

- **If a Scheme of Service provides that candidates should have training potential, then the advisor on the panel must be able to assess this potential;**
- **A candidate who has done training of officers in the cadre in which he aspires to become a Deputy Head should have an advantage.**

The Appellant is appealing against the decision of the Respondent to appoint the Co-Respondent to the post of Deputy Head of DEA cadre in a temporary capacity, hereafter referred to as the post, in the AN Department as from....

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 are reproduced as they appear in the appeal form.

"The decision of the PSC, in not selecting me for the above post, is unfair and not in order. The PSC made abuse of its powers in appointing Mrs B as I have all the required qualifications, much more experience and merit and therefore I am the most suitable person for the post". (SIC)

In the Annex to his GOA he averred that:

- He had never been adversely reported upon and had a very good track record;
- He performed well during the interview for the post and the panel stated that they were impressed by his wide experience, track record and length of service;
- He served AON for a longer period than the Co-Respondent and unlike her, he had been assigned duties as Deputy Head of the DEA cadre;

- He had already acquired extensive experience as well as administrative and organising abilities related to the post of Deputy Head of the DEA cadre;
- he had good communication and interpersonal skills and relates well with his colleagues and AON's stakeholders; and
- He was appointed Vice Chairperson of AON's OSH Committee in ...

The Appellant expatiated lengthily on his GOA in his Statement of Case (SOC). He explained that he joined the public service as WO in the TCMS Department in ... and was appointed Trainee DEA in the AON in Since then he had been working in the same cadre and had obtained several promotions in the hierarchical structure of the DEA cadre. He was appointed to his actual position as Principal DEA in...

He stated that he was surprised and stunned that he was not selected for the post in as much as he met all the requirements in terms of skills and experience relevant to the post. He mentioned that he had assisted the Head of the DEA cadre or the Deputy Head of the DEA cadre in the day-to-day management of the division and in the preparation of the Annual Work Plan. He was also assigned duties of Deputy Head of the DEA cadre from...to...and from...to....He was the Vice Chairperson of the OSH Committee of the AON since

He also stated that he coached, monitored and reviewed work of relevant teams, ensuring compliance with applicable standards and legislations as well as conducting meetings with the Officers regarding the findings. He also prepared/edited training materials and presentations on PowerPoint for AON resource persons and provided training to DEA in years ..., ...and

He also updated regularly the "Revised Laws of Mauritius" and consolidated legislations for use as reference material by AON Staff and formed part of the editorial team of the Newsletter of the AON.

He contended that he also had experience in other organisations which he listed.

He believed that he had acquired extensive experience as well as administrative and organising abilities related to the post as he was posted in Divisions headed by either the Head or Deputy Head of the DEA cadre for more than ... years and that the Co-Respondent had no such experience. He possessed all the merits for the post and that he should have been appointed in lieu of the Co-Respondent. He moved that the decision of the Respondent to appoint the Co-Respondent to the post be quashed.

Under cross-examination, he agreed that assignment of duties did not give him a claim to the post but he stated that he gained more experience while performing the different duties attached to the post. He also agreed that the Co-Respondent held the post of CEM as well but he denied that both of them were doing the same duties. He explained that, for the last decade, he was posted with the Deputy Head DEA cadre and at times, he deputized the Head of the DEA cadre in the day-to-day management, thus gaining experience.

Respondent's Case

The representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence (SOD). In the SOD, the Respondent averred that:

- (1) The post of Deputy Head DEA is not a grade to grade promotion and instead it is a selection exercise where seniority is not an overriding factor;
- (2) Both Appellant and Co-Respondent met the requirements of the Scheme of Service; and
- (3) Experience and all information disclosed in the application forms had been taken into account by the Selection Panel.

The Respondent also averred that the appointment for the post is based on the performance of the eligible candidates at the interview and taking into consideration:

- (a) The number of vacancies to be filled;
- (b) The provisions of Regulation 14 of the Commission Regulations;
- (c) The requirements of the post and Scheme of Service;

- (d) The criteria of selection determined by Respondent; and
- (e) Fitness for promotion and Performance Appraisal Form for the last three years and report indicating to what extent each candidate satisfies the requirements laid down under the qualification part of the Scheme of Service for the post.

As regards the other averments of the Appellant in the SOC, the Respondent had either taken note or admitted same without giving any other explanation.

Respondent moved that the Appeal be set aside.

The Representative of the Respondent produced the Criteria for Selection and was then cross-examined. She admitted that the Appellant was the most senior officer and that someone who is more senior gains more experience, skill and dexterity. She also agreed that Appellant had been assigned duties for more than ...months in ... but she maintained that assignment of duties does not give claim to permanent appointment. However, she admitted that doing the duties of the post brought experience and expertise to the Appellant compared to the Co-Respondent who had never carried out the duties of the post.

She further admitted that Appellant did prepare, deliver training for the last three batches of DEA in..., ... and..., in conformity with one of the requirements of the Scheme of Service. She also confirmed that the Co-Respondent did not provide any training to members of staff.

