

Seniority not being an overriding criterion an appellant must show that an appointee was not qualified under the other criteria to be able to obtain that the decision of the Public Body be quashed

he decision of the Respondent to appoint the Co-Respondent No.2 to the post of OER in the local government service.

Appellant's Case

The grounds of appeal of the Appellant were "*why not me. I have twenty three (23) years of service in the Council, and I have CPE that required and also Form IV whereas Mr ... who have 14 years of service in the Council*". **(sic)** The Appellant did not submit a Statement of Case to expatiate on his grounds but he was given full latitude to explain at the hearing.

Respondent's Case

According to Respondent, the post was filled "*by selection from among employees in the Local Authority holding a substantive appointment and who:*

- (i) Possess the Certificate of Primary Education; and*
- (ii) Reckon at least 10 years service"*

The Appellant joined service as REC on ... and was appointed RECR on ... whereas Co-Respondent No.2 joined as GWR on ..., was appointed RMD on..., HDW on ... and CSM on....

Both the Appellant and Co-Respondent No.2 had the CPE and met the requirements of the Scheme of Service.

There were 37 applications for the post and 26 candidates were found eligible to be considered for appointment. They were called for interview on ... and ...

The criteria for selection were:

- (i) Qualifications
- (ii) Personality
- (iii) Sense of discipline/ attitude
- (iv) Communication, supervisory and leadership skills;
- (v) knowledge of the job

Following the interview, the Co-Respondents were appointed.

The Respondent averred that all procedures had been followed, in line with the requirements of the Scheme of Service and Regulation 13 (1) (b) of the LGSC Regulations.

Determination

There is no dispute that the appointment was by selection. As such seniority is not a determining factor as clearly stated in regulation 13.

The only way to see whether the Appellant was treated fairly was to get the weightage and the markings for the selection criteria. These were given to the Tribunal under confidential cover. As the Appellant is contesting only the appointment of Co-Respondent No 2, the Tribunal will focus only on the markings of the Appellant and that Co-Respondent.

The Tribunal finds that, on the criterion Qualifications, the Appellant and the Co-Respondents obtained full marks. They all had the minimum qualification requirements and the fact that the Appellant studied up to Form IV did not matter as it was not a requirement of the Scheme of Service.

As regards the other criteria, Co-Respondent No 2 obtained more points on all of them. The reason is presumably because the Appellant spent all his time at the Municipal Council in the REC department whereas Co-Respondent No 2 had moved in several departments. Co-Respondent No 2 has been promoted three times since he joined the Municipal Council as GWR in ... The Appellant himself conceded that he found it strange that Co-Respondent No2 had such fast promotions in a relatively short time. Co-Respondent No 2 averred that he could be transferred to any department and be equally adaptable to such new environment. In fact, an OER is appointed for the whole Municipal Council and can rotate within the various areas of activities.

On the issue of qualifications, the Appellant and the Co-Respondents were at par. Seniority not being an overriding criterion, the only determining factor was experience and Co-Respondent No 2 was found better than the Appellant on all the other criteria for selection.

The Tribunal does not find any flaws in this selection exercise.

The appeal is set aside.