

When there has been an examination by a recognized body and that no obvious mistake has been made, the Tribunal will not interfere with the decision of the public body to appoint those who had the highest marks.

Originally there were six Appellants. Appellants No.2, 3, 4 and 5 withdrew their appeals. Appellant No.1 and 6 maintained their appeals. The two Appellants are MMSPO in the Local Government Service. They are contesting the decision of the Respondent to appoint the Co-Respondents to the post of OFMTA. The two appeals were consolidated for the purposes of giving one Determination only.

The post of OFMTA is filled:

*“By selection from among officers who hold a substantive appointment in the grade of MMSPO and who:-*

- (i) Reckon at least four years’ service in the grades of MMSPO and CLO/ HCLO or CL/WPOF or SWPOR or WPOR; and*
- (ii) Possess excellent analytical, technical and interpersonal skills together with the ability to demonstrate initiatives in various situations ”*

The Scheme of Service also says that candidates for the post may be required to take part in a written competitive examination conducted by the Respondent.

### **Appellants’ case**

Appellant No 1 had been working as MMSPO at the Municipal Council of ... since ... where he was posted in various sections of the Council. He thus had the opportunity to enhance both his experience and knowledge and became conversant with the rules and regulations of the Council. He held a B.Sc. and was completing his

MBA with specialization in .... His academic qualifications and his working experience, he claimed, were of great help when he sat for the examination held by the Mauritius Examination Syndicate (MES) in ... for the filling of the vacancies in the post.

Appellant No 6 averred that he was an employee in the Local Government Service. He was an MMSPO at the Municipal Council of .... He had more experience than some of the Co-Respondents as he had been appointed to the post of MMSPO since ... while some Co-Respondents joined later. He worked in different departments of the Council, was more versatile and possessed sound knowledge of different duties assigned to her while some of the Co-Respondents worked in only one department.

Both Appellants stated that they did very well in the examination and could not understand why they were not appointed. On cross-examination, they conceded that they could not say whether they did better than the Co-Respondents.

They invited the Tribunal to look at the markings given to the candidates and to see that they obtained a fair treatment in the selection process.

### **Respondent's Case**

The Respondent averred that for this appointment exercise there was an advertisement inviting MMSPOs to apply. There were ... candidates and some of them were found eligible for consideration for appointment as OFMTA. The Respondent contacted the MES to conduct a written competitive examination, to correct the scripts and to determine the results. All the eligible candidates, including the two appellants sat for the examination on .... The MES submitted the results of the examination to the Respondent on .... Based on the results given by the MES, the Co-Respondents who topped the list were offered appointment.

The Respondent further averred that it followed all the procedures and the appointments were made according to the prescribed Scheme of Service.

The Respondent averred that the appeals had no merit and that they should be set aside.

## **Determination**

The Scheme of Service for the post of OFMTA is clear. It has to be filled by selection. It also stipulates that candidates may have to sit for an examination. This is precisely what the Respondent did. Moreover, the Respondent was fair to the candidates in entrusting the examination to a professional body which is the MES and relied entirely on the marks given to candidates.

As is the practice, the Respondent was asked to provide the Tribunal under confidential cover the marks of the Appellants and the marks of the Co-Respondents. Unlike selection by interview where the Tribunal asks for the criteria, their weightage and the markings, in this case only the examination results were sought from the Respondent.

The Tribunal found from the marks given by the MES to the Respondent communicated to the Tribunal under confidential cover, that the Co-Respondents scored higher marks than the Appellants. The Tribunal also found that there were some candidates who scored more marks than the Appellants but were not appointed as there were not enough vacancies to be filled.

The Tribunal has no reason to doubt the seriousness with which the MES performed the exercise. The Appellants, who have the burden of proving their case, in fact never raised any points to challenge the seriousness of the examination. They merely averred that they believed that they did very well but admitted that they did not know how the others performed.

The Tribunal finds that the Respondent has not erred in its decision.

The appeals are set aside.