

No. Det 33 of 2019

- **When two schemes of service apply to different posts, it is irrelevant if previously the two posts were under the same scheme of service.**
- **The appointment is made under the relevant scheme of service in force at the time of appointment.**

The Appellants are challenging the decision of the Respondent to appoint the Co-Respondents to the post of Senior IMAT in the Ministry of.... They had not been called for interview. As the only issue to determine is about the eligibility of the Appellants to the post of Senior IMAT, only the relevant averments related to eligibility would be taken into consideration for the purpose of giving only one Determination by the Tribunal.

Case of Appellants

As it is the same selection exercise, all parties agreed to consolidate all the appeals and that only one determination be delivered. All Appellants agreed that Appellant No 1 will depone on their behalf as their grounds of appeal are common. However, it was also agreed that the other Appellants may add any clarifications if the need is felt.

All Appellants solemnly affirmed as to the correctness of their Grounds of Appeal (GOA) and their Statements of Case (SOC).

The GOA of all Appellants are:

- Not convened by the Public Service Commission (PSC) for the selection process.
- Denied the right of promotion despite being qualified and experienced.
- Discrimination on the basis of category. Employees outside shift system considered for promotion at the detriment of those on shift.

In their statements of case, Appellants explained that Respondent issued circular Note No ... concerning application for the post of Senior IMAT but the post was not open to IMAT(Shift) but reserved only to IMAT (Personal). They contended that the circular did not explicitly mention that it was exclusively reserved for IMAT(Personal).

Under ground 2, they averred that they had been denied the right of promotion under the pretext that they had merely two years of service. They were not even called for interview. They were of the view that they had been doing the same duties for the past sixteen years. They contended that they joined the shift system in ... but were confirmed in ... and they were informed that no retroactivity of years of service in the grade of IMAT(Shift) would be considered as it was a new appointment.

Under ground 3, they averred that those who opted for the shift system were discriminated against when compared to their colleagues IMAT(Personal). The latter who resisted the transition to the shift system and forced the Ministry of ...to modify its initial policy, were given priority to accede to higher posts to the detriment of those who complied with the new policy of the Ministry of They also contended that it was claimed that the IMAT(Personal) and the IMAT(Shift) are two distinct grades with different schemes but the personnel of both grades performed the same duties. They added further that the IMAT(Shift) had a heavier workload compared to the IMAT(Personal). They averred that the selection process for promotion should have been open to the personnel of both grades. They moved that the decision of the Respondent to appoint the Co-Respondents to the post of Senior IMAT be quashed.

Appellant No 1 was cross-examined by Counsel for Respondent and she denied that the post of Senior IMAT was different from the post of Senior IMAT (Shift) as according to her, the duties are the same for both posts. However, she admitted that the hours of work are different. She also admitted that they signed an option form following the PRB report of 2016. She also admitted that they were paid an in-attendance allowance for the extra working hours. She also obtained three increments on her salary scale following the PRB report of 2008. But she stated that only Appellants 2, 3, 4 and herself obtained same. The PRB report after 2008 mentioned that 3 increments would be granted upon implementation of the shift system. She denied that they were not

eligible to apply for the post of Senior IMAT. She further stated that they were never called as IMAT(Shift) and their salary was not adjusted, which implied that the shift system was never implemented. And now they are being paid overtime for extra hours of work.

Appellant No 5 stated that she was assigned the duties of Senior IMAT several times in the past and that she was deprived of any actingship since she opted for the shift system. She further stated that, a former IMAT was assigned as Senior IMAT for a rather long period of time although she signed for the shift system

Appellant No 7 added that CHAS were also called to work after office hours and were paid overtime accordingly.

Case of Respondent

The representative of Respondent solemnly affirmed as to the correctness of the Statements of Defence (SOD) in all the appeals. In its SOD, Respondent raised a preliminary objection which read as follows:

“The Appellant has no locus standi to lodge the present appeal in as much as the Appellant was not eligible for the post of Senior IMAT being given that she did not meet the qualifications requirement for the post as per the Scheme of Service prescribed on.... The Appellant is therefore not an aggrieved party and the Respondent moves that the appeal be set aside”.

It is to be noted that this preliminary objection was repeated in all the SOD and the averments in all the SOD were more or less similar.

On the merits, Respondent averred that *“according to the Scheme of Service prescribed on..., the post of Senior IMAT is filled by selection from among officers in the grade of IMAT who reckon at least five years’ service in a substantive capacity in the grade”* and that on... , 9 officers only from the grade of IMAT(Personal) were selected for the post of Senior IMAT and none were selected from the grade of IMAT(Shift). Respondent pointed out that PSC Circular Note ... of ... clearly stated that appointment as Senior IMAT would be done by selection from officers in the grade of IMAT.

Respondent further averred that the post IMAT(Personal) and IMAT(Shift) are two separate and distinct posts as established in the Civil Establishment Order and carry a different salary scale. Respondent averred that 29 candidates applied for the post, 18 were found eligible and were convened for interview and 11 of them, including the Appellants, were found not eligible.

The Respondent recalled in its SOD that it was the Errors, Omissions and Anomalies Committee (EOAC) Report 2004 which recommended that officers in the grade of RDAT be made to work on a shift basis. It also recommended that those who opted to work on shift, be granted three additional increments on conversion in the new shift salary scale, subject to the maximum salary of the grade. In the meantime, the post of RDAT was restyled as IMAT. Consequently, the grade of IMAT(Shift) was created.

Respondent averred that the Appellants exercised their option on.... Respondent agreed that it was only on ... that the Appellants were offered substantive appointment as IMAT(Shift). They assumed duty on ... and explained that this was due to the fact that the Scheme of Service was only prescribed on Respondent admitted that the Appellants applied for the post of IMAT in response to ... Circular Note No ... of ... but they were not called for interview.

