

# **PUBLIC BODIES APPEAL TRIBUNAL**

**No. D/16 of 2016**

**In the matter of:-**

**Doorgawatee NAPAL**

**Appellant**

**v/s**

**Public Service Commission**

**Respondent**

**and**

**Sheela RAMSAHA & Ors**

**Co-Respondents**

- 1.RAMSAHA Sheela**
- 2.RAMSOOROOP Ramsowar**
- 3.AROOMOOGON Tevani**
- 4.GOKHOL Marie Elix Priscilla**
- 5.GUNGAH Mala**
- 6.ROOJEE Bibi Rosida**
- 7.RUMJEET Sandya**
- 8.SAFEE Beebee Badroon**
- 9.OOJAGEER Koresha Bano**

## **Determination**

The Appellant is a Senior Human Resource Executive (SHRE) in the Ministry of Civil Service and Administrative Reform (the Ministry). She lodged an appeal to this Tribunal challenging the decision of the Respondent to appoint the nine Co-Respondents to the post of Assistant Manager, Human Resources (AMHR). Her grounds of appeal were:

*“The 9 officers promoted to the post of AMHR were all junior to me. I have not been promoted .The exercise is procedurally unfair and has frustrated my legitimate expectations and rights. In addition, it has caused prejudice to my career prospects.”*

### **Appellant’s Case**

The Appellant averred that she was appointed Human Resource Executive (HRE), formerly called Establishment Officer on the 17 December 2002. In this appointment exercise she ranked immediately after Co-Respondent No 1.

On 21 February 2011, she was offered assignment of duties to the post of SHRE together with other colleagues.

In March 2011, vacancies for the post of Assistant Secretary were advertised. She applied for the post and was offered appointment and assumed duty on 5 December 2011. While in post as Assistant Secretary she was granted her yearly increment as SHRE.

On 19 October 2012, she was offered appointment as SHRE and she reported for duty on 23 October 2012. She accepted the offer but not on the terms and conditions contained in the letter of offer. She drew the attention of the Tribunal to the effect that the effective date for the appointment was not correct and requested that the Respondent should do the needful. She did not receive any reply and she assumed that the effective date of the appointment had been amended.

On 3 September 2014, there was a circular from the Ministry regarding the assignment of duties as AMHR to the Co-Respondents with effect from 5 September 2014. She noted that eight of the Co-Respondents, who were junior to her, were appointed. She made a written representation to the Respondent through the Ministry. She did not receive any reply. On 22 January 2016, the Co-Respondents were offered appointment to the post in a substantive capacity.

The contention of the Appellant was that when she was assigned the duties of SHRE in 2011, there were vacancies in the grade but she was not appointed and thus she was denied of her legitimate right to a promotion.

She averred that there were cases in the past where posts were reserved when officers could not be appointed right away. She referred to two officers. However, when the Appellant was cross-examined, the Respondent' Counsel put it to her that the case of these two persons were not comparable. They were both due for promotion as Head Master and Forester, but they could not be considered for immediate appointment as they were under report. Vacancies in these posts were reserved for them. The Appellant understood this nuance.

The Appellant averred that she was fully qualified for appointment to the grade of AMHR and should have been appointed as she came immediately after Co-Respondent No.1 in the seniority ranking as SHRE. She further averred that according to PSC Circular No 2 of 2009, the seniority is not even disturbed if the appointee assumed duty within 2 months of the offer of appointment. She had accepted the offer and assumed duty immediately. There was no reason for her seniority to have been affected.

The Appellant submitted that she should have been appointed and requested the Tribunal to quash the appointment made by the Respondent and to appoint her to the post of AMHR.

### **Respondent's Case**

The Respondent rebutted the averments of the Appellant and stated that the appointments were made according to procedures and in particular to the provisions of PSC Circular No 5 of 2008 as regards the way effective dates of appointment were to be determined.

