

Det 03 of 2018

It is impossible for the Tribunal to have a complete and meaningful analysis of the marks given by an adviser who sits on the interview panel as he does not allot marks based on the criteria.

1. These three appeals concern the decision of the respondent following an offer of appointment by selection for the post of ODR, in a temporary capacity, made to the co-respondent with effect from.... The appeals have been heard together and we are delivering a single decision, the original of which shall be filed in the respective files.
2. On..., five vacancies in the grade of ODR were reported. It is common ground that, the respondent invited applications from qualified officers wishing to be considered for appointment as ODR in the Unit, of the Ministry. The post of ODR was to be filled by selection from among (i) officers of the Bureau; and (ii) officers in the grade of Assistant ODR and they were required to possess a degree in SOGY or SOW or EMC or PAN or CENG from a recognised institution or an equivalent qualification acceptable to the Public Service Commission. Candidates were also required to possess at least four years' experience in CMY and SOW, and in addition, supervisory and communication skills.
3. It is not disputed that, on..., there was an additional vacancy for the post of ODR. Out of the 35 candidates who applied for the post, only 17 candidates (including the Appellant) were eligible and were convened for an interview on ... and ... The criteria used for the assessment at the interview exercise were: (i) Additional Relevant Qualifications; (ii) Relevant experience in SOW; (iii) Personality; (iv) Communication and Inter-personal skills; (v) Knowledge of duties and responsibilities for the post; (vi) Supervisory and organisational skills; (vii) Aptitude.
4. Following the interview exercise, an offer of appointment as ODR was made to six candidates in a temporary capacity for a period of six months in the first instance with effect from their assumption of duty, i.e., as from.... Notification of the appointment for the post was given on....
5. An additional vacancy in the grade of ODR occurred with effect from.... The Respondent considered the suitability of candidates following the interview exercise held in ... and recommended the appointment of one candidate. Notification of this appointment was given on

6. On..., one additional vacancy in the grade of ODR was reported to the Respondent which, after having considered the suitability of qualified candidates following the ... interview exercise, recommended that the Co-Respondent be offered the post of ODR in a temporary capacity for a period of six months initially. An offer of appointment was made to the Co-respondent who assumed duty on.... The responsible Ministry gave notification of the appointment on ...
7. By way of letter dated ..., we requested the Respondent to submit the following information under confidential cover to us: (i) list of criteria used for the assessment of the candidates; (ii) markings obtained by the Appellants and Co-Respondent with respect to each criterion; and (iii) weightage for each criterion. The information was submitted to us on....
8. During the course of the proceedings, the Respondent adduced evidence concerning the particulars of service of the Appellants and Co-Respondent.

Case for Appellant No 1

9. Appellant appealed against the decision of the Respondent on the grounds that: (i) he is more experienced; (ii) more eligible; (iii) more suited; and (iv) more qualified as he holds a B.Sc (Hons) in SOW. He confirmed his statement of case under solemn affirmation.
10. We can easily dispose of the second ground of appeal. It is not the contention of the Appellant that the Co-Respondent is not eligible for the post. A candidate is either eligible or not eligible having regard to the requirements for the post in question.
11. As regards the assertion of the Appellant that he is more experienced, the records of the Respondent pertaining to the interview exercise show that the Appellant has scored the maximum 5 marks for the criterion 'relevant experience in SOW' and the Co-Respondent has obtained less marks. Experience in SOW is, however, one among other criteria used to assess candidates in the interview. We note that the Co-Respondent has scored more marks than the Appellant in other areas of assessment such as knowledge of duties and responsibilities for the post, and supervisory and organisation skills and aptitude.
12. The Appellant also contends that he is more qualified because he holds a B.Sc. (Hons) in SOW. In cross-examination, he agreed that the Co-Respondent also possesses a degree in SOW. Neither the Appellant nor the Co-Respondent

scored any marks for additional relevant qualification. There is nothing on record which shows that the Appellant was more suited for the post of ODR.

13. We, therefore, hold the view that there is no cause for us to intervene in the decision of the Respondent.

Case for Appellant No 2

14. The Appellant appealed against the decision of the Respondent on the ground of seniority. The Appellant confirmed the correctness of his statement of case under solemn affirmation.
15. It is not disputed that the post of ODR is not a post to be filled by promotion but by selection. The Appellant was eligible to be considered for the post and attended the interview exercise held in.... In his statement of case, the Appellant set out his SOW experience. In cross-examination, he agreed that the post of ODR was not one to be filled by way of promotion. He also agreed that seniority is not an overriding factor in a selection exercise.
16. From an examination of the particulars of service of the Appellants and the Co-Respondent, we note that the Appellant joined the service on ...as a PSTR and held the position of "Office Organiser" as from.... On the other hand, the Co-Respondent joined the service on ... and, after assuming the posts of CLK and EOR, he held the post of "Office Organiser" as from.... It is clear that the Appellant has, on the face of the records, more years of service in his capacity as "Office Organiser" than the Co-Respondent. We understand the frustration of the Appellant when he said, in examination-in-chief, that it hurts and it is frustrating that after having been on the job for 25 years, someone else should overtake him for the post. Regulation 14(1)(b) of the *Public Service Commission Regulations* provides that, in exercising its powers in connection with the appointment or promotion of officers in the public service, the Commission (i.e., the Respondent) shall have regard to the maintenance of the high standard of efficiency necessary in the public service and shall "*in the case of officers in the public service take into account qualifications, experience and merit before seniority in the public service.*" The fact that the Appellant was, at the time of the impugned appointment, senior to the Co-Respondent cannot avail him, except of course if they are *at par* in relation to all other criteria – which is not the case.
17. We note from the assessment sheet that the Respondent has given due consideration to the Appellant's experience in SOW as he scored the maximum 5 marks allocated for the criterion 'relevant experience in SOW', unlike the Co-Respondent who scored less mark for that criterion. The Co-Respondent has,

however, scored higher marks than the Appellant in the other areas of assessment at the interview.

