

**When an officer is on approved study leave abroad, he keeps his time of service. But that period cannot count as experience in the post he holds.**

**The Tribunal has no power to investigate before hearing an appeal. It can only adjudicate and base itself on all the evidence available from all parties concerned. It can however seek further information from the Public Body.**

These appeals concern the appointment by selection of four officers to the post of CM/CDH, hereinafter referred to as the post.

In view of the fact that several officers concerned, both as Appellant and Co-Respondent, were based abroad, the Tribunal agreed to listen to each one out of turn and that those who had to proceed to their different overseas post were to instruct their Counsel for the purposes of cross examination.

It was agreed by all parties that only one Determination would be given as all cases concerned the same selection exercise.

### **Appellants' Case**

All Appellants averred that Co-Respondent No 4 "*does not have at least five years service in a substantive capacity in the grade of SF*" and that she did not have five years continuous service in that grade.

### **Appellant No 1's Case**

Appellant No 1 solemnly affirmed to the correctness of his Grounds of Appeal (GOA) and Statement of Case (SOC). His appeal was specifically against Co-Respondent No 4 and was based on the following grounds: He was "*better qualified, more experienced and more senior*".

He averred that he had "*worked in more challenging and demanding environment*" than Co-Respondent No 4 and that she "*failed to satisfy the qualifications required for the post*". He also averred that the interview panel "*lacks the competence, experience and knowledge to gauge and/or to assess*

*“his competence in international affairs”* and whether he is a *“skillful negotiator and communicator with demonstrated qualities of maturity”* (sic).

In his SOC he listed his academic qualifications and described his career path. He averred that Co-Respondent No 4 had only been posted to only 3 trips, much less than him and that the decision of Respondent not to appoint him but instead to appoint Co-Respondent No 4 was *“unsound, unreasonable and contrary to the principles of equity and natural justice”*.

It was also *“unfair, unwarranted, unjustified and smacks of favouritism...”* and because the decision was *“unfair, unreasonable, unjustified in as much as the Co-Respondent No 4 failed to satisfy the qualifications required for the post”*. He added that she had *“spent less than five years in the substantive capacity of SF”* as she *“had spent about one and a half year outside Mauritius for postgraduate full time studies in Australia”*.

He averred that in addition to the ASF, *“the interview panel consisted of the CEO of a Group and a Senior Chief Executive of the Ministry of ... who was also the Chair of the interview panel”*. He averred that the choice of the ASF was not wise or impartial as the interviewees were answerable to her in the exercise of their functions.

### **Appellant No 2's Case**

The Appellant solemnly affirmed to the correctness of his GOA and SOC after having agreed to expunge from his SOC issues not related to or within the ambit of the PBAT. He also agreed not to refer to his previous case of 2013. His GOA were as follows:

- “1. Due process not followed.*
- 2. My level and quantity of experience may not have been properly assessed and objectively evaluated and considered.*
- 3. The interview process was flawed*
- 4. The process of data and information collection to establish my profile, job experience and job knowledge may have been unfairly established. The Ministry may not have created a level playing field*

*to ensure that all candidates have equal opportunities and equal chances to acquire job knowledge and experience and therefore face the PSC selection process without being discriminated upon.*

- 5. Given my extensive diplomatic experience, field work, the number of international conferences/seminars/workshops I have attended (all directly relevant to the work of my Ministry) and my intensive contact within the organisation, I believe that none of the selected candidates can beat me in terms of job experience and knowledge, especially not someone with a mere basic degree (having nothing to do with relevant skill, management and finance) in Textiles Technology. Nor someone just passing the 5 years of SF experience and last on the seniority list and eligible list (and ten years below me on the seniority list)*
- 6. None of the selected candidates are as qualified as I am with degrees and THREE Master degrees so relevant to the job description and specification. Though I know this is not a determining criteria but it is a very important one.*
- 7. There are wild rumours that at least three of four selected candidates (all my juniors on the seniority list) have high contacts and otherwise connected".*

The Appellant insisted on the lack of level playing field for all candidates. He averred that he had more job experience and knowledge than those appointed. He laid emphasis on his qualifications. He averred that he was "flabbergasted" with the manner in which the interview was carried out in particular he pointed at one member who tried to penalise him and not allow him to finish his replies.

