

# PUBLIC BODIES APPEAL TRIBUNAL

No. D/25 of 2016

In the matter of:-

1. Oomar Farook Mohiyuddeen JEETUN
2. Devanen Valayooda MOODELLY
3. Yovanen Valayooda MOODELLY
4. Muhammad Jamiil CHADY
5. Chetanand IMRIT
6. Sapna ARMUGAN
7. Zainab NAUJEER
8. Saraspadhee AYASAMY
9. Rubina SANTALLY
10. Danushta B.SOMI
11. Bibi Zoya Ambereen HOSSENBACCUS
12. Oumain Kawshar TORAUB
13. Lekshwaree RAMBURRUN
14. Oumaïrah Bibi AUKAULOO
15. Bhavna Madhushi RAKHAL
16. Nilesh GOPAUL
17. Khoshanee KOWAL
18. Roynee MUNISAMY
19. Ram Kumar KHOODEERAM

**Appellants**

**v/s**

**Public Service Commission**

**Respondent**

**and**

1. Anusha DABY

**Co-Respondents**

2. Goommatee KOTOWAROO

## **Determination**

The Appellants are contesting before this Tribunal the effective date of their appointment to the post of Medical Laboratory Technologist/Senior Medical Laboratory Technologist (hereafter referred to as the Post). The Appellants agreed that Appellant No 1 depone on their behalf and whatever he said would be binding on them.

### **Appellants' case**

The Appellants averred that they received a letter dated 20 November 2015 in which they were informed that the Respondent had appointed them to the post of Medical Laboratory Technologist/Senior Medical Laboratory Technologist with effect from 13 May 2015.

They were contesting that decision as explained in their Statement of Case. They stated that on 17 August 2010 they were informed by the Respondent that they had been enlisted as "*Student Medical Laboratory Technician in the Ministry of Health and Quality of Life*". Appellants Nos 1, 6 and 19 were informed on 5 October 2010.

It was "*expressly understood that upon completion of a training course and the provision of a bond with two sureties in the sum of Rs 508,900, the Appellants would serve the Ministry of Health and Quality of Life as Assistant Medical Laboratory Technician or Medical Laboratory Technician for a minimum period of five years as from the date of appointment as Assistant Medical Laboratory Technician or Medical Laboratory Technician as appropriate*". It was also expressly understood that on completion of the training including the obtention of the Diploma in Biomedical Sciences they would be eligible for appointment to the grade of Medical Laboratory Technician as and when vacancies would occur. This was clearly stated in the letters given to them when they were enlisted for training.

On May 2013, the Errors, Omissions and Anomalies Committee (the EOAC) recommended in its report that the appellation of Medical Laboratory Technician be changed to Medical Laboratory Technologist/Senior Medical Laboratory Technologist

and a new Scheme of Service be put in place *“given that the one currently in force then dated back to 29 July 1981”*.

The Appellants completed their training course on 2 August 2013 and were awarded the Diploma in Biomedical Sciences by the University of Mauritius.

After the completion of their training, they *“took their posting in the Ministry of Health and Quality of Life and have been acting for all intents and purposes, as full-time Medical Laboratory Technologists/Senior Medical Laboratory Technologist”*. They wrote several letters to different persons in authority in 2014 and 2015 for their appointment as this was causing them hardship.

On May 2015 a new Scheme of Service for the Post was prescribed with effect from 13 May 2015.

*“Consequently, by way of letter dated 20 November 2015, the Respondent informed the Appellants that they were being offered the post of Medical Laboratory Technologist/Senior Medical Laboratory Technologist at the Ministry of Health and Quality of Life and their appointment would take effect from 13 May 2015”*.

They felt aggrieved as they averred that their appointment should take effect as from the date they completed their training course, that is 2 August 2013, when they obtained their Diploma. They referred to the case of a Rodriguan colleague who was offered appointment with effect from 2 August 2013. They felt that they had a legitimate expectation that they would be treated in the same way. There were some 59 vacancies that arose from 2012 to 2013.

They again referred to the treatment given to the Rodriguan officer. They stated that the two Schemes of Service, one for the island of Mauritius dated 13 May 2015 and one for the island of Rodrigues dated 29 October 2013 had the same appellation and the duties were similar. Both the Appellants and the Rodriguan counterparts were paid under the same budget code “09 33 59”. The Respondent should stay within the definition of “scheme of service” as meaning the “scheme of service prescribed under regulation 15”. The grade of Medical Laboratory Technologist/Senior Medical

Laboratory Technologist should be the same whether they operate in Rodrigues or not. They explained the structure of the technical activities of the Ministry, being in “*five regions and the health services in Rodrigues and Agalega*”. The Appellants provide support to the medical profession.

They also submitted that there was no provision in the Rodrigues Regional Assembly Act 2002 which indicated that the Post operated within a different parameter for the Rodriguan counterpart compared to the Appellants. The fact that there were two schemes of service could not justify the different treatment. The fact that the Rodriguan counterpart was given an unfair advantage was tantamount to discrimination in employment in terms of section 4 of the Employment Rights Act 2008.

The Appellants requested the Tribunal to quash the decision regarding the effective date of appointment of 13 May 2015 and make an order as appropriate.

