

Det 28 of 2018

Depending on the date of a promotion, Circular No 5 of 2008 and Circular No 2 of 2016 of the Public Service Commission will apply concerning the date when a promotion will take effect.

The Appellant is contesting his effective date of appointment to the post of ACTRL at the FPSR.

Appellant's case

The Appellant was formerly a PIFP. The Appellant's contention was that his date of appointment was different from that of his colleague though he was acting as ACTRL since His grounds of appeal were:

- “(1) I was acting as ACTRL since 11th January. Mr S. E. PIFP was also acting as ACTRL.*
- (2) Both notification of appointment are on the same date but my effective date of appointment is ... whereas for Mr S. E. was earlier*

Respondent's Case

The Respondent averred that the post of ACTRL was filled by promotion. The Co-Respondent was 1st on the seniority list and the Appellant was 2nd. The Respondent conceded that the Appellant was assigned the duties of ACTRL with effect from ..., on ground of administrative convenience.

The Co-Respondent was continuously assigned the duties of ACTRL since ... vice Mr M., also ACTRL, who was assigned the duties of CTRL.

On ..., an additional post of ACTRL was established by way of the relevant Civil Establishment Order.

The Appellant was assigned the duties of ACTRL since ... vice the additional post thus created.

Mr M. was appointed CTRL with effect from ... and a vacancy occurred in the grade of ACTRL as from that date.

On ..., the Responsible Officer (RO) informed the Respondent that the Ministry of ...had approved the filling of the two funded vacancies in the grade of ACTRL. On ... the RO recommended the continued acting appointment of Co-Respondent and Appellant as ACTRL with effect from ... and ... respectively and until the filling of the vacancies.

On ..., the Respondent informed the RO that it had decided to appoint the Co-Respondent as ACTRL with effect from ...and the Appellant was appointed ACTRL with effect from his assumption of duty.

The appointment of the Co-Respondent was made according to PSC Circular No 5 of 2008 which laid down that for grade to grade promotion the effective date should be from (1) date of assumption of duty (2) date of the actingship/assignment of duties started or (3) the date of the vacancy whichever is the latest.

The appointment of the Appellant took effect as from his date of assumption of duty in accordance with PSC Circular No 2 of 2016 which said that “ *all promotions in respect of vacancies occurring on or after 1 April 2016 would be as from the date of assumption of duty*”. The vacancy occurred after the appointment of Mr M. to the post of CTRL. The Appellant was appointed according to PSC Circular No. 2 of 2016, i.e. after the post of ACTRL became vacant and on the day he assumed duty.

The appointment of the Co-Respondent and the Appellant were made according to regulation 19 of the PSC regulations.

The Respondent averred that the appeal had no merit 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 for appointment of each appointee.

In the case of the Co-Respondent it was backdated to 1 January.... This is because the Co-Respondent was assigned continuously the duties of ACTRL as from The post of AC became vacant on According to PSC Circular No 5 of 2008 the Co-Respondent was appointed with effect from ... when the post became vacant and not as from the date he started his assignment of duties as ACTRL which was...

For the Appellant it is accepted that he was assigned the duties of ACTRL since However, the post which he filled became vacant only when Mr M. left the post on This was, therefore, after the cut-off date of 1 April 2016 when PSC Circular No 2 of 2016 came in force, i.e. that promotion should henceforth take effect as from the date of assumption of duty.

The Tribunal finds that the Respondent has acted as per its regulations.

The Tribunal takes note that the Respondent has taken too long to fill the vacancies. Had this been done earlier, the effective date of appointment of the Appellant would have fallen under its Circular No 5 of 2008. However, the Respondent had to wait for the two years required by Mr M. in the grade of ACTRL before he could be appointed to the post of CTRL. This said, it needs to be pointed out that the Appellant was getting an allowance while he was performing as ACTRL and any backdating would not have made him senior to the Co-Respondent as the post was filled by promotion.

The appeal is set aside.