

- **Qualifications obtained after the interview are not relevant.**
- **If one candidate was wrongly marked, the Tribunal will request the PSC to correct and readjust the merit list.**
- **The Tribunal will not however intervene if the overall marking of a candidate does not reveal anything unreasonable**

This is a case contesting the appointment of Deputy RT by the Respondent. It is related to another appeal entered by three Appellants concerning the same selection exercise but contesting a first and second batch of appointees. In the first batch there were in all 43 appointees. In this case the Appellant is contesting the appointment of Deputy RT in the second and third batch only but the Tribunal will be analysing the whole selection exercise.

Appellant's Case

Appellant entered two appeals against Co-Respondents Nos 1-9 in the 2nd batch of appointments and against Co-Respondent in the third batch hereafter referred to as Co-Respondent No 10. His two appeals have been consolidated.

He solemnly affirmed to the correctness of his Grounds of Appeal (GOA) and Statement of Case (SOC) which were the same in both appeals. In his GOA he based himself on the following:

He averred that he was better qualified in various fields, had 35 years of work experience in the relevant sector, had relevant work experience and demonstrated leadership and managerial skills and that, while he was Deputy RT from ...to..., he was also assigned the duties as RT.

He averred having performed well at the interview. He was posted as Head of the specific Department since ... and had been assigned several duties in the competition as well as many international competition and he spearheaded the organisation of various and important events and activities.

He averred that he had not been notified when the first batch and 2nd batch of Deputy RT were selected at the end of October ... and mid November ...respectively

as he had been appointed as Coordinator of an activity. Though he was posted at the relevant section, he was coming on and off to his post during that period as he also had to do his own work.

In his SOC, he averred that he has different qualifications in various fields which were very relevant to the post of Deputy RT and he listed those qualifications and the courses that he had followed in leadership as well as the places where he had worked as Deputy RT, RT and acting RT and Head of a Department. He produced several relevant documents:

The Ad Hoc Report would normally have been sent to Respondent by the Ministry concerned.

He related how he had been appointed Deputy RT in April ... and was reverted in May ... following a Determination of the Public Bodies Appeal Tribunal (PBAT) cancelling the selection exercise. But he had been in the post of Deputy RT for more than 3 years during which time he had also been acting as RT. He therefore had direct and relevant work experience and fulfilled his duties reliably with no adverse reports. He averred that he had submitted all relevant documents to the panel and successfully undergone his interview.

He believed that "*he had been severely and systematically victimised by the Public Service Commission unfairly and for unclear reasons...*" but this had not been mentioned in his GOA.

During cross-examination, Appellant was questioned about why he made this allegation. He stated that one Commissioner sitting on the panel told him that it was not because he had been Deputy RT that he would be selected.

When Appellant was cross examined by Counsel for Co-Respondents he agreed that appointment as head of Department was normally given to the most senior officer and that this was not related to the qualifications of the officer. He also agreed that he did not question the merit, qualifications and experience of the Co-Respondents.

He also agreed that other candidates might also have additional relevant qualifications. On being cross examined, he corrected his statement concerning his

reversion which was due to a judgement of the Supreme Court given on ... and not of the PBAT. He also admitted that he was not reverted in May ... but in February ... to take rank in the previous grade on

He also admitted that he did not have a Diploma in Leadership and Management.

He then explained in re-examination that his reversion was not due to his qualifications, performance at the interview etc, but because of the way PSC did the interview.

Co-Respondents' case

Co-Respondents 1 and 3 to 9 gave a common SOD and they were represented by the same Counsel.

There was an agreement that the said SOD which was more in the form of a submission would be treated as such.

It made reference to PSC Regulations.

The first averment concerned the minimum qualification prescribed by Circular Note which Co-Respondents all had and they were therefore eligible.

It was also averred that some of them possessed "*further*" qualifications which it was submitted was irrelevant "*in as much as a candidate who possesses more advanced post-degree qualifications would not necessarily be more suitable for the position*" except if it concerned added qualities provided under Part B of the Circular regarding the skills needed:

- "(i) possess good leadership skills;*
- (ii) possess effective communication skills, both written and oral;*
- (iii) possess organising and managerial skills;*
- (iv) be able to motivate staff to achieve the highest level of attainment and performance; and*

- (v) *have a high level of integrity and the ability to exercise authority and command respect among stakeholders”.*

It was averred that none of the Appellants possessed qualifications which gave them an edge over Co-Respondents and that the minimum years of experience should suffice. More years of service could not be determining as seniority was not a determining criterion and could not be introduced in a disguised way.

