

Employees cannot be excluded from an interview based on an assessment of a Responsible Officer as this would amount to a preselection exercise and only the LGSC has the power to select.

The three Appellants are RECR at the Municipal Council of

There were three vacancies in the grade of FSER at the Municipal Council and there was an advertisement dated ... inviting applications for filling of same. The three Appellants filed their application but they were not called for interview. They felt aggrieved and lodged an appeal to this Tribunal.

Appellants' Case

Appellant No.1 averred that he had 33 years service in the local government service. Prior to this advertisement he applied three times for the post of FSER but he was called only once for interview. He believed that a RECR could perform the duties of FSER. He was not agreeable to Co-Respondents Nos.1 and 3 being appointed as they were from a different grade and had no relation with the duties of FSER as they had no field experience. He studied up to Form IV and the post of FSER required five years of experience as RECR. This last part of the averment was rebutted as the five years' experience was in local government service and not as RECR specifically.

Appellant No.2 also challenged the decision of the Respondent to appoint Co-Respondents No.1 and 3 for the same reason as Appellant No 1. He stated that when the Municipal Council had to choose among the best workers to attend a training course in Customer Care, he was chosen and not the two Co-Respondents. He claimed that he was more meritorious as he had 10 years experience in the ... Department and dealt with people in the field. His training in Customer Care helped him. He shared what he learnt from his training with others working with him, and insisted that he could lead people. He questioned why he was found fit to work for the same post of FSER in ... and not this time.

Appellant No.3 averred that the Co-Respondents were favoured as they were given the opportunity to perform the duties of FSE on an assignment basis. He felt that the fact that the Co-Respondents were assigned the duties of the post should not be the sole consideration for calling them for the interview. He insisted that working in an office and working in the field were two different jobs. All the candidates should be given the same chance and be assessed by the selection panel as this was the only way to ascertain whether they were fit for the job. In an interview, the panel could watch the body language of the candidates and gauge their personality and ability to lead. He stated he was personally a member of his Trade Union and he had the ability to deal with people.

The three Appellants, therefore, contested the decision of the Respondent not to call them for interview as they felt that they were deserving of consideration and were equally eligible. In fact, they claimed that they were more deserving than Co-Respondents No.1 and 3 who had no field experience.

Respondent's Case

The Respondent averred that the post was filled by selection in the following manner:

“ By selection of employees of the Council reckoning at least five years service in the Local Government service and satisfying the following requirements :

- (a) Certificate of Primary Education*
- (b) Satisfactory service ; and*
- (c) The ability to supervise workers and maintain discipline among them ”*

There were 41 applications in response to the advertisement. Five of them were found eligible for consideration for appointment for the post and were called for interview on....The Appellants were not among those chosen for interview. The Respondent stated that *“only the candidates having satisfied the requirements as set out in the Scheme of Service were called for an interview”* as per its Statement of Defence and only the five who were called for interview met the requirements.

The Respondent said that the Responsible Officer of the Municipal Council certified that the Appellants did not have the ability to supervise workers and maintain discipline among them.

As regards the three Co-Respondents, the Respondent gave in its Statement of Defence the record of assignment of duties of FSER to Co-Respondent No.1 (five times), Co-Respondent No.2 (five times) and Co-Respondent No.3 (four times). But the Co-Respondents were informed that the assignment of duties would not give them any claim to permanent appointment as FSER.

The Respondent moved that the appeal be set aside.

Co-Respondents' Case

Co-Respondent No.1 wrote to the Tribunal that he would "*personally defend my case before the Tribunal and will answer all questions emanating from the appellants under oath*". On the date of the Hearing, he did not turn up and the Tribunal was told that he had retired from service.

Co-Respondent No.2 submitted a Statement of Defence where he listed the five times he was assigned the duties of Field Supervisor. He stated that he joined the Municipal Council in... He was holder of a CPE and claimed ability to supervise workers and maintain discipline among them.

Co-Respondent No.3 would abide by the decision of the Tribunal.

Determination

The issue in this appeal is whether the Appellants should have been called for interview and if not, why not.

The Scheme of Service states clearly that the post is open to officers reckoning five years' service in the local government and not five years as RECR as one of the Appellants thought. On this count, the three Appellants qualified, having been in service for more than five years and in the case of Appellant No.1 he had been in service for some 33 years.

As regards the CPE, there has been no contest. Both Appellants and Co-Respondents possess these educational qualifications.

On the issue of satisfactory service, nothing has been said in the Tribunal by the parties and it is assumed that both Appellants and Co-Respondent have satisfactory service.

The core issue then is the fourth element “*Ability to supervise workers and maintain discipline among them*”. The representative of the Respondent produced at the Hearing the annexure of a letter from the Responsible Officer (RO) of the Municipal Council to the Respondent where the RO gave a list of 31 candidates who are “*Employees who have applied for the post of Field Supervisor and who do not have the ability to supervise workers and maintain discipline among them*”(emphasis ours). By so doing, the RO has stepped into the shoes of the Respondent in precluding these candidates from the interview when the LGSC Act at its section 4 states clearly that the power to appoint local government officers shall “vest exclusively in the Commission”. It is apposite to note that the RO did not give any reasons whatsoever to the Respondent as to why he found these candidates not fit for the post.

On the other hand, the Respondent in justifying the selection of the Co-Respondents was quick to highlight the assignments of duties of Field Supervisor to them. While the Respondent cautioned that the Co-Respondents were informed that such assignment of duties would not give them a claim for appointment to the post, the Respondent undeniably used this to ascertain their ability to supervise workers and maintain discipline among them.

The problem in all this is the way assignment of duties was made by the Municipal Council. It had been the practice for the Municipal Council to assign duties on the basis of seniority among all the workers, irrespective in which section the person appointed is going to be posted for such assignment. For example, in the present case, ATDS were assigned duties as FSER in the ... Department where RECR are posted. The determination of the Tribunal, in which Co-Respondent No.2 had challenged the appointment of Co-Respondent No.1 in ... as FSER, was mentioned at the Hearing. The parties are aware of this determination where the Tribunal quashed the decision of the Respondent for the same post of FSER where Co-Respondent No.1, an ATD, was appointed over the Co-Respondent No.2 who was RECR. The appointee was reverted to his former position. Since that decision of the Tribunal, the representative of the

Municipal Council stated that assignments of duties were given to the senior-most officers in the sections where the vacancies arise.

The Tribunal finds that the Respondent has not been fair vis-à-vis the Appellants by not giving them at least a chance to be heard by the selection panel. The Respondent has:

- (1) Relied too much on the RO who usurped its power to decide to a large extent by eliminating those candidates who should not be considered thus carrying out a preselection exercise.

- (2) Relied on the assignment of duties to the Co-Respondents to preselect them for interview when assignment of duties is not a determining factor to gauge the ability to supervise workers and maintain discipline. The RECR is capable of doing this. Co-Respondent No.2 was a RECR and was assigned duties of FSER on five occasions.

As a result, the Tribunal finds that the Co-Respondents, who are ATDS and performing duties of a more sedentary nature, are given the chance to be interviewed for the post of Field Supervisor. The Appellants, who are RECRS and working in the field, are debarred from consideration for that post. This is an unreasonable situation in the Wednesbury sense.

The Appellants should rank *pari passu* with the Co-Respondents, at least up to the interview stage, so that they are given the chance to show their mettle in supervision of workers and maintenance of discipline.

As the Appellants have not been given a fair chance in the selection exercise the Tribunal quashes the decision of the Respondent.