

The fact that a Co-Respondent is appointed in a substantive capacity before an Appellant is not questionable if the Co-Respondent finished the on-the-job training before the Appellant.

The Appellant has lodged an appeal before the Tribunal contesting the decision of the Respondent to appoint the Co-Respondent as RAPOR in a substantive capacity.

Appellant averred that the decision challenged was:

“1. In breach of the rules of Natural Justice – the CRAPOR was clearly biased in his recommendation which was thereafter approved by the Respondent;

2. Arbitrary – (i) there are no clear guidelines in place leaving the appointment of officers from temporary to substantive capacity at the entire discretion of the CRAPOR; (ii) in failing to give due consideration to the Appellant seniority, the Public Service Commission has acted in an arbitrary manner;

3. Unreasonableness and abuse of power (Ultra Vires) – the decision of the Public Service Commission based on the report and recommendation of the CRAPOR which was in itself unreasonable made by extension the Respondent’s decision unreasonable as well; and

4. Legitimate Expectations – the Appellant had legitimate expectations in view of his seniority and merits that the Public Service Commission would maintain his seniority.”

Appellant's Case

The Appellant was aggrieved by the appointment of the Co-Respondent on ...to the post of RAPOR effective as from He believed this appointment to be unfair and prejudicial, as he should have been the Co-Respondent's senior.

The Appellant joined the ... Authority on ... as Temporary RAPOR following a public advertisement. He was required to complete an on-the-job training of at least 1 year and subject to being favourably reported on, he was to be appointed to the post of RAPOR. As such, the Appellant became eligible for appointment on the ...

The Appellant averred, and same was confirmed by the Respondent, that there are no guidelines and/or regulations setting out what would amount to successful completion of the on-the job training, nor are there any other forms of more clear-cut assessment. It is the Appellant's belief that the Chief (CRAPOR), held a personal grudge against him which resulted in the latter delaying the Appellant's appointment to the post of RAPOR in a substantive capacity.

Furthermore, the Appellant believes that due to this strong dislike by the CRAPOR, he was made to suffer humiliation, abuse at work, regular frivolous criticisms and complaints levelled against him, as well as unwarranted requests for explanations, which culminated in the stalling of his appointment.

The Appellant averred that the appointment of the Co-Respondent to the post of RAPOR in a substantive capacity prior to his was further evidence of the CRAPOR's bad faith and blatant favoritism in favour of the Co-Respondent, who had been appointed as temporary RAPOR on the ... Additionally, the Appellant stated that the CRAPOR ignored complaints of three staff members against the Co-Respondent, as well as a 2 weeks sick leave during which Co-Respondent, according to the Appellant, went on wedding shopping.

Therefore, the Appellant appealed to the Tribunal for:

- (i) a breach of the rules of Natural Justice as the CRAPOR, in the Appellant's opinion, was biased in his recommendation which was then approved by the Respondent;
- (ii) the arbitrary nature of the appointment which, the Appellant believes, to be at the entire discretion of the CRAPOR;
- (iii) the arbitrary nature of the PSC's decision not to give due consideration to the Appellant's seniority; and
- (iv) a breach of his legitimate expectations that the PSC would maintain his seniority in relation to his appointment to the post of RAPOR, in a substantive capacity.

Respondent's Case

The Respondent averred that recruitment for the post of RAPOR is filled by selection whereby the candidate is first appointed in a temporary capacity. The Respondent denied that the seniority of candidates determined the order in which they were to be appointed in a substantive capacity and maintained that the conditions to be fulfilled were as stated in the Scheme of Service.

However, it was noted by the Tribunal that during his cross-examination, the CRAPOR produced a letter from the Acting Permanent Secretary of the Ministry of ... stating that, "*Following a report of a committee set up by the Permanent Secretary, it was decided that appointment in a substantive capacity should be made on the basis of seniority...*" Nonetheless, the CRAPOR maintained that he could not make the recommendations according to the seniority list as he did not possess knowledge of same.

As per the Scheme of Service, after at least a year of on-the-job training and subject to being favourably reported upon, the candidate is considered for appointment in a substantive capacity. The Respondent stated that all candidates were informed of the Scheme of Service requirements mentioned above in the offer of appointment made to them.

Furthermore, the Respondent stated that the CRAPOR was requested to submit, on successful completion of the training, a report on the work and conduct of the candidates together with his recommendation as to their suitability for appointment as RAPOR in a substantive capacity. This statement was supported by the CRAPOR during his cross-examination.

It was explained, by the Respondent that, the recommendations of the CRAPOR were mostly based on the work, conduct and performance of the officer for each of the different assigned task. As stated by the Respondent, the CRAPOR also took into consideration a certain number of competencies, such as responsibility and ethical conduct during his evaluation. Furthermore, the Respondent denied that the appointments were entirely dependent on the whims of the CRAPOR.