The Co-Respondent averred that headship of a department could not be given too much weight as it was purely fortuitous and also that the Tribunal could not reassess the candidates but merely see if Respondent acted beyond its powers.

Co-Respondent No 4 was called as a witness. She explained under solemn affirmation that she also worked at the same field as Appellant. She averred that there was a public notice of the relevant appointments on the staff notice board which she saw even though she was also going in and out of during the holidays. She averred having also been assigned as Assistant Coordinator with Appellant by the relevant department.

Co-Respondent No 2 stated under solemn affirmation that she had given instructions to her Counsel to prepare a Statement of Defence and merely said that she was under stress during the interview.

Co-Respondent No 10, appointed in the third batch, solemnly affirmed that she gave instructions to her Counsel to prepare a SOD and that the facts contained therein were correct. She solemnly affirmed to the correctness of that SOD in which she averred that qualifications and experience were not the only considerations to be selected.

She also averred that the fact that Appellant had acted as Deputy RT and RT, did not entitle him as of right to be appointed as Deputy RT.

She detailed her academic qualifications, her experience (having taken charge of the management in the absence of the Deputy RT and RT). She also detailed the various activities that she participated in and which gave her leadership skills. She believed that she was better qualified than Appellant to be appointed Deputy RT.

Respondent's Case

In all the appeals Respondent averred that the Scheme of Service prescribed on 3 October 2016 provided how the post of Deputy RT is filled.

Appellants and Co-Respondents were eligible for the post and the application forms of Appellant were duly considered by it. Consideration was given *“to the requirements of the post, the criteria of the selection determined by Respondent, the requirement of the Scheme of Service, performance at the interview and the provisions of regulation 14 of the Public Service Commission Regulations, taking into account qualification, experience, merit and suitability for the post before seniority. Moreover, in exercising its powers in connection with this appointment, Respondent, has, in accordance with regulation 19(6) of the Public Service Commission Regulations, determined the suitability of the selected candidates for appointment as Deputy Rector”*.

39 candidates were appointed Deputy RT in a temporary capacity for a period of six months as from the date of their assumption of duty and in the order given. They assumed duty on

Subsequently the RO reported two additional vacancies and recommended that the names of two suitable candidates be made available for appointment as Deputy RT from the last selection exercise. Hence Co-Respondents Nos. 40 and 41 in the first batch were appointed and assumed duty on

Two additional vacancies occurred and by the same method Co-Respondents Nos 42 and 43 in the first batch were appointed and they assumed duty on

On ... and ..., the Responsible Officer again reported a total of nine additional vacancies and recommended that the names of suitable candidates from the last selection exercise be made available for appointment as Deputy RT. On ... and..., the Responsible Officer was informed that Respondent had decided that Co-Respondents Nos 1 to 9 be appointed Deputy RT in a temporary capacity for a period of six months in the first instance, as from the date of their assumption of duty and in the order given.

The offer of appointment was made to the nine Co-Respondents through letters dated ... and ... following which, six assumed duty on ...and three assumed duty on....

On..., the Responsible Officer issued a Circular letter No. ... to notify the appointment of the Co-Respondents as Deputy RT in a temporary capacity.

On..., the Responsible Officer reported an additional vacancy in the grade of Deputy RT. On..., the Responsible Officer was informed likewise that Co-Respondent in the third batch be appointed Deputy RT in a temporary capacity for a period of six months in the first instance, as from the date of her assumption of duty. The offer of appointment was made to the said Co-Respondent through letter dated ..., following which she assumed duty on ... on which date the Responsible Officer issued Circular letter to notify her appointment.

Respondent further averred that the onus to notify all the appointments rested with the RO of the Ministry and that it had been informed by the latter that attempts to reach Appellant, who was involved with the competition, were made in vain regarding the first two batches of appointments as Deputy RT.

Respondent averred that Appellant was eligible for the post by virtue of the Scheme of Service. It enumerated the Appellant's qualifications and particulars of service which were duly considered.

It explained how Appellant's temporary appointment as Deputy RT in ...was quashed by the Supreme Court and he was reverted to his substantive post with effect from Respondent agreed that during the time that Appellant was acting Deputy RT he was assigned the duties of RT on four occasions. Respondent explained that headship was not an established post and that it was merely an internal arrangement made to senior-most officers.

Respondent finally concluded that it had acted in all fairness and in conformity with the powers vested upon it by section 89 of the Constitution and its Regulations.