The Appellant described in great detail how questions were put to him during the interview and how he answered and how, according to him a member tried to destabilise him. He averred that there was ploy, a preordained strategy and that he left the interview and "knew that something had been cooked already and well conceived".

He then averred conflict of interest of the Chairperson of the panel with regard to the Co-Respondent No ... who according to him was not eligible as she had gone on study leave and he questioned as to whether this counted as service.

In his SOC Appellant referred to rumours and made numerous averments concerning family and other ties which he did not substantiate to prove that there had been any conflict of interest or political interference. He also questioned the presence of the ASF on the interview panel averring "mala fides" on her part.

He averred that proof of his higher responsibilities had not been taken into consideration by the panel and that he was not allowed to put in his pay slips to show that he had assumed higher responsibilities. He requested the Tribunal to investigate in these matters before the Hearing.

On being cross examined, he maintained that the time spent in Australia by Co-Respondent No 4 cannot count as service. He said that it was a Master's degree but did not constitute experience as SF. He explained that he could not complain at the time of interview as he was intimidated but he felt that the PBAT was the proper forum for complaint. He said that he himself had carried out interviews by creating an enabling environment for the candidates to answer in the best conditions.

He maintained that Co-Respondent No 1 was related to a high profile person and produced a few letters from, his immediate superior, who was related to Co-Respondent No 1 who worked under him while they were all in the office overseas. He also maintained that Co-Respondent No 4's father was SP when the Chair of the panel worked at the same Ministry.

He maintained that, even if qualification was not a criterion, those with higher qualifications should have an advantage.

Appellant admitted that during his 16 years of service he was on leave without pay for ... years and ... months. He said that he had never requested leave with pay.

### **Appellant No 3's Case**

Appellant No 3 solemnly affirmed to the correctness of her GOA and SOC.

Her first ground concerned Co-Respondent No 4.

Her second ground was that she was two years senior to Co-Respondent No 4.

Her third ground was that she “*spent more time working as SF than the appointee*”.

Her fourth ground was that, in the past, the PSC had refused to take into consideration time spent outside the Ministry as time of service but did not bring any evidence regarding this previous practice.

In her SOC she gave a list of her qualifications and particulars of appointment as well as her involvement in the various Directorates of the ministry as well as in different overseas missions. She also listed the times when she performed higher duties and shouldered additional responsibilities.

She then explained why she had appealed against the decision of the Respondent to appoint Co-Respondent No 4. She requested the Public Bodies Appeal Tribunal to have Respondent's decision “revoked, quashed, reversed, set aside or otherwise dealt with as the Tribunal shall deem fit and proper”. She averred that in appointing Co-Respondent No 4 Respondent did not adhere to its Regulation 14(1)(c).

She filed several documents (Annex A-G).

On cross examination Appellant No 3 said that the difference between 5 years service or 5 years experience concerning Co-Respondent No 4 is a legal issue.

She did not agree that regarding service Co-Respondent No 4 satisfied the Scheme of Service.

## **Appellant No 4's Case**

The Appellant solemnly affirmed to the correctness of his GOA and SOC. In his GOA, he averred that he had "*more than the appropriate qualifications and experience*". He also averred that he had never been informed of any shortcomings, had extremely positive ratings in the PMS and had very favourable comments from all superiors with whom he worked.

He averred that his effective years of service had not been considered in an appropriate manner.

In his SOC he pointed out that the vacancy notice (Circular Note 3 of 2017) does not mention any requirement as to academic or professional qualifications. He however listed his qualifications and experience. He averred that since he did not have questions regarding the requirement of "*sound administration and managerial abilities*" the panel must have been satisfied with the Report submitted by the Ministry.

He averred that as regards his skill as a skilful negotiator and communicator, he had some achievements which he listed in particular when posted in sensitive regions in time of war and coup in Pakistan for example.

