

No appointment can be made if Applicants do not possess the required qualifications as laid down in the Scheme of Service.

The Appellant lodged an appeal challenging the decision of the Respondent to appoint the Co-Respondent to the post of DRMU in a temporary capacity in the Ministry of

Appellant's Case

The Appellant swore to the correctness of his Grounds of Appeals (GOA) which were as follows:

- “1. *I hold more years of service*
2. *I hold more years of experience*
3. *I hold permit of..., ..., ..., ...*
4. *I have performed duties of DRM on allowance for many years” SIC*

He averred in a statement of case that he joined service as a GW on.... He performed the duties of DR in an acting capacity from ... up to ... and ... the following....

He further explained that, since his appointment as DR in ..., he worked whenever and wherever he was instructed to do. He worked during flood, chikungunya, dengue, covid 19 and had never had a ... accident while on duty.

During cross-examination, he admitted that he did not possess a ...permit at the time of application but he was in the possession of a Learner for ...permit. He also admitted that in a selection exercise, the issue of longer years of service is not a criterion for selection.

He was then reexamined by a representative of the Union representing Appellant. He stated that he was several times instructed to act as DRMU each and every time that the incumbent was on leave. He has also been paid responsibility allowance for carrying such higher duties.

He produced a letter from the Ministry dated ... assigning him duties of DRMU from ... to....

He also informed the Tribunal that the Ministry was aware that he had no permit to ... but held another permit. He just abided to instructions given to him. He also stated that he

was not aware of the exact load of the transport that he was called upon to use mainly. He accepted that he used the ones that he was not authorized to do.

Respondent's Case

Respondent solemnly affirmed to the correctness of its Statement of Defence (SOD) in which it averred that the selection exercise was made under delegated powers. The post of DRMU was advertised on ... among DRs on the permanent and pensionable establishment of the Ministry who possessed a ... permit (mg) and a permit to

There were ... applications and only ... candidates were convened for interview including the Appellant. The criteria used to assess the suitability of the candidates were as follows:

- (i) Knowledge of ...maintenance;
- (ii) Experience of work; and
- (iii) Licence

Respondent further averred that Appellant joined the Ministry with effect from ... and was transferred to the permanent and pensionable establishment of the Ministry with effect from He was Acting DR as from ... to ... and was subsequently appointed DR with effect from

Appellant was convened for the interview. In the meantime, the advice of the COP was sought as to whether he was entitled to drive GVs when he was the holder of a permit to drive GV not exceeding.... The COP confirmed that the vehicles whose maximum gross weight ... are classified as GV and can only be driven by those who are holders of a valid DRG permit for GV. Respondent therefore averred that Appellant was not eligible for the post of DRMU.

Respondent contended that all procedures have been followed and the appointment of Co-Respondent was made in line with the requirement of the Scheme of Service.

Under cross-examination, the representative of the Ministry recognized that a mistake had occurred by allowing the Appellant to drive vehicles when he did not hold the required permit. He also stated that, when Appellant was convened to be interviewed, there was doubt as to his eligibility. But he admitted that there was no point of asking advice from the COP as to his capacity to drive GV as the DRG permit produced before the Tribunal demarcated

clearly the permit to drive GVs and that of driving HMV. Appellant only had a learner's permit for driving GVs.

Co-Respondent's Case

In response to a letter from the Tribunal inviting Co-Respondent to take a stand, Co-Respondent sent a letter dated ... stating that he is abiding by the decision of the Tribunal and did not submit any SOD. On the day of hearing, he left default.

Determination

Under grounds 1 and 2

The Tribunal will deal with grounds 1 and 2 together. It is well known and not disputed that in a selection exercise more years of service, as opposed to experience, have no bearing in the final selection of the candidates and that Appellant has admitted same. Hence both grounds fail.

Under Ground 3

It is not denied that Appellant held a permit to drive ... but the scheme of service produced to the Tribunal required that the candidates should be the holder of a permit to drive GVs. The Appellant admitted that he did not hold a valid DRG permit for GVs at the time of application. Hence, he was not qualified and eligible for the post. This ground of appeal was just a Statement of fact and not a ground as such, and therefore fails.

Under Ground 4

The Representative of the Ministry admitted that Appellant was called upon to drive vehicles over ... and classified as GVs. This is very surprising and is a matter of serious concern. The Tribunal fails to understand how the Ministry could have instructed an employee to carry out duties falling outside the parameters of the law. The Ministry went even further by approving acting allowance for him doing such job. Appellant was in fact paid the full allowance. By doing so, the Ministry defeated its reasoning that such a thing happened outside its control. However, as the Appellant did not possess the required qualification, this ground of appeal is not relevant to the case. Hence this ground fails.

The four grounds of appeal having failed, the appeal is therefore set aside.