The Respondent stated that further to the advertising of 2 vacancies for the post of RAPOR, 71 applications were received out of which 26 candidates, including the Appellant and the Co-Respondent, were convened for an interview/verification of documents on the ... Subsequent to the interviews, two candidates, appointed in a temporary capacity, assumed duty on the ...

However, on ..., one of the appointed candidates notified the Respondent that she would be resigning as from the ... Thus, the impending vacancy was reported on the ... The Appellant was offered appointment in a temporary capacity on the ... and assumed duty on the... On the ..., one additional vacancy was reported and following the declination of the first suitable candidate who was offered the position, the name of the Co-Respondent was submitted on the ... and she assumed duty in a temporary capacity on ...

In relation to the Appellant, the Respondent stated that he assumed duty in a temporary capacity on ... and on ..., the CRAPOR informed the Ministry that the Appellant had not yet completed his on-the-job training. It was added that, on ... the CRAPOR had a meeting with the Appellant whereby he was informed of his shortcomings, that is, that his output of work was below expectations and therefore his work was being monitored. The Appellant was thereby informed that his training would have to continue for an additional 3 months according to a Performance Improvement Plan to which the Appellant did not object.

On .., the CRAPOR informed the Respondent that the Appellant had completed his on-the-job training on the ... His conduct and performance were assessed to be good and he was recommended for appointment in a substantive capacity with effect from ... On ..., the Respondent informed the CRAPOR that it had agreed to the recommendation and decided to appoint the Appellant in a substantive capacity. The Appellant was thus, offered the appointment on the ... and accepted the offer.

In relation to the Co-Respondent, the Respondent stated that she assumed duty in a temporary capacity on ... and on ... made representations to the Respondent regarding her non-appointment in a substantive capacity. On 13 January 2014, the representations were forwarded to the CRAPOR. On ..., the CRAPOR informed the Respondent that the Co-Respondent had completed her on-the-job training on ... and recommended her appointment in a substantive capacity with effect from ... The Respondent stated having approved the recommendation on ... which was followed by the Co-Respondent's appointment as RAPOR on twelve months' probation with effect from ...

The Respondent stated that the Appellant was never made to suffer any alleged discrimination or abuse at work nor was he subjected to any frivolous criticism, complaint or unwarranted request for explanations. Further, the Respondent maintained that the Co-Respondent's appointment in a substantive capacity taking effect prior to that of the Appellant was solely due to the fact that she was deemed to have completed her on-the-job training prior to him.

With regards to the complaints from three members of staff against the Co-Respondent, the Respondent averred that according to information received, the CRAPOR promptly initiated action upon receipt of the complaints, in or around The matter was referred to the Ministry for necessary action on ...With regards to the nomination of the Co-Respondent to attend the Post Graduate ... Course, the Respondent stated that same was based on the advice of the Ministry that nomination for the said training course should be made on a seniority basis and that the officer being nominated should have already been confirmed in his/her post.

However, depending on the circumstances, nomination to attend courses may not be on the basis of seniority, as was the case in this situation. However the nomination of Appellant was submitted to and accepted by an international organisation and he followed the course.

With regards to the two weeks sick leave, the Respondent stated that the Co-Respondent submitted a Medical Certificate explaining the reason for leave.

During cross-examination, the CRAPOR explained that, according to the Scheme of Service, when a person is appointed, that person is responsible to the CRAPOR who, is also responsible for the on-the-job training. With regards to this training, he stated that he would assign the trainee work and, based on the assignment given, he would then, together with the head of administration i.e. the Office Management Executive, assess their competence and quality of work.

He further explained that, in the case of the Appellant, there had been non-submission of reports for more than a year. Some of the inspection reports which were made following inspections of the... facilities and assessment of applications were incomplete.

When put to him that the Appellant was appointed in a temporary capacity on the ... and that the Appellant took two years and two months to complete his training whereas the Co-Respondent, who started two months later than the Appellant, completed hers in one and a half years, he explained that he was the one who looked at the work of the Appellant. He further explained that he, is accountable to the ...Council (the "Council"), to whom he has to report to every month. During the on-the-job training period of Appellant, some serious shortcomings had been noted. However, when it was put to him that between ... and ..., no letter of complaint had been sent to the Appellant, he agreed, but did state that he had spoken to the Appellant about his shortcomings and that on the ... he had sent a letter to the Ministry regarding the said shortcomings.

