

# **PUBLIC BODIES APPEAL TRIBUNAL**

**No. D/35 of 2016**

**In the matter of:-**

**(1) Jean Francois Michael ENOUF  
(2) Chandrasekar SEETOHUL**

**Appellants**

**v/s**

**Local Government Service Commission**

**Respondent**

**and**

**1 Saifuddin Saif JOOMUN  
2 Ravichand MADHUB**

**Co-Respondents**

## **Determination**

The Appellants, Senior Health Inspectors (SHI), have lodged an appeal against the decision of the Respondent regarding appointment of the Co-Respondents to the post of Principal Health Inspector (PHI). Appellant No.1 is contesting the appointment of both Co-Respondents while Appellant No. 2 is only contesting the appointment of Co-Respondent No.1.

### **Appellants' Case**

**Appellant No.1.**

The Appellant based his appeal on the following grounds:

- (1) Years of service
- (2) Years of experience
- (3) Seniority

- (4) Meritocracy
- (5) Assignment of duties to the post of Principal Health Inspector
- (6) Discrimination
- (7) Injustice and unfairness
- (8) Experienced and knowledge claimed for the post applied
- (9) Qualification

The Appellant became Health Inspector (HI) on 16 November 1993 after he obtained a Diploma in Sanitary Science from the University of Mauritius (UOM).

On 1 September 2004, he was appointed SHI and had since his appointment accumulated more than eleven years of experience as SHI. He reckoned 24 years of experience in the Public Health Department. As SHI, he performed his duties and assumed responsibilities, participated in the achievements of several national and inter-ministerial projects and represented the Council at meetings and committees held at different levels to the full satisfaction of all his superiors of the different Councils where he had served and performed his duties.

Since 2006, he *“acted as Environment Liaison Officer for the Environment Liaison Officers Committee set up at the Ministry of Environment, Sustainable Development and Disaster Beach Management for the various Councils where he has been posted and has successfully participated in finding solutions and solving burning environment problems to the satisfaction of his superiors, the Council and Committee”*. He was also a registered Evaluator in the field of cleaning/scavenging services for the Central Procurement Board and he had on several occasions been invited to act as Evaluator for bid evaluation and procurement matters at the head office.

He had been assigned the duties of PHI on eleven occasions from 2006 to 2015 (for more than 1500 days) and performed the duties with due diligence and given satisfaction to his superiors. He had no adverse reports.

He applied for the post of PHI in 2008, 2012 and 2015. He averred that he met all the requirements for the post and was called for interview each time. He produced

written evidence as regards his qualifications, experience, assignment of duties, his various skills and his knowledge and understanding of environment matters.

The Co-Respondents were appointed SHI on 23 April 2007 and 11 October 2004 respectively. They ranked 12<sup>th</sup> and 4<sup>th</sup> on the seniority list of SHI in the local government service. They were junior to him and did not possess the required experience and consequently the Respondent should have taken same into consideration before appointing the Co-Respondents.

He averred that he was verbally informed by his colleagues that Co-Respondent No 1 had never been assigned the duties of PHI and Co-Respondent No 2 had once refused to assume duties of the post of PHI while he was SHI at the Municipal Council of Port Louis. However, he conceded during cross-examination that he was not personally aware that these were so.

The Appellant also averred that Co-Respondent No 1 had not *“represented the Council in committees, meetings held at Council’s level or inter-ministerial level”*. On cross-examination, he said that he was not personally aware that this was so.

The Co-Respondents had no relevant proven evidence of experience and knowledge for the post of PHI and should not have been appointed to the post of PHI. This had created frustration as two junior officers had been appointed.

The Appellant declared that the Respondent’s decision as *“unfair, unjust and is also discriminatory and wrong as it is the first time that the Commission appoints two officers who are not senior whereas in its precedent appointment exercises and more recently the last two appointment exercises, the said Commission has always appointed the senior most officers holding the required qualification, merits, experience, maturity and knowledge”*.

The Appellant requested the Tribunal to quash the decision of the Respondent to appoint the Co-Respondents.

