

Appellant should prove to the satisfaction of the Tribunal of any assignment of duties for higher post.

This is an appeal concerning the appointment of officers as SANH on shift, in a temporary capacity. There were originally 5 Appellants and one of them decided to withdraw her appeal. The heading of the Appeals which were consolidated, was amended accordingly with the names of the remaining 4 Appellants. A single determination will be delivered and a copy of same will be filed in each Appeal file.

Appellants' case

Appellant No 1's case

Appellant No.1 solemnly affirmed to the correctness of her Grounds of Appeal (GOA) and her Statement of Case (SOC).

Her Grounds of Appeal were as follows:

- “• *I have done SAN work in absence of senior staff servaltimes.*
- *It is unfair to me since the batch of 2009 has ... promoted and my batch 2002 was not.*
- *During my 21 year I had the exposure to different departments with in the ...Service. (SIC)”*

In her SOC, she expatiated on her GOA as follows:

She laid emphasis on her 20 years of service during which she had exposure in most sections and worked in different departments.

She averred that in ..., due to a shortage of senior staff, she was “*appointed as Acting SAN in the specific sections for 6 months*” (SIC). She then produced a letter dated ... from an officer in charge of the Head Office addressed to the Senior Chief Executive of the Ministry of This letter was provided to her in the context of the interview for the post which confirmed that she did work in a specific section on the relevant dates “*where she diligently performed the duties of SAN without any remuneration*”.

She further averred that she had a clean record.

During cross examination, in reply to a question on her averment that she had been assigned duty as SA, she replied that she had a roster which shows clearly where she worked. But she agreed that she never had a letter stating that she was assigned duty and that it was her duty to work in all wards and it was the same for all those who had been appointed. She also conceded that she never received nor claimed any allowance for such duty.

She also agreed that she understood that this was not a promotion exercise but a selection exercise for which seniority was not an overriding criterion.

She did not know about the criteria of selection nor how she performed during the interview.

She further explained that for doing the duty of SAN she merely had to sign a paper saying "willing".

Appellant No 2's Case

Appellant No 2 SAH to the correctness of her GOA and SOC. The GOA were as follows:

- “• *Joined work in....*
- *More experience in different sections”.*

In her SOC, she expatiated on her GOA and averred that she worked in different units of the departments. She averred that she never received any complaints at work. She also laid emphasis on the fact that she and her colleagues of batch 2002 have been left behind whereas those of batch 2009 have been promoted.

During cross-examination, like Appellant No 1, Appellant No 2 also conceded that all her colleagues had worked in different departments.

She understood the difference between promotion and selection.

Appellant No 3's Case

Appellant No 3 solemnly affirmed as to the correctness of her GOA and SOC.

Her GOA were as follows:

- “• *I have done SAN work in absence of senior staff several times.*

- *It is unfair to me since the batch of 2009 has been promoted and my batch 2002 was not.*
- *During my 20 years I had the exposure to different departments within the ... Services”.*

In her SOC she expatiated on her GOA and gave a list of wards where she had worked as SAN due to lack of staff. She also laid emphasis on the fact that the batch of 2009 had been promoted and not that of 2002. She averred being disciplined and having attended work early and done overtime.

Similarly, during cross-examination, Appellant No 3 conceded that all appointees also worked in different departments because this is the normal process of work for all attendants. But she insisted that she worked as SAN for long periods of time in different units.

She agreed that the appointments were made through a selection exercise by an interview and that seniority did not count like it would if it had been a promotion exercise.

Appellant No 4's Case

Appellant No 4 SAH to the correctness of her GOA and SOC.

Her GOA were as follows:

“• *I have done SAN on many time replace when someone is absent in many ward were they senior... I am most senior and have more experience than some of those who had been appointed I have several years of service HSAN”.* (SIC)

In her SOC she averred that she had more experience, had several years of service and had “acted” as SAN in several sections. She averred that those who had less experience had been appointed.

During cross-examination Appellant No 4 admitted that she did not know how her colleagues had performed during the interview.

She also conceded that she had no official letter concerning “actingship”, nor received any allowance and that it was in the normal course of her duties that she had done the duty of SAN.

During the Hearing she also said that one appointee had only worked in a specific unit and had no experience working in the other sections.

Co-Respondents' Case

Two appointees who had declined the offer were removed from the list of Co-Respondents. Co-Respondents Nos 2, 4, 5, 8, 9, 12, 13, 14, 15, 17 and 18 confirmed that they would abide by the decision of the Tribunal.

