

When choosing an adviser Respondent must ensure that he is qualified in the specific field in order to assess the candidates fairly

The Appellant, a SARCO at the relevant Department of the Ministry of..., is challenging the decision of the Respondent to appoint the Co-Respondent to the post of ARCT.

Appellant's Case

The Appellant averred that he joined the National ARC Department on ... as ARC Assistant. He was appointed ARC Officer on ... and promoted to the post of SARCO on ...

He was the holder of the following qualifications:

- (i) BSc (Hons) Management with Law, University of London
- (ii) Post Graduate Certificate in Recd and ARC Management, University of London
- (iii) MA in Historical Studies, University of Mauritius.

He was a member of the International Council of ARC

The Appellant stated that prior to 2011 the post of ARCT was filled by way of open competition from candidates possessing either a Degree in ARC or a Degree in English, French, or History together with a Certificate in Recd Management and ARC from a recognized institution. Courses leading to the latter certificate did not exist in Mauritius. Subsequently, a Course leading to a Certificate in ARCL Science was mounted and run by the Mauritius College of the Air (MCA). It was a one-year course which was accredited by the University of Technology (UTM) and the entrance requirement was a School Certificate plus one year's work experience.

A new Scheme of Service was prepared and became effective on Under the new Scheme of Service, the post of ARCT was filled from officers of the ARC Officer Cadre. The Certificate in ARCL Science was included as one of the qualification requirements.

The Appellant objected to the appointment of the Co-Respondent on the following grounds:

Ground 1: The Appellant had initially averred that the selection process was flawed inasmuch as the panel of interviewers did not include the Acting Director of National ARC or the Deputy Director who had a better aptitude to assist the Respondent in the assessment of candidates. However at the Hearing the Appellant dropped this ground of appeal.

Ground 2: The Appellant dropped the first part of this ground of appeal referring to his qualms about the filling of his Performance Appraisal Form. On the other hand he averred that the performance of the Co-Respondent could not have been properly done as the officer who appraised the Co-Respondent was herself not qualified to be ARCT and the appraisal was done while the Co-Respondent was acting as ARCT. The Appellant was regular in attendance at work compared to that of the Co-Respondent and he thus had performed better than the Co-Respondent.

The Appellant averred that the Co-Respondent was assigned the duties of ARCT for the period ... up to ... and subsequently extended to end ... on the grounds that the Co-Respondent was the senior most officer. He contested that Co-Respondent was the senior most, only to explain later that the two senior most officers were not qualified to be ARCT and the Co-Respondent who was third on the seniority list was fully qualified. The Appellant said that he was fourth on the list and it was not correct that the Human Resource Executive should report to the Ministry that Co-Respondent was the only eligible officer for the said post of ARCT. The Ag Director was also asked to sign the appraisal report while she was on maternity leave and therefore not on duty and not entitled to sign any document on behalf of the Department, including the Co-Respondent's performance appraisal report.

He then gave information on assignments of duties to other officers. Counsel for Appellant found it surprising that the officer who was not found eligible to be assigned the duties of ARCT could later be assigned the duties of Director of the Department in an acting capacity.

The Appellant also averred that he was regular at work while the Co-Respondent was late at work almost every day. In spite of that, the Co-Respondent was put in charge of the Stores Section which left him less time for his normal work. The Respondent had failed to give due consideration to the attendance records of the Appellant and the Co-Respondent which failure was to the detriment of the Appellant. In this context, Counsel for Appellant had produced a record of attendance for both Appellant and Co-Respondent to buttress his case.

Counsel for Appellant also referred to the PRB Report 2013 where the posts of ARC Officer and SARCO were merged with an elongated salary scale. Counsel stated that as a result both the ARC Officer and the SARCO were given managerial/supervisory responsibilities. The Appellant performed the duties of SARCO since ... while the Co-Respondent was SARCO much earlier.

Ground 3:The Respondent had failed to give due consideration to the qualifications of the Appellant as these were of direct relevance to the knowledge and skills required for the post of ARCT. He gave his qualifications as detailed previously and compared same to those of Co-Respondent who had (i) a BSc (Hons) Tourism and Hospitality Management (ii) a Certificate in Archival Science, accredited by the UTM and (iii) an MBA. He stated that his qualifications were more relevant for the post of ARCT and the Co-Respondent's degree had no relevance to the field of ARC.

Ground 4:The Respondent failed to give consideration to Appellant's membership of the International Council of ARC which enhanced his exposure in the sector not only at local but also at international level.

