

Det 11 of 2018

If an interview panel has been deprived of an important element which is brought in evidence before the Tribunal, then section 8 (4) (c) of the PBAT Act 2008 may be relevant to remit the case to the Respondent for further consideration.

The Appellant, a GLW performing the duties of GTR at a specialised unit, has appealed against the decision of the Respondent to appoint the Co-Respondents to the post of TSR (formerly GTR until PRB Report 2016).

Appellant's Case

The Appellant averred that he had performed for eight years the duties of GTR at times working alone and also doing night duties sometimes for up to 24 hours for two shifts. He averred that some of the Co-Respondents never worked in such units. He never had any adverse report against him.

On cross-examination he explained that he had been doing the duties of GTR for eight years. He produced at the hearing a letter dated ... from the Administrator who certified that the Appellant had been performing those duties at the said unit from ...till that date. The Appellant averred that he was not paid any responsibility allowance all this time except for the period ... to ... Even then it was the ...Director of the unit who gave approval to the Ag. Executive Assistant without sending a copy to the Ministry. He also explained that he was never paid a night duty allowance despite several requests. He was not even given a letter of assignment of duties and when he asked for such a letter it was refused.

The Appellant was aggrieved because he had a position of authority and he was giving orders to several workers and could not now be reverted to his post. He was expecting that he would be found fit for the job of TSR given that he had been doing such duties and he was not told of any shortcomings in his performance of those duties.

The Appellant conceded that when he applied for the post he did not indicate in his application form that he was performing the duties of GTR.

The Appellant averred that he had the merit, job knowledge and experience, and Respondent had been unfair to him.

Respondent's Case

The Respondent averred that the post was filled from employees of the Ministry of ... who were on a permanent and pensionable establishment and who possessed:

"A. Primary School Leaving Certificate or an alternative qualification acceptable to the Public Service Commission.

B. Ability to speak and write English and French

C. Good personality

Note:

Preference will be given to candidates who show proof of having sat for the Cambridge School Certificate".

The post was advertised on ... and a selection exercise was done internally under delegated powers in ... for the filling of 20 funded vacancies. There were 208 candidates and 16 of them were not found eligible as they did not meet the requirements of the Scheme of Service for the post. The remaining 192 candidates were called for an interview, but 44 of them did not attend the interview and five were disqualified as they did not possess the Primary School Leaving Certificate (PSLC) or did not produce the PSLC.

The remaining candidates were assessed on the following criteria:

- (i) Qualifications
- (ii) Ability to speak and write simple English and French
- (iii) Personality; and
- (iv) Aptitude, interest and motivation

The selection panel established a list of 35 candidates suitable for the post. The Appellant was not on this merit list.

Following the interview, the Respondent offered appointment to the first 20 candidates on the merit list. One of them declined the offer and was replaced by the 21st candidate on the list.

Subsequently 18 additional vacancies were declared and 13 of the 14 candidates left on the merit list were offered appointment while one had opted for an appointment elsewhere.

The post of TSR was again advertised on ... to fill the remaining five vacancies.

The Respondent averred that since the post was filled by selection seniority was not a selection criterion. The selected candidates possessed the required qualification as per the Scheme of service. The post was opened to all employees in the service who met the eligibility requirements.

All the Co-Respondents were reported upon favourably.

The Respondent moved that the appeal be set aside.

On cross-examination, the Respondent stated that the Appellant was never assigned the duties of GTR, except for the period the Appellant was given a responsibility allowance in The Respondent and the representative of the Ministry had nothing in their files to show that the Appellant had been performing the duties of the post for the past eight years. They were not aware of the note from the Administrator that was produced by the Appellant certifying that the Appellant did in fact perform the duties of GTR since

Co-Respondents' Case

The Co-Respondents stated that they would abide by the decision of the Tribunal.

Determination

It is not disputed that the appointments were made by selection and not by promotion. This is as per the Scheme of Service for the post of TSR.