### **Respondent's Case**

The Respondent averred that the Appellants were offered employment to the Post with effect from the date of prescription of the new Scheme of Service as the Post was created following the EOAC recommendation of 2013. Two Appellants were offered employment in a substantive basis with effect from the date of prescription of the Scheme of Service as they were already confirmed in their previous appointment of Pathological Laboratory Assistant. The other Appellants were offered appointment on a twelve months' probation with effect from the 13 May 2015, date of prescription of the Scheme of Service. All the Appellants accepted the offer on the terms and conditions contained in the letter of offer. They assumed duty on different dates.

The Respondent agreed on the sequence of events leading to the appointment.

Respondent also made reference to the recommendation of the EOAC which led to the merger of the grades of Medical Laboratory Technician and the Senior Medical Laboratory Technician into that of Medical Laboratory Technologist/Senior Medical Laboratory Technologist and the inclusion of this new grade in the Civil Establishment Order No 2 of 2013. There was no recommendation in the EOAC Report to amend the

Schemes Of Service for the posts of Medical Laboratory Technician and Senior Medical Laboratory Technician. A new Scheme of Service was prepared for the merged and restyled grade of Medical Laboratory Technologist/Senior Medical Laboratory Technologist which was prescribed on 13 May 2015.

The Respondent conceded that the Appellants continued to work at the Pathological Laboratory on completion of their training and obtention of the Diploma. However, no offer of appointment was made.

The Respondent averred that on 6 March 2015, the Ministry of Civil Service Affairs submitted to it the proposed Scheme of Service for the Post for approval. As it was in line with the EOAC recommendation, it gave its agreement to the Ministry on 6 May 2015. On 13 May 2015, the Scheme of Service was prescribed. The Appellants were favourably reported upon and the Responsible Officer of the Ministry recommended their appointment with effect from the 13 May 2015. The Respondent approved the recommendation and the Appellants were appointed.

The Respondent averred that the Appellants could only be appointed as from the date the Scheme of Service was prescribed and not before.

The case of the Rodriguan officer was different. His appointment was made on 13 February 2014 with effective date 2 August 2013 in accordance with the Scheme of Service prescribed on 2 September 2002 for the post of Medical Laboratory Technician restyled Medical Laboratory Technologist/Senior Medical Laboratory Technologist restricted to Rodrigues Regional Assembly (RRA) (Medical and Health Services). The said appointment was, in no way whatsoever, made under the aegis of the Ministry of Health and Quality of Life. The RRA is a separate and distinct establishment and each establishment had its own scheme of service for the Post. Appointments in the grade were therefore in accordance with the respective schemes of service effective as at the material time. The appointment of the Appellants was according to the Scheme of Service of the Mauritian establishment and that of the Rodriguan officer in accordance with the Scheme of Service of the establishment of the RRA. The post of Medical Laboratory Technologist/Senior Medical Laboratory Technologist under the Ministry of

Health and Quality of Life and the comparable grade on the RRA fell under two separate and distinct establishments although they had the same salary and duties. There had been no representation when the Schemes of Service were reviewed. The Schemes of Service were made in accordance with PSC Regulation 15.

The Respondent moved that the appeals be set aside.

### **Determination**

There is no dispute as to the way the Appellants were enlisted for training and their subsequent appointment.

It was clear that they were to be appointed to the post of Medical Laboratory Technician on completion of their training and the award of the Diploma to them. Had there been no EOAC report this would have followed its course and they would have been appointed. However, the EOAC recommended that the post of Medical Laboratory Technician and that of Senior Medical Laboratory Technician be merged and the new post created. Since the EOAC did not recommend amendments to the two previous posts the Appellants could not be appointed in what became an evanescent grade. Appointment has to be for the new post which in turn could not be filled until and unless a Scheme of Service is prepared, discussed and prescribed. As pointed out by the Respondent, there was no representation when the proposed scheme was under review. Thus when the offer was made to the Appellants in November 2015, they accepted the terms and conditions of the Scheme of Service. It is obvious that the appointment could not start on an earlier date than the date when the Scheme of Service was prescribed as, before this, the Post did not exist. The Tribunal does not see how the Respondent erred when it decided that the effective date of the appointment be the 13 May 2015 when the Scheme of Service was prescribed. It cannot be the date they completed their studies and were awarded the Diploma.

As regards the reference to the Rodriguan officer, this has no substance. It is evident that the circumstances are different. The post of Medical Laboratory Technologist/Senior Medical Laboratory Technologist are not the same for the Ministry's establishment and the RRA establishment even if the appellation is the same and the

duties are similar. As the Appellants themselves pointed out in their Statement of Case, the offer of appointment was “for service **restricted** to the Medical and Health Services, Rodrigues Regional Assembly” (emphasis ours). Further, the Post for the Ministry and the RRA has two distinct Schemes of Service which would again not be the case if the two posts were identical. The entry to the Post is not the same and a Rodriguan appointee cannot aspire to a higher position in the grade in the Ministry’s establishment even if he has the same Diploma as the Appellants. Therefore there is no discrimination as the Appellants think.

The Tribunal, therefore, finds that the appointment was in order and the effective date can only start as from the date of prescription of the Scheme of Service for the Post and not before.

The appeals are set aside.

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

**G. Wong So**  
Member

**P. Balgobin-Bhojrul (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.