

Knowledge of the job is a good criterion for assessing candidates in a selection exercise.

Both Appellants are challenging the decision of the Respondent to appoint the Co-Respondent to the post of ORS in the Municipal Council.

All parties agreed to consolidate both cases as they concern the same selection exercise and that only one determination will be delivered. For the purpose of the determination, Appellants will be referred to as Appellant No 1 and Appellant No 2 respectively. Copy will be filed in each Appeal Case.

Case of Appellant No 1

Appellant solemnly affirmed to the correctness of his Grounds of Appeal (GOA) and Statement of Case (SOC). In his GOA, he averred that he had 25 years of service at the Municipal Council of ... and had held the said post of “ORS” from ... until his reversion to his previous post on ... without complaints from hierarchy. Furthermore, he was not remunerated for the post as “ORS”. He further averred that the Co-Respondent had no experience in the job and was an OAT whereas he had several months experience as ORS.

In his SOC, he explained that he joined the Municipal Council as LAER on ... and subsequently appointed as BDR on the next day of the same year. He applied for the post of ORS on ... and received his appointment in the job with effect from the next month in the same year. He worked up to ... when he was reverted as BDR. He averred that during the period that he worked as ORS, there was no complaints or whatsoever about his performance on the quality of work he delivered. He applied once more for the post of ORS in ... but was not selected and averred that he had more experience than the Co-Respondent who had been an OAT with no prior experience as ORS. He considered that he had been prejudiced in the relevant selection exercise and sought

redress from the Tribunal. He reiterated the GOA and requested for a full enquiry to see that justice is carried out.

Under cross examination, he admitted that experience was not the only criterion as it was a selection exercise. He also admitted that he was under report but he explained that many other employees were reprimanded for same. He also said that as BDR, his hand became rough and that the clock machine did not recognize his thumbprint.

Case of Appellant No 2

Appellant No 2 solemnly affirmed as to the correctness of his GOA and a letter addressed to the Tribunal which was considered as a SOC. In his GOA, he averred that the decision of the Respondent was unfair in as much as he reckoned more than 30 years of service and had applied for the post of ORS several times and he was qualified, eligible and possessed the required qualification to be appointed as ORS. He also averred that the appointment of Co-Respondent was unfair towards him because the latter held a post which was a lower grade than him and he reckoned more experience and years of service than the Co-Respondent. He was of the view that the Tribunal should rule in his favour as he was being unjustly looked down by the Respondent for the post of ORS.

Under cross examination, he admitted that experience was not the only criterion of selection and that he was not aware how the Co-Respondent performed during the interview.

Case of Co-Respondent

The Co-Respondent solemnly affirmed as to the correctness of his Statement of Defence (SOD) which he filed in both cases. In the SOD, he averred that he joined as LAER with Respondent since 1992 and was involved in various works across several departments of the Municipal Council. He also averred that he was appointed as OAT and worked in the welfare, planning, works and administration department as well as

with the Chief. On several occasions, he was called upon to assume higher responsibilities as acting SAT where he also worked at the reception desk for administering telephone calls and that no complaints were made against him and he was always commended for his good performance and attitude at work. He was appointed as ORS on 2019.

He explained that at the time of advertisement, he was eligible in the light of his qualifications and experiences.

In reply to the SOC of Appellant No 1, he averred that the several months experience as ORS as claimed by the Appellant No 1 and upon which his appeal was based could not come to his rescue as such appointment itself was based upon facts which were concealed from the employer and which vitiated his application. Further the Commission Circular No ... of ... made no mention of working experience as a prerequisite for consideration to the post.

As regards the GOA of Appellant No 2 which referred to his seniority and had not been considered, he submitted that seniority was not the only and primary basis for making an appointment. There were other considerations that applied.

In light of the points raised in his SOD, he moved that the appeals be set aside.

Case of Respondent

Respondent's representative solemnly affirmed as to the correctness of its SOD in both cases. The Respondent confirmed the averments of the Appellants regarding their appointments at the Municipal Council and that the Appellant No 1 was reverted from the post of ORS to his previous substantive post after a determination of this Tribunal.

As regards the averment of Appellant No 1 concerning the non-payment of remuneration while he was working as ORS, the Respondent averred that during the period Appellant was appointed as ORS in a temporary capacity, that is from the ... to..., and as the initial salary point of ORS was similar to what he was drawing as BDR,

he was paid the same salary. However, upon appointment to the post in a substantive capacity, he would have been granted three increments.

Respondent further averred that 92 candidates submitted their applications and 68 candidates including the Appellant, were convened for the interview and the selection exercise was carried out in accordance with the requirements of the Scheme of Service and the criteria of selection required for the post. Respondent added in the Statement of Defence, that it had in the exercise of its powers during the selection exercise, given due consideration to the candidates and had taken into account qualifications, experience and merit as well as the Scheme of Service for the post of ORS.

Respondent averred that experience and seniority were not overriding criteria for selection, that all procedures had been scrupulously followed by Respondent in compliance with Regulation 13(1)(b) of the Commission Regulations 1984 and all information pertaining to experience as spelt out in the candidates' application forms, had been duly considered by it. The Respondent appointed two of the candidates with effect from the ... and a third one with effect from ...

Thereafter later, the Respondent appointed the Co-Respondent to the post of ORS. Respondent reiterated that:

- (a) the post of ORS was filled by way of selection;
- (b) experience was not the only criterion for selection;
- (c) the onus was on the Appellants to demonstrate that they were more suitable for the post of ORS during the interview;
- (d) the fact that they were not appointed indicated that their performance at interview were not satisfactory; and
- (e) The Co-Respondent satisfied all the requirements under the Scheme of Service for the post of ORS.

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

Respondent's representative was cross examined by Counsel for Appellant. He denied that the several months that Appellant No 1 was working as ORS before his appointment was quashed, gave him an edge over other candidates. He added that he would be assessed during interview under the criterion Knowledge of the job.

He also added that the experience of Appellant No 2 was considered as declared in his application form.

Determination

It is not disputed that Appellants and the Co-Respondent were qualified for the post of ORS. The only issue that was intensely canvassed by all parties was about Experience. The Tribunal reminds all parties that merit also is a criterion under Regulation 13 of the Regulations 1984.

A scrupulous analysis of the markings provided to us by the Respondent showed that there was nothing disturbing in the Qualifications criterion. As for the criterion Merit, the Tribunal could not intervene as it is the prerogative of the assessors to give marks according to their own subjective assessment.

On the criterion of Experience, the Tribunal notes that the Respondent is referring to any experience the candidates may have of the post he/she is applying for. The Tribunal feels that Experience should refer to the post a candidate is actually occupying to see whether he/she is apt to apply for a higher position. In this case then, the selection panel cannot give a zero mark for Experience and finally choose a candidate for appointment to the higher post. This would be unreasonable in the Wednesbury sense.

The aptitude of a candidate for the post applied for can best be assessed on the basis of a criterion of Knowledge of the Job where he can be tested on his future

responsibilities. This would be a more logical and reasonable way to assess a candidate.

The Tribunal notes that the Appellants did not receive marks for Experience, but the Co-Respondent was granted full marks under the same criterion. However, the Tribunal finds that if full marks had been allocated for Experience to both Appellants as well, they would have still been below the Co-Respondent in the total marks. The discrepancy in the markings of the criteria Experience is not fatal in the final outcome of the assessment exercise.

Under these circumstances, the Tribunal finds no reason to quash the decision of the Respondent and therefore the appeal is set aside.