

When there is a cut off date an applicant who did not qualify under the Scheme of Service before that date will not be considered for appointment even if he qualified two days later

The Appellant is an acting HMR/ Officer in Charge in the Ministry of... He is challenging before this Tribunal the decision of the Respondent to appoint the 26 Co-Respondents to the post of HMR.

Appellant's Case

The Appellant contended that in this appointment exercise "*I have been singled out, discriminated and victimized*".

The Appellant joined the service as TER in.... He was appointed Deputy HTER in....

He referred to the PRB Report 2008 where it was recommended that Deputy HTERs would undergo a selection exercise to be promoted HTER. However, the Report also "*stated that a last cohort of senior most Deputy HMR would be promoted to the grade of HMR*".

The Union made several efforts to have the vacancies between ...and ... filled. It was only in..., that these vacancies were filled and all those who were appointed as TER together with him in ...were appointed except him.He stated that "*I have been unjustly penalized because I was born a few days afterwards. My name appears at the bottom of the seniority list established by the Ministry.Had it been one upwards, I would have been on the promotion list*".

The Appellant found the promotion exercise unjust. The PSC should have effected the promotion exercise for HMR grade for the whole batch who were appointed in ... and not leave one or two outside. He contested the decision of the Respondent to

appoint on vacancies that existed as at ... instead of the whole batch who joined service in

The decision of the Respondent was *“discriminatory, based on age, which is unconstitutional and do not promote fairness and equity”*.

The Appellant appealed to this Tribunal for redress.

Respondent’s Case

The Respondent averred that the vacancies were filled as per the Scheme of Service for the post of HMR which was prescribed on ...

On ..., the Responsible Officer (RO) of the Ministry had reported 120 permanent vacancies in the grade of HMR and recommended that 27 of these vacancies be filled as follows:

- (i) 22 vacancies be filled under the heading “NOTE” under the item “Qualifications” of the Scheme of Service, that is by the promotion of 22 Deputy HMR who were assigned the duties of HMR vice permanent vacancies which occurred prior ... and who are still being assigned such duties; and*

- (ii) 5 vacancies be filled under the heading “NOTE” under the item “Qualifications’ of the Scheme of Service that is, by the promotion of 5 Deputy HMRs who are senior to any of those 22 Deputy HMRs mentioned above, but who could not accept assignment of duties of HMR prior to...”*

On..., the Respondent informed the RO that it had decided to appoint 26 out of the 27 DHMsas HMRs as one of them had in the meantime retired on

The Respondent confirmed that the Appellant was appointed TER onHe was confirmed to that post on.... He was promoted to the post of Deputy

HTEr(later restyled Deputy HMR) on.... The Appellant was assigned the duties of HMR from ...and was still doing these duties at the time of the appeal.

The Respondent averred that the cut-off date for considering appointment of ... followed a recommendation of the Errors, Omissions and Anomalies Committee following PRB Report 2008.The Appellant was assigned duties of HMR on ... from a vacancy that occurred on ... and he was therefore not eligible for consideration for appointment as the vacancy occurred after the

The Respondent did not qualify under the First Intake Note which was included in the Scheme of Service prescribed on ...to give effect to a decision of the High Powered Committee.

The Respondent invited the Tribunal to set aside this appeal.

Determination

The appointment of HMR is governed by the Scheme of Service which was prescribed on.... It is clear that the post of HMR is filled by selection. However there is the First Intake Note which says how the appointment was to be done for the first time.

The Appellant did not meet the requirements of the First Intake Note. He missed the cut-off date by three days as the vacancy arose in his case on ... Moreover he was given assignment of duties on the....It was definitely after the....There has been no discrimination or victimization. It is just that the Respondent was bound by the Scheme of Service. This is an unfortunate case.There were still a large number of vacancies in the HMR grade. In the next appointment exercise he will have to compete with others as the post will then be filled by selection.

The Appellant has made reference to one of the Co-Respondents who was not assigned duties of HM. It was explained to the Appellant that this Co-Respondent was senior to those who were assigned duties of HMR before the ... and was eligible for promotion under part (b) of the Note.

The appeal is set aside.