

Det 22 of 2018

If a ground of appeal is bias on the part of the adviser on the selection panel, Appellant must bring proof of such bias.

If the same adviser ranked Appellant high on a merit list in a previous exercise, the ground of bias will fail.

The Appellants are appealing against the decisions of the Respondent to appoint the Co-Respondents to the posts of HL in the Ministry of As both appeals in issue are related to one and the same appointment exercise, all parties agreed to consolidate both matters and that there will be only one determination for both cases.

Appellants' cases

1. Case of Appellant No 1

The grounds of appeal which Appellant No 1 has reproduced in his statement of case are as follows:

I have never been on medical leave or even leave without pay.

I have been doing Acting HL at several places in the District.

I have been interviewed four times and have 40 years of service in department whereas newcomers and people with 10 years of service have already been nominated as HL.

Appellant was not represented by Counsel and during cross examination, he admitted that he was granted sick leave for 2 days in..., 5 days in ... and 4 days in... However, he denied having been granted leave without pay in ... Appellant also stated that if he had not been selected, it was probably because of his qualifications and the replies he made during the interview. He moved that the appointments of the Co Respondent be quashed.

2. Case of Appellant No 2

The grounds of Appeal as set out in the Notice of Appeal and expatiated in his Statement of Case are reproduced below and read as follows:

1. *Better qualifications*
2. *More experience*
3. *One of the person of the interview panel was bias against me because we had a lot of problem in the past till now.(SIC)*

Appellant was represented by Counsel and averred that he holds a pass in ... and He also obtained a Certificate of Achievement from School of ...(IVTB) for basic and advance module and a Certificate of Participation for a Course of HSY.

His contention was that he was better qualified than the Co-Respondent and had acquired relevant experience which the post of HL required. Appellant further averred that he was transferred from the Ministry of ... and to the Ministry of ...as from ... where he had been performing the following duties of HL/ Senior HL over and above his normal duties:

- (a) *In charge of store at ... and is dealing with the Purchasing and Supply Officers at ...Building for receiving and issuing tools and materials required;*
- (b) *Looking after the posting of a certain grade of workers and provision of vehicles around the island;*
- (c) *Typing of all correspondences;*
- (d) *Daily record of attendances; and*
- (e) *Process return of travelling, sick, casual and unauthorised leaves. (SIC)*

Appellant produced evidence that he was being paid an ad-hoc allowance equivalent to two increments worth as approved by the Ministry of However, he admitted in his Statement of Case that the performance of the above duties over and above his normal duties did not automatically give him the right to be selected for the post of HL/Senior HL. Appellant also admitted that all the Co-Respondents were also

qualified for the post as per the Scheme of Service for the Post of HL/ Senior HL but he maintained that he was better qualified than them. He further explained how the duties that he had been carrying would help him in the job of HL. He also stated that he had stopped doing the additional duties since the ... as he had been transferred to

On the issue of bias referred to in Grounds 3 of his appeal, he averred that one of the persons on the interview panel was the SNRI Mr. S. from the Ministry of.... He also averred that he had a long history of clashes with the said Mr. S when he was working at..., despite the fact that he worked under the supervision of another Senior Inspector namely Mr. C. K. He complained that Mr. S. always interfered in his work although he was not answerable to the latter. The Appellant cited a few alleged incidents where Mr S. was involved. He averred that Mr. S. was biased against him and he should have disclosed to the other members about the bad relationship existing between them. However, under cross examination, he admitted that he did not make any complaint about the presence of Mr S. in the interview panel, neither during the interview nor after the selection exercise.

Mr. C. K. was called to depone as witness in favour of Appellant. He stated that he knew the Appellant well and that he was satisfied about his performance at work. He confirmed that the relationship between the Appellant and Mr S was not good and confirmed the various incidents as related by Appellant. He stated that the Appellant should have been the first one to be appointed.

Appellant prayed the Tribunal to:-

- (a) Quash the decision of the PSC and remit the matter back to the PSC;
- (b) Remit the matter, subject to such conditions as it may determine, to the parties for further consideration by them with a view to settling the matter;
or
- (c) Make such other order as it deems appropriate.

Respondent's Case

Respondent averred that the Ministry of ... was delegated the power of appointment for the post of HL/ Senior HL to fill 12 funded vacancies in the Ministry. Respondent also averred that the Ministry received 44 applications and the interviews were carried out on three days. The candidates were assessed on the following criteria-

- (i) Qualification;
- (ii) Experience;
- (iii) Personality/motivation
- (iv) Performance at interview

Respondent averred that the 12 selected candidates reckoned more than 10 years' service as at the date of appointment.

With regards to the case of Appellant No 1, the Respondent mentioned in its Statement of Defence that the Ministry had no records that Appellant had been acting as HL.

