

Seniority ranking is based on the last selection exercise and not on the date of entry in the service.

The Appellant, a SOH at the Ministry of(the Ministry), is appealing against the decision of the Respondent to appoint the Co-Respondents to the post of SSOH.

Appellant's Case

The Appellant had grounded his appeal as follows:

“(1) my length of service in the Government is forty one (41) years and longer than any of the SOH nominated

(2) I'm on top of my salary scale

(3) I have the qualifications required at the time of entry as SOH. I sat for SC exams in 1975”

In his Statement of Case, the Appellant averred that he was the most senior in the list of 45 SOH who were recruited by the Ministry on.... Appellant joined the Government service on....

He averred that there were minutes of a meeting held on ... duly approved by the Ministry which pointed out that the seniority list of SOH grade was not made as per the PSC Regulations but as per criteria established by the Ministry.

On being cross examined Appellant said that he did not know his ranking after the selection for SOH was made. Further he did not then know how many candidates applied for the post of SOH.

Respondent's Case

Respondent's Representative swore as to the correctness of Respondent's Statement of Defence wherein Respondent averred that, according to the Scheme of service for the post of SSOH, the said post was filled by promotion on the basis of

experience and merit of officers from the grade of ... (restyled SOH in the Civil Establishment Order 1999 following the recommendation of the Pay Research Bureau 1998) reckoning at least five years' experience in that grade.

The Respondent stated that, as per records, the Appellant joined service on ... as casual worker at the WCD and was appointed SOH on ... following a selection exercise carried out on.... When Appellant was appointed SOH he ranked 36th in the grade of SOH while Co-Respondents No 1, 2, and 3 ranked 7th, 8th and 10th, respectively. Prior to the present appointment exercise, these three Co-Respondents ranked 1st, 2nd, and 3rd in the grade of SOH and Appellant ranked 22nd in that grade.

On ... the Responsible Officer (RO) reported three vacancies in the post of SSOH and recommended that the three most senior officers be appointed, thus the appointment of the three Co-Respondents.

Co-Respondent No 1 was assigned duties of SSOH from ... until filling of vacancy. Co-Respondent No 2 was assigned the duties of SSOH from ... until filling of vacancy and Co-Respondent No 3 from ...until the filling of vacancy. Respondent stated that the assignment of duties was made on seniority basis as they were against permanent vacancies. As the Co-Respondents were on continuous assignment of duties it was decided that their appointments would take effect as from the dates the vacancies occurred in accordance with PSC Circular No 2 of 2016. The offers of promotion as SSOH were accordingly made to the three Co-Respondents on ...

The Respondent averred that the appeal was devoid of merits and moved that the appeal be set aside.

Co-Respondents' Case

Co-Respondents Nos 1 and 2 who were represented by Counsel, explained their career paths and indicated that they would abide by the decision of the Tribunal. They however, drew the attention of the Tribunal that they had the academic qualifications and experience for the post. They went through an interview for the post of SOH and they

were assigned the duties of SSOH which gave them a legitimate expectation to be appointed to the post.

Counsel for Co-Respondents Nos1 and 2 submitted and referred to the cases of Heeramun V PBAT (2015 SCJ 269) and Hosanee and 9 ors V PBAT (2016 SCJ 123) which both dealt with the issue of seniority in a selection exercise.

Co-Respondent No 3 decided to abide by the decision of the Tribunal

Determination

According to the Scheme of Service, the post of SSOH is filled *“by promotion, on the basis of experience and merit, of officers from the grade of FFWKR reckoning at least five years “experience in the grade”.*

The post of FWKR was restyled SOH. As Appellant and the Co-Respondents were appointed SOH on..., they all reckoned more than five years of experience in the post and met the requirements for the post.

As was averred by the Respondent, the three Co-Respondents were top of the list as SOH and the Appellant was 22nd on the list. Since the post of SSOH is filled by promotion it stands to reason that the three Co-Respondents be appointed. The Appellant may be under the impression that he joined the service well before the Co-Respondents and he was senior to them. However, for the post of SSOH the starting point is that of SOH and not the dates of joining the service.

The Appellant had shown to the Tribunal the minutes of the meeting at the Ministry which he referred to in his Statement of Case. The Tribunal finds that the Appellant has misinterpreted the tenor of the minutes which in fact showed that the Ministry followed the PSC procedures.

The cases referred to by Counsel for Co-Respondents No.1 and 2 both state clearly that, in a selection exercise seniority is not a paramount criterion. The Supreme Court upheld the Determination of the Tribunal in both cases.

There is no flaw in this appointment exercise. However, this is one of the several cases which have come before the Tribunal regarding appointment by promotion where Appellants are not aware of the seniority ranking in their grades. Had this been known, there could have been fewer appeals in such cases before the Tribunal. It is suggested that, in such cases, the Ministries/Department should call aggrieved officers and explain to them their seniority ranking and the process of appointment by promotion rather than wait for them to come and consult the HR department as they often do not even know that they have a right to obtain this information. This would spare parties tedious and avoidable proceedings before this Tribunal.

The appeal is set aside.