

## Det 12 of 2020

**If a candidate invokes bias on religious ground, he must bring evidence of same and not just rely on his perception**

Appellant is challenging the decision of Respondent to appoint the Co-Respondents to the post of DERHU (Roster) hereafter called “the post” in the District Council of ...

### **Case of Appellant**

Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and Statement of Case (SOC).

The GOA of Appellant were as follows:

1. At least nine out of the fifteen appointees do not have the minimum or hold the appropriate qualifications for the post DERHU (Roster).
2. Seniority has not been considered at all.
3. At least two DERs namely Messrs ... and ... who are not even RDERs have been appointed.
4. The following appointees below do not have a clean record, namely Co-Respondents Nos 2, 4, 7 and 12.
5. The interview panel was biased against me on religious ground.
6. All the fifteen appointees come from the same religious background.
7. I hold all the qualifications to be appointed as per advertisement for the post.
8. The Tribunal must ask for the markings.

In his SOC he expatiated on the GOA. He averred that Co-Respondents Nos 1, 3, 5, 6, 8, 9, 11, 13 and 15 were underqualified for the post of DERHU (Roster) as the minimum qualification was the basic certificate. He added that seniority had not been

considered at all and that he had 14 years' working experience in the District Council. He further averred that at least two Co-Respondents namely Nos 6 and 10 were not even RDERs but were appointed and that to be able to apply for the post, appointees had to be a RDER. He also averred that Co-Respondents Nos 2, 4, 7 and 12 did not have clean criminal records. He was of the opinion that the interview panel was biased against him on religious grounds. He pointed out that the qualifications required to be appointed to the post were at least two special permits and having passed the basic certificate.

Under Cross Examination, he admitted that seniority was not a criterion in a selection exercise and that, even a DER was eligible to apply for the post as per the Scheme of Service (SOS). He also admitted that he could not say whether Co-Respondent No 12 was convicted for fatal accident. He agreed that the SOS did not require DERs in post in the Local Authorities to possess the basic certificate and two special permits. He also stated that he felt that he had been prejudiced because of his religion but it may not be case. He rested his feeling on the fact that all the Co-Respondents came from one specific religion. He admitted that he paid a fine of Rs ... on ... for ... before the ... District Court and a fine of Rs ...on ... for ... before the District Court of... However, he denied that he was involved in a case of SGD which is pending before the Intermediate Court.

### **Case of Respondent**

The Representative of Respondent solemnly affirmed as to the correctness of its Statement of Defence (SOD). Respondent averred that the post was filled according to the SOS and both the Appellant and the Co-Respondents were eligible to apply and convened for interview. The minimum qualification required was that the candidate must hold the post of either DER or DER (Roster) and must possess a special permit.

Respondent added that Seniority is not a determining factor as it was a selection exercise and experience was not the sole criterion. According to the record available with the Respondent, it was averred that:

- (i) Co-Respondent No 2 was a Declarant involving only a precautionary measure and the case was filed on...;

- (ii) Co-Respondent No 4 had a clean record;
- (iii) Co-Respondent No 7 was suspended from work without pay for a period of three working days following his sentence before the District Court of ... on ... to pay a fine of ... and Rs... as costs for ...;
- (iv) Co-Respondent No 12 was prosecuted for the offence of ... and was sentenced to pay a fine of Rs...
- (v) Appellant was sentenced on ...to pay a fine for ... before the ... District Court, he was fined on ... for ... before the District Court of.... He was also involved in a case of SGD pending before the Intermediate Court.

Respondent further averred that all procedures had been followed and the appointment of the Co-Respondents had been made as per the provisions of the SOS and in accordance with the Local Government Service Commission Regulations 1984. The Co-Respondents were appointed in a temporary capacity for a period of one year and that their appointment in a substantive capacity was subject to them giving a clean ... Offence Certificate at the end of the temporary period. Respondent moved that the appeal be set aside.

Under Cross Examination, the representative of Respondent admitted that he was not aware of the outcome of the case of SGD against the Appellant and denied that some of the Co-Respondents did not qualify for the post. He maintained that the selection exercise was made in accordance with the SOS. Experience was not the sole criterion of selection.

### **Case of Co-Respondents**

Co-Respondents No 1, 2, 3, 4, 8, 11, 12, 13, 14 were abiding by the decision of the Tribunal. However, on the day of hearing, no Co-Respondents were present and therefore the Tribunal was not in the presence of the stand of Co-Respondents Nos 5, 6, 7, 9, 10 and 15.

### **Determination**

The Tribunal has heard both parties on the GOA raised by the Appellant as well as the Defence of the Respondent. The Tribunal is analysing each ground individually.

Grounds 1 and 3. The Appellant admitted that all Co-Respondents were qualified to be appointed, and DERs were also eligible to apply for the post. The basic certificate was only required for those not in service.

Ground 2. Under this ground, it is well known that seniority is not a criterion for selection exercise unless two or more candidates are at par after the selection exercise.

Ground 4. Appellant could not produce any evidence regarding the criminal records of Co-Respondents as listed in his GOA. However, Respondent admitted that Co-Respondent No 7 was suspended from work. The Tribunal concluded that, in this present appeal it did not have to decide whether the suspension of Co-Respondent No 7 should have been taken into account for the selection exercise as the Respondent stated that all depended upon the gravity and seriousness of each case.

Ground 5. The Tribunal observed that the Appellant had not shown sufficient evidence to prove any element of bias during the selection exercise and it was only a feeling of the Appellant.

Grounds 6 and 7. The Respondent admitted that Appellant was qualified for the post.

Ground 8. The Tribunal was provided with the markings under confidential cover and found nothing disturbing for it to intervene.

The Tribunal concludes that there is no element based on the GOA which indicates that the selection exercise was flawed.

The Appeal is therefore set aside.