Co-Respondent's Case

The Co-Respondent submitted a Statement of Defence wherein she averred that assignment of duties was always made to the seniormost officer in the grade, which explains why the Appellant was assigned the duties of the post. However, such assignment was not a prerequisite for appointment to the post; the post being filled by selection. Since all the divisions operate in a similar way, the duties mentioned in the SOC were also performed by her in a division headed by an ADR. She also averred that she was never formally requested by Management to impart training to DEA before their examination. She explained that she had constantly been training new recruits on site,

which is fundamental to the proper execution of the relevant work as such training is from scratch where staff has to learn the basics.

She mentioned that she had performed well in the interview and was never adversely reported. She was called upon to work as FCL in the AN Department from to.... She followed the CTF Programme in PCP course conducted by the relevant Office conducted by the University of.... She was also well versed with verification of ... contracts. She reiterated that she was fully eligible and qualified to be appointed in the post and moved that the Appeal be set aside.

During cross-examination, she admitted not having done formal training because she had never been requested to do so.

Determination

The Tribunal will address all GOA together.

This is a case where the Appellant had been assigned duties to the post for more than ... months but was not selected to the post. It is not disputed that assignment of duties does not give any claim to the Appellant to the substantive post. However, the Tribunal points out that in the case of *S. Rampersad V PSC (2009 SCJ 189)*, the Supreme Court referred to assignment for a short period. The question which arose in the present case was mainly about the experience which Appellant gained for having occupied the post for a long period. It was not disputed by any party that the Appellant gained experience, knowledge and dexterity while carrying the duties of the post for a long period. This should have been assessed by way of another criterion such as “knowledge of the job” which surprisingly did not form part of the selection criteria. The Tribunal was of the opinion that the markings should be provided to ascertain whether the experience of Appellant was taken on board during the selection exercise. The markings were provided with much reluctance but the Tribunal disagrees with the Respondent when the latter informed it that the issue of “experience” did not arise as the Scheme of Service provides that selection should be from among officers in the grade of CEMA who reckon at least three years’ service in a substantive capacity in the grade and as such it is only an eligibility criterion. The Tribunal reminds all parties that

all appointments should be made in compliance with Regulation 14 of the Public Service Commission Regulations, more precisely sub section (1) (c) which reads as follows:

“In the case of officers serving in the public service, take into account qualifications, experience, merit and suitability for the office in question before seniority”.

This regulation applies to all posts and not simply to those where the qualification requires a certain number of years of service as an eligibility criterion. Be that as it may, a scrutiny of the markings showed that both the Appellant and the Co-Respondent have scored the same number of marks under the criterion “experience” because the Respondent had given only marks for the three years of service as required in the Scheme of Service. The Tribunal views it as a bad practice which prejudiced candidates with more years of experience than the required number of years of service.

The Tribunal points out that the Respondent is bound to assess candidates as per the requirements of the Scheme of Service. The Selection Criteria adopted by the Respondent should reflect that all the requirements of the post are duly assessed. In this regard, the Respondent averred that this was the case in the present matter. The Selection Criteria submitted by the Respondent read as follows:

1. Experience in the grade of CEMA (> 3 years);
2. Administrative and Organising Abilities;
3. Communication and Interpersonal Skills; and
4. Initiative and Leadership Qualities.

The Scheme of Service of the post was also produced and the requirements under heading “Qualification” are as follows:

By selection from among officers in the grade of CEMA who reckon at least three years’ service in a substantive capacity in the grade and have –

- “(i) proven administrative and organising abilities;*
- (ii) good communication and interpersonal skills;*
- (iii) initiative and leadership qualities;*
- (iv) training potential; and*

(v) *sound judgement*".

A comparison between the Criteria for Selection and the requirements of the post as mentioned in the Scheme of Service showed that the ground of appeal under heading Administrative and Organising Abilities was duly considered by the Selection Panel but the Tribunal remarks that the Scheme of Service provides for proven administrative and organising abilities. It would have been more appropriate for the External Assessor, who should be well versed with the capabilities of the candidates, to do the assessment. Without any evidence that this was the case, the Tribunal was left in the dark.

The Appellant further stated in his grounds of Appeal that he prepared and provided training to DEAs. The Respondent only took note of the averment without any denial and it is therefore deemed that Respondent admits same. Further the Co-Respondent agreed during cross-examination that she had never provided formal training. The Tribunal notes that the Respondent had not included in the Criteria for Selection a criterion to assess the candidates for their "training potential" which is a requirement under heading "Qualification" in the Scheme of Service. This is considered to be a serious flaw in the selection exercise as it has been proved that only the Appellant possessed these training abilities. By failing to assess the candidates on this specific requirement, the Appellant had suffered prejudice. This GOA is in itself sufficient to uphold the appeal. The more so as the Tribunal expressed concern on the other GOA as mentioned above.

The Tribunal therefore quashes the decision of the Respondent to appoint the Co-Respondent to the post of Deputy Head DEA cadre and remits the matter back to the Respondent under Section 8(4)(b) of the Public Bodies Appeal Tribunal Act 2008.