

If an Appellant cannot prove that there was a wrong assessment of her capacities she will have no leg to stand on to win her appeal.

Even though Respondent may have included seniority and assignment of duty in the list of criteria, which is not good practice, if the Appellant has been treated like all other candidates under those criteria which she invoked herself

The Appellant, an OWP at the Ministry of..., is challenging the decision of the Respondent to appoint the Co-Respondents to the post of COSY. Initially there were three other Appellants. However, in the meantime they were appointed COSY and they withdrew their appeals.

Appellant's Case

The Appellant solemnly affirmed as to the correctness of her Grounds of Appeal (GOA) and her Statement of Case (SOC).

Her GOA were:

"I possess all the qualifications and skills laid down in the Scheme of Service

- *Never had any adverse report re quality of work*
- *Availability beyond normal working hours*
- *Worked under pressure at Cabinet, State House, NDU, Supreme Court*
- *Never refused to act as COSY- recently posted at ... where all OWP'S senior to me refused to assume such responsibilities*
- *Level of experience gathered by me as Ag COSY at different Ministries proves my capability for appointment to the grade"*

She felt aggrieved that appointment was made to the grade of COSY to OWPs who reckoned less years of service as OWP in a substantive capacity and who refused to act as COSY. In her SOC she averred that this was in total disregard of her seniority

and her experience as a COSY given that she was assigned the duties of COSY, albeit sporadically, since May 2003 till then. She had excellent ratings in her Performance Appraisal and had experience over 15 years as Ag COSY as opposed to those who had been selected. She averred that the Respondent took into account irrelevant consideration in breach of the principle of fairness and the rule of natural justice to conduct the selection exercise and was detrimental to her prospective career in a 10 minute interview which purportedly led the Respondent to assess her competence and experience.

Appellant had joined the civil service in ...to give assistance as OWP. On ...she was appointed OWP and posted at the Public Service Commission and she was confirmed to the post on ... She had applied for the post of COSY on two occasions, viz in ... and....In spite of the fact that she performed the duties of COSY for almost 15 years,the Respondent appointed less qualified colleagues without disclosing the appointment criteria.

Appellant reckoned well over 15 years in a substantive capacity as OWP. She possessed a certificate in word processing and was fluent in English, French, Creole Mauricien, Hindi and Bhojpuri. It could not be denied that she possessed the other qualifications for the purpose of performing the duties of COSY. She opined that she had doubts that the Respondent referred to her performance rating to ascertain her ability to perform the job of COSY.

On cross examination, the Appellant agreed that she was not aware of how the Co-Respondents performed at the interview. She was not aware also of the qualifications of the Co-Respondents or the fact that they were assigned the duties of COSY.

In conclusion, the Appellant maintained that she was more qualified or equally qualified than a number of the Co-Respondents and the Respondent could not have assessed her fitness or unfitness for the job in a few minutes interview when in fact she had been performing the duties of COSY for a number of years. The Respondent did not take relevant considerations into account in the circumstance of her case.

Respondent's Case

The representative of the Respondent solemnly affirmed as the correctness of Respondent's Statement of Defence (SOD) in which Respondent averred that on ..., the Respondent was informed by the Responsible Officer (RO) that there were 23 vacancies in the post of COSY and there was a need to fill only 17 vacancies. The RO also informed the Respondent that 31 vacancies were due to occur in the years The post of COSY was advertised on ... among qualified serving officers as per PSC Circular Note No ... of

On..., the RO reported 31 additional vacancies in the grade bringing the total vacancies to 54 and requested that the names of 46 candidates be submitted for appointment as COSY in order to meet the requirements of Ministries.

There were 113 applications in response to the advertisement and 106 of them, including the Appellant, were convened for an interview. Following the interview 46 of the candidates interviewed were offered appointment on ... and they assumed duty on.... There followed another 14 vacancies and the 14 next on the merit list were appointed and they assumed duty on...

The Respondent stated that the post of COSY was not a grade to grade promotion but was filled by selection. Seniority was, therefore, not an overriding factor. Assignment of higher duties did not give claim to permanent appointment in the higher post.

The Co-Respondents possessed all the qualifications as laid down in the Scheme of Service for the post. The Respondent took into account all qualifications and experience as submitted in the application forms. The Respondent also considered the Performance Appraisal Forms and the fitness for promotion of the Appellant and the Co-Respondents for the selection exercise.

