

LGSC Regulation 13 specifies that in a selection exercise Respondent must take into account qualification experience and merit. Experience should be one of the criteria of selection.

The Appellants, DVR at the Municipal Council of ..., are challenging the decision of the Respondent to appoint the Co-Respondent, also a DVR, to the post of DVRHR.

Appellants' Case

All Appellants swore to the correctness of their Grounds of Appeals (GOA).

Appellant No 1:

The GOA of Appellant No 1 were as follows:

- “● working as DVR in the Council since ...
- Have more experience, possessed all necessary permits
- Have replaced as DVR in Specialised Unit (SU) various time
- Co-Respondent has just been nominated DVR thus does not have enough experience
- He asked whether Co-Respondent possessed all the necessary permits.

In his Statement of Case (SOC) the Appellant averred that the Co-Respondent had been appointed DVR since only two years. He pointed out that the work of the SU required a lot of experience. He had doubts as to whether the Co-Respondent had all the required driving permits. Appellant stated that he worked for more than ten years in the SU.

Appellant No 2:

Appellant No 2 averred in his GOA that the Co-Respondent had just been nominated DVR and he did not have enough experience. Appellant worked for 13 years as DVR and had been replacing DVRHR. He had all the necessary permits.

Appellant No 3:

Appellant No 3 averred in his GOA that he had been working as DVR for the past 17 years whereas the Co-Respondent had just been nominated as DVR. Appellant had various permits while the Co-Respondent had just obtained his permit. Appellant had been in service for some 20 years and the post of DVRHR needed someone who had experience. The Co-Respondent did not have any experience since he had just been nominated as DVR in 2016.

In his Statement of Case, the Appellant averred that he had been driving working in the specialised sector everyday. The Co-Respondent was appointed DVRHR in a unit where they did not work on specialised He was of the view that his experience had not been taken into consideration for this appointment exercise. He averred that after he applied for the post someone came to see him to collect information about his work, presumably for the purpose of the selection exercise. He stated that he was working in the normal unit in the morning but in the afternoon he was working in the specialised unit and this was not recorded. In the circumstance, he felt that he was not given a fair assessment.

Respondent's Case

The Respondent averred that the appointment of the Co-Respondent was made following a selection exercise. According to the Scheme of Service, the post was filled by selection from among employees of the Local Authority in the grades of DVR, DVRR, and DVRH, who possess a GVDMG permit.

Note 1 Consideration will also be given to DVRs/SVGR Supervisors who wish to be appointed in the grade DVRHR.

Note 2. In the absence of qualified candidates in the Local Authority, by recruitment of outside candidates residing within the boundaries of the Council who possess:

- (i) The Basic Certificate
- (ii) A GVDMG permit which should have been obtained at least 3 years prior to submission of application; and
- (iii) A good EST.

Note 3 All candidates to be recruited under Note 2 will be required to undergo a medical test to assess their EST.

Note 4 Selected candidates will be appointed in a temporary capacity in the first instance and will be required to obtain a permit for at least two (2) different types of ... as determined by the Council so as to be eligible for appointment in a substantive capacity”

The vacancy in the post was advertised and there were 21 applicants. Fourteen of them, including the Appellants, were found eligible and were called for interview on ... in order to assess their suitability. Following this selection exercise the Co-Respondent was found more suitable and was appointed. The Co-Respondent had joined service as REC on ... and confirmed to that post on He was appointed REC (Roster) on.... He was appointed DVR (Roster) on.... Prior to that he had been assigned the duties of DVR from ... to.... According to Respondent, Co-Respondent had been working in the specialised field since ... but it is not specified how often he did so. Respondent only said that the Responsible Officer (RO) of the Municipal Council reported that the Co-Respondent was posted in the PIF Department since ...

Respondent gave the career paths of the Appellants as follows:

Appellant No 1: joined service as LLD on ... and was confirmed to that post on.... He was appointed DVR on.... He was most of the time not involved in the specialised field. He was assigned the duties of DVRHR from ... to ...and from ... to....

