

Det 12 of 2019

- **Age is not a criterion of selection. Seniority is relevant only if candidates are at par.**
- **Though assumption of duty does not give any advantage to an applicant, it may be relevant regarding certain criteria of selection like “duties and responsibilities of the post.”**

The Appellant, a SMO, is contesting the decision of the Respondent to appoint the Co-Respondents to the post of AHE (on shift) as per Notification of Selection dated...

Appellant's Case

The Appellant solemnly affirmed as to the correctness of his grounds of appeal. He also agreed to the correctness of the Statement of Case (SOC) signed by his Counsel.

The grounds of appeal were as follows:

“I have more experience as I have been performing the duty ever since ... periodically and continuously same since ...up to ... (for the past ... years), legitimate expectation; and age (now... years old) “

In his SOC, he stated that he joined the service as GKP on ... and was confirmed to that post on ... He performed this duty until the year ... Thereafter, he assumed duty at the place as TPH until... After that, he was appointed as CKA. Initially he worked in the registry of the Ministry of..., then he was transferred to another section. In..., he was enlisted as TRO and became CRO, now known as SMO. He had been performing the duties of AHE on a voluntary basis against payment of overtime prior to being paid a responsibility allowance. The allowance was 80 % of the responsibility allowance.

The Appellant applied for the post of AHE in response to the advertisement dated.... He was not called for interview. He claimed that he met all the requirements of

the post as he had the aggregate of three years experience. Others who did not satisfy the requirements were called for interview and were appointed. He wrote a letter to the Respondent and to the public body making strong representations but he did not appeal as "there was a lot of confusion and tension at work". He averred that one of those not called for interview did appeal to this Tribunal and there was a determination, quashing the appointment of two of those appointed. He referred to the case (Website reference {Det 12/2016}). He believed that he should have been called for interview and he would have been appointed at that time.

On ... there was a fresh circular inviting application for the post of AHE. He applied and was called for interview but was not appointed. He averred that he was more qualified and experienced than many of those appointed. He was ... years old and he had a legitimate expectation to be appointed given that he had been performing the duties of AHE continuously since.... He possessed all the required qualifications and had adequate work experience.

On cross-examination the Appellant further explained that after the appointment he made a handing-over to one of the appointees who was in the same office as him. It was later that he realized that that officer was not qualified and was reverted to her former post. He was adamant that at the time of the interview he was acting as AHE and he stated that he produced the relevant letter which he obtained from the public body dated ... at the interview. This letter was produced at the hearing.

The Appellant averred that he had not been afforded equal treatment and equal opportunity. The norms and principle of meritocracy, transparency and accountability had not been complied with. He averred that the decision of the Respondent was "wrong, unfair, unjust, unjustified, bias, abusive, discriminatory, against the rule of natural justice and unlawful".

On perusing the Application Form of Appellant communicated to the Tribunal under confidential cover, it is noted that Appellant had annexed all his qualifications including those obtained from examining body.

Respondent's case

The representative of the Respondent solemnly affirmed as to the correctness of Respondent's Statement of Defence (SOD).

The Respondent gave the particulars of the years of service of the Appellant and agreed that the Appellant had more than ... years of service at the public body. The Respondent averred that the Appellant gave the details in his application form as regards his assignments of duties.

The Respondent averred that assignment of duties was made in the interest of departmental efficiency and for administrative convenience. It did not give rise to any claim for permanent appointment to the post of AHE. All information relating to work experience as disclosed in the application form were taken into consideration by the selection panel.

The Respondent reacted to the averment of the Appellant as to the circumstances of an earlier appointment exercise and stated that this took place more than five years ago and this was extraneous to the decision appealed against and to the grounds of appeal .

The Responsible Officer (RO) of the Ministry of ... had on ... reported 42 permanent vacancies in the grade of AHE and recommended that the vacancies be filled by way of advertisement within the service.

However, on..., the RO was informed by the Respondent that it had decided to stay action on the release of the advertisement for the post until the finalization of the case of officers whose temporary appointment as AHE were terminated in ... following an appeal lodged before the PBAT.

On..., the RO submitted afresh PSC Form 1 reporting 38 permanent vacancies and reiterated its recommendation for the filling of the said vacancies.

