

Det 21 of 2016

Even if seniority is not normally a criteria, in a specific case it may be included in the list of criteria as work experience in the cadre.

The Appellant is a OWP at the Ministry of (hereafter referred to as the Ministry). She has lodged an appeal before this Tribunal as she feels aggrieved that she was not appointed as OCSE and that the Co-Respondents have been appointed instead. Her grounds of appeal are focused on the appointment of one Co-Respondent in particular, namely Co-Respondent No 35.

Appellant's Case

The Appellant averred that she joined the service in ... as OWP. She had 25 years of experience while Co-Respondent No 35 joined later and had only 20 years' service. She performed the duties of OCSE on a large number of occasions and, at any rate, on more occasions than Co-Respondent No 35.

She stated having performed to the satisfaction of her supervisors and she has never been adversely reported upon. Her work was of appropriate standard, she did well at the interview for the post and answered the questions put to her while bearing in mind the requirements of the Scheme of Service for the post.

She said that "*I was not given the opportunity to work with the present Director of ... as Co Respondent No 35 was*".

The Appellant also stated, during cross-examination, that she was not grounding her case on seniority but on her work experience and merit.

She could not understand why she was considered for assignment of duties in the post of OCSE but was not found fit for appointment to that very post. It was the fourth time that she competed for the position.

Respondent's Case

The Respondent stated in its Statement of Defence that the Responsible Officer (RO) of the Ministry reported on ... that there were ... vacancies in the grade of OCSE and recommended that a selection exercise be carried out to fill ... of these vacancies for which funds were available. These vacancies were advertised on ... On ... , the RO recommended the filling of eight additional vacancies, bringing the total number of vacancies to 37.

There were 307 applicants and 232 were found eligible, including the Appellant. They were called for interview. They all reckoned more than 15 years' service.

The 37 Co-Respondents were successful and were offered appointment. They reported for duty on ...

The vacancies were filled as per the Scheme of Service on the basis of the requirements of the post, the criteria of the selection determined by Respondent and performance at the interview. The Respondent paid attention to its regulation 14 which takes into account "*qualifications, experience, merit and suitability for the office in question before seniority*".

The Respondent also stressed on the fact that, as per regulation 19 of the PSC Regulations, it had the exclusive power to determine the suitability of a candidate for a post. The Respondent therefore moved that the appeal be set aside.

Determination

According to the Scheme of Service the post of OCSE is filled:

“By selection from among officers in the grades of

(i) Senior OWP

(ii) OWP

Who

(a) Reckon at least 15 years’ service in a substantive capacity in the cadre;

(b) Possess a certificate in ... from a recognized institution

(c) Are fluent in English and French

(d) Have shown qualities of trustworthiness, discretion, maturity, tact and initiative

(e) Are capable of dealing efficiently with members of the public; and

(f) Are able to work under pressure.”

Both parties agree that the post is filled by selection and that seniority is not a determining factor in such appointments. The Appellant made it clear that she was not relying on the fact that she was senior to Co-Respondent No 35 in her claim for appointment but was counting on her experience and her merit. Her point is that she had been found fit to be assigned the duties of the post but when there were appointments she was not amongst those chosen. This was her fourth attempt.

The Tribunal sought information from the Respondent on the qualifications of the Appellant and the Co-Respondents as well as the criteria for assessment, their weightage and the markings.

The Tribunal finds that the criteria used by the selection panel were:

(i) Work experience in the cadre (Seniority)

(ii) Experience as Senior OWP/OCSE

- (iii) Additional relevant qualifications
- (iv) Personality
- (v) Communication and inter-personal skills and fluency in English and French
- (vi) Qualities of OCSE- Trustworthiness, discretion, maturity and initiative
- (vi) Knowledge of duties
- (vii) Aptitude.

There was also an Advisor on the panel who allocated marks.

A cursory look at the marks shows that, even if seniority is not a determining factor, it was one of the criteria of the panel and it carried a significant weight.

But what is more disturbing is the marks given to Appellant and Co-Respondent No 35 for the second criterion, namely Experience as Senior OWP/OCSE. It stands to reason that if one is to be assessed on experience as OCSE, one must have performed these duties. From the information provided by the Respondent, the Tribunal finds that the Appellant was officially given assignment of duties as OCSE 28 times and she was given one point whereas Co-Respondent No 35 was assigned duties of OCSE 18 times but she obtained the full 5 points. It is noted that the Appellant had her first assignment of duties of OCSE as far back as ... while Co-Respondent No 35 started her first assignment of duties of OCSE only 4 years later. The Tribunal also notes at random (given the short time the record was seen before it was given back to the Respondent's officer) that Co-Respondent No 27 was also assigned duties 18 times but she scored only one point. Co-Respondent No 24 was assigned duties of OCSE 9 times and ended

with one point. Had Co-Respondent No35 been given one point, there would have been a difference of 4 points between her and the Appellant.

The Tribunal finds, however, that even if the Appellant had been given full marks on the second criteria, she would not have exceeded the total marks of the Co-Respondent. The Co-Respondent would still have been appointed.

The Tribunal again draws the attention of the Respondent to the fact that public officers are very often given frequent assignments of duties for long periods which create unnecessary expectations. The Respondent needs to enforce its Circular No.2 of 2006 regarding assignment of duties.

The appeal is set aside.