

Det 06 of 2020

- **If a candidate avers that he was assigned duty of a post for which he is applying he must at least bring proof of such assignment and that he was paid an allowance in order to claim experience acquired.**
- **But assignment of duty does not in itself constitute an advantage.**

The Appellants are challenging the decision of the Respondent to appoint the Co-Respondents to the post of LED/Senior LED in the Ministry of ... hereafter referred as the Ministry.

As all the appeals concerned the same selection exercise, all parties agreed that all appeals be consolidated and that only one determination be delivered.

Case of Appellant No 1

Appellant No 1 solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and his Statement of Case (SOC). In fact, the SOC is a reproduction of the grounds of Appeal which read as follows:

No meritocracy. I join Service in the Year No one has been promoted to ... Section. Six Years Experience as acting LED and already performing LED Duties on an acting basis from up to now. For example, working on site, etc.

During cross examination, he stated that he had performed the duties of LED but had never received any allowance, nor did he have any letter from the Ministry to prove that he had been assigned the duties of LED. On being cross examined, he admitted that he was not aware that the Co-Respondents had the required experience.

Case of Appellant No 2

Appellant No 2 solemnly affirmed as to the correctness of his Grounds of Appeal and his Statement of Case (SOC). The GOA read as follows:

“Moi ... Mo travail dan Ministere ... en ... Mo travail section.... Bonjour Monsieur & Madame Mo p faire la deux eme appeal. Mo contre Monsieur ...”

“Monsieur ... line rentre travail en.... Moi mo travail dan 1 site tousel pendant 27 mois pena chef narien. Mo avoy mo presence par moi ek mo progress travail tou le semain. Moi ... mo ena ban travail experience com: (He cites several specialisation).

Moi mo pe rode mo droit com Seniority” .SIC

In the SOC, Appellant repeated his GOA. He added that he applied for the post of GG five times and he was appealing to the Tribunal for the second time He was working as Acting GG on several sites of work.

During cross-examination, he admitted that he did not know the experience of the Co Respondents because he did not know them as they worked on different sites. He was also informed that seniority was not a criterion in a selection exercise.

Case of Appellant No 3

Appellant No 3 solemnly affirmed as to the correctness of his Grounds of Appeal. He did not submit any SOC. The GOA read as follows:

“I. Appellant has been in employment at the Ministry for more than 12 years. He was employed as GWR from ... to ... and thereafter was employed as HWR and has been occupying the said post till date.

II. Appellant has adhered to all criteria for the post of LED. He has working experience and the required qualifications and competencies.

III. Appellant has been discharging his duties fairly and diligently and has never been subject to any adverse complaints since the start of his employment. His behaviour and performance at work is beyond reproach.

IV. Appellant has worked as acting LED for one and a half years under request by a retired officer. Appellant has therefore acquired the experience and skills to exercise duty as LED.

V. Working colleagues who were employed after Appellant was promoted to LED; namely (Co Respondent No 2) who was employed in.... The selected candidate is less qualified, has less experience and less suited for the post.

VI. *The proper procedure has not been adopted during selection.*

VII. *The decision is unfair, biased and unjust.*

VIII. *The selection is not based on meritocracy". SIC*

He also averred that he should be equally considered for the post of LED and that he be enrolled on fulltime basis as LED as soon as was reasonably practicable.

He was cross-examined by Counsel for Respondent and he admitted that Co-Respondent No 2 had experience but he maintained that he joined the service 4 years before him. He also stated that he had worked as acting LED in ... and ... but he was never provided with a letter nor received any allowance for carrying out higher duties. He was also explained that seniority is not taken into consideration in a selection exercise.

Case of Respondent

The Respondent, in its Statements of Defence against Appellants, averred that appointment to the grade of LED/Senior LED was made by selection from among employees on permanent and pensionable establishment of the Ministry.

Respondent further averred that Appellant No 1 joined service on ...as CGWR and was transferred on permanent and pensionable establishment since.... He was posted at ... substation as GWR and not as Acting LED as he had not been assigned the duties of LED/ Senior LED nor had been paid any allowance with regards to any such alleged actingship.

As regards to the SOD filed against Appellant No 2, Respondent averred that Appellant No 2 joined the service as CGWR on..., was appointed on the permanent and pensionable establishment in the Ministry on the ... and thereafter appointed HWRS with effect from the.... He had not been assigned the duties of LED/Senior LED nor had been paid any allowance with regard to such alleged actingship.

Respondent averred in its SOD filed against Appellant No 3 that the latter joined the service as CGWR on ... and subsequently appointed on the permanent and pensionable establishment of the Ministry on.... He was then appointed as HWR with

effect from.... He had also not been assigned the duties of LED/ Senior LED nor had been paid any allowance whatsoever for any alleged actingship. Respondent further averred that Co Respondent No 2 joined the service on ... and subsequently appointed on permanent and pensionable establishment of the Ministry on.... He was also appointed as HWR with effect from the.... Co Respondent No 2 had pursued higher studies than Appellant no 3.

Respondent explained in the SODs that 64 applications were received following the advertisement made on the ... for the post of LED/ Senior LED. Only 47 candidates were found eligible, including the Appellants, and they were convened for interview. 11 of them were appointed to fill in the 11 vacancies in the grade with effect from.... All the candidates were assessed on the basis of qualifications, general knowledge of work performed on site of work and aptitude i.e work and conduct and supervisory and managerial skills.

Respondent moved that the three appeals be set aside.

Respondent filed:

- (I) *its Delegation of Power of Appointment to the Ministry*
- (II) *the list of employees appointed as LED*
- (III) *a letter to the effect that “when the supervisors were on leave, arrangements were made for other officers in the grade of LED/Senior LED to cover the work”*

Under cross-examination the representative of the Respondent maintained that none of the Appellants had been assigned duties as LED/Senior LED nor any allowance paid to them. She explained that due regard was given to qualifications during the selection exercise.

Case of Co-Respondents

All Co Respondents were absent on the day of hearing. However Co-Respondents No 2, 8, 9, 10 and 11 had already signified their intentions to abide by the decision of the Tribunal.

Determination

All the three appeals rest on common grounds related to qualifications, experience and seniority. However, none of the Appellants had substantiated their grievances with appropriate documents. Their averments to the effect that they carried out the duties of LED/Senior LED were denied by Respondent. Furthermore, they themselves admitted that they were not given appointment as such nor did they receive any allowance. Under these circumstances this ground of appeal does not stand.

The Tribunal analysed the markings provided to it under confidential cover to see if the selection process duly took into consideration qualifications, experience and merit of the Appellants. It was found that there was nothing to suggest that the selection exercise was flawed. All the relevant criteria upon which marks were allocated duly considered qualifications and experience.

Upon these circumstances, the Tribunal sets aside the appeals. Copy of this Determination is to be filed in each Appeal Case file.