In the case of Appellant No 2 Respondent admitted that the latter was serving temporarily at the Ministry of ...as GWKR from ... to ... and as HWKR as from ..., but there was no record that the Appellant acted as HL/Senior HL in that Ministry. The Respondent's representative stated that the Ministry of ... was not made aware that the Appellant was drawing an ad-hoc allowance. She also stated that there was no report whatsoever about the alleged bad relationship between Appellant No 2 and Mr S. Moreover, she stated during cross examination, that she did not believe that the presence of Mr S as advisor in the interviewing panel had been prejudicial to Appellant No 2 and that there was no apparent bias. She even stated that during a preceding interview exercise for the post of HWKR, Mr S. formed part of the panel and that Appellant No 2 was ranked second during that interview.

Respondent further averred that experience was not the sole criterion for selection and the experience referred to in the Statement of Case was not a requirement for appointment to the post of HL/Senior HL.

As it was an appointment by delegated powers, the Assistant Manager Human Resources of the Ministry of ... deponed in favour of Respondent. She stated that the post of HL/Senior HL was selected among the grade of GWKR, REC and HDM and that all the appointees had at least 10 years of experience in their respective grades. She also stated that the selection exercise was done based on the criteria as mentioned above. However, she could not explain clearly what was meant by the criterion "performance at interview". Under cross examination, she admitted that some of the duties associated with the post of HL/ Senior HL were carried out by Appellant No 2 when he was posted at the Ministry of However, she stressed that the panel which interviewed all the Applicants gave more consideration to those who had knowledge of HL/ Senior HL on site of work, i.e. in the field and not in the office. She even added that those who had chosen to work in the office did not acquire experience and knowledge in HL/Senior HL. With regards to qualifications of the candidates, she pointed out that only the basic qualifications required for the post as per the Scheme of Service had been taken into consideration and no further consideration was given to additional qualifications held by Appellant No 2.

Mr S was called to depone as witness for Respondent. He denied having any problem with Appellant No 2 and he stated that he always had a good relationship with him as well as with his colleague Mr. C. He could not explain as to why Appellant No 2 and Mr C. made such allegations against him. He related his versions of facts on the different alleged incidents made by the Mr B. and confirmed by Mr C. He denied that he had been biased during the interview exercise. He confirmed that Appellant No 2 was ranked second during the preceding interview exercise for the post of HDM and that had he been biased against him, he could have penalised him during that interview as well.

Co Respondents' case

All Co-Respondents decided to abide.

Determination

The Tribunal had very often received complaints from Appellants regarding the role played by Advisors in the interview panel. It is true that the advisors are more likely to know the capacity and performance of each candidate because the candidates are well known to them. It is also true that it can also be to the detriment of a particular candidate if the advisor does not like him or her for some other reason known to them only. The Tribunal is recommending that Respondent should be very cautious when choosing an advisor to sit in an interview panel because, at the end of the day, the whole responsibility would fall on the head of the Respondent. Coming to the present matter, the Tribunal will deal with the issue of bias first as it considered it to be a very serious ground of appeal which concerned precisely the role of the Advisor in the interview panel.

The Tribunal paid particular attention to what Appellant No 2 said about the alleged existing bad relationship between him and Mr S, which was supported by the statement made by Mr C. However, the allegation of apparent bias was denied by Mr S. and by the representative of the Respondent. The more so, Mr S. had been in the interviewing panel for a preceding selection exercise for the post of HDM which Appellant No 2 did not deny. Furthermore, Appellant No 2 did not make any complaint about the presence of Mr S. in the interview panel neither at that time nor after, even though up to now the Tribunal has never been convinced that candidates can in fact complain in such circumstances. Taking into consideration all elements put in the presence of the Tribunal, the balance of probability of an existing apparent bias or not in the selection exercise tilts in favour of the Respondent as Appellant No 2 was clearly satisfied with the role played by Mr S as Advisor during the preceding interview exercise when he was appointed HDM. Thus the Tribunal finds no merit in this ground of appeal.

Under grounds 1 and 2 of Appellant No 2 and the only ground of appeal of Appellant No 1, the Tribunal requested for the markings of each candidate which were handed over under confidential cover.

After careful analysis of the markings, the Tribunal has observed that all candidates have received the same number of marks under the criterion

qualification. Here it is worth noting that qualifications should not have been included as a criterion in as much as no additional marks were given for additional qualification. Basic qualifications allow candidates to be eligible to apply for the post only. As regards the case of Appellant No 1, he was well behind those who have been appointed in all the criteria. The Tribunal finds no reason to intervene in his case.

However, the Tribunal is of the view that Appellant No 2 may possess better personality/motivation to carry out the job of HL/ Senior HL. Unfortunately, the Tribunal cannot substitute itself for the Selection Board who had the opportunity to assess all candidates before it made its recommendations to Respondent for appointment. The Tribunal has found no disturbing element in the marking exercise to quash the appointments of the Co Respondents.

The Tribunal took note that the Selection Board recommended a merit list of candidates for eventual appointment as HL/ Senior HL.

Otherwise, there is no merit in both appeals which are set aside.

We order that a copy of the determination be filed in each appeal.