

In a promotion exercise, seniority is a determining factor. However seniority is often established after a previous selection exercise.

Age does not affect seniority in such cases.

The Appellant, a PALAT in the Ministry of ..., has appealed against the decision of the Respondent to appoint the Co-Respondent to the post of Senior PALAT.

Appellant's Case

The Appellant has grounded his appeal as follows:

"I would catch your attention that previously I held a substantive post of HRCK since the ... and was offered appointment in the grade of PALAT on the..., whereas my colleagues have joined the specialised services on the same date but it was only their first appointment in the public service.

Thus to my knowledge I should be considered as the most Senior Officer since I satisfy the criteria listed below according to the Public Service Commission Regulations and the Human Resource Management Manual.

- 1. I have been in service in the Public Sector since the ... and offered appointment to the actual post on the....*
- 2. I am ... years old and thus most senior officer to those who joined the service with me on the same date for the same grade.*
- 3. I have been acting as Senior PALAT on various occasions, since ... and the Public Service commission has been providing his approval without any objection for the Actingship. This means that I was considered as the most senior officer since I was selected to act in the higher capacity.*
- 4. I am holder of a degree in the field of ... since*

5. *I have been trained to deliver the required services scheduled to the senior level as well, during my Actingship.*
6. *I have never been on Leave without pay during my entire career whilst in the Government service.*

Thus to my understanding, Since I satisfy the criteria mentioned above, which are clearly discussed as per the clause in the Public Service Commission Regulations and the Human Resource Management Manual, consideration should be given to these factors when considering seniority list and promotion as well.

Hence I would be very grateful to you if you can kindly redress this problem of administration and to consider me as the most senior officer in the grade of PALAT.”

Respondent's Case

The Respondent did not dispute the dates of appointment of Appellant to the different posts mentioned by him.

The Respondent averred, however, that the post of Senior PALAT was filled by promotion from among officers in the grade of PALAT who reckoned at least five years' service in a substantive capacity in the grade. Co-Respondent was the senior most officer in the grade of PALAT and the Appellant ranked second. As there was only one vacancy in the grade, Co-Respondent being the senior most was offered promotion. Age did not determine seniority in the public service. There was a selection exercise in ... for filling the post of PALAT and a seniority list was established.

The Respondent averred that assignment of duties was done on the basis of either seniority or administrative convenience as per the Public Service Commission Circular No 1 of 2011. Appellant was assigned the duties of Senior PALAT on the basis of administrative convenience for several periods which were listed.

The Respondent further averred that the assignment of duties did not give rise to any claim for appointment to the higher post. Respondent denied that the fact that Appellant was assigned the duties meant that he was considered the most senior officer. At the hearing, however, the representative of the Respondent conceded that it was a mistake to assign the duties of Senior PALAT to the Appellant when the Appellant and the Co-Respondent were on the same work station.

As regards leave without pay, the Respondent referred to PSC Circular No 4 of 1977 which stipulated that:

“Officers who are on leave without pay will be considered for any grade to grade promotion in the ordinary course for which they may become eligible during their absence on leave provided that such absence does not exceed two years. They should however assume duty within two months (for those abroad) or within 15 days (for those in Mauritius) from the date of the offer of promotion, failing which the offer will be withdrawn”.

From the records, neither the Appellant nor the Co-Respondent had proceeded on leave without pay upon their appointment as PALAT.

The Respondent moved that the appeal be set aside.

Determination

The post of Senior PALAT is filled by promotion .The Co-Respondent was the most senior PALAT and the Appellant ranked 2nd. Since they both had no adverse reports against them the Co-Respondent was appointed and this was in order.

The confusion arose in this case as both the Appellant and the Co-Respondent were appointed on the same date and the Appellant thought he was senior to the Co-Respondent as he was older. He relied on section 2 of the PSC Regulations where seniority is defined as follows:

“Seniority means the relative seniority of officers and except as may be otherwise provided by the Commission or in these regulations, shall be determined and be regarded as having always been determined as follows:

(a) as between officers of the same grade or class-

(i) by reference to the dates on which they respectively entered the grade or class;

(ii) where any officers entered the grade or class on the same day, by reference to their seniority in the next lower grade or class on the day immediately preceding that day;

(iii) where any officers who entered the same grade or class on the same day did so by appointment and not by promotion (excluding promotion from a non-pensionable to a pensionable grade or class), their seniority relative to each other shall be determinable by reference to their respective ages”.

The Appellant relied on part (iii) to think he was senior to the Co-Respondent. He was oblivious of the part of this section which says “*except as may be otherwise provided by the Commission or in these regulations*”. In the appointment exercise that was carried out for the post of PALAT there was a selection and the candidates were ranked in order of seniority. This order of seniority stays and cannot be altered.

The belief of the Appellant that he was senior to the Co-Respondent was compounded by the fact that the Appellant was assigned the duties of Senior PALAT instead of the Co-Respondent. This was done at the level of the Ministry under delegated powers and the Respondent conceded that this should not have occurred as the

Co-Respondent was senior to the Appellant. The confusion could have arisen from the fact that the Appellant was already working in the Ministry when he was appointed PALAT and was therefore on a six months temporary employment. The Co-Respondent was appointed PALAT on a twelve months probationary period. However, this is immaterial as assignment of duties does not give rise to any claim for permanent appointment.

The Tribunal finds that the post of Senior PALAT was filled by promotion and the Co-Respondent was senior most in the grade of PALAT and she was appointed. The Appellant has no case.

The appeal is set aside.