He maintained that he was not asked appropriate questions to gauge his skills. He produced the Scheme of Service of SF and a document (an *exequatur*), which cannot be issued to anybody who is subservient to another officer, to prove that he headed a consulate in ... doing more than advisory work. He kept maintaining that he was working as head of a "Mission" reporting directly to the SFA and not to the HCM overseas His PMS was signed sometimes by the SP and sometimes by HCM.

With regard to Co-Respondent No.4 he stressed that

*"government service is carried out at specific and specified locations. In the case of foreign service officers, it is either at the Ministry/Missions overseas or at specific venues of meetings and conferences for extremely brief periods.*

*University campuses do not fall within that purview despite the fact the salaries are paid.*

*In the circumstance, it is clear that the requisite number of years of service are not there and there is a shortfall of 5 months of the requirement for the post”.*

### **Appellant No 5’s Case**

Appellant No 5 solemnly affirmed to the correctness of his GOA in which he averred that he was better qualified than the selected candidates and was never informed of any shortcomings. He always had a favourable PMS Report. He averred that an interview of 17 minutes was unreasonable and bordered arbitrariness to decide on the relative suitability of candidates.

He averred that he reckoned more experience than Co-Respondents Nos 1, 2 and 4 and he appealed to the Tribunal to have the decision of the Respondent reviewed, amended, quashed or otherwise dealt with as the justice and fairness of the case may require.

He also solemnly affirmed to the correctness of his SOC in which he expatiated on his GOA. He listed his different postings when he was assigned duty as well as the various Directorates of the Ministry where he worked and served at least at MCL.

He averred that in his overseas postings he was always the Administrative Head or CA. He averred having been exposed to relevant multilateral, bilateral and protocol issues. He had participated in various negotiations at international level.

As regards his qualifications which he listed, he said that he also followed several courses to improve his knowledge and skills. He averred that, in view of *“the complete absence of transparency on how the competencies, skills and qualities required for the post were assessed there is an appearance of unfair, unjustified assessment of ...”*

On being cross examined he did not agree that Co-Respondent No 4 had no interruption of service. He questioned the fact that Co-Respondent

No 4 had submitted a Performance Appraisal Form (PAF) during the time she was not carrying out any duty on behalf of Government.

He agreed that the selection process was not based just on the interview. He however averred that the selection of candidates cannot be solely based on a short interview of 17 minutes with four or five questions.

As regards experience he had 14 years of "*actual and tangible experience as SF*" and Co-Respondent No 1 only 13 years, Co-Respondent No 2 only 12 years and Co-Respondent No 4 only four and half years. Only Co-Respondent No 3 had 14 years.

He averred that Co-Respondent No 4 had not always served as No 2 in the Directorates or abroad. She has had a very short experience of two and half years as Administrative Head of a diplomatic mission.

He averred that he was No 2 and Administrative Head during all his postings overseas and No 2 in the Directorates where he served as SF.

He also said that he was astonished that he was not fit to be appointed as MC but was later, after the interview, assigned duty as MC in a directorate of the Ministry.

### **Co-Respondent's stand**

Co-Respondents Nos 1, 2 and 3 had communicated their Statement of Defence (SOD) but in the end they decided to abide by the decision of the Tribunal and their unsworn SOD were not taken into consideration.

Co-Respondent No 4 solemnly affirmed to the correctness of her SOD prepared by her Counsel to whom she gave instructions. In all the appeals she mentioned that she satisfied "all the criteria in relation to qualifications and experience required for the post...". She listed her qualifications and summarised her various postings and responsibilities and described herself as "an experienced, high calibre professional ...".

She strongly denied that there had been favouritism and maintained that "her appointment was based on the criteria set out in the Scheme of Service". She also averred that she had "6 years and 5 months as First



Secretary in a substantive capacity as at...". She explained that she had been awarded a scholarship for a Master of Arts in International Relations in 2012 and had an Australian Leadership Award. She attended the course while being on full paid leave and signed a five year bond with the Ministry.

She averred that according to practice and procedure, when leave with pay is granted to an officer there is no "break in service", the more so as it is clearly stated in the contractual agreement for the said scholarship that "*the awardee's employer is a party to the plan particularly where the employer is holding the awardee's position open*".

