

Det 03 of 2019

Markings allocated by the members of an interview panel do not necessarily show anything unfair. The Tribunal will then not intervene.

The Appellant is a CPO who is appealing against the decision of the Respondent to appoint the Co-Respondent to the post of Deputy DIC in the Ministry of

Appellant's Case

The Appellant solemnly affirmed to the correctness of her Grounds of Appeal (GOA) and her Statement of Case (SOC). She relied on the following grounds:

Ground 1.

Appellant was officially involved in many more projects, activities and relevant exchanges than Co-Respondent, and these required both leadership and interpersonal skills, and which showed that Appellant had more experience in these areas than Co-Respondent.

Ground 2.

Appellant has been involved in many more projects, activities and relevant exchanges requiring managerial and problem-solving ability and in fact Appellant had to solve urgent problems in the day to day activities.

Ground 3.

A number of projects and policy drafting which were allotted to the Co-Respondent were never completed by him and these projects had to be remitted to Appellant to be completed, thus showing the professional competence of the Appellant.

Under ground 1 Appellant averred in her SOC that since her appointment as CSO in ..., she had been assigned the organization of several events.

She also averred that she was given more responsibilities and more work than the Co-Respondent and that she discharged all the responsibilities successfully. She

was multitasking unlike the Co-Respondent. Furthermore, she added that the Co-Respondent failed to be at the level expected of him when he was given higher responsibilities in the organization of certain activities. She even mentioned that a diplomatic incident occurred when the Co-Respondent was assigned in..., the organization of an important event.

As regards ground 2 of the GOA, she averred that she possessed urgent problem-solving capabilities. She mentioned that she arranged for placing a permanent electric transformer with adequate power supply at ... thus avoiding the payment for a temporary supply to the Board every year. She added that she had to solve the problem of an uneven ground and ensure the uprooting of trees and levelling of grounds and used her problem-solving skills to ensure all arrangements for the event to be completed on time in.... She also mentioned that she was called to lead the Invitation unit to ensure the launching of invitations for the whole Ministry from ... to....

Appellant expatiated on ground 3 by averring that Co-Respondent took vacation leave when he was assigned as responsible officer for the project of ... round table of Ministers in ... and that she was called to oversee the project without being granted Acting Assignment for the post of Deputy DIC. She added that she was reallocated assignments which were originally assigned to Co-Respondent. Appellant averred that she was able to cope with a heavier work load than the Co-Respondent over the years, draft policies related to CA and managed the organization of several events.

Appellant admitted in cross examination that Co-Respondent was never under report and was senior to her on the seniority list. However, she rested her case on the ground that she acquired more experience while performing more work load than the Co-Respondent. She also admitted that experience was not the sole criterion for a selection exercise. She also explained that she was involved in the drafting of several relevant Bills. However, she denied that she was never involved in organizing the most important celebration.

Co-Respondent's Case

Co-Respondent solemnly affirmed as to the correctness of his Statement of Defence.

In reply to ground 1 of the SOC, Co-Respondent averred that he was appointed CPO in ..., whereas the Appellant was appointed as CPO later and thus had acquired 4 more years' experience in all aspects of the job. He also averred that he was responsible for very high-level events, visit of high-level personalities as well as the implementation of various projects. Respondent denied that Appellant was successful in all events organized by her.

Co-Respondent denied the averments of Appellant as laid down in ground 2 of the SOC. Co-Respondent averred that he possessed excellent managerial and problem-solving skills and that he had been re-assigned the organization of a main Celebration ... which was originally assigned to Appellant. Several Projects related to the relevant Ministry assigned to Appellant had not progressed and had not been implemented by Appellant. Co-Respondent also averred that the different projects falling under the responsibility of Co-Respondent over the years had been successfully implemented. He was also responsible of renovating a list of ... sites. He mentioned that the installation of a permanent electricity supply through a generator was made by the CEB under recommendation of ESD and not by the Appellant.

As regards ground 3 of Appellant, Co-Respondent denied all the averments contained therein and averred that, as it was the practice, there were changes in schedule and this could not be considered as reallocation for reasons of non-performance. Co-Respondent mentioned that he had been contributing regularly to the preparation of budget estimates and at the Committee of Supply in the National Assembly and he was also actively involved in the revision of certain legal provisions for relevant entities.

He also added that there was a general reshuffling of responsibilities in the Ministry and this did not mean that the work was left undone and that it had to be redistributed.

Co-Respondent moved that the Appeal be set aside.

Respondent's Case

The Representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence (SOD). Respondent averred that according to the Scheme of Service prescribed on ..., the post of Deputy DIC was filled by selection from CPO who reckoned at least two years of service in a substantive capacity in the grade and who

- (i) Possess good interpersonal and leadership skills;
- (ii) Have managerial and problem-solving skills; and
- (iii) Demonstrate professional competence.

The Respondent was informed of a vacancy in the post of Deputy DIC on ... and the vacancy was advertised by way of Public Service Commission Circular Note No ... of Three candidates applied for the post and a selection exercise was held between the Appellant and the Co-Respondent as they were the only two candidates who were found eligible for the post. Respondent averred that all information relating to work experience and responsibilities as disclosed by the Appellant and the Co-Respondent in their respective application forms as well as their leadership and interpersonal skills and their managerial and problem-solving skills were taken into consideration by the selection panel. Respondent produced the selection criteria upon which markings were allocated.

Respondent mentioned that it was not aware of the extensive allocation of work to Appellant as averred by her. Furthermore, Respondent averred that both Appellant and Co-Respondent had been performing the duties of CPO since their appointment to that post and had not been adversely reported in their performance appraisal forms.

As regards assignment of duties as Deputy DIC, both the Appellant and the Co-Respondent had the opportunity to do so for the purpose of administrative convenience only.

The representative of the Respondent was cross examined by Counsel of Appellant on the issue of assessing the candidates on the criterion “managerial and problem-solving ability”. She stated that questions were asked on each criterion which included leadership and managerial skills and it would depend on the way the candidates responded to these questions and the answers as well. It was also put to her that problem solving skills was more practical and could not be assessed in interview. She maintained that there was an advisor of the Ministry in the selection panel and that he was in a better position to assess the candidates.

Respondent averred that it had acted in all fairness and moved that the Appeal be set aside.

Determination

The Tribunal paid a very close attention to each ground of appeal and has come to the conclusion that each of them is interrelated. The Appellant had based her appeal on the different jobs she had been doing in the Ministry and the Co-Respondent had just denied all the averments of the Applicant. The Co-Respondent in turn submitted a Statement of Defence explaining the different jobs he performed as a CPO. The Statement of case of Appellant as well as the Statement of Defence of Co-Respondent looked like a tug of war on the allocation of duties to both of them without any evidence to support their respective averments. The Tribunal is of the view that both Appellant and Co-Respondent are employed as CPO and as such they are bound by their profession to carry out any work related to their domain. Whatever complaints that there may have been about the misallocation of duties should be dealt with at the level of the Ministry and do not fall within the jurisdiction of the Tribunal.

However, the Tribunal considered it judicious to ask for the Performance Appraisal Forms of both candidates as well as the markings which were provided under confidential cover. A scrutiny of the Appraisal forms showed a slight difference in favour of the Co-Respondent. However, the marks allocated to each candidate showed that the Co-Respondent scored more marks than the Appellant. The Tribunal recognises that the markings allocated depended mostly on the assessment made by the

interviewers. The Tribunal did not find any disturbing feature which would call for any intervention on its part in the present matter.

Therefore, the appeal is set aside.