## Appellant No 2

The Appellant based his appeal on the following grounds:

The Appellant joined the Municipal Council of Beau Bassin Rose Hill as Trainee Health Inspector on 6 December 1991. After he completed a Diploma Course in Sanitary Science, he was appointed Health Inspector (HI) on 16 November 1993. He was promoted SHI at the Municipal Council on 11 October 2004. He was transferred to the Municipal Council of Quatre Bornes in 2009 and as from October 2011 he worked at the Municipal Council of Beau Bassin Rose Hill.

He was assigned the duties of PHI on thirteen occasions since November 2011, the latest one being in November 2015. This was confirmed by the Respondent. The Appellant averred that Co-Respondent No 1 was never assigned the duties of PHI.

He attended meetings of the Council and other meetings. He was a member of the Environment Liaison Officer Committee at the Ministry of Environment, contrary to Co-Respondent No 1 who was never selected by the Chief Health Inspector to attend this Committee.

He followed a course for Prosecution duties and was awarded a certificate.

He attended three interviews for the post of PHI, the recent was on 12 October 2015.

Being given that he had been assigned the duties of PHI on so many occasions and taking into account LGSC regulation 13 he should have been selected for the post as he was more meritorious. He gathered knowledge and experience required for the discharge of the duties of PHI.

## **Respondent's Case**

The Respondent averred that appointment to the post of PHI was done by selection and in a selection exercise seniority gave way to qualifications, experience and merit as per LGSC regulation 13. The Respondent agreed that the Appellants were

senior to the two Co-Respondents but the Appellants could not use this fact to have a better claim for appointment.

In reply to Appellant No.1

The Respondent denied that the Co-Respondents had not been assigned the duties of PHI. In fact, Co-Respondent No 2 had been assigned such duties eight times. He never refused any assignment of duties as averred by Appellant No 1. Co-Respondent No 1 was assigned the duties of PHI from 24 November 2014 to 19 December 2014. The Respondent agreed that the Appellant had been called upon to perform the duties of PHI ten times (not eleven as averred by Appellant) but pointed out that assignment of duties does not give the Appellant any claim for permanent appointment to the post. Assignment of duties was done on the basis of administrative convenience.

Contrary to what was averred by the Appellant, Co-Respondent No 1 had represented the Municipal Council of Port Louis on various occasions on different committees at the level of the Ministry of Local Government and the Ministry of Health and Quality of Life. However, such representations formed part of the duties of a SHI and could not be considered a criterion for appointment to the grade of PHI.

The Respondent denied the averment of the Appellant that *“these appointment exercise have created frustration, injustice and discrimination to him and to the other senior most qualified and experienced Senior Health Inspectors because the Commission has appointed two junior inexperience (sic) officers to make them become the superiors of the more experience (sic), mature and qualified Senior Health Inspectors”*. Out of 27 candidates called for interview only two had appealed.

In reply to Appellant No. 2

The Respondent did not dispute the averment of the Appellant No. 2 as regards his various positions and postings at the local authority. The Respondent also concurred with the Appellant No. 2 regarding his assignments of duties as PHI but averred that

such assignment of duties did not give Appellant No. 2 any claim to permanent appointment in the post.

The Respondent also agreed about the duties Appellant No. 2 said he performed as these were part of his duties.

The Respondent took note of the course which Appellant No. 2 followed on prosecution matter but stated that this was not a mandatory qualification to be appointed PHI. As per requirements of the Scheme of Service, the post of PHI was filled

*“by selection of officers in the grade of SHI reckoning two years’ service in the grade and possessing:*

*(a) good interpersonal, communication, leadership and administrative skills; and*

*(b) a fair knowledge and understanding of environment matters relating to the prevention and control of pollution”.*

Co-Respondent No 1 joined the Municipal Council of Curepipe as Assistant Health Inspector on 11 February 1997 and he was appointed HI on 14 November 2000. He was appointed SHI on 23 April 2007 at the Municipal Council of Port Louis. He was eligible for assignment of the duties of PHI and was in fact assigned these duties from 24 November 2014 to 19 December 2014. He represented the Council in various committees and also followed the course in prosecution duties in July 2015.

