

**If a scrupulous analysis of the markings provided does not reveal anything disturbing, the Tribunal will not intervene.**

The Appellant is appealing against the decision of the Respondent to appoint the Co-Respondents to the post of OVS in the Municipal Council of ....

### **Appellant Case**

The Appellant solemnly affirmed as to the correctness of his grounds of Appeal which are reproduced below:

- “1. Applicant has the working experience in as much as he held the said post of OVS from ... until ... without remuneration.*
- 2. Applicant avers that the two persons who have appointed as OVS have no experience whatsoever in the supervising field in as much as they are HAD and LAD respectively.*
- 3. Applicant avers that despite his 17 months experience as OVS, he was not selected for the said post. He contends that he has the experience for this job compared to the two selected candidates”. (SIC)*

In his Statement of Case (SOC), to the correctness of which he solemnly affirmed, Appellant averred that he was appointed as LAR on ...and as BRB from ...to.... He was then appointed as OVS on ... but was reverted back as BRB following a determination of this Tribunal. He further averred that despite his 17 months of experience as OVS, he was not selected for the said post and considered that he performed well at the interview.

The Co-Respondents Nos 1 and 2 were appointed with effect from ... and he contended that he had more experience than them.

As conclusion, the Appellant averred that, on the basis of the above, he had been prejudiced in the relevant selection exercise and, in the circumstances, is seeking redress from the Tribunal.

Under cross examination, he admitted that apart from Experience, there were other criteria which were taken into consideration for the selection exercise. He also admitted that he had taken cognizance of the fact that Co-Respondents Nos 1 and 2 had 31 years' service in the Council.

### **Case of Respondent**

Respondent's representative solemnly affirmed as to the correctness of its statement of defence which included a preliminary objection which read as follows:

*"The Respondent moves that the appeal be set aside in as much as it was not lodged with the prescribed delay of 21 days as from the date of notification". (SIC)*

On the merits, the Respondent confirmed the averments of the Appellant regarding his appointments at the Council and that the Appellant and Co-Respondent No 3 were reverted from the post of OVS to their previous substantive posts after a determination of this Tribunal.

As regards ground 1 of the Appeal, the Respondent averred that during the period Appellant was appointed as OVS in a temporary capacity, that is from the ... to ... and as the initial salary point of OVS was similar to that of BRB, that is Rs..., he was drawing the same salary but upon appointment to the post of OVS in a substantive capacity, he would have been granted 3 increments.

Respondent further averred that ... candidates submitted their applications and 68 candidates including the Appellant, were convened for the interview and the selection exercise was carried out in accordance with the requirements of the Scheme of Service and the criteria of selection required for the post. Respondent added in the Statement of Defence, that it had in the exercise of its powers during the selection exercise, given due consideration to the officers interviewed and had taken into account qualifications, experience and merit as well as the Scheme of Service for the post of OVS.

Respondent also averred that Appellant received the notification of appointment on the day that it was issued that is, on.... It averred that all employees were informed as a copy of the notification of appointment was placed on ... on the notice board near

the fingertech machine even though the Appellant only signed the acknowledgment receipt on ....

In reply to grounds 2 and 3 of the Appeal, Respondent averred that experience was not an overriding criterion for selection, that all procedures had been scrupulously followed by Respondent in compliance with Regulation 13(1)(b) of the Local Government Commission Regulations 1984 and all information pertaining to experience as spelt out in the candidates' application forms, had been duly considered by it.

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

Respondent's representative was cross examined by Counsel for Appellant. He denied that the 17 months that Appellant was working as OVS before his appointment was quashed, gave him an edge over other candidates. He added that it would be assessed during interview under the criterion Knowledge of the job.

At a question from the Tribunal, the representative of Respondent confirmed that at times marks are granted as Experience for assignment of duties He agreed that this was to the detriment of other candidates who had not been given the opportunity to be assigned duties to a higher post even though they were seniormost.

### **Case of Co-Respondents Nos 1 and 2**

Co-Respondents Nos 1 and 2 solemnly affirmed as to the correctness of their Statements of Defence which were identical and were seen and submitted by their Counsel. Co-Respondent No 1 averred that he was appointed as REC on ... and later as OAD on the .... On the..., he was appointed in a substantive capacity as HAD (restyled as Head AD) which required supervision, organising and leadership skills.

Co-Respondent No 2 averred that he was appointed as SCR on a casual basis and confirmed to permanent and pensionable establishment on ... and later appointed as LAD in a substantive capacity on.... He was promoted Senior LAD on....

Co-Respondents Nos 1 and 2 replied to Appellant's Statement of Case and averred that the working experience invoked by the Appellant in grounds 1 and 3 could not hold in favour of the Appellant because the Public Bodies Appeal Tribunal reverted Appellant and Co-Respondent No 3 to their previous post as such appointment was

based upon facts which were concealed from the employer and which vitiated his employment. He also averred that Appellant failed to aver that he was subject to disciplinary proceedings and was severely reprimanded in ... for being absent from work without authorization and for carrying on private work.

Secondly, Appellant had spent 6 days on remand from ...till .... While he was in custody, he filed a medical Certificate claiming sick leave for the same period.

Co-Respondents further averred that they reckoned 31 years of service and had performed supervisory work.

Co-Respondents Nos 1 and 2 contended that their appointment as OVS was sound and not to the prejudice of the Appellant and consequently moved that the Appeal be dismissed.

Co-Respondent No 3 submitted a Statement of Defence but later decided to abide by the decision of the Tribunal.

### **Determination**

Before entering into the merits of the case, the Tribunal found that the Respondent had failed to prove that the Appellant had taken cognizance of the notification of appointment on the.... The version of the witness called by the Respondent to support its point in law was not precise and at times even contradictory and could not be relied upon. Moreover, the representative of Human Resources of the Council was not even able to say exactly how the notification was made. However, the Tribunal was in presence of a document witnessing that the Appellant received the notification on the....

In light of the evidence produced before the Tribunal, it set aside the preliminary objection of the Respondent and considered the appeal on its merits.

It is not disputed that Appellant and the Co-Respondents were qualified for the post of OVS. The only issue that was intensely canvassed by all parties was about Experience. The Tribunal reminds all parties that Merit also is a criterion under Regulation 13 of the Local Government Service Commission Regulations 1984.

A scrupulous analysis of the markings provided to us by the Respondent showed that there was nothing disturbing in the Qualifications criterion. As for the criterion Merit, the Tribunal could not intervene as it is the prerogative of the assessors to give marks according to their own subjective assessment.

On the criterion of Experience, the Tribunal notes that the Respondent is referring to any experience the candidates may have of the post he/she is applying for. The Tribunal feels that Experience should refer to the post a candidate is actually occupying to see whether he/she is apt to apply for a higher position. In this case then, the selection panel cannot give a zero mark for Experience and finally choose a candidate for appointment to the higher post. This would be unreasonable in the Wednesbury sense.

The aptitude of a candidate for the post applied for can best be assessed on the basis of a criterion of Knowledge of the Job where he can be tested on his future responsibilities. This would be a more logical and reasonable way to assess a candidate.

The Tribunal notes that neither the Appellant nor the Co-Respondents received marks for Experience. If we consider the averment of Appellant that he should be given marks for Experience for having worked for 17 months as OVS before being reverted, this should also apply to Co-Respondent No 3 who was also appointed and reverted at the same time as the Appellant. Had the full marks been allocated for Experience to Appellant and Co-Respondent No 3, Appellant would have been still far below the three Co-Respondents.

Under these circumstances, the Tribunal finds no reason to quash the decision of the Respondent and therefore the appeal is set aside.