

**Candidates should demonstrate and convince the interviewing panel that they are the best among other candidates.**

Following the appointment of Co-Respondent to the post of OSR by the Commission three appeals were lodged at the Public Bodies Appeal Tribunal against the appointment.

Case of Appellant No 1

Appellant No 1 solemnly affirmed as to the correctness of the Notice of Appeal including Grounds of Appeal (GOA) and of the Statement of Case which have been filed by him. He contested the appointment of the Co-Respondent on the following grounds:

“(1) *Because I am more experienced than the appointee in as much as I joined the service of the Respondent on ... 1997 as ASTD whereas the appointee joined in or about the year 2000 as GKR.*

*I was promoted TD on 21 June 2005 at the Council where I have worked unofficially as team leader in the workshop owing to my skills as a MCEG.*

(2) *Because the nature of my work has given me the required know-how and ability to lead and supervise a team whereas the appointee has always been performing in a post without any supervisory element.*

(3) *I have already been by passed on several occasions in relation to promotions in the past.*

(4) *I wish that the tribunal look at the marking”.*

In his statement of case, he expatiated on the grounds of appeal, as explained hereunder.

(1) He was more experienced than the Co-Respondent. He averred that he was working as MCE since the age of 17.

He started working in the private sector and then worked at the Council in 1997 as AMCE. He was promoted as TD at the Council of ... in 2005 and from 2018 to 2021 he was employed as MCETD at the Council of.... During his 27 years of service, he has been supervising and guiding the other workers in the team. He also had a licence for all types of motor vehicles.

According to him, the Co-Respondent joined the service of the Council of ... in or about 2013.

(2) He had several qualifications:

(3) He had greater expertise and leadership skills.

He averred that he was better equipped with more skills and experiences than the Co-Respondent. He averred that he owns a licence/permit which enables him to drive several machines such as lorries, trucks, bob cats, rollers and dumpers. He considered this to be extremely practical and convenient during site visits. On account of his long years of experience in the field, he claimed to be more apt for a smooth and safe operation, taking into consideration that at the same time he was providing guidance and supervising workers.

(4) The decision to appoint the Co-Respondent is unfair and unjustified to the rights of the Appellants.

He averred that the Respondent had failed to properly assess his experience, skills and ability as well as the other relevant factors for post of OSR.

(5) The markings obtained by each candidate at the interview should have been fairer to the Appellant in view of his experience and qualification.

During examination by his Counsel, he insisted that he was more senior than the Co-Respondent and that the experience, qualification and skills that he possesses such as Certificate in electronics and mechanics, driving licence, knowledge of agriculture/horticulture are very pertinent for performing the duties of OSR and should have given him an advantage over the Co-Respondent, who according to him, did not possess these skills.

However, during cross-examination by Counsel of Respondent, he admitted that seniority is not the determining criterion in a selection exercise where above-mentioned qualification/skills are not requirements for the post of OSR as per the Scheme of Service.

#### Case of Appellant No 2

Appellant No 2 solemnly affirmed as to the correctness of the Notice of Appeal including Grounds of Appeal and of the Statement of Case. His Grounds of Appeal are as outlined hereunder:

- “ (1) Most Senior*
- (2) More skills*
- (3) Better qualification*
- (4) More merit*
- (5) Well at interview*
- (6) Not adverse report*
- (7) The Tribunal to look at markings” . SIC*

He expatiated on the Grounds of Appeal in his Statement of Case as follows:

- (a) He is more senior than the Co-Respondent. Aged 53, he averred that he has been working since age of 18.

He was employed at the Council of as RFGL since 27 years ago. He has been working successfully with the other workers in the team.

According to him, the Co-Respondent joined the Council of ... in or about 2013.

- (b) He has various skills

Appellant averred that he followed various training programmes. He was actively involved in social activities, guiding youngsters and different activities and inculcating leadership skills in them.

- (c) The decision to appoint the Co-Respondent is unfair and unjustified to the rights of the Appellant.

He averred that the Respondent failed to properly assess his experience, ability, skills and other relevant factors and considered that he should have been appointed in the place of the Co-Respondent, had the Respondent made a proper assessment.

