

## PUBLIC BODIES APPEAL TRIBUNAL

No. D/39 of 2018

In the matter of:-

1. Sattiss CONHYE
2. Gajendra GEEANE
3. Marie Clivy Sheila Wendy LIM SHUNG

**Appellants**

v/s

**Public Service Commission**

**Respondent**

and

1. Trishna SOOKLALL
2. Vibhushan SENEDHUN
3. Dhanisha GOPAUL
4. Nushreen Begum JEENALLY
5. Devianee DHURMEA
6. Chintamanee MEETUN
7. Bhavnah KOMUL (declined offer)
8. Sanjeev Kumar LECKRAZ
9. Vyoumesh KAWOL
10. Divambal LUTCHMANEN
11. Subashini Amnee COOTAPEN
12. Pushpa Priyadarshini SEEPAUL-CHOO LHUN
13. Kavinah RUHEE
14. Shakeel Sen MAHADOO

**Co-Respondents**

### **Determination**

This is an appeal by three Appellants concerning the appointment of 11 officers to the post of Scientific Officer/Senior Scientific Officer (Fisheries) (SO/SSO). The Appellants prayed that the selection exercise be quashed and reversed.

## **Appellants' Case**

Appellant No. 1 solemnly affirmed to the correctness of his Grounds of Appeal (GOA) which set out the following:

1. He had 19 years experience in the Ministry of which 15 years as Technical Officer (T.O.). He felt that his experience as Field Assistant had not been taken into consideration. He was assigned duties as Acting SO on five occasions.
2. He possessed a Diploma in Fisheries and a Master Degree in Aquaculture and Ocean Studies.
3. He had performed well in the interview.
4. Three Officers did not hold a substantive appointment in the grade of Technical Officer at the vacancy closing date. One was called for the interview and two others were not called for interview which was held on 02 to 04 October 2017 but were convened for an interview on 01 December 2017.

In his Statement of Case, Appellant detailed his qualifications. He explained that, even though the three candidates called after the others were in fact not appointed, the selection exercise was not done in all fairness.

Appellant No.2 solemnly affirmed to the correctness of his GOA in which he averred that he had a Diploma in Fisheries and a Masters' Degree in Aquaculture and Ocean Studies.

He stated that he had more experience than the Co-Respondents as he had 19 years experience at the Ministry of Fisheries of which 15 years as T.O.

He was Field Assistant prior to being a T.O. He had been performing as SO from 13 June to 22 July 2005.

In the Planning Division of the Ministry he alleged having performed the same duties as a SO for 15 years. He claimed experience in the Import and Export Section and the Seafood Hub.

He stated that *“it has been a policy decision of the Ministry for internal intake to consider candidates among T.O having at least 4 years experience”*. But this policy has not been respected.

He also raised the issue concerning the candidates who were called for interview despite not being eligible at the closing date for application.

In his SOC, Appellant stated that, though the Scheme of Service did not provide for a minimum years of experience, Respondent had a duty to take on board the years of experience *“to ensure fairness and meritocracy”*. He further stated that he had not been adversely reported.

Appellant No. 3 solemnly affirmed to the correctness of her GOA in which she averred that she possessed a Diploma in Fisheries and an MSc in Aquaculture and Ocean Studies. She claimed 28 years of service in the Fisheries Department including 15 years as T.O. and averred that Co-Respondents had less experience than her.

She stated that she was convened for the interview through a written notification by post but as she was on official mission abroad together with four other candidates, she could not attend the interview on 4 October 2017. She also stated that she was never called by phone unlike the other four candidates and had to enquire from Respondent. She then received confirmation of the need for her to attend the interview on 01 December 2017 at 9.30 a.m. In addition, she stated that having had only 2 days' notice, she could not prepare herself fully.

She also raised the issue of three candidates who were not eligible for the post as they did not hold a substantive appointment in the grade of T.O. at the closing date and were called on 01 December 2017, a date scheduled for officers who were abroad.

In her SOC, she also averred that she had never been adversely reported and it was her legitimate expectation to be appointed.

## **Co-Respondents' Case**

Co-Respondent Nos 1-6 and 9-11 were represented by Counsel and filed a common SOD. Co-Respondent No 1 solemnly affirmed to the correctness of the SOD on behalf of all the others.

The main points averred in the SOD were:

1. Work experience was never a criterion of selection for the post nor was a minimum years of service a requirement.
2. It was the "merits" of the candidates holding substantive appointment in specific grades in the Fisheries Division in distinct specialised disciplines which counted.
3. Some Co-Respondents had also been assigned duty as SO/SSO but that this was not a criterion for selection as it was made clear to officers that assignment of duty would not give them any claim for permanent appointment.
4. As regards Appellant No.2's averment concerning the policy decision of the Ministry to consider candidates having at least four years experience, Co-Respondent denied same.
5. The Co-Respondent averred that "*they are better qualified than the three Appellants as demonstrated by a factually correct matrix of their respective qualifications and experience. All three Appellants hold an undergraduate Diploma and a postgraduate degree whereas all of the Co-Respondents No. 1 to 6 and No. 9 to 11 have BSc undergraduate degrees coupled with at least one postgraduate degree*".
6. Co-Respondent Nos 2, 4, and 5 had double post graduate degrees.
7. The Co-Respondent averred that they all were all well appraised in the PMS during the last few years.
8. Appellant's feeling that they performed well "*is merely their personal subjective appreciation*".
9. *The selection exercise was carried out by the Respondent correctly, in all fairness and transparency and in accordance with the Scheme of Service and rules of natural justice (SIC).*

Co-Respondent No. 8 solemnly affirmed to the correctness of his SOD in which he stated that *“he has been duly appointed and selected lawfully, pursuant to a sound selection process which cannot be impugned on flimsy grounds”*.