On being questioned by the Chairperson on the issue of Qualification Bar (QB) she explained that in the middle of the scale the officer should have a Degree or a Postgraduate Certificate in ... to be allowed to progress beyond the QB.

On being cross examined, Respondent's Representative declared that Additional Relevant Qualifications was a criterion. She said that experience while Appellant was Deputy RT would not count because he was reverted. Later she added that experience was not the only criterion but she could not reply to any question concerning the interview itself as she was not a member of the panel.

Submissions

Counsel for Appellant submitted about the member of the panel who was "*qualified as a sleeping partner*". He maintained that there was victimisation.

He submitted that the statement made by that panel member had a psychological effect on the other members of the panel who according to Appellant approved the statement to the effect that he would not be appointed on the basis that he had been in the post before. He regretted that the said panel member was not finally tendered as witness by Respondent.

He then submitted on the fact that Appellant was not notified for the three intakes of appointees. He submitted that the management should have made an extra effort to contact Appellant. He also laid emphasis on the additional qualifications of Appellant and the fact that Appellant did actingship as RT and had three years experience as Deputy RT.

Counsel for Respondent reminded the Tribunal that Appellant in his SOC stated that he had been "systematically victimised by the PSC ..." but he did not know how and in what manner he had been victimised. She also submitted that Reg 19(8) of the PSC Regulations only requires the Respondent to arrange for public notification.

Counsel for Co-Respondents Nos 1, 3-6, 8 and 9 submitted that the allegation of Appellant regarding one member of the panel only came out in cross examination and was not in the SOC or in re-examination.

He submitted that it is up to the Tribunal to see what weight to be attached to this piece of evidence.

Counsel for Co-Respondent No 2 submitted that issue of the member of the panel who apparently told Appellant that he would not be appointed was a "light" issue

which was never averred in his SOC. She referred to section 6 of the PBAT Act 2008 re the GOA. Since Appellant merely made averments not based on a GOA, no weight should be attached to this issue.

Counsel for Co-Respondent No 10 joined his colleagues on the issue of victimisation. He added that Appellant never reported this issue to any institution. He submitted that, concerning management skills, Appellant did not have any formal qualification whereas Co-Respondent No 10 had a post graduate Diploma in Leadership and Management.

Determination

The Tribunal has analysed all the evidence brought before it in these appeals as well as replies provided by Respondent to questions put to it regarding the appeal and the other appeal concerning the same selection exercise.

The Tribunal has gone through the GOA and SOC of Appellants, the SOD of Respondent and Co-Respondents in all the appeals, the lengthy transcript of proceedings and the documents produced by all parties as well as the submissions of Counsel in all the appeals.

It has further sought the following information under confidential cover:

- (i) weight of each criterion;
- (ii) markings under each criterion;
- (iii) additional relevant qualifications;
- (iv) actingship as DD;
- (v) duration of interview of each candidate;
- (vi) PMS, ad-hoc reports and any other relevant report; and
- (vii) documents prepared by the Screening Unit in respect of all applicants.

Respondent communicated (i), (ii) and (vi) to the Tribunal for its eyes only. It also stated to a question put to it in writing that, according to information obtained by the Ministry, none of the Appellants and Co-Respondents had been assigned duties of Deputy RT and it was not the policy of the Ministry to assign such duties to officers of that grade. This is very surprising since acting as Deputy RT was the third criterion for the interview and two candidates were given markings under this criterion, albeit Appellant, who was one of them, had been appointed then reverted after a few years. For the other i.e Co-Respondent No 23 in the first batch but in the same selection exercise, the Respondent, on being questioned in writing as to whether he had been

appointed as Deputy RT or assigned duty or acted as Deputy RT confirmed that the said Co-Respondent was never appointed nor was he assigned duty as Deputy RT.

It also stated that the Recruitment Section submitted to the interview panel the application forms and attendance sheets of candidates convened for interview as well as the Scheme of Service for the post of Deputy RT and Circular No...

Concerning the duration of interview it stated that "*it varied depending upon, inter alia the performance of the candidates*".

Qualifications of all candidates had already been produced to the Tribunal but there was no precision concerning which qualifications were considered as being relevant.

Later the Tribunal had to request for a certified copy of the Statements of Qualifications, particulars of service of Appellants and Co-Respondents with specific details in order to assess the number of years of experience in relevant field acquired after obtention of the relevant qualifications required to cross the Qualification Bar in their salary Scales as per the Scheme of Service still in force. Respondent provided the required information.