The Respondent stated that the time allocated for the interview was adequate for assessing the candidates and all candidates were treated equally.

The Respondent averred that the posting of an officer in a particular Unit/ Department/Ministry did not give claim to any advantage for appointment. The Appellant should know of her rating in the performance appraisal as there was a mutual agreement signed between the Appraiser and the Appraisee in the Ministry.

The Respondent averred that the post of COSY was filled by selection and consideration was given to the requirements of the post, the criteria of selection determined by the Respondent, the requirements of the Scheme of Service, performance at the interview and the provision of regulation 14(1)(c) of the PSC Regulations. The Respondent had to determine the suitability of the selected candidates according to PSC regulation 19(6).

The Respondent averred that it acted in all fairness and in conformity with the powers vested upon it by section 89 of the Constitution and the provisions of the PSC Regulations and all candidates were considered in a fair and impartial manner.

At the hearing the representative of the Respondent produced the criteria used by the Respondent to assess the candidates. These were:

- (1) Work experience \geq 15 years in the cadre
- (2) Experience as acting COSY
- (3) Communication & Interpersonal Skills
- (4) Knowledge of Duties and Responsibilities of the Post

The Respondent averred that the appeal had no merit and that it be set aside.

Co-Respondents' Case

All the Co-Respondents, except Co-Respondent No 11, decided to abide by the decision of the Tribunal.

Co-Respondent No 11 made solemn affirmation as to the correctness of her Statement of Defence. She provided information as to her career path and the fact that she was assigned the duties of COSY for almost 15 years. She stated that she was

more or equally qualified as the Appellant and had an excellent PMS rating. She was not cross-examined.

Determination

According to the Scheme of Service for the post of COSY, the post was filled

“By selection from among officers in the grade of –

- (i) SOWP*
- (ii) OWP*

Who –

- (a) Reckon at least 15 years’ service in a substantive capacity in the cadre;*
- (b) Possess a certificate in the relevant field from a recognised institution;*
- (c) Are fluent in English and French;*
- (d) Have shown qualities of trustworthiness, discretion, maturity, tact and initiative;*
- (e) Are capable of dealing efficiently with members of the public; and*
- (f) Are able to work under pressure”.*

It is not disputed, therefore, that there was an interview of eligible candidates to select the most deserving ones for appointment. The issue of seniority in a selection exercise is not a determining factor in the assessment. The Respondent always harps on this when appeals concerning appointments come before this Tribunal. In this case the Respondent did not fail to repeat the same argument.

Similarly, assignment of duties to a higher post does not give an officer any claim for permanent appointment to the higher post. The Respondent always argues that assignment of duties is done for administrative convenience and almost always to the most senior officer. The officer assigned the duties may not be the most suitable officer for appointment for the higher post and same can only be determined by an assessment of the eligible candidates.

The Tribunal, therefore, finds it surprising that the first two criteria for selection addressed squarely the seniority of the candidates and their assignment of duties as COSY.

For the first criterion "*Work experience ≥ 15 years in the cadre*" this is definitely a case where advantage is given to candidates who did more years in the grade of OWP, in other words on their seniority. The Respondent is contradicting its own SOD and is acting against its regulation 14(1)(c) of the PSC Regulations which says that Respondent must "*take into account qualifications, experience, merit and suitability for the office in question before seniority*" (emphasis ours). The issue of 15 years in the grade is to determine the eligibility for the post and once an officer has 15 years service or more the officer can compete for the post. However, when the Respondent gives marks for the number of years in service the Respondent has somehow brought in seniority into the assessment exercise.

Again, under criterion (2) the Respondent gave marks for assignment of duties as CS. This is against the usual stand of the Respondent itself that assignment of duties is done for administrative convenience and cannot give any claim for appointment to the higher post.

The Tribunal views this wrong practice with a lot of concern and recommends that it be banned from now on.

However, in view of the fact that the Appellant herself stated that she was aggrieved as she had more years of service and had gathered experience by acting as COSY, the Tribunal considers that she has been treated like all other applicants thus had not suffered any prejudice. In fact, these were her grounds of appeal. It is impossible from an analysis of the markings and the documents produced to the Tribunal concerning the particulars of service, posting and assignment of duties of Appellant and Co-Respondents to find that she was treated unfairly.

In the circumstances the appeal is set aside