

**Det 27 of 2018**

**All promotion occurring on or after 1<sup>st</sup> April 2016 should be as from the date of assumption of duty as per Circular No 2 of 2016**

Both Appellant and the Co-Respondent were appointed to the post of PIFP on the same date. However, the Appellant is contesting his effective date of appointment to the post.

**Appellant's Case**

The grounds of appeal were as follows:

*“(1) I was acting as PIFP since ..., same apply to Mr M. R.*

*(2) Mr M. R has been appointed to the post of PIFP with effective date..., whereas I was appointed as PIFP on the date of assumption of duty, that is ...*

*(3) Both notifications of appointment are dated...”.*

The Appellant's contention was that his appointment date was different from that of the Co-Respondent though they started acting as PIFP on the same date.

**Respondent's case**

The Respondent averred that the post of PIFP was filled by promotion on the basis of experience and merit of officers in the grade of SIFP reckoning at least four years' service in a substantive capacity in the grade.

The Schemes of Service for the grades of CTRL and ACTRL were being revised in line with the recommendation made in the Pay Research Bureau Report 2016. However, it had been proposed to fill existing vacancies in these two grades under the existing Scheme of Service.

On..., the Responsible Officer of the department reported two consequential vacancies in the grade of PIFP and recommended that the two senior-most SIFP be promoted PIFP in a substantive capacity as follows:

- (a) Co-Respondent, with effect from 01 January, against a consequential vacancy vice Mr S. E., PIFP who was recommended for promotion as ACTRL, with effect from ...;
- (b) Appellant, with effect from the date of assumption of duty, vice Mr H., PIFP, who was recommended for promotion as ACTRL with effect from the date of assumption of duty

On ..., the RO wrote another letter to the Respondent and recommended that the Co-Respondent be promoted PIFP with effect from 11 January 2016 instead of 01 January of the same year , date at which he was appointed to act in the higher post.

The Ministry had approved on ... and ... that the two funded vacancies be filled under the existing Scheme of Service.

On ..., the RO recommended the continued acting appointment of the Appellant and the Co-Respondent with effect from ... until the filling of the vacancies in the grade of PIFP.

On ..., the RO was informed that the Respondent had decided that the Co-Respondent and the Appellant be promoted PIFP with effect from ... and as from the assumption of duty respectively.

Appellant and the Co-Respondent were both offered promotion as PIFP on ...and they both accepted the offers of promotion.

The Co-Respondent, first on the seniority list, was continuously assigned the duties of PIFP since ... and he was recommended by the RO for promotion as PIFP with effect as from the same date vice Mr E. who was recommended for promotion as ACTRL with effect from 01 January 2016. The Co-Respondent was therefore promoted to the higher post with effect from 11 January 2016 in accordance with PSC Circular

No 5 of 2008 which provided that the effective date of grade to grade promotion should be as from either

- (1) Date of assumption of duty or
- (2) Date of actingship/Assignment of duty; and
- (3) Date of vacancy whichever is the latest, provided that there was no gap between the actingship/assignment of duties and the date of offer of appointment.

Appellant was second on the seniority list and he was assigned the duties of PIFP since 11 January 2016. He was recommended for promotion to the post of PIFP vice Mr H who was recommended for promotion to the post of ACTRL as from the date of assumption of duty. As the vacancy was a consequential one, and would occur only after the promotion of Mr H., Appellant's promotion was made in accordance with PSC Circular No 2 of 2016 which stated that all promotion occurring on or after 1 April 2016 should be as from the date of assumption of duty.

The Respondent further averred that the Appellant had already accepted the promotion under the terms and conditions and cannot now contest the effective date of appointment.

The Respondent averred that it had acted in accordance with powers vested in it by the Constitution and the promotion of the Appellant and the Co-Respondents with the provisions of the PSC Circular No 5 of 2008 and Circular No 2 of 2016.

The Respondent averred that the appeal had no merits and moved that it be set aside.

#### **Co-Respondent's stand**

Co-Respondent decided to abide by the determination of the Tribunal.

#### **Determination**

The issue in this appeal is the effective date of appointment of each appointee.

In the case of the Co-Respondent he was assigned the duties of PIFP continuously as from 11 January.... One post of PIFP became vacant as from 1 January ... following the appointment of Mr E. as ACTRL as from that date. The appointment of the Co-Respondent did not take effect as from the date the post became vacant but as from the date he was assigned the duties of PIFP, i.e, 11 January 2016, as laid done in PSC Circular No 5 of 2008.

For the Appellant, it is not disputed that he also was assigned the duties of PIFP as from 11 January 2016 as was the case for the Co-Respondent. His appointment could not be backdated in a similar manner as the Co-Respondent. The second post of PIFP only became vacant when Mr H. vacated the post when the latter was appointed ACTRL with effect from his assumption of duty i.e. .... As the vacancy occurred after ..., the provisions of PSC Circular No. 5 of 2008 no longer applied and it was Circular No 2 of 2016 which applied, namely that the appointment would take effect as from the date of assumption of duty as was the case for Mr H.

There is no flaw in the determination of the effective dates of appointment for the Co-Respondent and the Appellant as they were in accordance with the two PSC Circulars.

It is apposite to note that the Appellant was receiving an allowance while he was assigned the duties of PIFP and that the substantive appointment to the post of PIFP has no effect on his seniority ranking being given that the appointment was by promotion.

The appeal is set aside.