

When candidates cannot show that they did better than appointees at an interview and overall markings are not in their favour, their appeal will not be upheld.

The two Appellants are DRE at the Municipality of ... They are challenging the decision of the Respondent to appoint the Co-Respondents to the post of HMDRER

Appellants' Case

The two Appellants submitted their appeal to this Tribunal but they did not follow this up by a Statement of Case. They preferred to rely on the grounds of appeal as contained in their application to this Tribunal.

The grounds of appeal of the two Appellants were identical. They both stated that they were more senior than the Co-Respondents and were equally more qualified. Appellant No 1 was appointed DRE on ... and Appellant No 2 was appointed DRE on..., that is before the Co-Respondents.

They claimed that they had more experience than the Co-Respondents and they had the required permits for the job. They had no adverse reports against them whereas Co-Respondents Nos 1 and 3 were subject to adverse reports which could be easily verified from the Human Resource section of the said Municipality.

They could not, therefore, understand how the Co-Respondents were appointed and not them.

Respondent's Case

Respondent averred that, as per the Scheme of Service, the post of HMDRE were filled by selection from among employees in the Local Authority in the grades of

DRE, DRER, HMDRE who possessed a special permit. Seniority was not a determining factor in a selection exercise.

Appellant No 1 joined service as SAT on ...and was appointed DRE on ...

Appellant No2 joined service as LOLR on ...and was appointed DRE on ...

Co-Respondent No 1 joined service as LAR on.... He was appointed in several posts 2004 and finally DRE in a specialised department ...

Co-Respondent No 2 joined the service as REC on ... and occupied another post before becoming DRE on ...and HMDRE on ...

Co-Respondent No 3 joined service as ..on ..., was appointed in another post on ... and DRE on

TheAppellants and the Co-Respondents were allfound eligible and were called for interview.

The Respondent called for the confidential reports of each candidate for the years 2012, 2013 and 2014 as well as an *ad hoc* report.

The Respondent confirmed that Co-Respondent No 1 was in ... involved in a case of ... and was fined Rs 3,000 and Rs 100 as costs.As a result, he was issued a warning on ... However, Respondent stated that this could not be taken into consideration as it occurred more than five years back.

Co-Respondent No 3 was convened before a Disciplinary Board for...

Respondent said that Co-Respondent No 3 was inflicted a reprimand and warned that there should not be a recurrence. Respondent, however, pointed out that the case of that Co-Respondent was not related to the duties ofthe post

Respondent averred that there were three vacancies and 25 candidates applied following an advertisement. There were 17 of them who were found eligible, including the Appellants. Theywere called for an interview and the Co-Respondents were appointed in a temporary capacity as from ...

All procedures had been scrupulously followed.

Respondent moved that the appeals be set aside.

Determination

One of the grounds of appeal relates to the seniority of the Appellants. However, this ground can be set aside. Seniority is not a determining factor in a selection exercise as is clearly laid down in LGSC regulation 13 *"in the case of officers in the local government service, take into account qualifications, experience and merit before seniority in the local government service"*.

The Tribunal sought information under confidential cover from the Respondent as regards the criteria, their weightage and the markings for the candidates for this selection exercise. These were provided to the Tribunal.

The criteria on which candidates were marked at the interview were:

- (i) Experience
- (ii) Personality
- (iii) Communication skills, and
- (iv) Knowledge of the job.

Co-Respondent No 1 was appointed ...in He was found to have more experience and more knowledge of the job than the Appellants. The post was higher than that of DRE. This appointment also cannot be contested. He was fined but even if this was taken into account in his markings this would not have affected the final outcome given the differences in total marks.

The Tribunal finds that, although the Appellants were appointed DRE before the Co-Respondents, Co-Respondent No 2 was already a HMDRE since ...and therefore obtained more marks than the Appellants on criteria (i) and (iv). The appointment of Co-Respondent No 2 cannot be contested.

Co-Respondent No3 was reprimanded for ... Respondent pointed out that this offence was not related with the duties of the post .True it is that this offence was not related to the duties of the officer but it is still a serious offence committed in the work place. However,similarly to Co-Respondent No 1, given the difference in marks obtained by Co-Respondent No.3 and the Appellant, even if this was taken into consideration, the total marks of Co-Respondent No.3 would have been higher than the Appellants and would not have prevented him from being appointed.

The appeals are set aside.