

## Det 18 of 2018

**The mere fact that appointees had worked under the supervision of an Appellant is not a sufficient ground of appeal. If Appellant was then assigned duty in the higher post it was because he was most senior. Seniority is not the overriding criterion in a selection exercise.**

The Appellant, an ACO, is challenging the decision of the Respondent to appoint Co-Respondents Nos 1, 2, 3 and 4 to the post of CO.

### **Appellant's Case**

The Appellant averred that he was appointed ACO since ... and like the six Co-Respondents he had completed the five years service in the post of ACO when he applied for the post of CO. He was the most senior in the grade of ACO after Co-Respondent No 5.

Co-Respondents Nos 1 and 4 worked under the supervision of the Appellant when the latter was assigned the duties of CO.

The Appellant stated that he performed the duties of CO from ... to ... (for nearly 28 months) and from ... to ... (about 45 months) to the satisfaction of the Ministry of ... without any adverse report. He was paid a responsibility allowance. He conceded that the Co-Respondents, with the exception of Co-Respondent No 2 who was never assigned the duties of CO, were also assigned the duties of CO but were assigned duty for shorter periods of time.

Co-Respondent No 3, while she was performing the duties of CO, had a problem in filling one requisition form and a Committee of Enquiry was instituted following which the Ministry issued a warning to her in a letter dated ....

All the Co-Respondents were selected for training courses on a seniority basis and he went on training just after Co-Respondent No 5 and the others came after him.

He averred that he should have been selected for the post as he was ranked 2<sup>nd</sup> on the seniority list. There was no adverse report against him during his years of service. While on assignment of duties he worked alone but the others worked under the supervision of a SCO. He had the qualifications, experience and merit for the post

The Appellant felt that the Respondent had been unfair to him for not selecting him for the post for the reasons given by him.

### **Respondent's Case**

The Respondent averred that the vacancies for the post of CO were advertised on ... by way of a circular. There were 15 applicants and 11 of them, including Appellant, were found eligible. They were convened for an interview on ....

The six Co-Respondents were selected and offered appointment. They assumed duty on....

Co-Respondents Nos 1, 3, 5 and 6 were also assigned the duties of CO.

Co-Respondent No 2 was the only ACO posted to the specialised unit who was not called to perform the duties of CO.

The Respondent stated that the Appellant and Co-Respondents Nos 3, 5 and 6 completed their training course at the concerned department in ... while the three other Co-Respondents completed theirs in...

All the candidates convened for the interview were ACO's reckoning 5 years' service in a substantive capacity and had completed the approved training course at the concerned department. As such they were fully qualified as they met the requirements of the Scheme of Service for the post.

The Respondent averred that it acted in all fairness to the candidates and took into account all the information contained in their application forms.

The post was not a grade to grade promotion but was filled by selection. Seniority was not an overriding factor in a selection exercise and assignment of duty is

made in the interest of departmental efficiency and on the ground of administrative convenience and does not give rise to any claim for permanent appointment.

The Respondent stated that it acted as per regulation 14 of the PSC Regulations, the requirements of the Scheme of Service, the criteria of the selection determined by the Respondent and the performance of the candidates at the interview. Moreover, the Respondent was guided by its regulation 19 (6) to determine the suitability of the candidates for the post.

The Respondent moved that the appeal be set aside.

### **Determination**

According to the Scheme of Service, the post of CO is filled:

*“By selection, on the basis of experience and merit, from among ACOs serving in the Ministry of ... who either possess the Diploma in Institutional Management of the ... and Institutional Management Association (United Kingdom) or have successfully completed an approved training course for ACOs at the Institute of ... provided they reckon at least five years service in a substantive capacity in that grade”*

It is not disputed that the Appellant and the Co-Respondents were all eligible for the post.

As the post is filled by selection, the Respondent was guided by regulation 14 of the PSC Regulations which puts *“qualifications, experience, merit and suitability for the office in question before seniority”*. The ground of appeal concerning Appellant’s seniority over the Co-Respondents does not hold.

Since the Appellant is contesting the appointment of only Co-Respondents Nos 1, 2, 3 and 4, the Tribunal will only direct its attention to the assessment of Appellant and these four Co-Respondents.

The Tribunal was provided with the criteria that were used by the interview panel to assess the candidates who were convened for the interview. The criteria were:

- (1) Additional relevant qualifications
- (2) Relevant work experience
- (3) Communication and Interpersonal skills
- (4) Duties and responsibilities of the post
- (5) Management of staff and stores; and
- (6) Training skills

With regards to the first criterion, the Tribunal finds that Appellant and the Co-Respondents had obtained marks for additional qualifications in addition to the basic qualification requirement, namely for having followed the Training Course in CM organized by the Institute of .... Co-Respondent No 1 had, amongst his other qualifications, a Diploma in ... Management (IVTB) and Co-Respondent No 2 had, inter alia, a Diploma in ... Science (Bombay) and they both obtained full marks under this criterion. Co-Respondent No 3 followed a number of short courses and was also given full marks, which is rather surprising. Co-Respondent No 4 had only a record of Achievement towards the NTC 3 in ... (IVTB) and obtained almost full marks. Appellant followed courses in IT and three other short training sessions and he obtained lower marks than the Co-Respondents. There may be small discrepancies in the way marks were given. However, this criterion carried a low weight and the markings between the Appellant and the Co-Respondents were so close that these did not impact on the overall markings.

Appellant and Co-Respondents Nos 1 and 3 were assigned the duties of CO on the same dates while Co-Respondent No 4 had shorter terms of assignment of duties as CO. Co-Respondent No 2 was never assigned the duties of CO. Further Co-Respondent No 3 was given a warning for not filling one requisition form properly. The Tribunal finds that on criterion No 2 the Appellant and Co-Respondents Nos. 1, 3 and 4 obtained full marks and Co-Respondent No 2 obtained less marks, maybe because the latter had not been exposed to the work of CO.

As regards criterion No 4, it is found that the Appellant scored less mark than the Co-Respondents. Co-Respondent No 3 had high marks on the criterion 4 presumably as the warning administered to her dates back to ... and she may have improved as

there have been no further complaints against her since then. The difference between Appellant's marks and those of the Co-Respondents was small and not enough to impact on the overall markings.

In making his case the Appellant had averred that Co-Respondents Nos 1 and 4 worked under his supervision when he was assigned the duties of CO. This is understandable as assignment of duties is given to the senior-most officers and for administrative convenience as was confirmed by Respondent Since Appellant was 2<sup>nd</sup> in the list of ACO's he was assigned the duties of CO and it is normal that those lower in the seniority list would have worked under him. It does not give Appellant an automatic claim for appointment over and above those working under his supervision

In the overall assessments, the Tribunal finds that the four Co-Respondents whose appointment was contested by the Appellant scored more marks on all the criteria and put them well ahead of Appellant in the overall markings and they were selected for appointment.

The Tribunal finds that the Respondent has not erred in this appointment exercise.

The appeal is set aside.