

Det 25 of 2018

The Tribunal has no jurisdiction to entertain an appeal challenging the established seniority list

The Appellant is appealing against the decision of the Respondent to appoint the Co-Respondent to the post of Senior ANW in the Ministry of

Appellant's Case

Appellant averred that his only ground of appeal was that he was more senior to the Co-Respondent and that he should have been appointed as SANW in lieu and stead of the Co-Respondent. He had never been reported for any misconduct or had any adverse report.

He explained in his Statement of Case that he joined the service on the ... in the DECW as GAM until he was transferred to the Ministry of ... now renamed Ministry of ... on the... He stated that he and the Co-Respondent were appointed relief SUR, WO and ANW at the same time and same dates and he did not bother about his seniority. It was when Co-Respondent was assigned duties as AANW that he started objecting and gave his point of view on the seniority issue as the Ministry did not consider the seniority list on the "start dates". He also informed the Tribunal that all his protests were not entertained. He found the decision of the Respondent unfair and humiliating and that he had been unjustly penalised. He moved that his case be reviewed according to its merits.

On being cross examined, he did not agree that he was a DVW as this appellation did not exist at the time. He did not agree that Co-Respondent was a GAM and therefore higher than him and he did not know what the seniority list was. He was aggrieved in ... when Co-Respondent was assigned duty as ANW.

Appellant called a witness, one Mr K., who testified that Appellant was a GAM and that the post of DVW did not exist. He maintained that despite very strong cross examination.

Respondent's Case

Respondent raised a preliminary objection in law in its Statement of Defence which read as follows:

PLEA IN LIMINE

“Respondent moves that the present appeal be dismissed in as much as Appellant is seeking to challenge his seniority placing”. However, his seniority placing has been determined as far back as ... and in the absence of any appeal by the Appellant to the relevant forum. Appellant cannot now contest his seniority placing and is in any event outside delay to do so.

On the merits, Respondent denied that Appellant joined service as GAM on the ... and instead averred that Appellant joined as DVW at the DECW on ... and was redeployed to the Ministry of ... on ..., carrying forward his years of service at the DECW.

Respondent further averred that the Co-Respondent joined service on ... as GAM at the DECW and was redeployed to the then Ministry on According to the Respondent, the Appellant and the Co-Respondent were appointed as CWO on the ... and were subsequently appointed on the permanent and pensionable establishment as WO (restyled AWO) on

As regards the issue of seniority, the averments of the Respondent as per its Statement of Defence are being reproduced for ease of reference.

3. *“(iii) prior to the filling of vacancies in the grade of AWO, the seniority list of employees in the grade of WO was revised by the Ministry, taking into consideration the previous grades of officers concerned at the DECW and their salaries drawn in order to*

determine their seniority placing in accordance with the definition of seniority at paragraph 2 (1) of the Public Service Commission Regulations;

(iv) as Co-Respondent previously held the post of GAM whereas Appellant held the post of DVW (which carries a lower salary than the post of GAM), Co-Respondent took rank before the Appellant in the grade of WO in the seniority list;

(v) Appellant and Co-Respondent were appointed WO on ..., with effect from ... The grade of WO and that of AWOs were merged following recommendation ... of Pay Research Bureau Report 1993 and the new merged grade was known as AWOs. As a result of the merger, no vacancies occurred in ...;

(vi) on the ..., Appellant made a representation to the Ministry of ... to the effect that three AWOs who joined service either on the same date or after him had been ranked before him in the staff for AWOs and requested the Ministry to take remedial action;

(vii) on ..., the Ministry informed Appellant that the seniority list of AWOs had been officially approved by the Public Service Commission and no amendment could be made thereto; and

(viii) Appellant was appointed ANW on ..., whereas Co-Respondent was appointed ANW before that date. (SIC)

The Respondent admits that “*Co-Respondent joined service after Appellant*”.

There had been many questions under cross-examination regarding the above issue and the Respondent maintained its stand. However, the Tribunal noted that the initial list of staff from the DECW was not produced, which is in fact the one which is relevant as regards Appellant.

Co-Respondent

Co-Respondent decided to leave the matter in the hands of the Tribunal.

Determination

As all the parties agreed that the preliminary objection be taken at merit stage, the matter was heard on its merit but the Tribunal made it clear to the Appellant that it had no jurisdiction to entertain any appeal based on the established seniority list. This appointment which is the subject matter of the present appeal, was made on the basis of promotion and merits as per the seniority list already approved. However, the Tribunal considered the matter on its merit to see if there is a possibility to remit the matter to the Respondent under Section 8 (4) (c) and it was revealed during the hearing that the Appellant was already assigned duties as Senior ANW as from the date the Co-Respondent was appointed as Senior ANW. It was also confirmed that all procedures had been initiated for the forthcoming appointment of Appellant to the post of Senior ANW. The Tribunal understands that the issue of seniority will still prevail even when Appellant is promoted. But it is incumbent on Appellant to decide how to challenge same as the PBAT has no jurisdiction on such an issue.

The Tribunal recommends that Respondent tries to probe further in the issue of seniority and restores justice to Appellant if possible.

The Tribunal sets aside the present appeal.