Appellant No 2: joined service as REC on ...and was confirmed to that post on.... He was appointed DVR on.... Respondent conceded that Appellant had 12 years experience as DVR but he was never assigned the duties of DVRHR. Appellant had been involved on and off Council with work of the specialised field.

Appellant No 3: joined service as LLD on ...and was appointed DVR on... .Municipal Council. The Appellant was in the PHD since ...and he was posted in the HSS. On and off the Appellant was called upon to replace DVRs in SVGL section. Since ..., Appellant was shifted to the SVG section.

Respondent stated that the appointment was made after a selection exercise and seniority was not an overriding criterion. The criteria for selection were:

- (i) Qualifications
- (ii) Appropriate permits

- (iii) Personality
- (iv) Communication Skills
- (v) Knowledge of the job

The Co-Respondent had various permits. So did the Appellants.

Respondent took into consideration all the information contained in the Appellants' application forms when they applied for the post and it based itself on the overall performance of the candidates at the interview.

Respondent averred that it followed all procedures and it made the selection according to the requirements of the Scheme of Service for the post and the criteria of selection.

Respondent averred that the appeals had no merit and moved that they be set aside.

Co-Respondent's Case

The Co-Respondent averred that he was eligible for the post and he participated in the selection exercise. He was found more suitable than the other applicants. The Appellants also went through the same process. Co-Respondent stated that he had the required qualifications, experience and know how and the Respondent was fair in its selection exercise. He further averred that all procedures were followed and adhered to. He was eligible and entitled to be selected for the post. He concluded that the appeals had no merit and these should be set aside.

Determination

It is not disputed that the appointment was made by way of selection and there was an interview of candidates.

The Appellants had doubts as to whether the Co-Respondent had the required permits for the post. Copies of the permits of the Appellants and the Co-Respondent were produced at the hearing. The Co-Respondent had the permit required permit.

In an appointment exercise the Respondent as per its regulation 17(1) “ *...shall determine the procedure to be followed in dealing with applications for appointment to the local government service, including the proceedings of any selection board appointed by the*

Commission to interview candidates; and.....". However, the Respondent has to exercise this function judiciously and the role of this Tribunal is to see to it that it is so.

The Tribunal finds that the Respondent had listed five criteria for the interview by the selection panel. The criterion of Experience does not appear among these and none of the criteria allows the assessment of the candidates as to their experience except knowledge of the job to a certain extent. The Respondent has therefore omitted one of the three overriding criteria of its regulation 13 where it is required to "*take into account qualifications, experience and merit before seniority in the local government service*". Experience has been swept under the carpet when experience is a requirement for appointment. In this particular post it is more so as the post is not one of ordinary DVR but a DVRHR. In not putting Experience as a criterion the Respondent has failed to comply with its own regulations and therefore has not taken into consideration:

- (i) the fact that the Appellants had their permits a long time before the Co-Respondent who only obtained his in 2010
- (ii) Appellants Nos 1 and 2 had been working in the specialised unit for a long time, albeit on and off as the Respondent has carefully specified. Appellant No 3 had been transferred to the SVG section since ... and was performing as required since then.

The Respondent averred that the Co-Respondent was performing as required since ... without saying whether this was on an "on and off" basis. It also stated that the Responsible Officer of the Council had certified that the Co-Respondent was posted in the PIF department as from ...and he was performing as required. This is not surprising at all as the Co-Respondent was appointed DVRHM as from that time. The RO did not certify on what the Co-Respondent was working while he was assigned the duties of DVR. The appellants had averred at the hearing that Co-Respondent was most of the time at a specific place.

The Tribunal noted that no marking has been allocated for experience as required in the list of criteria and that the Respondent has flouted its regulation 13. Hence experience of the candidates was not assessed.

The Tribunal finds that the Respondent has put Personality and Communication Skills as criteria. While these could be valid criteria for a selection exercise in other posts, the Tribunal is of the view that these criteria are not crucial for the post of DVRHR.

The Tribunal concludes that the Respondent has not taken into account what it is bound to do by its own regulations, namely to assess experience of candidates.

The Tribunal finds that the Respondent has erred in this appointment exercise and quashes the decision of the Respondent and remits the matter back to it.