

Det 34 of 2019

In a promotion exercise, seniority is an important criterion which will not benefit a candidate if he has been the subject of a negative report.

The Appellant, a LA at the Ministry of ..., is challenging the decision of the Respondent to appoint the Co-Respondent to the post Senior LA.

Appellant's case

The Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA). He did not submit a Statement of Case (SOC).

His GOA are:

- (1) The Co-Respondent had been nominated by promotion and his own experience and merits were not taken into account;
- (2) The Co-Respondent had not worked in all the relevant areas;
- (3) The Co-Respondent worked for more than five consecutive years at the Ministry of ...while the other LAs had to suffer because of the load of work at the particular Centre;
- (4) Appellant attained the top of his salary scale and had not received any increment for four years. He had no prospects in his job;
- (5) The Co-Respondent had most of the time not respected the normal hours of work. He came late to work and left early;
- (6) The Co-Respondent was never assigned the duties of the post
- (7) The Co-Respondent would sign in an earlier time when he came late to work
- (8) The Co-Respondent would make corrections in the attendance book
- (9) Appellant put in question whether Co-Respondent had studied relevant subjects and possessed certificates that Appellant had
- (10) Co-Respondent never wore uniform

- (11) The Co-Respondent worked in a special place and worked outdoor and signed the attendance book later
- (12) He worked in the three special places at the Centre and the Co-Respondent never worked in these places.
- (13) One Senior LA had retired and the Co-Respondent was not assigned the duties of the post
- (14) Appellant averred that the Co-Respondent could not be appointed to the post of Senior LA and that someone else should be appointed.

The Appellant conceded, under cross-examination, that the appointment was by promotion and it was done according to seniority. He also agreed that the Co-Respondent was senior to him according to the staff list. He stated that in an appointment exercise by promotion the Respondent should also take into account meritocracy and experience. Appellant also stated that he worked hard in different special places at the centre. He never saw the Co-Respondent working in the places since... when Appellant was there. Co-Respondent never came to help when other LAs were absent. Appellant claimed that he worked in special places that obtained ISO accreditation. When confronted with the statement of the Ministry that the Co-Respondent worked in other places at the Centre, the Appellant wanted proof of same. Appellant stated that the Co-Respondent was transferred to the Ministry of ...and could not have the years of experience required.

Respondent's Case

The representative of the Respondent solemnly affirmed as to the correctness of Respondent's Statement of Defence (SOD).

The Respondent averred that the appointment of the Co -Respondent was under delegated power conferred on the Ministry by the Respondent.

According to the Scheme of Service for the post, appointment was made by promotion, on the basis of experience and merit, of officers in the grade of LAT (restyled LA) who:

- (i) Reckon at least five years' service in a substantive capacity in the grade;
and
- (ii) Possess good organizing and supervisory skills

There was one vacancy in the grade of Senior LA following the retirement of the substantive holder. The Co-Respondent was the senior-most officer and he reckoned 14 years service in the grade. He was fully qualified and eligible for promotion to the grade of Senior LA. He was appointed in a temporary capacity for six months and he assumed duty on At the time of appointment, the Appellant ranked 3rd in the grade of LA.

Contrary to the averment of the Appellant, the Co-Respondent worked in different places at the Centre from ... to From ... to ..., the Co-Respondent was posted at a specific place. Between ... and ..., the Co-Respondent was on temporary transfer at the Ministry of..... The Co-Respondent reckoned more than five years of service in the grade of LA and was eligible for appointment as per the Scheme of Service.

The Respondent confirmed that the Appellant had reached the top of his salary scale. Promotion would be made to the grade of Senior LA as and when vacancies would occur. The Appellant now ranked 2nd in the grade of LA.

According to information provided by the Ministry, the Co-Respondent had been regular in attendance.

As regards the issue of assignment of duties raised by Appellant, Respondent stated that the decision to assign duties rested with the Responsible Officer. It is done for administrative convenience and does not give any claim for appointment to the higher post.

The Respondent did not note any discrepancy or corrections in the Attendance Register as reported by the Responsible Officer.

The Respondent stated that according to the Scheme of Service for LAT (restyled LA) a minimum pass in SC or GCE in the relevant field or an equivalent qualification acceptable to the PSC was required. The Co-Respondent was appointed

LA on He possessed the basic certificate. He was recruited under the note for the Scheme of Service which said that:

Consideration will also be given to serving employees who had proven experience of the specific work though they do not possess the academic qualifications mentioned above.

The Respondent averred that, according to the Ministry, the Centre had three main special offices and three small ones. Posting of officers to these offices were effected by the officer in charge of the specific Division.

The Respondent averred that the Co-Respondent was fully eligible for appointment to the post of Senior LA.

The representative of the Ministry deponed. He confirmed that there were no adverse reports against the Co-Respondent. He stated that the Co-Respondent was temporarily transferred to the Ministry of ... at the latter's request and the Commission gave its approval for this transfer. The representative stated that posting of officers at the Centre was done by the Officer in Charge and he was not in a position to explain the movements of officers in the special offices. He maintained that the Co-Respondent worked there.

The Respondent moved that the appeal be set aside.

Co-Respondent's case

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

Determination

It is not contested that appointment to the post of Senior LA was done by promotion and not selection. This is as per the prescribed Scheme of Service for the post. As such therefore seniority is a determining factor. The Appellant is not contesting that the Co-Respondent is senior to him on the staff list of the Ministry.

The only occasion when the senior most officer is not promoted is when there are adverse reports against him which can warrant a supersession. In this particular case the Appellant has raised a number of issues and the Tribunal will address them:

- (i) The Appellant is contending that the Co-Respondent often comes late to work and leaves work early. The Respondent avers that the Co-Respondent has been regular in attendance and there is no adverse report against him. The Tribunal asked for the Attendance Register and finds that there were cases of late attendance and early departure. However, there is no record of any action taken against the Co-Respondent which would have warranted putting in question his appointment. There was no sign of any tampering on the Attendance Register.
- (ii) The Appellant has questioned the qualifications of the Co-Respondent. It is true that the Co-Respondent has only a basic certificate and not any pass at higher level and the Appellant claims that he passed in some subjects at higher level. However, the Respondent has explained that the Co-Respondent was appointed LAT (restyled LA) under a note in the Scheme of Service. The fact remains that the Co-Respondent is a LA and eligible for appointment. The Scheme of Service for Senior LA does not make mention of qualifications.
- (iii) As regards the decision to allow the Co-Respondent's temporary transfer to the Ministry of ... when there was a dearth of LA, this is the prerogative of the Ministry in consultation with the Respondent
- (iv) The Appellant has expressed doubts as to whether the Co-Respondent had the number of years of experience in the specific works. The Respondent has given information on the matter which shows that he meets the five years experience. The confusion is that there are three larger specific offices and three small ones and the Appellant may not be aware of the posting of the Co-Respondent in the offices.

It was for the Appellant to prove his case and he did not do so. The Appellant was not in line for promotion as he was third in the seniority list.

The Tribunal finds that the Respondent has not erred in its promotion exercise.

The appeal is set aside.