She averred having 18 years service in the Ministry since she joined the Ministry in 1998. She further averred that Appellant No 1 had not challenged the interview exercise in which he had willingly participated. The issue of partiality of the interview panel had not been included as a Ground of Appeal and could not be considered.

Under cross examination she explained that her Oxford Postgraduate Certificate was obtained while she was working at the Ministry and she obtained leave with pay for 9 months from 2000 to 2001. She agreed that she had not served in the multilateral Economic Directorate but stated that it was not her choice. She agreed that Appellant No 1 had more postings than her but averred that experience is a qualitative matter and not a quantitative one.

She considered that she was as experienced as any other the more so as she had worked in "diplomatic hubs" in "areas of strategic importance". She agreed that Appellant No 1 had also been posted in Geneva, had assumed position of Head of Chancery and participated in high level technical preparations for international fora and summits and he had also been CA. She averred that she had also been Head of Chancery and CA in ... and later in ....

Concerning the time when she was in Oxford, Co-Respondent replied in cross examination that she had a "Chevening Scholarship" to cover her expenses even though she was drawing her salary. She said that she was not aware if anyone else apart from her had been granted leave with pay

precisely because the course was funded by a scholarship. She agreed that it was the same situation regarding her course followed overseas. She agreed that during the periods of scholarship abroad she was not working for the Government of Mauritius nor acquiring experience in any of the duties of the post.

However, she maintained that her studies had direct relevance to her work. She could not explain why she thought that her work ethics gave her a better profile and agreed that it was for her supervisor and others to evaluate.

She agreed that there was no appraisal PMS made for her while she was in Australia. She agreed that in mathematical terms she only had four and a half years experience.

### **Respondent's Case**

The Representative of Respondent solemnly affirmed to the correctness of its SOD in each appeal and averred more or less the same thing in each appeal.

It stated that all the fourteen candidates who applied for the post were found eligible and were convened for interview on.... The four Co-Respondents were appointed in a temporary capacity for a period of six months in the order given.

It averred that experience was not the only criterion and seniority was not an overriding criterion, that Appellant and Co-respondents were all qualified for the post and that it had acted in all fairness in conformity with section 89 of the Constitution.

It then listed the qualifications of Appellants and Co-Respondents as well as their career path including their postings at Headquarters and abroad. It also averred that experience was not acquired only by virtue of postings to missions abroad and the choice was made based on the overall performance of the candidates to select the most suitable candidates.

It averred that assignment of duties was done for administrative convenience and did not give any claim for permanent appointment to a post

and that the time allocated for interview (about 20 minutes) was adequate for assessing the candidates.

It further averred that all parties were favourably reported upon and that questions put during the interview were set in accordance with the criteria of selection and provisions of the Scheme of Service *“keeping in view the duties, responsibilities and complexities of the post”*.

Respondent insisted on the fact that all Co-Respondents reckoned the required five years service in a substantive capacity in the grade of SF.

Respondent averred that it has been informed that the type of work was challenging and demanding and that it had taken into consideration all information concerning Appellants.

Concerning Co-Respondent No4 the Respondent averred that she was on study leave with full pay from ... to... to follow a full time course under the ADS, which leave counted as part of her service and did not constitute a break in her continuous service as per section 4.9.4(3) of the Human Resource Manual concerning officers who are granted leave with pay which count as part of employment. Respondent maintained that Co-respondent No 4 did reckon more than five years service in a substantive capacity in the grade and was therefore qualified in accordance with the Scheme of Service for the post.

Concerning the interview panel, Respondent averred that it consisted of the Chairperson of the PSC, as Chair, the Commissioner of the PSC, as member and the AFS who had the technical and professional expertise as Adviser to assist the panel. Appellants did not make any observations concerning the members of the Panel then or immediately thereafter.

Respondent denied that there was any tactic by any member to destabilise Appellant No 2 and that it was merely his personal opinion. All Questions were set in accordance with the criteria of selection, the provisions of the Scheme of Service and keeping in view the duties, responsibilities and complexities of the post. Respondent also averred that *“questions were put*

*forward in order to assess the suitability of candidates, to gauge their reactions in a difficult situation as the post of CM/CDH is a high level post and incumbents would be required to work in ... abroad and deal with challenging situations”.*

Concerning an averment of Appellant No 3, Respondent denied that it had in the past refused to take into consideration time spent outside the Ministry as time of Service.

