

Det 18 of 2019

- Even if a candidate has a lot of experience of the job and scores high marks for same, if he does not do so well concerning the other criteria he will not succeed in the selection exercise as qualification and merit also count as well as other specific selection criteria.
- The Tribunal cannot base itself on humanitarian ground nor can it request the PSC to appoint anyone as the latter has sole prerogative to appoint under section 89 of the Constitution.

The Appellant, an ITRP at the ATN, has lodged an appeal to this Tribunal against the decision of the Respondent to appoint the Co-Respondent to the post of ITRC.

Appellant's Case

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

His GOA were:

"I have more experience in the relevant field of ...duties than Mr.....

I have more experience in performing duties of ITRC than Mr ...who does not have any such experience.

I have regularly performed the duties of ITRC since ...up to....

I have never been adversely reported upon while I was performing the duties of ITRC.

Even since I have been paid responsibility allowance for performing duties of ITRC.

I possess the degree in ... Management which is directly relevant to the post of ITRC as opposed to Mr. who possess an advance diploma in the relevant field.

Regulation 14(1)(b) provides that the Public Service Commission shall take into account QUALILFICATIONS, EXPERIENCE AND MERITS when making appointment.

I have performed the duties of ITRC to the entire satisfaction of my immediate superior.

During my five years of actingship, I have been fully involved in the decision making process of Senior Management level, which experience Mr ... does not have.

I am retiring by end of..., so I would like to enjoy a peace and sound retirement. So, in this context, I pray the Tribunal to quash the decision of the Public Service Commission to appoint Mr ... as ITRC and instead order the Public Service Commission to appoint me as ITRC". (SIC)

He expatiated on his GOA in his SOC. He averred that he had been performing the duties of ITRC since ... till ... for which he was paid an allowance. Among the six candidates who were called for interview he was the most qualified in relation to the post and possessed more experience as he had performed the duties of ITRC. He referred to Regulation 14 (1) (b) of the PSC Regulations that the Respondent should take into account qualifications, experience and merits before making an appointment.

He stated that he was 64 years old and nearing retirement. The post of ITRC was vacant sinceHe held a Diploma, as required, but in addition he studied and obtained a BachelorManagement at the University of ... which he claimed was higher than the Diploma which the Co-Respondent held. Based upon his merits and his higher qualifications, he was the most suitable candidate for the post. He served the country with zeal, perseverance, due diligence, utmost sincerity and commendable loyalty. He requested the Tribunal to give consideration to his appeal on a fair, just and humanitarian basis.

Respondent's Case

The representative of the Respondent solemnly affirmed as to the correctness of Respondent's Statement of Defence (SOD) to which Respondent annexed the Scheme of Service which provided how the post of ITRC is filled:

The Respondent averred in its SOD that one vacancy in the post of ITRC was advertised on ...by way of Circular Note No ... of.... There were six candidates and they were all found eligible. They were called for interview on ...

Following the interview one Mr ... was appointed and he assumed duty on....

On..., the Responsible Officer of the ATN recommended that a second vacancy for the same post and reported on ... be filled forthwith. The Respondent, after taking into consideration the suitability of candidates at the competition, decided to appoint the Co-Respondent to that vacant post of ITRC. The Co-Respondent assumed duty on....

The Respondent provided details of the periods of assignment of duty of Appellant and Co-Respondent as ITRC but averred that these do not give rise to permanent appointment.

All information provided by the candidates for the selection exercise were taken into consideration.

The Respondent averred that there was a selection exercise and in so doing it took into consideration the requirements of the scheme of service for the post, the criteria for selection, performance at the interview and the provisions of Regulations 14 and 19(b) of the PSC Regulations.

The Respondent moved that the appeal be set aside.

Co-Respondent's Case

The Co-Respondent solemnly affirmed as to the correctness of his Statement of Defence in which he gave details of his career. On or about..., he was appointed ITRS and performed at this level until he was appointed ITRC.

The Co-Respondent stated that, over and above the required qualification of an advanced Diploma, he also held a Master. The Appellant only had a Bachelor Degree in ...from the University of.... The post of ITRC required good administrative ability and strong organizing skills. His master's Degree weighed heavily in his favour and made him more qualified for the post. He also averred that he joined the service as CO while the Appellant joined the cadre as PO. This made him more exposed and conversant with administration than the Appellant.

Co-Respondent averred that he was involved in the decision making process at the Senior Management level.

He referred to the 11 occasions on which he was assigned the duties of ITRP He denied that the Appellant was more experienced than him. He also said that the Appellant did not contest the appointment of Mr ... who was junior to him when the former was appointed ITRC. The Appellant was also interviewed in ... for the post of ITRC but he was not appointed even if he was the only eligible candidate. The Co-Respondent stated that the Tribunal cannot consider the request of the Appellant on "*fair, just and humanitarian basis*" as being prayed by him.

He averred that the Respondent's decision was lawful, good and valid and that the Appeal should be set aside.

Determination

The post of ITRC was filled by selection. Seniority, therefore, is not a determining factor as per Regulation 14 of the PSC Regulations.

Assignment of duties to the post of ITRC cannot be a criterion for appointment as such assignment of duties is done for administrative convenience and does not give rise to permanent appointment.

The Appellant was indeed not adversely reported upon but neither was the Co-Respondent.

The averment of the Co-Respondent that he joined the service as a CO while the Appellant joined as a PO is irrelevant and is not valid for the higher posts where both the Appellant and the Co-Respondent have performed for a long period.

As per section 91 A of the Constitution and the PBAT Act 2008, the Tribunal cannot consider the appeal on a humanitarian ground basis. It must see if Regulation 14 has been respected and that there was no blatant flaw in the selection exercise.

The Tribunal is also not in a position to accede to the prayer of the Appellant to order the Respondent to appoint him. The power to appoint rests with the Respondent as per section 89 of the Constitution.

Having said this, the Tribunal analysed the markings of the Appellant and the Co-Respondent provided by the Respondent to the Tribunal under confidential cover.

The criteria for selection were:

- “1. *Additional Relevant Qualifications*
2. *Experience as ITRP > 2 years OR ITRP/ITRS (On Roster) > 8 years;*
3. *Trustworthy and Good Ethical Conduct;*
4. *Duties & Responsibilities of the Post;*
5. *Administrative Ability;*
6. *Ability to motivate & Lead Team of Officers; and*
7. *Organising Skills”.*

There was an external assessor who also gave marks.

The Tribunal finds that the Appellant obtained full marks under the criterion of Experience compared to the Co-Respondent who obtained less marks. This meets the contention of the Appellant that he had more experience. As regards additional qualifications, the Co-Respondent obtained more marks as he was holder of a master's Degree while the Appellant had a Bachelor Degree. Appellant was not more qualified as he believed. However, the Appellant scored less on all the other criteria than the Co-Respondent, including the marks given by the external assessor.

The Tribunal concludes that all the grounds of appeal have failed and, as it does not find any flaw in the appointment process based on those grounds, the appeal is set aside.