Respondent's Case

The representative of the Respondent swore to the correctness of the Statement of Defence (SOD) of Respondent which was similar in each appeal. The SOD had been prepared after receiving information from the public body. Respondent had delegated its powers to the Responsible Officer of the public body to carry out a selection exercise.

Circular No ...of 2019 provided that the selection would be made from officers from the grades of ANHS hereafter referred to as AMCA (on shift).

The criteria of selection were:

- “(i) Qualifications
- (ii) Experience and knowledge of work
- (iii) Personality and motivation, and
- (iv) Communication skills.”

There was a merit list and candidates were offered appointment in three different batches as per their ranking according to the number of vacancies reported.

The Respondent also averred that ANS are required to work in various units and departments of the Head Office according to their Schemes of Service. SAN are usually posted in certain units. When they proceed on leave and there is a shortage of SAN, AN replace their colleagues on a roster basis without any assignment of duties.

The Respondent denied that Appellant No.1 had been assigned duty for the period 16 October 2017 to 6 May 2018 and averred that in any case assignment of duty does not give a claim for permanent appointment.

The Respondent further averred that “*experience (proven evidence) Actingship*” was one of the selection criteria.

Respondent also averred that, among the 21 Co-Respondents, 8 joined service in 2009 and 4 in 2002. Concerning Appellant No 2, Respondent highlighted the fact that she reckoned some unauthorised absences and had been requested to improve her attendance but that she had no adverse reports.

None of the Appellants had adverse reports and they were on a merit list and would be appointed in due course when there are vacancies.

The documents produced by the Respondent were as follows:

- (i) The circular No. ... of 2019 concerning applications for the post;
- (ii) The Scheme of Service for the post of AN since ...;
- (iii) Three list of letters of appointment sent to appointees to the post for three batches of appointees;
- (iv) The breakdown of the mark sheets;
- (v) The Statement of Service of Appellants; and
- (vi) The Statement of Service of Co-Respondents.

The Representative of the public body confirmed that an Attendant could replace a SAN for short periods and that it was purely an administrative arrangement on a daily basis without any remuneration. It was neither an assignment of duty nor an actingship.

She stated that if the “replacement” had been for a long period, they would have documentary evidence which Appellant did not have at the time of the interview.

During cross-examination, she maintained that there were several criteria apart from “*temps service*”. She added that very few applicants had been marked under the criterion actingship.

Finally, the Representative of the public body informed the Tribunal that after the two officers refused the offer of appointment as SAN, there were 15 vacancies and there had just been an offer of appointment a week earlier and the new appointees had assumed duty “today” meaning on the very day of Hearing.

She produced the notification of appointment which the Tribunal had not yet received.

Determination

The case of the four Appellants rests mainly on the fact that they had all replaced senior attendants on several occasions which we refer to as Ground 1 for the purpose of clarity.

The second important GOA is the fact that it is unfair to the batch appointed in 2002 that those of the batch appointed in 2009 had been appointed (Ground 2).

The third one is reference to long years of service and exposure to different departments in the cadre as well as more experience than some appointees (Ground 3).

It is clear that all the Appellants have a lot of experience and have indeed been called upon regularly to replace SAN in various Units and Departments of the Head Office where they were posted.

However, this was done for administrative convenience at the level of the Management as and when there was a shortage of SAN or when one SAN was on leave for very short periods. The public body had never been made aware of such arrangements.

There is consensus on the fact that the Appellants were never formally assigned duty nor had anyone of them been asked to work in an “**Acting**” capacity. They averred that they were just asked to sign a paper to say that they were “willing” to replace SAs.

It is easy to understand in the circumstances that they had a legitimate expectation to be appointed in due course.

The representative of the public body produced the criteria of selection and the weightage during the Hearing. The markings were given for the eyes of the Tribunal only.

An analysis of these documents showed that Appellants were marked fairly with regard to their qualifications, years of service and knowledge of work which were

objective criteria. But even under the criteria of personality and motivation and communication skills they were clearly evaluated exactly like some Co-Respondents.

But we cannot find that any of the GOA raised by them stand.

Ground 1 fails as they were not assigned duties officially.

Ground 2 fails as it has been proved that some Appellants of batch 2002 were also appointed. In any case, considering that this was a selection exercise, their seniority was not an overriding criterion though they did receive marks for years of service as AN.

Ground 3 also fails as evidence shows that even Co-Respondents had worked in different departments. As regards experience the four Appellants received full marks.

The appeals are therefore, set aside and the decision of the Respondent is confirmed under section 8(4)(a) of the Public Bodies Appeal Tribunal Act 2008.