18. In the light of the evidence on record, we find that there is no cause for us to intervene in the decision of the Respondent.

Case of Appellant No 3

19. The Appellant appealed against the decision of the Respondent on the grounds that she (i) has better qualification; (ii) has wide experience and knowledge in the field of SOW; and (iii) performed excellently during the interview. She confirmed her statement of case under solemn affirmation.
20. As regards her first ground of appeal, we note that, the Appellant holds, amongst other educational qualifications, a B.Sc. in STID and a Master in PPAN obtained in ... and ..., respectively. Unlike the Co-Respondent, the Appellant holds an additional qualification and we note, from an examination of the assessment sheet for the interview, that she was granted marks for 'additional relevant qualifications'. As stated earlier, the Co-Respondent did not obtain any marks for 'additional relevant qualifications'. It is also the contention of the Appellant that most of the candidates who had been appointed as ODRs during a previous recruitment exercise were holders of a Master degree. Suffice it to say that the present selection exercise was carried out on the basis of different criteria and 'additional relevant qualifications' was but only one criterion among other criteria which the Respondent used in the selection process.
21. We now turn to Ground (ii), namely Appellant's contention that she had wide experience and knowledge in the field of SOW. It can be gathered from her statement of case that the Appellant was on secondment at the Office for a specialised unit during the period ... to ... where she performed the duties of IVR and that she was appointed as STY at the same office during the period ... to.... From the Appellant's particulars of service produced by the Respondent, we note that she joined the service on ...and, on ... she was confirmed in the post of TST. Before her appointment as "Office Organiser" on..., she had also held the positions of CFS and TCPO. During the course of cross-examination, learned Counsel for the Appellant suggested to the representative of the Respondent that the relevant experience for the post of ODR should be as "Office Organiser". If we follow the suggestion of learned Counsel that the relevant experience should be in the capacity as "Office Organiser", after examining the particulars of service for both the Appellant and the Co-Respondent, we find that whilst the Appellant holds the post of "Office Organiser" in a substantive capacity since..., the Co-Respondent held the same position since ... until his appointment as

Temporary ODR on.... Therefore, the Co-Respondent has more years of service as a “Office Organiser” than the Appellant. In any event, we agree with the representative of the Respondent that the Scheme of Service for the post of ODR mentioned that a candidate must have at least four years’ experience “*in CMY and SOW*”, which in our view, must be given its literal meaning. It is to be noted that the Appellant was given the same mark as the Co-Respondent for ‘Relevant experience in SOW’. The Appellant cannot, therefore, complain.

22. Learned Counsel for the Appellant also put questions to the Respondent’s representative concerning the criteria used by the Respondent to assess a candidate. Not being part of the selection panel, the Respondent’s representative did not know how the candidates were assessed with respect to these criteria or how marks were given. We have examined the assessment sheet for the interview exercise. We note that both the Appellant and Co-Respondent obtained the same total marks. A detailed examination of the marks obtained by each of the Appellant and Co-Respondent reveals that whilst she obtained a slightly higher marking than the Co-Respondent for the assessment criteria pertaining to knowledge of duties and responsibilities for the post, the Co-Respondent performed better with respect to the other assessment criteria, for example, with respect to supervisory and organisation skills, communication and inter-personal skills, and personality.
23. In cross-examination, the Appellant agreed that her appointment as STY was terminated in ... on account of her performance in that role and following an adverse report on her work. She was then reverted to her post of “Office Organiser”.
24. The Appellant and Co-Respondent having obtained the same total marks, we consider that it would have been perfectly legitimate for the Respondent to analyse the marks obtained by the Appellant and Co-Respondent with respect to each criterion used and to then determine which one of the two was more suitable for the post, having regard to the nature of the work that an ODR is called upon to perform and the duties attached to the post. We have not seen any cause to intervene in the selection of the Co-Respondent for the post of ODR.
25. Before we conclude, we wish to observe that the Adviser who attended the interview exercise also gave marks, to each candidate. The assessment sheet does not state on what basis the Adviser gave those marks. In the absence of any basis specified on the assessment sheet, it is not possible to have a complete and meaningful analysis of the marks granted by the Adviser to

candidates during an interview exercise. In particular, it is not clear if the Adviser took into account criteria (i) to (vii), or only (ii) to (vii), or any of them at all, when deciding how many marks he will give out of the maximum mark he is allowed to. If it has been the practice so far that an Adviser is allowed to mark differently from other members of a selection panel (i.e. he is allowed to give an overall marking only, without applying any criteria or without specifying the marks for each criterion), we take the view that such an approach ought to be reviewed. Since an Adviser forms part of a selection panel and allocates marks which are subsequently taken into consideration in drawing up a merit list, it is only natural that the Adviser should also follow the same approach and marking practice as the other members of the panel. We, therefore, urge the Respondent to look into this aspect of the interview exercise for future interview exercises in order to ensure that the principles of fairness and transparency are observed.

26. To conclude, after having examined the evidence and the records of the Respondent, we find that there is no cause for us to intervene in the appointment of the Co-Respondent. We, therefore, confirm the decision of the Respondent.