

Det 14 of 2019

- **When markings do not disclose any flaws, the Tribunal will not intervene.**
- **Assumption of duty for four and a half years is contrary to Public Service Regulations Circular No 2 of 2006;**
- **It is only fair that an officer having performed the duties of the post for over two years continuously should be paid his retirement benefits based on that grade.**

The Appellant, an Acting NSS at the Ministry of..., is challenging the decision of the Respondent to appoint the Co-Respondents to the post of NSS.

According to the Scheme of Service, the post of NSS is filled “*By selection on the basis of experience and merit, from among officers in the grade of Senior CANM who:*

- (i) reckon at least an aggregate of four years’ service in a substantive capacity and in the grade of CAN/CA NM; and*
- (ii) have successfully completed the RELEVANT Course”.*

Appellant’s Case

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

Appellant’s GOA were:

- (i) “More experience as ANSS(4 ½ years) compared to all selected candidates*
- (ii) I did not have any adverse report during my actingship”.*

The Appellant averred that he had been interviewed three times for the post of NSS and he had not been selected.

He stated that he had been acting as NSS since.... For four long years he had been performing these duties to the entire satisfaction of the management of the specialised centre. There had been no single instant where he failed in his duty and he gave the best of himself during the time that he was acting as NSS. He had an excellent track record as NOR, CAN and he was promoted as WAMR. He had the necessary qualifications for the post of NSS.

He averred that he was on pre-retirement leave and that his retirement was due on.... He could not understand how he had been excluded even though he was the most senior officer among all the selected candidates. He had ... years of dedicated service and he had never been negatively reported during his tenure of service.

He stated that this situation was causing him much hardship and this amounted to an infringement of his rights as a citizen of this country after such a long distinguished career.

Appellant averred that he had been unfairly treated and unduly penalized by Respondent.

Respondent's Case

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

Respondent averred that the number of times one was called for interview was not a criterion in the present selection exercise for the post of NSS. The Appellant could not validly challenge the previous selection exercises held.

The Appellant had set out in his application form that he had been assigned the duties of NSS from... till ... for administrative convenience. Respondent averred that this did not give Appellant any claim for appointment to the higher post.

The Respondent gave details of the career path of Appellant starting from ... when he was enlisted as NS. Appellant was appointed NOR on ...and confirmed in that post on.... He was appointed CAN on ... and WAMRM on

The Respondent averred that six vacancies in the post of NSS were reported by the Responsible Officer (RO) of the Ministry. There was an advertisement on On..... and ..., the RO reported other vacancies,totalling seven in all.

Following the advertisement, there were... candidates and... of them were found eligible and were convened for interview on and

The Respondent, having considered the suitability of qualified candidates decided to offer appointment to the Co-Respondents(except the last two) in a temporary capacity for a period of six months in the first instance. The offers were made on ... and selected candidates assumed on.... The Appellant was eligible for the post of NSS but he was not selected.

The Respondent stated that seniority and years of service were not in Appellant's GOA and should be disregarded. Appointment to the post of NSS was done by selection and was not by promotion. Seniority was not an overriding criterion.

Appellant and the Co-Respondents were favourably reported upon in their Performance Appraisal Forms.

The Respondent denied that Appellant had been unfairly treated and unduly penalized as averred by the Appellant in his SOC. Respondent acted fairly and in accordance with the powers vested upon it by the Constitution and the provisions of the Public Service Commission Act and corresponding Regulations. In the selection exercise, it had given consideration to the requirements of the Scheme of Service, the criteria of the selection, performance at the interview and the suitability of candidates.

The representative of the Ministry confirmed that the Appellant would be retiring in one week's time and he would be paid retirement benefits for the higher post as he had been assigned the duties of the post for more than two years on a continuous basis.

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

Co-Respondents' Case

The last two Co-Respondents were appointed on ... and they were joined as Co-Respondents as they were appointed in the same selection exercise. All the Co-Respondents decided to abide by the decision of the Tribunal.

Determination

The main contention of the Appellant is that he had been assigned the duties of NSS and he should therefore have been appointed.

The Respondent has produced the criteria for assessment of candidates. These were:

- (i) Management & Leadership Skills;
- (ii) Organising & Supervisory Skills;
- (iii) Communication & Inter-personal Skills; and
- (iv) Training Skills.

There was an external assessor who also gave marks.

The Respondent gave the markings to the Tribunal under confidential cover in which the Tribunal did not see any flaws. In fact, Appellant was very close to the last appointee and the External Assessor has been very fair to him.

It is accepted that the Appellant had performed the duties of the post for some four and a half years on a continuous basis. This is contrary to the provisions of Public Service Commission Circular No ... of ... and Respondent should ensure that this practice is discontinued. However, as confirmed by the representative of the Ministry the Appellant will draw the full benefits of the post of NSS on retirement as per section 15.29 of the PRB Report 2016.

There will be no prejudice caused to Appellant.

The appeal is set aside.