

D/02 of 2021

The main ground of appeal in this case was that the Appellants joined the service well before those who have been appointed and therefore had more experience. It is well known that seniority is not a determining factor in a selection exercise.

The Appellants are challenging the decision of the Respondent to appoint the Co-Respondents to the post of SHCA in a specific field.

According to the Scheme of Service prescribed on..., the said post is filled:

“By selection from among officers in the grade of HCAG who reckon at least five years’ service in a substantive capacity in the grade including at least one year’s working experience in the relevant field of speciality and who-

- (i) possess good communication and interpersonal skills;*
- (ii) are able to interact with people of different backgrounds; and*
- (iii) have ability to work in a team”*

Appellants’ Case

The appellants solemnly affirmed as to the correctness of their Grounds of Appeal (GOA) and their Statements of Case (SOC)

The GOA of the Appellants are almost the same and can be grouped as follows:

- (i) More length of services;
- (ii) More experience;
- (iii) Qualification;
- (iv) Vacancies were funded since two years and post filled in...;
- (v) Negative impact on work and interpersonal relationship among colleagues; and
- (vi) There was a selection to join the Specific Unit.

In addition to these core GOA an Appellant also stated that as SRP she was called upon to conduct training assessment of HCAs in RP on

The Appellants expatiated on their GOA in their respective SOC. They also decided that only one Appellant would depone on their behalf and they would intervene if needed.

On cross-examination the Appellants stated that some had gone to the Retinal unit only after one or two years as HCA in the general service and were not exposed to the other areas where HCAs worked. When questioned as to whether these persons were performing as HCAs when they were posted in the Specific Unit they conceded that this was so.

They mentioned that they followed training given by the Professional and were given a certificate at the end of the training.

The Appellants failed to understand why it took two years to fill vacancies and why after this initial appointment exercise the Respondent decided to re-advertise remaining vacancies and not have recourse to the merit list of the past interview.

One of the Appellant stated that she assessed some of the Co-Respondents. She could not understand why they were appointed and she was not found fit for appointment.

Some Appellants averred that they trained junior colleagues and yet were not appointed.

Respondent's Case

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

The Respondent averred that the appointment was made by selection as per the Scheme of Service for the post.

Funds were available for the filling of only ... vacancies because of budget problems arising from the Covid 19 pandemic. The Responsible Officer had recommended that the ... vacancies be filled but the Respondent decided that only ... vacancies would be filled for reasons which the representative of Respondent was not in a position to explain.

The representative of the Respondent produced the criteria that were used for the assessment of candidates. These were:

- (i) Relevant Work Experience in the relevant field (>one year);
- (ii) Computer literacy;
- (iii) Knowledge of duties & responsibilities of the post;
- (iv) Communication and Interpersonal skills/counselling; and
- (v) Surveys/Research projects.

The Respondent had sought information from the Responsible Officer on the candidates who applied and ... of them were found eligible. They were called for interview on ... and ... and Following the interview, the Respondent decided to appoint ... of them. They were offered appointment on ... and they assumed duty on....

The Respondent averred that it took into consideration all information submitted by candidates in their application forms. As regards the training issue, the Respondent averred that both Appellants and the Co-Respondents had followed the training courses on the relevant field.

The Respondent reiterated that the post was filled by selection and seniority was not a determining factor.

The Respondent stated that the appointment was made by selection according to criteria established, performance at the interview and suitability of candidates for the post as well as the provisions of the Public Service Commission Regulations.

The Respondent averred that the appeals had no merit and moved that they be set aside

Co-Respondents' Case

The Co-Respondents decided to abide by the decision of the Tribunal with the exception of four of them. The latter solemnly affirmed to the correctness of their SOD.

The first Co-Respondent listed her career path, including her posting in the relevant field as HCA from ... to ...and as RP at the Station till.... She worked to the satisfaction of her supervisor.

When she applied for the post of SHCA in the Specific Field she was called for interview but could not attend as her daughter had to undergo surgery and she had to accompany her. She asked for a postponement of the interview and she was interviewed later on ...

She averred that the correct procedures were applied for her appointment. She had been working as HCA for ... years and in the relevant field for almost ... years.

A second Co-Respondent averred that she worked for ... years as HCA and she had almost ... years of experience in the Specific Unit. She followed a ... months full time course in SSRD as was some of the Appellants and also followed training in IT. She was paid an ad hoc allowance as professional HCA in DSSR.

She averred that the interview process was carried out in a transparent manner and the decision of the PSC was fair and justified.

A third Co-Respondent averred that he joined service as HCA on He had been at the relevant Unit for almost ... years and he was paid an ad hoc allowance. He followed the course on DR. He imparted training to some of his colleagues

He further stated that he worked in various wards and participated in several workshops and seminars. He possessed good communication and interpersonal skills. He can interact with people of different backgrounds.

A fourth Co-Respondent averred that he had the necessary qualifications and training for the post. He had never had any adverse complaints in his career and had good professional working relationships with all members of staff. He was among the first ones to join the Specific Unit in ... and was amongst the most experienced applicant for the post.

He felt that his appointment was fully justified.

Determination

The Appellants have listed six main grounds of appeal.

The Tribunal will address them as follows:

Ground (i) The Appellants aver that they had more length of service and this should give them an advantage for appointment. It is not disputed that the appointment was made by selection as per the Scheme of Service for the post. In a selection exercise, seniority *per se* is not a determining factor as PSC Regulation 14 provides that the PSC must take into account “*qualifications, experience, merit and suitability for the office in question before seniority*”. This ground fails.

Ground (ii) As regards experience, both Appellants and Co-Respondents had been working in the Specific Unit and followed training in this field. They were found to be at par by the selection panel. There is the case of the Appellant who averred that she assessed four of the Co-Respondents in the field of RP and she found that these colleagues were appointed and she was not. The Tribunal finds that in fact the four Co-Respondents got marginally more marks than the Appellant. However, it is noted that the assessment was done in ... and the appointment was done in..., i.e. after ... years and RP is one of the areas in the relevant field. The Tribunal finds that the markings given on this criterion do not affect the outcome of the selection exercise.

Ground (iii) On the issue of qualifications, it is found that Appellants and Co-Respondents had followed the same course. The only difference is that for some of them the course was run by the and a certificate was awarded while for the other HCAs other persons carried out the training and a testimonial given. It was stated however that the training was the same. It was even averred that the training given by the Professional was of a shorter duration. There was some argument about the validity of the testimonial. However, the Tribunal cannot decide on this and, in any case, the Scheme of Service does not require such a qualification.

Ground (iv) The decision on the timing for the filling of posts falls on the shoulders of the Responsible Officer and the PSC. The Tribunal cannot intervene on this issue.

Ground (v) The Appellants referred to the negative impact of the appointment exercise on work and interpersonal relationship among colleagues. However, on cross-examination it was conceded that such negative impact resulted after the appointment and was not a cause for non-appointment. This ground bears no relevance to the appeal

Ground (vi) The Appellants stated that there was a selection before officers could join the Retinal Unit. The Tribunal does not find any influence that this can have on the selection process for this post.

As regards the criteria for assessment of candidates, the Tribunal finds that the criterion "Computer Literacy", served no purpose. All five Appellants and Co-Respondents were not acquainted with IT and scored same low marks except for one Co-Respondent.

The Tribunal finds that the appointment process was not flawed.

The appeals are set aside.