It further averred that there is no record that Appellant No 4 headed a mission in a substantive capacity and handled all those responsibilities averred by him during all those years.

In conclusion Respondent averred that it gave consideration to the requirements of the post and the Scheme of Service, the criteria of selection, performance at the interview, suitability of candidates and the provisions of regulation 14 of the Public Service Commission Regulation.

She produced the criteria of selection as follows:

1. Relevant Experience (5 Yrs Minimum);
2. Knowledge of Regional and International Affairs;
3. Negotiation and Communications Skills;
4. Personality, Maturity and Integrity;
5. Responsibilities of the Post;
6. Administrative, Managerial and Supervisory Skills and
7. Aptitude.

Respondent's representative averred that the five appeals had no merit and moved that they be set aside.

On being cross examined concerning the criteria of selection, Respondent's Representative confirmed that relevant experience was “*the first and foremost criterion*”. She also averred that Respondent could not say if there was a hierarchy in the criteria but there was a weight given to each

criterion. She maintained that it is the performance at the interview that has determined that the candidates possessed these skills.

On being referred to paragraph 4.10.7 of the HRM Manual, Respondent's Representative confirmed that Co-Respondent No 4 did sign a bond.

On being questioned as to how the 7 criteria fit in the criteria of Regulation 14 i.e. qualification, experience and merit and suitability, Respondent's Representative replied that these are overall criteria.

She also explained that when an officer is abroad there is no PMS Report but there is an Ad Hoc Report.

On being pressed on the issue of service to the effect that it was only for pension purposes she maintained that it was for all purposes.

On being questioned on the legal basis which supported the averment that "*When an officer is granted leave with pay, such leaves count as part of the employment and does not constitute break in service*", she cited section 4.9.4(3) of the Human Resource Management Manual and handed a copy.

She explained that leave with pay is granted to an officer who is sponsored, is given release by the Ministry but when a person embarks on his own then he must apply for leave without pay. This was based on a circular of the Ministry of Civil Service and Administrative Reforms.

She said that it was quite common for officers to apply for such a scholarship. She could not reply to the question as to whether while Co-Respondent No 4 was on study leave she did any work related to her office as First Secretary.

Respondent's Representative confirmed that Respondent did ask for Performance Appraisal Forms and that all the candidates had a good record. Normally these are requested for the last three years and so the period when Co-Respondent No 4 was abroad did not fall in that period.

Mrs P. from the public body was called as a witness concerning the issue of scholarship. She explained that generally leave with pay is under a

scheme regarding In-Service Training. Donor countries like Australia provide courses, and when public officers submit their application, the Ministry seeks approval from the relevant Ministry if they have been selected. The advertisement for the scholarship is on the Ministry's website.

Concerning leave without pay she confirmed that it concerns officers applying on their own for other types of courses.

On being questioned on how officers are chosen for courses, she explained that the Ministry issues a circular about courses being offered and the officers apply directly to the donor country with a copy to the relevant Ministry. But they must ensure that they will get release from their Ministry.

Then there is a selection panel on which an officer from the relevant Ministry sits.

She produced several documents to support her evidence.

### **Submissions of Counsel**

Counsel for Respondent submitted that the HRM Manual guides the Civil Service and it is clear that for those on leave with pay for all benefits and conditions of service it is not counted as a break in service the more so that Co-Respondent No 4 was bonded. She said that all the candidates being of high calibre, it was at the interview that one candidate could be seen to have an edge.

Counsel for Appellants Nos 4 and 5 referred to section 15 of the Pensions Act and maintained that the HRM Manual relates to continuation of service for pension purposes.

