

- **Even if a candidate is better qualified, there are other criteria to assess the suitability of an officer to be appointed.**
- **It is the candidates who score the most points with respect to all the criteria who will top the list to be considered for the post.**

1. These appeals which concern the decision of the Respondent to make an offer of appointment by selection to the Co-Respondents to the grade of RATI (on roster) in a temporary capacity in a specialised department (NATY) made on....
2. The present appeals are, with the agreement of all counsel, being heard before a differently constituted Tribunal following a judicial review application.
3. It is common ground that by Circular Note No. ..., the Public Service Commission (“**Commission**”) invited applications from qualified officers who wished to be considered for the post of ‘RATI (on roster).

Case for the Appellants

4. The Appellants appealed against the decision of the Respondent on the following grounds:
 - (i) they are better qualified than the Co-Respondents,
 - (ii) in addition, but except for Appellant No. 4, they also state that they have more experience;
 - (iii) one officer who was offered the post did not fulfil all the criteria for the post RATI (on roster); and
 - (iv) the interview process was biased and/or conducted in an unprofessional way.
5. Mr. ... confirmed his statement of case together with his grounds of appeal under solemn affirmation. He agreed that Mr R will give evidence on his behalf. He was not cross-examined by counsel for the Respondent and counsel for the Co-Respondent.
6. Mr. ... confirmed his statement of case together with his grounds of appeal under solemn affirmation and agreed that Mr R gives evidence on his behalf. He was not cross-examined by counsel for the Respondent and counsel for the Co-Respondent.
7. Mr. ... confirmed his statement of case and his grounds of appeal under solemn affirmation and agrees that Mr R represents him in the case. Under cross-examination by learned counsel for the Co-Respondents, he confirmed that when he lodged the appeal he was a TWEN. The

Appellant also stated that he believed he was entitled to the post of RATI in which the Co-Respondents have been appointed. He also confirmed that he had applied and obtained the post of Senior TWEN which he said is lower in scale to that of RATI. It was suggested to him that Mr. ..., Mr. ... and Mr. ... were all his seniors and have more experience to which the Appellant replied that he could not confirm. He agreed that none of the Appellants have contested his appointment as 'Senior TWEN'.

8. Mr. ... confirmed his statement of case and his grounds of appeal under solemn affirmation and agreed that Mr R gives evidence on his behalf. Under cross-examination by learned counsel for the Co-Respondents, he agreed that when he lodged the appeal he was a TWEN. He also stated that he applied for the post of Senior TWEN after he had contested the appointments in the post of RATI but has not obtained the former post. He could not say whether Mr. ... has joined the service before him. He agreed that he did not contest the post of Senior TWEN which Mr. ... had obtained.
9. Mr. ... confirmed his statement of case and grounds of appeal under solemn affirmation and agreed that Mr R gives evidence on his behalf.
10. Mr. ... confirmed his statement of case and grounds of appeal under solemnly affirmation and also agreed that Mr R gives evidence on his behalf. Under cross-examination by learned counsel for the Co-Respondents, the Appellant stated that he joined the civil service in ... and is not aware if Mr ... joined the civil service after him. He further stated that he had applied for the post of Senior TWEN which was advertised after the advertisement for the post of RATI and he did not obtain the post. He agreed that he did not contest the appointment of Mr... as Senior TWEN.
11. Mr. ... confirmed his statement of case and grounds of appeal under solemn affirmation and stated that he had chosen Mr R.. to give evidence on his behalf. Under cross-examination by learned counsel for the Co-Respondents, he stated that he joined the civil service in.... He could not say whether Mr. ... is his junior or senior. He stated that he applied for the post of Senior TWEN after he had lodged the present appeal. He agreed that he did not contest the appointment of Mr. ... in the post of Senior TWEN and that he still holds the post of TWEN.
12. Mr R confirmed his statement of case and grounds of appeal under solemn affirmation. He stated that he holds the post of Senior TWEN since ... and has held that position for 7 or 8 years. He further stated that because there were more prospects for promotion in the inspectorate cadre, all the Appellants had followed a Diploma in ... under the aegis of the Chartered Institute of..., U.K. which is a 2 year course and is a Chartered member of the Chartered Institute of He further stated that Mr. ... and him also followed the Advanced Diploma course. As regards, Mr. ... he followed a BSc course in.... He stated that the Diploma in ... is one of the requirements for the post of Principal RATI. He also said that when he joined the POF in ..., he was posted in the RYU. He added that four Appellants were also in the POF. The Appellant also took issue with the

fact that Mr. ... who was offered appointment for the post of RATI (on roster) did not possess all the qualifications criteria.

13. Under cross-examination by learned counsel for the Respondent, Mr. ... agreed that the Scheme of Service for the post of RATI (on roster) does not state that a person who possesses a Diploma in ... or an Advanced Diploma in ... would have a better chance of obtaining the post. However, he said that it is a 'plus' because it is an award in "the specialised field". He however also stated that the diploma would not help him in the post of Principal RATI. He agreed that the diploma is one of the requirements for the post of RATI (on roster) and the Scheme of Service does not state that he would stand a better chance because he holds the diploma. He however stated that the course would help him in the post for RATI (on roster). He also agreed that, when the Respondent conducts an interview, other criteria are considered and that it is someone who obtains more points with respect to all the criteria who is selected. He does not agree that he has not obtained the maximum points on the other criteria. He also went on to say that because the Respondent had made a mistake when it offered Mr. ... the post of RATI (on roster) when he was not eligible, the Respondent has made a mistake in relation to the entire process. We disagree. He agreed that the appointment of Mr. ... had been rescinded following the discovery of the mistake by the Respondent that the officer was not eligible to be called for the interview.

