

Seniority is not a determining factor in a selection exercise.

Background Information

The vacancy for the post of HPI was advertised by the Local Government Service Commission by way of Circular

The Scheme of Service (SOS) in respect of the post provides as follows:

“By selection of officers in the grade of Senior Officers reckoning two years’ service in the grade and possessing

- (a) good interpersonal, communication, leadership and administrative skills; and*
- (b) a fair knowledge and understanding of ... matters relating to the prevention and control of ...”.*

Following the selection exercise and the appointment of Co-Respondents to the post of HPI in a temporary capacity in the Local Government Service Commission with effect from..., the Appellant and five others lodged an appeal against the decision of the Respondent concerning the appointment of the above Co-Respondents. The other Appellants subsequently withdrew their appeals.

Both Appellant and Respondent filed their respective Statement of Case (SOC) and Statement of Defence (SOD) before the Tribunal.

Appellant’s Case

The Appellant filed an appeal with 9 grounds before the Tribunal and swore as to the correctness of same as well as to the correctness of his SOC. The grounds of appeal were as follows: -

- (1) Years of service
- (2) Years of experience
- (3) Seniority
- (4) Meritocracy
- (5) Discrimination
- (6) Assignment of duties to the post
- (7) Injustice and fairness
- (8) Experience and knowledge
- (9) Qualifications

In his SOC, the Appellant described the numerous duties that he performed and various responsibilities that he assumed since he joined service on ... as Trainee He explained that he was assigned the duties of HIP on various occasions. He further detailed the various training courses that he followed.

He claimed that he should have been appointed as HIP instead of the Co-Respondents.

During cross-examination, Appellant agreed that seniority and experience are not the only factors for appointment in a selection exercise but maintained that he should have been appointed in the place of Co-Respondent No 1 since he considered himself to have more experience and knowledge of the job than the latter.

Respondent's Case

The representative of the Respondent also solemnly affirmed as to the correctness of their SOD.

The Respondent highlighted that the selection exercise was carried out in accordance with Regulation 13 (1)(b) of the Local Government Service Commission Regulations which stipulates that *"in exercising its powers in connection with the appointment or promotion of officers in the local government service, the Commission shall have regards to the maintenance of the high standard of efficiency in the local government service and shall (...) in case of officers in the local government service, take into account qualifications, experience and merit before seniority in the local government service"* SIC

The Respondent also reported that both Appellant and Co-Respondents were eligible to be considered for appointment as HIP according to the requirements of the SOS but the Co-Respondents were selected because they were considered to be more meritorious and had performed better at interview. The Respondent also highlighted that the post was filled by selection and seniority is not a determining factor in a selection exercise. Consequently, experience alone is not a criterion for appointment to the post.

It was also pointed out by the Respondent that assignment of duties does not give rise to any claim to permanent appointment.

The Respondent also pointed out that the training courses followed by the Appellant were meant to improve the latter's performance in the capacity he was acting and not at enhancing his promotional aspects.

The Respondent also highlighted that in addition to seniority and experience, it has given consideration to other factors including performance at the interview, in the selection exercise in accordance with the SOS for the post of HIP and the Regulation 13(1)(b) of the Local Government Service Commission Regulations

Co-Respondent's Case

This case involves two Co-Respondents.

However, during cross-examination of Appellant the latter stated that his appeal was directed only against Co-Respondent No 1 and that he was not contesting the appointment of Co-Respondent No 2.

Co-Respondent No 1 agreed that he applied for the post of HIP and he fulfilled all the required criteria. He was appointed by the Respondent at that post as from He also stated that he would abide by the decision of the Tribunal.

It is worth pointing out that, as stated by the Counsel of the Respondent, the Respondent had, in the meantime, proceeded with the appointment of the Co-Respondent No 2 as HPI in a substantive capacity.

The Tribunal views the decision of the Respondent with concern, since it might entail serious consequences and draws its attention that it should refrain from proceeding with the substantive appointment of officers concerned which is subject of an appeal before the Tribunal and that determination of the appeal is still pending.