Counsel for Appellant No 3 referred to Regulation 14 of the Public Service Commission Regulations and highlighted the fact that Circular Note No ... of ... did not mention qualification and nothing specific was said about experience or seniority. He wanted to know if the circular takes precedence over the PSC Regulation. He submitted that the criteria of selection were *ultra vires* the Regulation and therefore the selection exercise was null and void. He added that the issue of relevant experience also

impacted on the other criteria. He then questioned the fact that it was impossible to establish the skills of the candidate at an interview and that over reliance on the interview was the second flaw. Concerning the issue of whether leave with pay constituted service or not, he referred to the case of Goburdhun v PSC (cited above). He submitted that the HRM Manual was not a legal document and it was not binding.

He maintained that, when one was studying and not working in a substantive capacity, it could not amount to time of service compared to all other colleagues who was actually working in their posts.

Appellant No 2, who submitted himself in the absence of his Counsel, stated that, when the Scheme of Service was drafted, service means “in service, at your desk” or doing operational work.

Counsel for Co-Respondent No 4 submitted that while Co-Respondent No 4 was in Australia she was undergoing “in service training’ and could be called back at any time. She could not be penalised otherwise officers would not be motivated to pursue additional job related studies. He submitted that whatever experience she had when working abroad in difficult situations should count not just when it was in her capacity as SF.

### **Determination**

The Tribunal has considered all evidence brought before it in this appeal and decided to seek the following information under confidential cover from Respondent which was provided for the eyes of the members of the Tribunal only.

1. The weight attached to each criterion.
2. The markings and
3. Documents forwarded by Appellants and Respondent with the respective application form
4. The PMS of Appellants and Co-Respondents.

It must be stated from the start that academic qualification was not a criterion of selection and higher qualifications could not be considered. As for seniority it is not an overriding criterion in a selection exercise.

It is very clear that Appellants and Co-Respondents all had excellent appreciation in their PMS. All the details as listed by them in their applications forms were duly considered by the selection panel and no serious evidence has been produced by Appellants to show the contrary except with regard to Co-Respondent No 4. The other candidates concerned had long years of service in the Ministry and of experience as First Secretary. Clearly some of the averments of Appellants were factually wrong. For example, Appellant No 1 did not know that apart from the AFS the panel was composed of the Chairperson and one Commissioner of the Public Service Commission. However, nothing in what was said about the competence of the panel members can be accepted by the Tribunal in view of the fact that these were general comments based on the perception of the candidate, largely based on their ignorance of who was on the panel.

Concerning the length of time of the interview, this issue keeps cropping up in several appeals before the Tribunal. However much it is understandable that to grant only 15-20 minutes when there are large number of applicants, in this case, in view of the level of responsibility of the post perhaps more time could have been more appropriate. The frustration of Appellants is legitimate even though, in itself this does not constitute a flaw, the more so as all candidates were on a level playing field in this respect.

As concerns the Adviser, candidates often feel ill at ease as they have worked directly with the officer concerned. Who else could have stepped in as Adviser as the officer must be higher in rank than the candidates. Expertise in the field is absolutely important and the AFS was the most appropriate person to sit as Adviser and precisely know the value of each candidate and the effort put in by them as well as their competence. The AFS had 20% of the total number of marks which is the usual practice and she gave good marks to all Appellants and Co-Respondents and the Tribunal saw no unfair advantage on



her part concerning any applicant. The two other members on the panel also gave their marks in a fair manner except for Co-Respondent No 4.

An analysis of the mark sheet did not strike the Tribunal as being unfair concerning candidates generally except the fact that Co-Respondent No 4 was marked under the criterion “experience more than five years” which clearly was wrong as this criterion was quite precise. Respondent cannot decide on the criteria and then adapt it.

Clearly as regards Co-Respondent No 4, the Respondent has been unreasonable and given an uncalled for advantage to Co-Respondent No 4 whatever be the mark given. Counsel for Respondent was quite clear about the fact that no markings should have been given under the criterion experience. It is a question of principle and fairness to other candidates. And in fact, that mark given did affect the next candidate on the merit list as the difference in marking is marginal.

Regarding the averments of Appellant No 2 that some candidates were politically and otherwise connected, the Tribunal could not consider this since no evidence was brought that the panel members were not independent. Even if any candidate was related to a member of Government, nothing can prevent that candidate from being selected by Respondent, unless it is shown that at least one panel member was himself related or directly concerned by a candidate and should have challenged himself, which was not the case.