Case for the Respondent

14. The representative of the Respondent gave evidence on behalf of the Respondent and confirmed the Respondent's statement of defence. She explained the various stages involved when applications are received until applicants are called for an interview. After the verification stage when applications are scrutinized having regard to the requirements of the Scheme of Service for the post, it is then that the selection panel, comprising of 2 commissioners and 1 adviser, i.e., a representative of the Ministry concerned, which conducts the interview. Under cross-examination she honestly explained that there was a wrong interpretation of the second qualification criteria pertaining to salary. She disagreed with the suggestion of learned counsel for the Appellants that because of the mistake at the verification stage there would be a mistake at the level of the interviewing exercise.
15. Evidence was also adduced by the Respondent that once the mistake concerning Mr ... was identified, the applications of all the Co-Respondents were verified and it was found that they all met the requirements as stated in the Scheme of Service.

Case for the Co-Respondents

16. Mr. ... confirmed the statement of case for all the Co-Respondents under solemn affirmation. It is the contention of the Co-Respondents that ground of appeal raised by each of the Appellants concerning the appointment of Mr. ... is no longer in issue before the Tribunal. We agree.

17. It is also the contention of the Co-Respondents that the Appellants and the Co-Respondents were all qualified, and hence eligible, for the said post. It is also their case that the selection for the post of RATI (on roster) in a temporary capacity is based on various considerations, including qualifications and experience, requirements of the Scheme of Service, criteria of selection determined by the Respondent, performance in the interview, the provisions of Regulation 14 of the Public Service Commission Regulations and suitability for the post.
18. Learned counsel for the Co-Respondents submitted that the entitlement of Co-Respondent Nos. 7 and 8 have not been challenged by the Appellants. He further submitted that by applying for the post of Senior TWEN, the Appellants Mr..., Mr..., Mr..., Mr. and Mr. ... have relinquished their claim to the post of RATI. As regards Mr..., learned counsel submits that by applying for the post of TPR, the Appellant has relinquished his claim to the post of RATI. Finally, as regards Mr..., having been appointed as Senior TWEN, a lower post to which the Co-Respondents would but for their appointment as RATIs have been entitled to, the latter would be unfairly prejudiced if their appointment as RATIs are reversed or otherwise set aside by the Tribunal.

Determination

19. We may easily dispose of Ground (iii) and (iv). As regards Ground (ii), the appointment of Mr. ... had already been rescinded when we heard this appeal. In the absence of any evidence adduced by the Appellants in support of their contention that the interview process was biased and/or the interview was conducted in an unprofessional way, this ground is dismissed as being frivolous and vexatious. Grounds (iii) and (iv) therefore fail.
20. As regards Ground (i), we hold that the fact that a candidate is better qualified is not a ground *per se* to be promoted where there are other criteria by virtue of which the suitability of the candidate is to be assessed. Mr R agreed that when the Respondent conducts interviews, other criteria are considered. He also admitted that it is someone who obtains more points with respect to all the criteria who will be selected. Ground (i) therefore fails.
21. As regards Ground (ii) which was stated together with Ground (i) in the Grounds of Appeal, we deemed it fit to address this ground separately because it is not related to qualifications. Whilst significant prior experience in the post would be a relevant criterion to consider, there are however, other criteria which the Respondent needs to consider for the selection exercise. It is the candidates who score the most points with respect to all the criteria who will top the list to be considered for the post. We have examined the marks given to the Appellants and the Co-Respondents from a copy of the assessment sheet which the Respondent has provided us. The Appellants did not rank among the best suitable candidates for the post having regard to all the criteria. Ground (ii) also fails.
22. We agree with the submission of learned counsel for the Co-Respondents that the Appellants have not lodged an appeal against the appointments of Mr. ... and Mr... which were made after

the Appellants had lodged their appeal on.... However we do not agree with the suggestion that the present appeals have no bearing on their appointments. To the extent that these two subsequent appointments were made following the same selection exercise, a decision of this Tribunal may impact on their appointments. Precisely this is why they have been made Co-Respondents.

23. On the assessment sheet provided by the Respondent, we note that points have been given with respect to the following criteria: (i) Qualifications; (ii) Relevant Experience > 8 years, (iii) Communication & Inter personal skills (iv) Inspection and enforcement skills, (v) Duties and responsibilities of the post, (vi) Knowledge and..., (vii) External Assessor.
24. Even if neither party has raised the question, we considered it important to address the following question: whether the selection panel of the Respondent can be said to have faulted for making 'qualification' marks a component of the 100 interview marks, and whether thereby the candidates were in any way prejudiced.
25. When examining a copy of the assessment sheet, we noted that different marks have been given to candidates for the criteria 'Qualifications'. Although, pursuant to Regulation 17(1) of the Public Service Commission Regulations, the Respondent has control over the procedure to be followed in dealing with applications for appointment to the public service, yet any procedure it adopts must be consistent with fairness. (*T. Khedun-Sewgobind vs The Public Service Commission i.p.o R. Bissessur & Ors 2010 SCJ 6*). We have examined the marks allocated for the criterion 'Qualifications'. It cannot be said that prejudice has been caused to the candidates because marks were uniformly allocated to them having regard to their respective qualifications.
26. In order to remove any perception of arbitrariness in a recruitment process, and to reinforce the fairness of the process, the Respondent may, on ground of transparency, state in the advertisement for a post to be filled, the criteria and the maximum marks for each of the criteria.
27. For the reasons given in this determination, we therefore set aside the appeal.