#### In conclusion

The Respondent stated that the Appellants were eligible for the post. They were called for interview on 13 October 2015 and it was for them to satisfy the selection panel that they should be considered for the post. Participation in an interview did not guarantee that the interviewees would be selected. There were criteria to be met for such appointments. Performance at the interview was important.

The Respondent averred that it acted in compliance with the requirements of the Scheme of Service and the provisions of the law regarding appointment.

The Respondent moved that the appeals be set aside.

## **Co-Respondents' case**

The Counsel of Co-Respondent No. 1 had cross examined Appellant No.1 but Co-Respondent No 1 did not come forward to swear to the correctness of his Statement of Defence. Co-Respondent No.2 did not do so either and he did not wish to cross examine Appellant or even say a few words.

## **Determination**

It is not disputed that the post was filled by selection as per the Scheme of Service. Both the Appellants and the Co-Respondents were eligible and were called for interview. In the process the two Co-Respondents were appointed. The Appellants were not.

The Appellants are making their case specifically on the grounds of seniority and assignment of duties to them. Appellant No.1 was appointed SHI on 1 September 2004 and Appellant No. 2 joined this grade on 11 October 2004 while Co-Respondent No 1 became SHI on 23 April 2007 and Co-Respondent No 2 joined this post on 11 October 2004. It is agreed therefore that the Appellants are senior to Co-Respondent No. 1. But this does not give them any advantage as the LGSC (Local Government Service Commission) regulation 13 clearly says that for appointment in the local government service the LGSC shall *"take into account qualifications, experience and merit before seniority in the local government service."*

The Appellants also relied on the fact that they were assigned the duties of PHI. Appellant No.1 was assigned such duties on ten occasions while Appellant No. 2 was assigned the duties on twelve occasions. They were not aware that the Co-Respondents had also been assigned such duties. In any case assignments of duties do not give officers any claim for permanent appointment to the post of PHI.

The Appellants also invoked their experience, meritocracy and qualification amongst other grounds.

The Tribunal sought information on the criteria that were used for this selection exercise as well as the weightage for each criterion and the markings given. The weightage and markings were provided to the Tribunal under confidential cover.

The criteria for selection were:

- (i) Qualifications
- (ii) Personality
- (iii) Communication and Interpersonal Skills
- (iv) Leadership, Supervisory and Organisational Skills and,
- (v) Knowledge of the Job

On criterion (i) both the Appellants and the Co-Respondents obtained same marks. They all had a Diploma in Sanitary Science but no degree or any post-graduate relevant qualifications that would allow them to score additional marks. The Respondent has been fair to both Appellants and the Co-Respondents.

On criterion (v) there was consistency among the members of the panel that Co-Respondent No 2 had good knowledge of the job and he scored the highest mark. Co-Respondent No 2 had been assigned the duties of PHI eight times and can be assumed to have acquired knowledge of the duties of the post. He performed his duties and had no adverse report. However, the lower marks given to the Appellant No. 1 and Appellant No. 2 compared to Co-Respondent No 1 defy logic. The Appellants are senior to Co-Respondent No 1. Appellant No. 1 was assigned the duties of PHI ten times as detailed by the Respondent and Appellant No. 2 twelve times. Co-Respondent No 1 was assigned duties of PHI only from 24 November 2014 to 19 December 2014 as per information provided by Respondent itself. While seniority is not a determining criterion in a selection exercise and assignment of duties does not give an incumbent a claim to permanent appointment to the higher post, it stands to reason that an officer gains knowledge of the post where he is assigned such duties and that he does the duties well. Otherwise, they would not have been assigned such duties so many times without any adverse report. It cannot be said therefore that Appellants were assigned these duties solely because they were senior to the Co-Respondents. There was also divergence on the marks given by members of the selection panel to the Appellants and Co-Respondent No 1 on this criterion.



The Tribunal has no remarks on the other three criteria.

The Tribunal finds that the Respondent has not been reasonable in the marks given on the criterion “Knowledge of the Job” and has not been fair to the Appellants as compared to Co-Respondent No 1. The Tribunal finds no flaw in the marks given to Co-Respondent No 2 and his appointment is not put in question.

The appeal is allowed. The Tribunal quashes the decision of the Respondent to appoint Co-Respondent No 1.

**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.**