If a document was not produced before the interview panel and it relates to a qualification or experience or skill, it is too late to produce same before the Tribunal. Qualifications which were obtained after the interview will of course also not be relevant at all.

As regards the necessity to depute a member of the Panel to depone before the Tribunal, though this proposal emanated from the Respondent's Representative during the hearing, the Respondent itself decided not to go ahead with this course of action. The Tribunal did not insist as it did not retain the evidence regarding Appellant's averment that he had been victimised as this was not in his GOA and does not in any case appear to be so fundamental as to change the result of the selection exercise.

It must be emphasised however that, as often happens, the Representative of Respondent, who is not present in the interview room is not aware of how the members of the panel in fact carried out the interview. The Tribunal therefore had to seek clarifications on issues raised except when the procedures used are well established

and well known by public officers and the members of the Tribunal. True it is that it does not suffice for Respondent to state that it gave consideration to the provisions of Regulations 14 and 19 (6) of PSC Regulations and that it has acted in all fairness and in conformity with Sec 89 of the Constitution.

Even though it is up to the Appellant to prove his case, Respondent must show that it did indeed adhere to the Law and Regulations and acted in full transparency, was fair, equitable and reasonable in taking its decision. The burden of proof in fact shifts to the Respondent for all information which is not available to Appellants. Respondent has accepted this principle and is now providing confidential information to the Tribunal.

The Tribunal is used to the procedure which is adopted by Respondent even though there is still a lot of room for improvement. Up to now the proposal to film the interview has not been adopted and we are still sometimes in the dark on how the questions are put, how candidates are treated and how the marking itself is done. There does not seem to be a set procedure and members of different panels use different systems. It may be a good time now to regulate the interview exercise better so that there is consistency.

We keep noting that Appellants are often suspicious and always believe that they have been discriminated against. Every candidate feels that he performed well at the interview but he does not know how the others performed. We know that some of the criteria established by Respondent are assessed in a subjective manner for example communication and leadership skills. The Respondent has not yet adopted modern tests for such aptitudes. So, the panel members will judge the candidates both by his replies to some questions put and the way he expresses himself and proposes solutions to hypothetical questions.

However, there is some hard evidence which cannot be contested unless they are obviously not acceptable. For example, the eligibility criteria is straight forward. The Tribunal has therefore scrutinised the documents forwarded to it concerning the qualifications of applicants and their number of years of experience and when they crossed the Qualification Bar in their salary scale.

Regarding the eligibility criteria, based on the documents produced by Respondent and certified by the Ministry as being true and correct: We have noted that four candidates did not seem, on the face of the documents produced, to qualify as per the Scheme of Service. We therefore requested for supplementary information to find out if they had produced any certificate of equivalence which has been accepted by the Respondent. The Respondent replied in the affirmative explaining in detail how it accepted that they had equivalent qualifications.

Concerning Co-Respondent No 23 who was wrongly marked under the criterion acting as Deputy RT, though his mark was very low, and the others had no marks under that criterion it caused a slight disruption of the merit list. The case of Appellant is however different. Since he was actually appointed as Deputy RT, one can consider that he deserved the marking obtained under this criterion, however low it was, as there was no other criterion where he could be marked for the obvious experience that he did acquire in the post of Deputy RT.

Concerning Appellant's averments that he was not notified concerning the appointments of the first and second batches: Co-Respondent No 4 came as witness against him regarding this issue. The Respondent had clearly placed the notification on the board as required by PSC Regulations. But we have not attached too much importance to this issue since Appellant did lodge his appeals against the appointees in the 2nd and 3rd batches and the Tribunal analysed the selection exercise as a whole.

Appellant had full marks on additional relevant qualifications and on experience in the relevant field.

It was however the marking given to him by the external assessor which was very low for someone who had so much experience and had been in the post for 3 years. Of course, assignment of duty does not give an automatic right of appointment but his case was different. He was not assigned but appointed.

This kind of marking when compared to those who had been appointed is very difficult to understand.

However, even if he was given an average mark, he would still not have been appointed as his overall marks would still be lower than the 53 appointees.

The Tribunal has already given its Determination in the other Appeal concerning the same selection exercise with regard to this issue, requesting an adjustment of the marking of Co-Respondent No 23 in the first batch and of the merit list thereafter.

In view of the above, the Tribunal will not intervene further in this selection exercise.

The Appeal is set aside.