Counsel's Submissions

Only the Counsel of Co-Respondent No 2 made an oral submission. He explained that the Appellant was not contesting the appointment of his client (Co-Respondent No 2), as confirmed by the Appellant during cross-examination. He also reported that the Respondent had already proceeded with the appointment of his client in a substantive capacity. Information which was confirmed by Respondent during cross-examination. He accordingly submitted that his client should be put out of cause in the case. Appellant found no objection to that proposal.

Counsel of the Respondent did not make any submission and left the matter in the hands of the Tribunal.

Determination

The Tribunal has given careful examination to the evidence on record and the additional information and elements that cropped up during the cross-examination of the Appellant and the Respondent. It has emerged that the Appellant based his case mostly on the fact that he joined the service before the Co-Respondent No 1 and considered that being more senior he had more experience than the Co-Respondent No. 1. He also claimed that he had more knowledge in the job.

The Tribunal has also decided that since some of the grounds of appeal are of similar nature, it would be most appropriate and practical that they be grouped and be dealt with together as set out below:

A. Grounds Nos 1, 2, 3, 4 and 8

The above-mentioned grounds relate to years of service (No. 1), years of experience (No. 2), seniority (No. 3), meritocracy (No. 4), experience and knowledge (No. 8) respectively.

The Appellant's assertion that being given that he joined the service earlier than Co-Respondent (No. 1), he has more experience and knowledge of the job than the Co-Respondent (No. 1) and consequently he considers himself to be more suitable for the post of and merits to have been promoted as HPI in the place of Co-Respondent (No. 1).

However, since the post is filled by selection, seniority is not a determining factor in the selection exercise as experience alone is not a criterion for appointment to the post. The SOS provides, *inter alia*, for the post to be filled by selection of officers in the grade of Senior Officers reckoning two years' service in the grade. Both Appellant and Co-Respondents were eligible for consideration and were called for interview. There was no evidence adduced to the effect that established and prescribed procedures were not complied with in that respect. It is also cannot be argued that the Respondent acted *ultra vires*". Regulation 13(1)(b) of the LGSC Regulations which provides that "*in exercising its powers in connection with the appointment or promotion of officers in the Local Government Service, the Commission shall have regard to the maintenance of the high standard of efficiency in the Local Government Service and shall (...) in case of officers in the Local Government Service, take into account qualifications, experience and merit before seniority in the Local Government Service*".

The grounds of appeal have, therefore, not been proved.

B. Grounds Nos 5 and 7

The above-mentioned grounds relate to Discrimination (5), injustice and fairness (7). It is obvious that the Appellant has been aggrieved by the decision of the Respondent to appoint the Co-Respondent (No. 1) and has consequently felt that he has been victim of discrimination, injustice and fairness. While we can understand the emotional reactions and feelings of the Appellant, there has been no evidence on record and adduced to justify these feelings of the Appellant.

The Tribunal has therefore concluded that there is no merit in the Grounds of Appeal Nos 5 and 7 as well.

C. Assignment of duties to the post (No. 6)

The Appellant has submitted, as one of his grounds of appeal, that he deserves to be appointed as HPI since he was assigned duties of HPI on many occasions. But it is an established principle that assignment of duties does not give rise to any claim for permanent appointment and is done merely for administrative convenience. It is worth pointed out that this fact is clearly spelt out in the letter of offer of assignment of duties made to the Appellant as is usually the practice. During cross-examination, the Appellant admitted this fact.

This ground of appeal cannot therefore stand.

D. Qualifications (No 9)

This ground of appeal relates to qualifications. However, the Appellant has not expatiated on this ground of appeal in his SOC. Neither has he brought evidence how he considers himself to be more qualified than Co-Respondent No. 1. It has also not been disputed that qualifications is only one of the factors that is taken into consideration by the Respondent in determining the suitability of candidates for an appointment exercise in accordance with Regulation 13(1)(b) of the Local Government Service Commission Regulations and the SOS.

In the light of the above, the Tribunal has reached the conclusion that the grounds of appeal raised by Appellant had not been proved.

The Tribunal, therefore, set aside the appeal.