Ground 5:The Respondent had failed to give proper weighting to the Appellant's qualifications, merit and experience. He was given the duties of Officer in Charge of the ARC Section of another Ministry and he was entrusted with the custody of the L.S. Registry which was kept in the ARC. Copies of notarial deeds were deposited at this Section. He was not remunerated for performing such higher duties.

Respondent's Case

The Respondent averred that the Scheme of service for the post of ARCT was reviewed and a new Scheme of service was prescribed on.... Under the new Scheme of Service "*the post of ARCT was filled*

A. *By selection from among officers in the ARC Officer Cadre who*

- (i) reckon at least five years' service in a substantive capacity in the Cadre; and*
- (ii) possess a degree in the field of ARC from a recognised institution or*
 - (a) possess a degree from a recognised institution; and*
 - (b) possess a Certificate in ARCL Science from a recognised institution".*

NOTE

In the absence of qualified serving officers, by selection from among candidates who-

- "(i) possess a Cambridge Higher School Certificate or passes in at least two subjects obtained on one certificate at the General Certificate of Education "Advanced Level";*
- (ii) possess a degree in the field of ARC from a recognized institution; and*
- (iii) are computer literate.*

OR

Equivalent qualifications to A(ii) and, (i) and (ii) under "NOTE" above acceptable to the Public Service Commission".

There was one funded vacancy for the post and this was advertised on Four candidates applied and two of them, including the Appellant were found eligible and were called for interview on.... Following the interview the Co-Respondent was appointed to the post of ARCT and he assumed duty on....

The selection panel was properly and adequately constituted. It was composed of two Commissioners of the Public Service Commission and an Advisor,

Mr G. S, Director of ..., who was the technical Head of the Ministry. The posts of Director and Deputy Director of the ARC Department were both vacant since The appointment of the Co-Respondent had been made in conformity with the power vested upon the Respondent under its regulation 17 which empowered it to determine the procedures to be followed in dealing with applications in the public service.

The Respondent stated that neither the Appellant nor the Co-Respondent had been adversely reported upon in their Performance Appraisal Forms for the past three years. Appellant had been given excellent ratings during the past three years. The Appraisal Forms were signed by the Appellant and his Appraiser. The Appellant was appraised by his immediate supervisor and his next level supervisor respectively.

On ..., the Respondent had asked for a report from the Ministry. The Acting Director of the ARC Department had replied that both the Appellant and the Co-Respondent had acquired the experience / knowledge of Arc duties.

The Respondent averred that the Performance Appraisal Reports were not the determining factor in assessing the suitability of candidates for a higher post as consideration was given to the requirements of the post, the criteria for selection determined by the Respondent, the requirements of the Scheme of Service and the provisions of regulations 14(1)(c) and 19(6) of the PSC Regulations.

On ..., the Responsible Officer had recommended that the Co-Respondent, then 2nd senior most ARC officer/SARCO to be assigned the duties of ARCT as from the date of assumption of duty until the resumption of duty of the substantive holder of the post who proceeded on vacation leave, followed by leave without pay from ... to.... The officer who then ranked 1st in the grade of ARC Officer/ SARCO was assigned the duties of Principal ARC Officer instead of the post of ARCT as she did not possess the required qualification for the post. The Respondent gave its approval for the assignment of duties of ARCT to the Co-Respondent on Following the resignation of the Director of ARC, the Co-Respondent continued the assignment of duties with effect from ... and until the filling of vacancy.

The Respondent averred that the Co-Respondent and the Appellant ranked 1st and 2nd in the grade of SARCO as per the Departmental Staff List. Appellant was appointed SARCO on ... while the Co-Respondent was appointed to the post earlier.

Assignment of duties was made in the interest of departmental efficiency and on ground of administrative convenience and such assignment of duties did not give rise to any claim for permanent appointment. The assignment of duties of ARCT to the Co-Respondent was in order as he was fully qualified for the post and he was senior to the Appellant. The assignment of duties to the other officers of the Department, were made according to their eligibility to do so.

The Respondent reiterated that there were no adverse reports against the Appellant and the Co-Respondent. They were both fully qualified and all information contained in their application forms were given due consideration. In so doing, it complied with PSC regulation 14, the requirements of the post, the selection criteria and regulation 19 (6) in determining the suitability of the candidates to the post. Co-Respondent was found more meritorious and was appointed.

The Respondent moved that the appeal be set aside.

Co-Respondent's Case

The Co-Respondent stated that there was a circular that was issued to qualified officers in the ARC Cadre inviting them to apply for the post of ARCT.

