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Even if some criteria of selection are very subjective, the Public Body is empowered (i) to choose the criteria (ii) to assess the suitability of the best candidates for the post.

Regulations 14 and 19 provide that Respondent must look at “*qualifications, experience, merit and suitability for the office in question before seniority*”

The Appellant has lodged an appeal before this Tribunal contesting the decision of the Respondent to appoint the Co-Respondents to the post of COSY as she was not appointed.

Appellant’s Case

The Appellant has grounded her appeal as follows:

- (a) I joined service as WOPO on During the course of my employment as WOPO and by virtue of my postings at Ministry of ... and at... , I have been given several opportunities to perform the duties of COSY which I have done to the satisfaction of one and all.*
- (b) It is surprising to note that several colleagues who are junior to me in terms of seniority.*
- (c) By virtue of my posting at the ... I have developed good communication and interpersonal skills. My daily work schedule includes interaction with stakeholders and the public. I am performing almost all the duties of a COSY since five years on a daily basis.*
- (d) During the interview for the post of COSY I have done well, having able (sic) to answer all the questions to the satisfaction of the panel of interviewers.*

Their body language clearly gave an indication that they were satisfied with all my answers.

(e) In a spirit of fairness, the PSC should have taken into account my competencies, skills and experience which was not so in my case.

I therefore make a strong appeal for your intervention to redress the matter so that not only merit but justice prevails.”

Respondent's Case

The Respondent stated in its Statement of Defence that the Responsible Officer (RO) of the Ministry reported on ... that there were 73 vacancies in the grade of COSY and recommended that a selection exercise be carried out to fill 29 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 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 stressed that “*in exercising its powers in connection with appointment or promotion in the Public Service, it has, as laid down in regulation*

19(6) of the Public Service Commission Regulations, determined the suitability of the selected candidates for appointment as COSY”.

The Respondent also highlighted the fact that, as per regulation 19(6) 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

Both parties agree that the post is filled by selection and that seniority is not a determining factor in such appointments. The Appellant however, maintained that she had more years of service and that she acquired greater experience on the job.

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 was made aware that the criteria used by the selection panel were:

- (i) Work experience in the Cadre (Seniority)
- (ii) Experience as Senior WOPO/COSY
- (iii) Additional relevant qualifications
- (iv) Personality
- (v) Communication and Inter-personal Skills and Fluency in English and French
- (vi) Qualities like trustworthiness, discretion, maturity and initiative

(vii) Knowledge of Duties

(viii) Aptitude.

The Appellant greatly relied on the fact that she had been in service for a long time and much longer than some of the junior colleagues. Even if seniority *per se* is not a determining factor, she had stated having acquired more experience and this should be taken into account. In fact the Tribunal noted from the information provided by the Respondent, that the Appellant obtained good marks for experience in the cadre.

As regards her assignment of duties as COSY, the Appellant obtained one mark out of a maximum score of 5. Most of the Co-Respondents also scored the same marks, even those who topped the appointment list. This is presumably a way for the selection panel to downplay the importance of assignment of duties. Respondent's own Regulations clearly states that assignments of duties do not give a claim for permanent appointment.

Be that as it may, the fact is that experience carries only 15 % of total marks and it is diluted by the large number of criteria in this appointment exercise. The Appellant did not do well on the other criteria and was not among those selected. Given that Appellant had grounded her appeal mostly on her experience and that the other criteria of selection are mostly subjective ones that the interview panel was in a better position to assess, the Tribunal sees no reason to intervene with the decision of the Public Service Commission.

The Tribunal once again draws the attention of the Respondent that it must avoid giving long assignments of duties and stick to its Circular No 2 of 2006. Long and repeated assignments of duties may trigger expectations which are thwarted in a selection exercise and create unnecessary frustrations. In this particular case, the Tribunal has been told that the Appellant has done 207 days of assignment of duties.

The appeal is set aside.