On ...the vacancies were advertised. On 7 June 2018, the RO reported another two vacancies and same be filled along with the other 38 vacancies.

There were 164 applications and 69 of the applicants, including Appellant, were found eligible and were called for interview.

Following the interview offers of appointment were made to 40 candidates on ... and 29 of them assumed duty on....

Following an appeal lodged on ... before this Tribunal by one candidate for the same selection exercise a technical error was detected in the recruitment system which was launched on a pilot basis. Two candidates who were among the appointees did not satisfy the academic qualifications laid down in the PSC Circular for the post and their appointment was terminated with immediate effect.

Respondent averred that the Appellant was eligible for the post of AHE. However, this was not a grade to grade appointment and seniority was not an overriding factor in a selection exercise. Age was not a criterion for selection.

Respondent averred that it acted in all fairness, in accordance with powers vested into it by section 89 of the Constitution and the PSC Regulations. Appointment was made after a selection exercise and it took into account the requirements of the Scheme of service, performance at the interview and the provisions of regulation 14 of the PSC Regulations. The Respondent had also to determine the suitability of the candidates as per regulation 19 (6) of the PSC Regulations.

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

Co-Respondents' Case

The Co-Respondents decided to abide by the decision of the Tribunal

Determination

The filling of vacancies in the post of AHE is done by selection as per the Scheme of Service for the post. There has been an advertisement. This was followed by an interview and the Appellant participated in the selection exercise. It cannot be said, therefore, that the exercise was unlawful.

The Appellant brought up in his appeal his previous application for the same post of HEA in ... where he was not even called for interview. Unfortunately, this matter dates back to some five years ago. According to the PBAT Act, an appeal should have been lodged within 21 days of the occurrence of the notification of appointment. This was not done and the jurisdiction of the Tribunal is ousted on the matter.

It is also evident from regulation 14 of the PSC Regulations that seniority is not a determining factor in a selection exercise and it has to give way to qualifications, experience, merit and suitability. The Appellant cannot claim that he was a better candidate because of his seniority.

By the same token, age is not a factor to be taken into account when there is an appointment which has to be made by selection.

The Tribunal requested the Respondent to provide it with the markings of the Appellant and the Co-Respondents for this selection exercise. The information was provided to the Tribunal under confidential cover.

The criteria were:

- (i) Relevant qualifications
- (ii) Relevant Work Experience
- (iii) Communication and Interpersonal skills
- (iv) Organising and Supervisory skills
- (v) Duties and Responsibilities of the post.

There was also an external assessor who gave marks.

The first criterion is "*Relevant Qualifications*". The Tribunal finds that marks were given for qualifications which relate to the eligibility of the candidates. This has been repeated in other cases before this Tribunal and the attention of the Respondent has been drawn so many times that this is not correct. Once candidates are found eligible regarding the minimum qualifications, then they are all *at par* irrespective of the grades of such qualifications. Marks cannot be given on the minimum qualifications for eligibility. However, the Respondent may decide to allocate marks for additional relevant qualifications, if it deems fit to do so.

The Tribunal finds that the Appellant obtained full marks under the criterion "*Relevant Work Experience*", together with most of the Co-Respondents. The Appellant also scored the highest marks together with seven other Co-Respondents from the external assessor. However, the Appellant obtained low marks on the criterion "*Duties and Responsibilities of the Post*" in spite of the fact that he had been doing the duties of AHE continuously from ... to.... He did not get any adverse report while he was doing the assignment of duties as AHE. The Appellant obtained low marks also on the other criteria.

The Tribunal feels that there could have been a wrong assessment on the criterion "*Duties and Responsibilities of the Post*" as regards the Appellant. This is because some Co-Respondents (Co-Respondents Nos 16, 18, 27, 29, 30 and 40) who obtained less marks than the Appellant on the criterion "*Relevant Work Experience*" obtained surprisingly much higher marks than the Appellant on the criterion "*Duties and Responsibilities of the Post*".

In the light of the points raised above, the Tribunal remits the matter back to the Respondent under section 8(4)d of the PBAT Act and directs the Respondent to scrutinise anew the assessment of the Appellant concerning the criterion "*Duties and Responsibilities of the Post*".