- (d) The markings obtained by each candidate at the interview should have been fairer to the Appellant in view of his experience and qualifications.

However, during cross-examination by the Counsel of the Respondent, he admitted that seniority is not the determining criterion in a selection exercise where above-mentioned qualification/skills are not requirements for the post of OSR as per the Scheme of Service.

### Case of Appellant No 3

Appellant No 3 solemnly affirmed to the correctness of his Notice of Appeal including the Grounds of Appeal and of his Statement of Case.

He appealed against the decision of the Respondent to appoint the Co-Respondent as OSR on the following grounds:

- (1) Most Senior*
- (2) More skill*
- (3) Better qualification*
- (4) More merit*
- (5) Well at interview*
- (6) Not adverse report*
- (7) The Tribunal to look at markings". SIC*

He expatiated on the grounds of appeal in his Statement of Case. He averred as follows:

- (a) He is more senior than the Co-Respondent.

He joined service at the Municipality of Beau Bassin – Rose Hill, 27 years ago as RFGL. He started working at the age of 18 as a Helper in the construction site and later worked for two years in a knitting factory

According to him, the Co-Respondent joined service at the in or about 2013.

- (b) He has various skills

He averred that he followed various training programmes and is computer literate. He is actually involved in social/sports activities. He is an experienced driver with private car and taxi driving licence.

- (c) The decision to appoint the Co-Respondent is unfair and unjustified to the rights of the Appellant.

According to his averments, the Respondent failed to properly assess his experience, skills and abilities for the post.

- (d) The markings obtained by each candidate at the interview should have been fairer to him in view of his experience and qualifications.

However, during cross-examination by the Counsel of the Respondent, he admitted that seniority is not the determining criterion in a selection exercise where above-mentioned qualification/skills are not requirements for the post of OSR as per the Scheme of Service.

### **Respondent's case**

The Representative of the Respondent solemnly affirmed to the correctness of his Statement of Defence.

She averred as follows:

- (a) The post of OSR was advertised on 24 February 2021 from employees of the Council of ... who hold a substantive appointment and who possess the Certificate of Primary Education and reckoning at least 10 years' service.
- (b) 28 applications were received. Out of which, 19 candidates, including the Appellants who satisfied the requirements, were called for interview exercise held on 3 August 2021.
- (c) Following the selection exercise, the Respondent decided on 6 August 2021 to appoint the Co-Respondent as OSR in a temporary capacity. Co-Respondent assumed duty on 16 August 2021.
- (d) The selection exercise was carried out in line with established procedures and in accordance with the Scheme of Service for the post, performance at interview and Regulation 13(1)(b) of the Local Government Service Commission Regulations 1984. Consideration has also been given to the qualifications, experience and documentary evidence as disclosed by the candidates in their application forms.

In reply to the Grounds of Appeal and Statement of Case of the Appellants, the Respondent further averred that:

- All information regarding the Appellants qualification, experience and documentary evidence, as disclosed by the Appellant was duly considered by the Respondent.
- It was up to the Appellants to prove, during the interview, that they had more experience than the Co-Respondent.
- The licence/permit was not required for the post of OSR as per the Scheme of Service.
- It is the prerogative of the interviewing panel to determine the competence and merit of each candidate and to mark each candidate accordingly.

The Counsel for the Respondent put forward that, in the light of the above reasons, the appeal has no merit and should consequently be set aside.

During examination/cross examination, the representative of the Respondent explained that all the particulars relating to the qualifications, experience, skills of the Appellants as disclosed by them in their application forms and at interview, have been

taken into consideration by the Respondent together with their performance at interview in making the overall assessment.

