

- **The termination by Respondent of the temporary appointment of six appointees shed doubt on the selection exercise.**
- **Assignment of duty and overtime performed in the same post cannot be treated separately**

This is an appeal by a MASO of the Ministry of ...who wants to know why he was not called for an interview for the post of HOEA although he was qualified for the post.

Appellants Case

The Appellant averred that all his colleagues were called for the interview. He averred that he had 3 years aggregate of acting in the post of HOEA (10 times). He laid emphasis on his voluntary work without payment from 1988 to December 2010, including overtime performed during the same period in the same post.

He stated having submitted all particulars of his experience when asked to do so.

Clearly he was very concerned about not having been called for interview while not actually questioning "the outcome of the interview".

He submitted documentary evidence regarding *ad hoc* allowance equivalent to three increments for performing duties of HOEA. He also submitted certificates from his superiors from his sites of work. They stated that he had performed higher duties at the "level" of EXOH and HOEA and this "professionally and to our entire satisfaction". These documents were accepted by the Tribunal on the premise that the signatories would be called and be cross-examined but they were not finally summoned. He also submitted a computation of his overtime. When he was cross-examined regarding the payments made to him, he agreed that when he was officially assigned duty, he was paid two thirds of the responsibility allowance whereas for overtime performed, he was paid another tariff. He maintained that he was not paid as MASO but as HOEA as it was after normal working hours and that he had performed the same duty. It was not a question of money but of work performed.

Respondent's Case

The Respondent's representative solemnly affirmed to the correctness of its Statement of Defence in which it averred that the post of HOEA was filled by selection from among serving officers

- "A. *By selection from among serving officers drawing salary in a scale the maximum of which is not less than ... monthly in their substantive appointment and who possess a Cambridge School Certificate with credit in at least five subjects including English Language, French and Mathematics or Principles of Accounts obtained on one certificate or passes not below Grade C in at least five subjects including English Language, French and Mathematics or Principles of Accounts obtained on one certificate at the General Certificate of Education "Ordinary Level" or an equivalent qualification acceptable to the Public Service Commission.*

Note

Candidates not possessing a credit in English Language at the Cambridge School Certificate will also be considered provided they possess passes in at least two subjects at "Principal Level" and one subject at "Subsidiary Level" as well as the General Paper obtained on one certificate at the Cambridge Higher School Certificate Examinations.

- B. *Candidates should possess good supervisory, communication and organizing skills.*

NOTE

For the first intake, consideration will be given to serving officers drawing salary in a scale the maximum of which is not less than Rs... monthly and who

- (a) *possess a Cambridge School Certificate or passes obtained on one certificate at the General Certificate of Education "Ordinary Level" either (i) in five subjects including English Language with at least Grade C in any two subjects or (ii) in six subjects including English Language with at least Grade C in any one subject or an equivalent qualification acceptable to the Public Service Commission;*

- (b) *have performed or have been performing duties for a period of at least three years at the level of HOEA or an aggregate period of at least three years at the level of EOS and HOEA in the Ministry of...; and*
- (c) *possess good supervisory, communication and organising skills.*

The Respondent averred that on..., the Responsible Officer (RO) of the Ministry of ...reported 50 vacancies and recommended that a selection exercise be conducted. 99 applications werereceived. Only 17 out of the 38 candidates posted at the Ministry of ... were found eligible and were convened for interview.

According to the RO, the Appellant had not been performing the duties at the level of HOEA for a period of at least three years or an aggregate period of at least three years at the required level.

Respondent gave details of Appellant's performance including overtime.

The sum total did not amount to three years as required by the Scheme of Service, but only to 306 days. This was the reason why he was not convened for interview. Respondent produced a letter from Appellant whereby he recognised that he had not performed the required three years. However, he explained how in fact he had worked in the said post.

On..., the RO was informed that 16 candidates could be appointed HOEA in a temporary capacity for six months.

They were appointed in a letter dated ...and assumed duty on ...

Co-Respondent No.8declined the offer a few days later.

Following additional information requested by Respondent and submitted by the Ministry "*it was found that six of the selected candidates had not been performing the higher duties laid down in the Scheme of Service*" and Respondent reconsidered its decision and decided to terminate their appointment forthwith. This concerned Co-Respondents Nos.2,3,4,8,10 and 13.

The Respondent averred that the appeal had no merit.

Co-Respondents' Case

Most Co-Respondents decided to abide by the decision of the Tribunal.

Co-Respondent No.1 gave a Statement of Defence in which she stated that she was fully qualified for the post and was appointed after an interview. She merely questioned Appellant asking him whether he was contesting her appointment specifically to which he replied no.

Co-Respondent No.6 decided not to abide.

Co-Respondent No.7 gave a Statement of Defence and stated that he would conduct his own case. He merely questioned the number of hours of actingship of Appellant as being 286 hours.

Co-Respondent No.9 gave a Statement of Defence and retained the services of Counsel who also represented the interests of Co-Respondent No.8. Counsel cross-examined Appellant on the main issue of actingship and overtime. The Appellant maintained his position.

Determination

The Tribunal is very concerned at the way this selection has taken place.

The very fact that the appointment of six candidates were finally terminated after almost six months, as Respondent after querying the Ministry found that they did not meet the criteria of the Scheme of Service, is very disturbing.

Any reasonable person would find this a major destabilising factor. Clearly at the level of the Ministry, someone has not been transparent or rigorous in the scrutiny exercise. If the Respondent had not sought further clarifications, those six appointees would have been illegally appointed in a substantive capacity, by the yardstick of Respondent itself.

The second disturbing factor is the way that employees of that Ministry have been treated as far as assignment of duty is concerned. Some assignment is computed officially and others count as overtime despite the fact that the type of work, the amount of time spent and quality of the job are all the same. Thus the employees are unable to

qualify under the Scheme of Service though the wording is “have performed or has been performing duties for a period of at least three years...”(note b for the first intake).

This is one of the rare cases in which we feel that the decision of Respondent not to call the Appellant for interview was unfair and unjust. Even if technically he does not meet the criteria of “three years”, in actual fact he “performed the duty described”.

For this reason the Tribunal has decided to remit the case to Respondent under Section 8(4) c of the PBAT Act 2008 for further consideration by it with a view to settling the matter both for Appellant and for the six Co-Respondents who were reverted back for the same reason.

Respondent is to bear in mind the fact that the ...Sector is a very sensitive sector which needs committed employees who can work without being unduly penalised by procedural rigidity and wrong interpretation of words.

Further, the Appellant has confirmed before the Tribunal that he has no objection that the Co-Respondents be appointed in a substantive capacity.

The Respondent is invited to report to the Tribunal in three months' time i.e. at latest on 31 July 2016 on any decision reached.