The Respondent further averred that the Appellant could not bring before the Tribunal her seniority ranking when she was appointed SHRE in October 2012 as this was outside the 21 days delay for lodging appeals before the Tribunal.

The Respondent confirmed that the Appellant was assigned duties of SHRE from 23 February 2011 up to 4 December 2011, that is, for some 9 months. However, when she was offered the post of Assistant Secretary this assignment of duties lapsed. On cross-examination, the Appellant agreed that this was so.

On 14 May 2012, the Appellant was again offered assignment of duties to the post of SHRE. She declined the offer. Officers who were junior to her were performing duties of SHRE from different dates.

When Appellant was offered substantive appointment in October 2012, officers who were junior to her in the lower grade became her senior as the effective of appointment were from the dates they were assigned the duties of SHRE as per Circular No 5 of 2008.

The Respondent submitted that since the Appellant assumed duty as SHRE on 23 October 2012, she did not complete the four years in the grade for consideration for appointment as AMHR when vacancies for the post were filled on 12 January 2016. The Appellant could not claim that she was fully qualified as averred.

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

### **Determination**

The first point is that this Tribunal has no jurisdiction to appoint the Appellant as requested by the Appellant as the power to appoint in the public service rests solely with the Respondent as per the Constitution.

The rest of the case revolves entirely on the issue of effective date of appointment. It is a fact that the Appellant had a bout of assignment of duties as SHRE for 9 months. It is equally correct to say that this assignment of duties lapsed when the Appellant opted to take the post of Assistant Secretary. The Appellant herself conceded that this was so.

It is equally noted that the Appellant had refused the offer of assignment of duties of SHRE made to her in May 2012. The Appellant cannot say therefore that she was denied her right to an assignment of duties as she was next after Co-Respondent No 1 in

the grade of Human Resource Executive. The Respondent had acted fairly. However, while she refused this offer, other colleagues junior to her were performing the duties of SHRE.

It was no surprise, therefore, when the post of SHRE was filled that those who were assigned the duties of SHRE were appointed with effect as from the dates they started assignment of duties. The Appellant did not perform the duties of SHRE because she had refused to do so when she had been offered the opportunity by the Respondent. She lost her seniority as her effective date of appointment started as from the day she assumed duty. This is according to Circular No 5 of 2008 which reads as follows:

*“Reference is made to the recommendation at paragraph 9.34 of the Pay Research Bureau Report 2008 (Vol1) to the effect that “filling of vacancies in respect of grade-to-grade promotion should as from 1 January 2009 invariably take effect from either (a) the date of assumption of duty; or (b) the date the actingship/assignment of duties starts; or (c) the date of vacancy whichever is the latest, provided in the case of (c) there has been no gap between the actingship/assignment of duties and the date of offer of appointment.”*

The Appellant made reference to Circular No 2 of 2009 where it is said that the seniority position is not disturbed even if an appointee assumes duty later but within 2 months from the date of offer. However, it was explained to the Appellant that this referred to delays when appointees are not in a position to assume duty immediately and that this did not apply in her case.

As the Respondent averred, the Appellant had not occupied the post for four years as SHRE and did not qualify for appointment as AMHR. The Scheme of Service for the post of AMHR clearly says that the post is filled:

*“By promotion, on the basis of experience and merit, of officers in the grade of Senior Human Resource Officer who reckon at least four years’ service in a substantive capacity in the grade....”*

This situation resulted from the decision of the Appellant to take up employment as Assistant Secretary while she was a Human Resource Executive.

The Respondent is bound by the Scheme of Service which is sacrosanct. The Appellant was not eligible for appointment to the post of AMHR.

The appeal is set aside.

**S. Aumeeruddy-Cziffra (Mrs)**  
Chairperson

**G. Wong So**  
Member

**P. Balgobin-Bhojru (Mrs)**  
Member

**Date:** .....

**Note:** This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. The Supreme Court upheld the Determination of the Tribunal which has now become final.

