

Det 10 of 2020

Assignment of duties cannot be taken as a criterion in a selection exercise as it is done for administrative convenience and cannot constitute an advantage for a candidate.

The Appellant is an AET (PHT Services) (on shift) in the employment of the Rodrigues Regional Assembly. She is challenging the decision of the Respondent to appoint the Co-Respondents to the post of Senior AET (PHT Services) (on shift).

Appellant's Case

The Appellant swore to the correctness of her Grounds of Appeal. She did not submit a Statement of Case.

She grounded her appeal as follows:

“(i) Appointment of Junior AET (PHT Services) (on shift)

(ii) Last appointment made by selection, most Senior AETs were appointed

(iii) I am fully qualified for the post of Senior AET (PHT Services) (on shift)

(iv) In terms of seniority, I am most Senior AET with twenty four (24) years of service as compared to the two AETs who have been offered appointment as Senior AET (PHT Services)

(iv) I consider I have been discriminated against by appointment of the two junior officer”

At the hearing held in Rodrigues, she was cross-examined. She conceded that there was a selection exercise and seniority was not the sole criterion. She explained, however, that her longer years of service gave her experience. She stated that she worked in many sections whenever there was a dearth of officers and there were no complaints about her work. She performed satisfactorily. Her experience had not been taken into account by the selection panel. She felt that she should have been appointed

and the appointment of the two Co-Respondents was a case of discrimination against her.

She averred that she did not contest the previous appointment of four officers in the same selection exercise as they were senior to her.

Respondent's Case

The Respondent solemnly affirmed to the correctness of its Statement of Defence (SOD).

The Respondent had raised a point to the effect that the appeal reached the Tribunal after the statutory delay of 21 days. However, the Tribunal ruled that the Appellant sent her appeal by post well before the date limit but it reached the Tribunal after the date limit. Given the special circumstances of Rodrigues and the delay in the appeal reaching in time which was not of Appellant's fault, and in fairness to the Appellant the Tribunal agreed that the appeal be heard. Counsel for the Respondent did not insist on the preliminary point of law and the appeal was heard on the merits.

The Respondent averred that the post was filled by selection as per the Scheme of Service from officers in the grades of PHT AET (shift) now restyled AET (PHT Services) (on shift) and ALM AET (on shift) who reckoned at least four years' service in a substantive capacity in their respective grades and who possess supervisory skills. Candidates were appointed according to their merit and performance at the interview and seniority was considered last. Appellant was 24th on the seniority list. Co-Respondent No 1 ranked 75th and Co-Respondent No 2 was 25th on the list.

After the selection exercise the Appellant ranked 9th on the merit list while Co-Respondent No 1 and Co-Respondent No 2 were 5th and 6th respectively. The merit list was valid for a period of 2 years and candidates were appointed from the merit list as and when vacancies occurred.

The Appellant was not appointed because of her ranking on the merit list and Respondent moved that the appeal be set aside.

The Respondent produced at the hearing the criteria which were used by the selection panel which were:

“(i) Knowledge of the job

(ii) Relevant Experience in the job (assignment of duties)

(iii) Motivation”

Determination

The fact that appointment was made through selection is not disputed as this is provided for in the Scheme of Service for the post. As it is a selection exercise, seniority is not a determining factor.

The Appellant is, however, contesting the fact that during her longer years of service she acquired more experience than the Co-Respondents who were junior to her.

The Tribunal finds that there was a major flaw in the criteria for this selection exercise. This relates to criterion (ii) where assignment of duties was taken on board for assessing candidates. This is unfair as Respondent always points out that assignment of duties should not give claim for permanent appointment. Assignment of duties is done for administrative convenience and is normally proposed to the seniormost officer(s) in the grade. It is not reasonable to allocate marks to those assigned duties as this is at the expense of junior officers who are not given a chance to do so. It is apposite to quote the Supreme Court Judgement in *S. Rampertab v the Public Service commission (2009SCJ 189)* which says that *“the assignment of duties, as an administrative expediency and for short periods, does not confer any right on the applicant to claim permanent employment; nor we may add, any advantage”*.

The Tribunal wanted to make sure that the interview panel took into consideration the assignment of duties in assessing the candidates. The Tribunal asked for and was given the mark sheets for each candidate. The mark sheets showed clearly that assignment of duties was taken on board in the assessment of candidates.

The Tribunal finds that Respondent has erred and the selection exercise has not been fair and reasonable and the appointment exercise is flawed.

The Tribunal quashes the decision of Respondent to appoint the Co-Respondents and remits the matter back to Respondent for appropriate action under section 8(4)(b) of the Public Bodies Appeal Tribunal Act 2008. In the circumstances, the merit list becomes invalid for future appointments.