The Co-Respondent averred that the Appellant did not follow the course leading to the Certificate in Arc Science (hereafter referred to as the Certificate Course). The post required a degree in ARCL Science which the Appellant did not possess.

He said that he was appraised by the Chief ARC Officer and the Acting Director. He mentioned his assignment of duties as ARCT and the training course he followed at the National ARC of Malaysia.

He either took note of or denied the other averments of the Appellant and put the latter to the proof thereof.

On cross-examination the Co-Respondent conceded that his MBA was of a general nature not related to Arc Science specialization.

Determination

At the request of the Tribunal, the Respondent provided under confidential cover the criteria for the assessment of the candidates, the weight assigned to each criterion and the markings of the Appellant and the Co-Respondent.

The criteria were:

- (i) Qualifications: (a) Degree and (b) Certificate in ARCL Science;
- (ii) Relevant work experience \geq 5 years;
- (iii) Communication and Organising Skills;
- (iv) Managerial and Interpersonal Skills; and
- (v) Knowledge of Duties and Responsibilities of the post.

The Tribunal finds that:

- (1) It was in order for Respondent to assign the duties of ARCT to the Co-Respondent. He was 3rd in the seniority list of SARCO but the first two SARCOs were not eligible as conceded by the Appellant himself. Appellant cannot contest this as he was 4th on the seniority list. However, the Appellant is right when he contested the fact that the ARC Department had reported to the Ministry that Co-Respondent was the only one eligible as the Appellant was also eligible. This in no way affected the Appellant as there was only one vacant post of ARCT.
- (2) The Appellant raised the point that the post of ARC Officer and that of SARCO were merged following the PRB Report 2013. The representative of Respondent rebutted this in saying that the officers already appointed SARCO still retained their post as SARCO in spite of the merger. In spite of the merger, the Appellant and the Co-Respondent continued to perform at the level of SARCO and had the opportunity to enhance their experience. The Tribunal notes that the Co-Respondent was appointed SARCO earlier than the Appellant. The Co-Respondent had the opportunity to be assigned the duties of ARCT. Yet, the Tribunal finds that under criterion (ii) Relevant Work Experience, both the Appellant and the Co-Respondent scored equal marks
- (3) Equally important the Tribunal finds that the Appellant scored more marks than the Co-Respondent on criteria (iii), (iv) and (v). The Co-Respondent who

- was assigned the duties of ARCT scored less on criterion (v) which is Knowledge and Responsibilities of the post.
- (4) On criterion (1) Qualifications-Degree the Tribunal finds that the Co-Respondent obtained almost full marks and the Appellant very low marks when they both had a first degree and a Masters degree which were not directly related to ARCL Science
 - (5) There was an averment from the Appellant that the Co-Respondent was irregular at work and produced during the Hearing evidence to support the averment. It would appear that this had not been brought to the attention of the selection panel and Respondent denied same in its Statement of Defence but did not bring evidence to counter this evidence of Appellant.
 - (6) The Appellant averred that the Respondent did not give consideration to the fact that he was a member of the International Council of ARC. The Respondent had stated that all the information contained in the Appellant's application form had been taken into account. In any case, the Tribunal notes that the Appellant scored more marks on the key criteria.
 - (7) The Co-Respondent averred that the Appellant did not have a degree in ARCL Science but this also applies to the Co-Respondent.
 - (8) The Co-Respondent averred that the Appellant did not follow the Certificate Course. The Appellant rebutted this by saying that his Post Graduate Certificate in Recd and ARC Management, University of London was a higher qualification and the selection panel did mark the Appellant fairly under the criterion.
 - (9) The more disturbing element is the marks given by the Advisor on the selection panel. In spite of the fact that the Appellant had more marks on the key criteria, the Advisor gave very high marks to the Co-Respondent and very low marks to the Appellant which wiped out the advantage which Appellant had on the Co-Respondent. The Tribunal finds that the assessment of the Advisor is flawed and defies logic. The Appellant had expressed apprehension about the presence of the Director of ... on this selection panel. The Tribunal agrees that the Advisor was not the appropriate person on the panel as he was not versed on ARCL matters to enlighten the panel on the technical functions of the post. Although Respondent has the prerogative of

choosing the members of the selection panel, it must exercise its function judiciously. In allowing the wrong person on the panel, the outcome of the selection exercise has been vitiated as Appellant scored better on most of the criteria.

In the light of the above findings, the Tribunal strongly believes that the selection exercise has been vitiated by the wrong assessment of the Advisor on the selection panel.

The decision of the Respondent is therefore quashed.