

- **A ground of appeal based on long years of service is not sufficient to win an appeal since seniority is not an overriding criterion in a selection exercise.**
- **To be selected for a post an appellant must show how he was more deserving and satisfy the other selection criteria;**

This is an appeal concerning the post of MUD hereafter referred to as “the post” of the Ministry of ... hereafter referred to as “the Ministry”.

### **Appellant’s Case**

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

His GOA were as follows: Since...,he has been performing duties as VDR and he acted as “MVDR” since ...

He also averred that he was the most senior officer.

In his Statement of Case, he averred that he joined the Ministry on .... As VDR he worked since ... and he possessed all the relevant permits to act as “MVDR”.

He had more than ... years of service.

His Counsel laid a lot of emphasis on the fact that no one on the interview panel was a technician able to assess the abilities of the candidates in mechanics. She cross examined Respondent’s Representative and all witnesses thoroughly.

### **Co-Respondent’s Case**

Co-Respondent decided to abide by the decision of the Tribunal.

### **Respondent’s Case**

Respondent averred that Appellant joined ...WDCO on. He was then transferred to the Ministry as RL on ... and was subsequently appointed as VDR with effect from ....

He possessed two different permits as per the Scheme of Service for the post.

Respondent averred that it had delegated its power to the Ministry to carry out the selection exercise for appointment to the post.

As per the Scheme of Service, appointment to the post was made by selection from among VDR s on the Permanent and Pensionable Establishment of the Ministry who possessed a basic permit and a second more specialised one to be able to perform his work.

Respondent averred that seniority is not a criterion for selection for that grade.

Respondent averred that on the closing date of applications on ..., 13 applications were received and 3 applicants were not eligible.

The candidates were assessed on the following criteria:

1. Knowledge of the relevant job;
2. Experience;
3. permits; and
4. Personality.

One candidate was found suitable to fill the only vacancy available. Three candidates were shortlisted to fill further vacancies that could arise.

When one MVDR retired, one additional vacancy occurred on ...and was filled from the shortlist. The Co-Respondent was then appointed.

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

At the request of the Tribunal, the Ministry submitted information concerning the composition of the Board and the weight attached to each criterion as well as a copy of the qualifications of Appellant and Co-Respondent.

A representative of the Ministry was called but could not reply to most questions in cross-examination. He, however, confirmed that both Appellant and Co-Respondent did not have any adverse report.

A member of the interview panel came as witness and confirmed that one Mrs W was putting questions on the technical side as she had been in charge of the Section for a very long time and she based herself on the Scheme of Service

especially with regards to the duties. She was interested in issues concerning maintenance. Mrs W being now retired, was not called as a witness. The questions that she put herself were mostly to check their leave and conduct as there was no report for the last year. She was from the Human Resource Department.

### **Determination**

The Tribunal has listened carefully to the deposition of all parties concerned by this selection exercise. It has also looked at the Grounds of Appeal, Statement of Case and Statement of Defence as well as all the documents produced especially with regard to the way the interview panel proceeded to choose the most suitable candidates to constitute the merit list, and appoint the first two candidates, including Co-Respondent, who was No 2 in that list. Unfortunately, Appellant was not in the short list of three mentioned by the Ministry.

Regarding qualifications, both Appellant and Co-Respondent were eligible. Both also had a good record.

The only ground of Appeal of the Appellant was that he was senior-most and had been performing duties as VDR since ... and MVDR since ....

Concerning the issue about questions put by members of the panel on mechanics, obviously no one was qualified to put such questions but all candidates were treated at par on this issue. In all fairness to candidates, the Tribunal recommends that Respondent should advise Ministries acting under delegated power to include one member on the panel who is fully conversant on the relevant issues of any post.

His single ground must necessarily fail as seniority is not an overriding criterion in a selection exercise. His long years of service *per se* is not enough to show that he was more deserving than the Co-Respondent. Section 7(3) of the Public Bodies Appeal Tribunal Act provides that "*the onus of proof shall rest with the Appellant*". Appellant was given the chance to prove that he was more meritorious but could not do so.

The appeal is therefore set aside.