He pointed out that even before he had reported the shortcomings of the Appellant to the Council, the Council had already taken note of same, following a

report that was submitted in ... regarding a mission in an African country from ... to ... The Chairman and other members of the Council had expressed much concern about the poor standard of the report. Therefore, when the witness had discussed the shortcomings of the Appellant with the Council and after the Council looked into his case, they recommended an extension of the period of on-the-job training. He therefore extended the period by six months, after which he stated having found some improvements in the Appellant's work.

He explained that, during the probation period, there are no guidelines regarding the probation of a trainee and that he is in fact the one to decide on the length of training. Subsequently, he is the one to send the recommendations to the Ministry. He further explained that after the Appellant's one year probation period, the Ministry had asked him for his recommendations as to appointment of the Appellant and he had answered that the Appellant had not yet completed his on-the-job training, but once he had, his recommendations would be submitted. He did not provide any reasons as to why the Appellant was not ready. He further stated that it was only in ... that a meeting was held to discuss these shortcomings, following which the Appellant was asked to follow a Performance Improvement Plan. He explained that through the Performance Improvement Plan he could constantly monitor performance in order to address performance gaps and that the output of work could be assessed. During this three months period, it was up to him to appraise the work of the Appellant, to ensure that he was delivering up to expectations. He further stated that after monitoring the Appellant's performance, an assessment was done during the month of ... and as improvement was noted and he was satisfied with the performance of the Appellant, he therefore reported to the Responsible Officer that the Appellant was ready for appointment and his recommendations were sent to the Ministry.

He stressed on the fact that he had a very professional relationship with all of his staff, including the Appellant. He further stated that he did not have a personal grudge against anybody in his organization, nor did he have any preference for one over the other. He explained that he has been head of the Authority for about ten years and has always done his work in an objective manner, to the best of his ability and in the best interests of his organisation.

When asked whether or not he had conducted an investigation in relation to letters in which allegations had been made against the Co-Respondent and which the Appellant had signed, he explained that as the allegations were serious, he had written to the person who had first signed the letters and asked for proof in order to take the proper appropriate action. However, he stated that he never received any response, so did not conduct an inquiry. Instead, he referred the matter to the Ministry for necessary action. He further stated that he had also written to the Co-Respondent asking her for her explanations, but again did not receive any response. He explained that the Ministry was kept aware, as he always discussed any problem with the Responsible Officer. He further stated that there was a committee looking into the matter, however, he is not aware of the report given.

It was put to him and he agreed that, according to the records, the Appellant had received more training than the Co-Respondent, as he had been to ... for twelve weeks and ... for one week. It was also put to him that on the ..., a letter from the Acting Permanent Secretary of the Ministry was sent stating that, "*Following a report of a committee set up by the Permanent Secretary, it was decided that appointment in a substantive capacity should be made on the basis of seniority. In view of the above and given that Appellant has been appointed, it would be appreciated if you could submit fresh recommendations with regard to Co Respondent.*" He confirmed that the Appellant had already been appointed in a substantive capacity and that he was to do needful for the Co-Respondent.

Thus, the Respondent averred that the appeal had no merit and asked the Tribunal set it aside.

Determination

Appellant's main contentions are that he has not been appointed to the post of RAPOR in a substantive capacity despite being the senior most and that the CRAPOR has wrongly recommended the Co-Respondent to the post before him. The Tribunal has had the opportunity of hearing not only the Appellant's version but also the Respondent and that of the CRAPOR. The Appellant has submitted that the

latter had a personal grudge against him. However, after hearing the evidence of the latter regarding the shortcomings of the Appellant, we find no reason to believe that the latter had any personal grudge against him. On the contrary, he has very clearly explained to the Tribunal that even before he had reported the shortcomings of the Appellant to the Council, the Council had already taken note of same, following a report that was submitted by the Appellant regarding a mission in ... and the Chairman and other members of the Council had expressed much concern about the poor standard of the report. Therefore, they recommended the extension in the period of training of Appellant. The Appellant was put on an additional 3 months of a Performance Improvement Plan to which he did not object.

We also found no reason to believe the allegations of favoritism in favour of the Co-Respondent. The Tribunal notes that the fact that the CRAPOR did not in fact rush to initiate action for the appointment of Co-Respondent until the latter questioned her non appointment shows that he was not biased.

With regards to the complaint made against the Co-Respondent by other colleagues, the Respondent has confirmed the version of the CRAPOR to the effect that he reported the matter to the relevant ministry at the time.

Although the Appellant was senior to the Co-Respondent, she was appointed first solely due to the fact that she was deemed to have completed her on-the-job training ahead of to him.

In the future, given that the training imparted is open-ended, it is recommended that any training scheme should have clearly defined inputs expected from the incumbents and clearly established means of assessments of the officers concerned.

In light of the above, the Tribunal finds that the Respondent has not faulted and the appeal is therefore dismissed.