Respondent averred that prior to the PRB Report 2016, the post of Senior IMAT was filled by selection from among officers in the grades of: -

- (1) IMAT who reckoned at least five years 'service in a substantive capacity in the grade; and
- (2) IMAT(Shift) who reckoned at least five years' service in a substantive capacity in the grade or an aggregate of five years' service in a substantive capacity in the grades of IMAT and IMAT(Shift).

Respondent further averred that the qualification requirement had been amended to reflect the recommendations of the PRB report of 2016 so that appointment to the post of Senior IMAT is made from officers in the grade of IMAT who reckoned at least five years' service in a substantive capacity in the grade. Consequently, the Scheme of

Service for the post of Senior IMAT prescribed on ... provides for the post to be filled by selection from among officers' in the grade of IMAT who reckoned at least five years' service in a substantive capacity in the grade. Hence, officers in the grade of IMAT(Shift) were no longer eligible for the post of Senior IMAT.

It was also averred that the PRB Report 2016 recommended the creation of the post of IMAT(Shift) on the establishment of the Ministry of.... One post of IMAT(Shift) was subsequently created with effect from ... and the Scheme of Service was prescribed on the The post has not yet been filled as there are no qualified candidate who satisfies the qualification requirement.

Respondent further mentioned that both grades were required to perform almost the same duties, except that IMAT(Shift) were required to work on shift system as compared to IMAT.

Respondent maintained that all procedures were rightly followed and had acted in accordance with the Scheme of Service prescribed on the ... and the Civil Establishment Order.... Respondent finally averred that the Tribunal was not the proper forum for the Appellant to challenge the Scheme of Service for the post of Senior IMAT prescribed on the ... and moved that the Appeals be set aside.

Case of Co-Respondents

All Co-Respondents decided to abide by the decision of the Tribunal.

Determination

From the outset, the Tribunal reiterates its position to take into consideration only relevant issues regarding the eligibility of the Appellants to be considered as Senior IMAT following the vacancy which was advertised on the ... as per PSC Circular Note of ... So, the only issue to be determined in this case is whether the Respondent acted within the parameters of the prescribed Scheme of Service for the post of Senior IMAT. All other averments and replies of both the Appellants and Respondent respectively, including those related to the present Scheme of Service were disregarded.

Before determining on this specific issue, the Tribunal finds it important to provide a chronology of the following events which occurred during the last 15 years concerning the grade of IMAT:

- The Errors, Omissions and Anomalies Committee Report 2004 recommended that the grade of RDAT (now IMAT) be made to work on shift basis and that those who opted for shift be granted three increments on conversion in the new shift salary scale subject to the maximum salary of the grade.
- The PRB report of 2013, restyled the post of RDAT and Senior RDAT into IMAT and Senior IMAT respectively. It also created two distinct categories of officers in the grade as IMAT and IMAT(Shift). It also provided two different salary scales for each grade, the salary of IMAT(Shift) being higher than the salary of IMAT.
- The Appellants exercised their option to be appointed as RADT (Shift) now restyled IMAT(Shift).
- A new Scheme of Service for the post of IMAT (shift) was prescribed on ... which provided that the first intake be made by appointment of officers who held a substantive appointment in the grade of IMAT who opted to join the grade of IMAT(Shift).
- On ..., the Appellants were appointed as IMAT(Shift) and they assumed duty as from ... in different relevant places.
- The PRB report 2016 recommended the creation of a new post of Senior IMAT (Shift) for which, only officers in the grade of IMAT(Shift) would be entitled to be appointed and at the same time recommended that the Post of Senior IMAT be appointed from the grade of IMAT only. The report also provided two separate salary scales for IMAT and IMAT(Shift) as well for Senior IMAT and IMAT(Shift). The salaries attached to the posts of IMAT (Shift) and Senior IMAT(Shift) were higher than those of IMAT and Senior IMAT.

- Two different Schemes of Service for Senior IMAT and Senior IMAT (Shift) came into force on However, no officer was appointed as Senior IMAT (Shift) as there was no qualified candidate who satisfied the qualifications requirement.

In light of the above, it is clear that the Appellants are officers in the grade of IMAT(Shift), the moreso, since they declared their present appointments as IMAT(Shift) on their respective application forms. As regards adjustment of their salary, Respondent confirmed that their salaries were adjusted with the new salary scale of IMAT(Shift). It could be that they were drawing the same salary as previously which may be due to the salary conversion point. In the event the Appellants are not satisfied with their converted salary, they had to take the matter with the Ministry concerned as the Tribunal cannot interfere on this issue.

However, our attention was drawn to the fact that Appellant No 5 was deprived of assignment of duties to the post of Senior IMAT since she opted to the shift system but there was another IMAT who also opted for the shift system and was given assignment of duties for a long period. Explanation was sought from the Respondent which informed us that Appellant No 5 was assigned duties of Senior IMAT for period ... to ... on the ground of administrative convenience. As regards the other employee mentioned above, she was the third most senior IMAT and was assigned duties as Senior IMAT on ground of administrative convenience from ... to She was appointed as IMAT(Shift) on the She continued with the assignment of duties as Senior IMAT up to the ... and she retired on the....

The Tribunal finds nothing wrong in the assignment of duties of both of them as the Scheme of Service for the post of Senior IMAT, which was in force prior to ..., provided that both the IMAT and IMAT(Shift) were entitled to be appointed as Senior IMAT. It was only on ... that the new Scheme of Service came into force which limited appointment as Senior IMAT from the grade of IMATS only.

All the grounds of Appeal having failed, the Tribunal sets aside the present appeals. A copy of this Determination is to be filed in each Appeal case file.