### **Co-Respondent's case**

The Co-Respondent solemnly affirmed as to the correctness of her Statement of Defence. With respect to the Grounds of Appeal of Appellant No 1, she replied as follows:

- (i) Three subparts under section Duties in the Circular Note relating to the vacancy are concerned about supervision.
- (ii) She joined service in 2007.
- (iii) She was already performing supervisory tasks as ATD/SATD at the Municipality of Beau Bassin – Rose Hill.
- (i) Although the requirement for the post is possession of CPE, she holds the GCE, a Certificate in Binding and Printing and a Certificate in IT from CPP, which are relevant for performing requisition materials.
- (ii) The Scheme of Service provides for selection of the most appropriate candidate. She considered that she had satisfied the criteria of the Respondent as being the most appropriate candidate in view of her experience in supervisory duties as ATD/SATD and of her qualifications in IT.
- (iii) Appellant No 1 has neither performed at supervisory level and nor is well versed in IT as her.
- (iv) As regards Appellant No 2, she contended that the post that she occupied as ATD/SATD involved responsibility and supervisory duties, contrary to Appellant No 2 who was a RFGL.
- (v) Appellant No 2 was neither involved in supervisory duties and nor well versed in IT.

(vi) She was better qualified and more experienced.

In reply to Statement of Case of Appellant No 3, she averred that she occupied the next level position and was involved as such in responsibility and supervisory duties, contrary to Appellant No 3 who was a RFGL

During examination by her Counsel and cross-examination, she denied that she was less qualified, skilled and experienced than the Appellants. She further explained that it was not necessary to have knowledge in such specialised areas as MCES, electricity, agriculture etc to perform as OSR. Her responsibility involved mainly inspection and supervision of works and to report any problem to the section concerned for any remedial action.

### **Determination**

The grounds of appeal of the three Appellants are practically identical and some of which being of similar nature. The Tribunal has accordingly decided that it would be more convenient and practical that they be grouped and dealt with together, as outlined hereunder:

#### **A. Grounds 1 and 2 of Appellants Nos 1, 2 and 3 (Seniority and Experience).**

The vacant position of OSR was filled by way of a selection exercise which was carried out on the basis of the Scheme of Service and performance at interview.

The Scheme of Service provides with regard to eligibility of candidates, as follows:

- Employees of the Council of ... who hold a substantive employment
- Be holders of the Certificate of Primary Education; and
- Reckoning at least 10 years of experience.

We have noted that all the three Appellants as well as the Co-Respondent meet the minimum requirements as per the Scheme of Service and have been called for interview. Consequently, in terms of experience and seniority, all of the abovenamed are at par and performance at the interview was the determining element to demarcate the candidates in the selection exercise. It is for the candidates to demonstrate to and convince the Interviewing Panel that they are the best and deserve to be selected.



This is more so that Regulation (13)(1) of the Local Government Service Commission Regulations 1984 provides for the Commission, in the exercise of its powers in connection with the appointment or promotion of officers the Local Government Service “*to have regard to the maintenance of the high standard of efficiency necessary in the local government service ...*”.

The prerogative to determine the competence and merit of each candidate rests on the Interviewing Panel set up by the Local Government Service Commission.

In the light of the above, the above grounds of appeal cannot stand.

**B. Ground 3 of Appellants Nos 2 and 3 (Better qualifications)**

The Appellants have contested that they are more qualified and possess more skills/aptitudes (such as leadership skills, holders of licence/permit) than the Co-Respondent. While it is not denied that these additional qualifications and skills would have helped them to be a good OSR, the Respondent has maintained “*that qualifications, experience and documentary evidence by the Appellants have been duly considered.*” Having regard to the powers conferred on the Respondent under Regulation 13 of the Local Government Service Commission Regulations 1984, as explained above, the Tribunal finds that there is no merit in the above grounds of appeal as well.

**C. Grounds 4 and 5 of Appellants Nos 2 and 3 (More merit, well at interview)**

While the three Appellants have claimed that they deserve to be appointed in the place of the Co-Respondent since they have more merit, did better at interview and have no adverse report, the Tribunal has noted that the Commission has given due consideration “*to qualifications, experience and documentary evidence*” as declared by the applicants in their application forms and has acted in accordance with the powers conferred on it under the regulations.

The Tribunal has consequently found that the above grounds of appeal as well cannot stand.

**D. The Tribunal to look at the markings**

Ground 4 of Appellant No 1, Ground 7 of Appellant No 2, Ground 7 of Appellant No 3.

These are not proper Grounds of Appeal and the Tribunal cannot make a finding on same.

### **Conclusion**

In the light of the above, the Tribunal has reached the conclusion that the grounds of appeal raised by the Appellants have not been proved and should, therefore, be set aside.