In a selection exercise seniority gives way to qualifications, experience, merit and suitability under regulation 14 of the Public Service Commission Regulations.

The Appellant also avers that some of the Co-Respondents were not working in a specialised unit. This ground of appeal does not hold as the post was open to employees of the Ministry who were on the permanent and pensionable establishment and not limited to employees in a specialised unit.

What is puzzling is the fact that the Appellant had been performing the duties of GTR for some eight years. This was certified by the Regional Administrator posted at a specialised unit. The Appellant produced a copy of the note to that effect at the hearing. Neither the Respondent nor the Ministry was aware of this and they had no record in their files. The representative of the Ministry, who was the Secretary of the interview panel, stated that she was not aware of this fact. It implies that the rest of the panel had not taken this into consideration. The fact that the Administration of the specialised unit had not brought this important information to the attention of the Ministry must not cause prejudice to the Appellant. The onus is on the Respondent and the Ministry to have all the facts which should normally be available in their custody for a proper assessment. True, the Appellant failed to indicate this in the appropriate section in his application form when he applied for the post. It is, however, unfortunate that when the interview panel assessed the Appellant under the criterion "Aptitude, Interest and Motivation" it did not probe into this aspect. The panel completely overlooked the aspect of experience of the Appellant.

The Tribunal sought confidential information from the Respondent on certain issues. On one of them, the Respondent candidly stated that "experience was not a criterion in the selection exercise" This is a surprising statement as experience is one of the core determining criterion in an appointment exercise under regulation 14 of

Respondent's own Regulations. However, the Tribunal feels that the criterion "Aptitude, Interest and Motivation" can be considered as experience.

There is no doubt that the Appellant has the aptitude for the post as he performed the duties for eight years and there was no adverse report against him while he was posted there. As to his interest and motivation it is also clear that he has an inclination for the job as he was performing the duties even if he was not getting the higher remuneration attached to the post of GTR.

The Tribunal asked for the markings under the different criteria and especially as regards the assessment under the criterion "Aptitude, Interest and Motivation". The Tribunal finds that 18 of the Co-Respondents had no experience at all as GTR as from the date of the interview in.... If the Tribunal starts from the date of the advertisement most of the Co-Respondents would not have experience as GTR or only a few months of assignment of duties to that post. It is agreed that assignment of duties does not give rise to any claim for appointment to the higher post. It cannot however be denied that the performance of the higher duties provides aptitude and experience for the post.

The marks obtained under the criterion "Aptitude, Interest and Motivation" are quite revealing. They show that the Appellant scored less marks than most of the Co-Respondents who had no experience as GTR. The others who had no experience as GTR obtained same marks as him. The question then is how the selection panel assessed the candidates on this criterion. It is clear that the subjective assessments of the interview panel regarding the Co-Respondents shrouded the empirical evidence brought by the Appellant regarding his experience as GTR as certified by the Administrator of the specialised unit. Moreover his averment that he had no adverse report while performing the duties of GTR was not rebutted.

The Tribunal finds that the legitimate expectations of the Appellant have been thwarted. It is agreed that the Appellant was not given assignment officially to perform in the post of GTR for the good running of the service and he was refused a letter to that effect when he asked for same from the UNIT when he was posted. The fact remains that Appellant was asked to perform the duties of GTR and this was known in the unit

and the administration. It is a mystery why the Ministry was not made aware of this fact and had nothing in its files. The Appellant expected that the experience he gathered as GTR would help him when the opportunity would occur in the grade. He stated at the hearing that he would find it difficult to go back to his substantive post of GLW, now that he has got accustomed to the post of GTR. He showed that he can manage and supervise workers under him.

The Tribunal, therefore, feels that justice has not been done to the Appellant in this selection exercise as the interview panel was deprived of an important element.

Short of quashing the whole exercise, the Tribunal remits the matter to the Respondent under section 8 (4) (c) of the PBAT Act for further consideration and to find a solution that will give justice to the Appellant.

The Respondent will revert back to the Tribunal at latest in three months' time.