He however averred that he had been victim in the selection process as his ranking had been unfavourably upset and the issue was the subject of another appeal before the Public Bodies Appeal Tribunal.

Co-Respondent No. 8 contended that *“Applicant holds a diploma in fisheries as opposed to a required degree in Fisheries related subjects”*. He *“was head of project in long term monitoring of coral reef eco system of Blue Bay and Balaclava marine parks. He was also project leader for coral farming. He was leader of a team to Agalega for stock assessment of sea cucumbers”*.

### **Respondent's Case**

The Representative of Respondent solemnly affirmed to the correctness of the SOD in which Respondent stated that:

1. *“The post of Scientific Officer/Senior Scientific Officer (Fisheries) is filled by selection from among officers who hold a substantive appointment in the grades of Principal Technical Officer (Fisheries), Senior Technical Officer (Fisheries) and Technical Officer (Fisheries) and who possess a degree in the relevant fields as laid down in the Scheme of Service, prescribed on 01September 2015”*.
2. Eight vacancies were reported by the RO of the Ministry. The post was advertised on 14 April 2017and thereafter 3 additional vacancies were reported for the same post.
3. 41 out of 44 candidates who applied for the post were found eligible and were convened for interview held on 02, 03, 04 October 2017 and 01 December 2017.
4. On 14 December 2017, 11 T.Os. were appointed to the post in a temporary capacity as from the date of their assumption of duty.

5. One officer declined the offer and 10 T.Os assumed duties on 21 December 2017.
6. Respondent gave a detailed list of the qualifications of Co-Respondent while admitting that Appellants did disclose their qualifications in their application form. It also provided a document describing the qualifications of Appellants and that all of these qualifications had been taken into consideration.
7. Respondent also gave a detailed description of the terms of service of Appellants and Co-Respondents.
8. Respondent also averred that all details concerning experience had also been taken into consideration.
9. It averred that seniority was not an overriding criterion in a selection exercise.
10. Respondent also provided details concerning assignment of duties of some of the Appellants and Co-Respondents.

Some Co-Respondents had never been assigned duties as SO/SSO and in any case any assignment of duty as SO/SSO did not give any claim to appointment to the higher post as it was done merely for administrative convenience.

Respondent averred that all experience gathered by candidates and disclosed by them was taken into consideration.

Regarding the candidates who had not been convened for the interview, Respondent averred that following representations made by the Trade Union to the effect that two candidates had been eliminated on the ground that they did not hold a substantive appointment in the grade of T.O. (Fisheries). The Ministry provided information that the two officers hold a substantive appointment in the grade of T.O. (Fisheries) with effect from 09 January 2017.

The two candidates had indicated in their application form that they joined the grade of T.O on 09 January 2017 and would be confirmed in January 2018.

They were therefore convened for interview on 01 December 2017 and were interviewed by the same panel.

Respondent averred that all parties had been favourably reported. Respondent averred that following their performance at the interview a merit list was drawn. Concerning Appellant No.3, Respondent maintained that it had contacted her by phone to convene her for interview as it did for the other officers who were on mission abroad.

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

At the request of the Tribunal, Respondent sent the mark sheets concerning Appellants and Co-Respondents under confidential cover for the eyes of the Tribunal only. The criteria had already been communicated as follows:

1. Qualifications;
2. Additional Relevant Qualifications;
3. Relevant Work Experience;
4. Communication & Interpersonal Skills
5. Duties and Responsibilities of the Post;
6. Knowledge of Organization and management Skills; and
7. Knowledge of Research and Training.

On the issue of the three candidates who have been challenged as not being eligible at the time of application, it was not clear when their appointment were actually backdated. But in any case, as they were not appointed this has little bearing on the exercise.

Appellants scored full marks on Relevant work Experience which is not the case for some of the Co-Respondents.

Under the criterion Qualifications all Appellants and Co-Respondents were marked which was not called for as they should have been at par for the eligibility criterion. Appellants were given marks for their Diploma as stated by Respondent in its SOC, which, in our view, was not warranted as the minimum qualification required

for the post was a degree. They were eligible because they had a Master's degree. By the same logic, the Co-Respondents were given high marks for their first degree according to Respondent. This is not in order as the degree is the qualification requirement for eligibility. By giving marks for the Diploma of the Appellants and the degree of the Co-Respondents this upset the overall markings and tipped the balance in favour of the Co-Respondents. The whole exercise is thus flawed.

The Tribunal therefore quashes the appointments of Co-Respondents and remits the matter to Respondent under section 8(4) (b) of the Public Bodies Appeal Tribunal Act 2008.

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**S. Aumeeruddy-Cziffra (Mrs)**  
Chairperson

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**G. Wong So**  
Member

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**M. Oozeer**  
Ad hoc Member

**Date:.....**