Regarding all the averments of Appellant No2, the Tribunal could not of course “investigate before the hearing”. As per the PBAT Act 2008, the Tribunal is not empowered to investigate but only to adjudicate. Proceedings before the Tribunal are not inquisitorial but adversarial.

All averments of Appellant No 2 concerning the member who tried to destabilise him cannot be considered as one of the purposes of an interview is to see how candidates react under stress. When it concerns a post of that calibre, it is difficult to believe that only one candidate had this negative feeling going as far as to speak of a “ploy” without any serious evidence being

brought. In fact the marking shows otherwise. All candidates seemed to have done well and there is little in fact to demarcate them.

Regarding Appellant No 4 concerning his averment that he served in ... as head of mission the document produced only referred to consular work.

As regards Appellant No 5, his averments concerning the fact that he was assigned duty to a post which he did not obtain through selection, this is normal as assignment is done for administrative convenience and is usually done on a seniority basis.

The only real issue in these appeals concerns Co-Respondent No 4. All Appellants contested her appointment on the grounds that she was not eligible to be called for the interview on the premise that she did not qualify under the Scheme of service regarding the requirement for applicants to have served for five years as First Secretary in a substantive capacity.

Since it was not challenged that Co-Respondent No 4 did follow a full time course in ... between ... and..., Counsel for Respondent on this issue stated clearly that this did not constitute a break in her continuous service. Indeed Respondent referred to section 4.9.4 (3) of the HRM Manual. Counsel however conceded that Co-Respondent No 4 did not have 5 years experience.

Clearly section 4.9.4(3) of the HRM Manual refer to "*Any period of break or leave without pay or secondment to outside bodies (whether approved service or not) shall be deducted in determining length of service*" which did not apply to leave with pay for inservice training. It has been averred that this is only for pension purposes.

The Pensions' Act referred to does not at all refer to the issue of leave with or without pay. We will therefore rely on the HRM Manual 2011 which incorporates the recommendations of the Report of the Pay Research Bureau PRB 2008 and the PRB (Errors, Omissions and Clarifications) Report 2008. It sets out the procedures regarding the application of rules, regulations and conditions of service in force. An intelligent reading of the manual clearly

means that leave with pay counts as service otherwise no officer would accept to go on paid leave to study.

Counsel for Appellant No 3 had referred the Tribunal to the case of Pradeep Goburdhun V/s PSC and Anor IPO Lutchmeeparsad Ramdhun (2010 SCJ 83). In that case Appellant had been on leave without pay and been posted in another Ministry whereas the Scheme of Service required that for promotion to the post of Principal Information Officer, officers had to be in the grade of IOS who reckon at least four years in a substantive capacity in the grade". The Supreme Court found that interpreting his period of assignment should be included to cover the four years' service would offend the clear words of the text.

In the case before the Tribunal, the Co-Respondent No 4 was not assigned duty in another capacity in a different Ministry. She was on study leave. Therefore she was eligible to be called for the interview but could not be marked under the first criterion.

Further Appellant No 3's averment that the criteria were *ultra vires* Regulation 14 of the PSC Regulation does not hold as the said Regulation refers to overall criteria whereas the selection criteria are chosen by Respondent to respect the Scheme of Service while at the same time taking into consideration qualification, experience and merit.

The submissions of Counsel for Co-Respondent No 4 that she did not need to have 5 years as SF but could cumulate her other experience does not hold. This criterion is specific. The fact that she was marked gave her a slight advantage over some of her other colleagues who applied.

However, this does not constitute a flaw which affects the whole selection exercise and the appointment of the first three Co-Respondents is not affected as they were further up in the merit list.

In this respect the Tribunal has based itself on the case of G. Appadu v/s PSC (2003 SCJ 29) where there were four appointees, and the Supreme Court quashed the appointment of two of them but maintained the decision to appoint the two other officers.

The Tribunal therefore has no choice than to quash Respondent's decision concerning Co-Respondent No 4, and under section 8(4) (d) of the PBAT Act 2008, the Tribunal orders the Respondent to readjust the merit list and restore justice to the other applicants who have been affected by that wrong marking.