellant had the ability to lead and supervise workers performing different kinds of trades given that he has never been assigned any supervision work. On the other hand, the Respondent itself conceded in its Statement of Defence that the Appellant had been doing duties of three different trades and had therefore experience in such trades. Has the Respondent taken into account the fact that the Co-Respondent was assigned duties of ... to give him higher marks when the Respondent always harps on the fact that assignments of duties do not give any claim to appointment?

On the three other criteria, the members of the selection panel all gave more marks to the Co-Respondent.

The Tribunal had asked the Respondent to provide to it the following:

- (i) Job cards of the Appellant and the Co-Respondent,
- (ii) Attendance Book on their site of work for the last three years
- (iii) Number of hours of overtime performed by each of them

The Respondent refused to provide this information on the ground that the onus of the proof rests with the Appellant as per section 7 (3) of the PBAT Act. The Respondent seems to be oblivious of the fact that, once the Appellant submits certain points, the onus of proof shifts to the Respondent to enlighten the Tribunal on matters which Appellant could not naturally provide as these are in the custody of Respondent. Section 6 (4) (b) (i) and (ii) of the PBAT Act clearly provide for such requests to be made by the Tribunal. Given the reluctance of the Respondent to assist in the quest for truth, the Tribunal finds it difficult to properly assess the selection process, which includes the interview and the marking of the candidates, on the criterion of Job Knowledge.

Bearing in mind the refusal of the RO to say categorically that Appellant did not have the appropriate skills, and the refusal of the Respondent to provide to the Tribunal the documents which would have gone a long way towards showing whether the Appellant and Co-Respondent had the Job experience or not and the fact that the total marks of Co-Respondent were 105 over 100, the Tribunal allows the appeal and quashes the decision of the Respondent.