

Det 38 of 2018

When a Hearing reveals that a Co-Respondent was not eligible for a post as per the Scheme of Service, and he has been reverted by Respondent to his previous post, there is no live issue anymore in an Appeal which concerned precisely his non qualification.

This is an appeal concerning the appointment of POSR hereafter referred to as “the post” in the PGD.

Appellant’s case

Appellant solemnly affirmed to the correctness of her single Ground of Appeal (GOA) as follows:

“N.M lacks technical qualifications as at II B. as per Circular Note ...which I posses”. (SIC)

Appellant solemnly affirmed to the correctness of her Statement of Case (SOC) in which she expatiated the GOA as follows:

1. She joined the PGD as MM/Senior MMBR on
2. She had previous to that date seven years’ experience in the relevant field.
3. She had the academic qualification for the post.
4. She applied for the post on....
5. She then reckoned five years’ service and she provided details of all her technical qualifications.
6. She also possessed a Certificate in WBN in DRWR and a Certificate of Achievement in Training on Team Building and Bonding, Civil Service College.
7. She attended the interview and along with copies of certificates, she handed a copy of Certificate of Service from a private company.
8. On ... she was notified of the offer of appointment to Co-Respondents and Co-Respondent No.1 declined the offer as he had accepted another post.

9. She averred that Co-Respondent No 2 did not possess the technical qualification at B of the Scheme of service for the post i.e. *“National ... Certificate (Level 3) in the field, Record of Unit Credit (formerly a Record of Achievement) in LA or in PRP whereas I possessed the full National ... Certificate (Level 3) in PRP. Co-Respondent No 2. possessed the National ... Certificate (Level 3) in PRP, FNG and BB, which is a certificate in a different field/sphere of the PRP Industry other than PRS and as such this certificate is not relevant for the post of POSR which belongs to the PRS field”*.
10. Co-Respondent No 3 has been appointed with the same technical qualification that she possesses, namely the National ... Certificate (Level 3) in PRS.
11. She also affirmed that she was not under any adverse report.

She prayed the Tribunal to review the appointment made and remedy the unfairness caused to her as she believed that she should have been appointed in lieu of Co-Respondent No 2.

Co-Respondents' Stand

All three Co-Respondents decided to leave the matter in the hands of the Tribunal.

Hearing

The State Attorney informed the Tribunal on ... that the Respondent had on ... decided that

“(i) the whole selection exercise for the post of POSR, which was advertised on..., be cancelled;

(ii) the appointment of the three officers be terminated forthwith and they be reverted to their last substantive appointment in the PGD and take rank in their respective grade according to their initial date of appointment:

(iii) the post of POSR be re-advertised”.

According to records available in files, the interview for the post of POSR and PM/FOR were carried out on the same day by the same Selection Panel in view of common candidates for both posts.

On ... the case was called for Hearing and the Appellant's Counsel informed the Tribunal that there were 2 interviews scheduled on the same day at the Public Service commission for the post of PFOR and PSOR. The interviews were merged and candidates were interviewed for the two posts at the same time. He was of the view that both selection exercises should be cancelled.

During the Hearing the Representative of Respondent stated that it was the Mauritius Qualifications Authority (MQA) which said that the qualification of Co-Respondent No.2 was not equivalent to the requirement of the Scheme of Service. She stated that it was the policy of the Commission to cancel the whole exercise and not just for the unqualified candidate.

Counsel also stated that Co-Respondent No 1, who was appointed in both posts, dropped one post, the Respondent was left with only two appointees. They then appointed another candidate from the merit list, one Mr ST.

On ...the case was called Proforma and the Tribunal informed parties that confirmation had been received confirming the merging of the interviews for the two posts.

Appellant's Counsel submitted that the Respondent should demote the candidate not qualified for the job and appoint the next person on the merit list.

State Attorney representing Respondent referred to Determination 6 and 17 of 2014 where the Tribunal quashed the whole selection. Regarding the second post, she added that there was no appeal.

The Tribunal requested for written submission from both Counsel.

Submissions of Counsel for Appellant

Counsel for Appellant submitted that Respondents' stand is "*utterly inconsistent*" because there was only one selection exercise for the two posts and if the "*whole selection exercise*" is cancelled because it is flawed for one post then it cannot stand for the other post.

He argued that *“it is not in the interest of justice to go by the policy of reverting back the 3 appointees from the POSR. And it will cause further unfairness still, if the Respondent brings consistency to its unjust policy, i.e. cancel the selection exercise for the two posts and revert back all the appointees in the post PM/FOR ALSO”*.

He explained that the only reason for Respondent’s decision is that one appointee (Co-Respondent No 2.) did not have the required Trade Certificate, *“which had escaped Respondent’s eyes and mind”*.

He therefore suggested that Co-Respondent No 2. only be reverted and appoint the next meritorious candidate on the waiting list.

He underlined that this had been the policy of Respondent in the recent past concerning candidates at the PGD and he referred to an exercise concerning the post of MM/SMMP in which appointment was made on ...to 7 persons. One of them was not qualified and his appointment has been terminated and the other six appointees are still in post. This was not rebutted.

Submissions of Counsel for Respondent

Counsel submitted that at this late stage the Tribunal did not have jurisdiction as it is only concerned with an appointment exercise and disciplinary action. Cancellation of the selection exercise did not fall under any of these two instances.

Concerning the appointment for the post of “PM/FOR” the appointees were fully qualified for that post and Respondent did not need to cancel this selection exercise.

Counsel further averred that these grounds were not raised in the GOA and it was now outside delay to raise them.

Determination

Concerning the issue of jurisdiction the Tribunal feels that it has jurisdiction on any matter pertaining to an appointment exercise.

Respondent cannot at leisure decide to cancel an exercise and penalise those who have participated in such an exercise in such an unreasonable way without the Public Bodies Appeal Tribunal (PBAT) being able to pronounce itself on the matter.

The Tribunal has considered all the facts brought before it in this case and has come to the following conclusions:

The Respondent is totally at fault for not having proceeded with its screening exercise with due care. As a result, Co-Respondent No 2 who did not possess the relevant qualification was not eligible to be called for interview under the Scheme of Service. But not only was he called but he was appointed following the selection exercise.

It is only during the Hearing of this appeal that full light was shed on the whole process.

Since the Appeal is only concerning one post, that of POSR, the Tribunal cannot pronounce itself on the other post. The Tribunal allows the appeal as far as Co-Respondent No 2 is concerned which was the basis of Appellant's appeal. Since Co-Respondent No 2 has been reverted to his substantive post the Appellant's prayer has been satisfied and there is no live issue anymore. The only issue left is the one concerning Co-Respondent No 3 which is not an issue regarding Appellant in this appeal. As the said Co-Respondent No 3 has now entered an appeal against his reversion, we will deal with that issue in the new appeal.