

Proof of literacy should be assessed separately

Appellants appealed against the decision of Respondent to appoint the Co-Respondents for the post DRV in the public body. Both appeals were heard together and only one determination is delivered.

Appellants' case

The two Appellants Grounds of Appeal (GOA) and Statement of Case (SOC) are similar and are as follows:

- “1. Hierarchy and Seniority have not been followed*
- 2. More experience as Acting DRV and handling govt ...*
- 3. Clean record and no adverse report*
- 4. Selected candidates have adverse report, accidents and have been reverted back*
- 5. Vacancies still available but not yet filled” SIC*

Appellants No 1 and No 2 expatiated on their GOA in their SOC to the effect that both of them were performing duties of acting DRV and that they were surprised not to be selected inasmuch as the Respondent had failed to follow hierarchy and seniority in the selection exercise and that they had more experience compared to other selected candidates.

Appellant No 1 under cross-examination agreed that the current exercise is one of selection and not of promotion and as such hierarchy and seniority is of no relevance. He further stated that he had worked as acting DRV and received allowance for same. He also stated that he did sit for the Certificate of Primary Education (CPE) exams but did not pass same.

Under cross-examination, Appellant No 2 conceded that the current exercise is one of selection and not promotion. He also agreed that experience is one of the criteria and that other candidates might have received better marks in other criteria. He further agreed that he did sit for the CPE exams but did not pass the said exams.

He produced his CPE certificate which showed he passed only in two subjects. He also stated that he is the holder of private car driving licence since 5 years and was driving in course of his duties for 3 years.

Case of Respondent

The Representative of the Respondent affirmed as to the correctness of the Statement of Defence (SOD). She expatiated on her SOD and averred that assignment of duties was done on grounds of administrative convenience and does not give claim to appointment to a higher post. She further averred that the current post is filled by selection and not on a seniority basis.

Under cross-examination, she stated that candidate should pass the CPE exams and that in the absence of such qualifications, consideration will be given to candidates who show proof of being literate.

The representative of the concerned public body was called as witness and produced the certified copy of list of criteria for selection. She confirmed that there are two merit list one being those having passed the CPE exams and another for those who did not. The two appellants were in the second list. She also stated that every candidate was allocated marks as per the criteria of selection and on the issue of proof of being literate, there was an assessment sheet and candidates were marked accordingly. She further testified that for the time being, there is no vacancy.

Case for Co-Respondents

Co-Respondents Nos.2, 5, 8 and 9 did inform the Tribunal that they will abide to the decision of the Tribunal. As regards Co-Respondents Nos 6 and 7 they did not give any stand. Finally, Co-Respondents Nos.1, 3, 4 and 10 filed their respective SOD. However Co-Respondent No.1 was absent on the day of the hearing.

Co-Respondent No.3 solemnly affirmed as to the correctness of his SOD and was cross examined. He stated that he joined as General Worker on the 16 April 2009 and that since 2017 he was given assignment to work as DRV and that he did not pass the CPE exams but he can read. He also mentioned that he has driving licence for private car and for bus.

Co-Respondent No.4 solemnly affirmed as to the correctness of his SOD and it was revealed in cross-examination that he did not pass the CPE exams and he joined as General Worker since 2017. He also stated that since April 2021 he was working

as acting DRV. Moreover, he also stated that he was not aware that Appellant No 2 was Acting DRV since 1st July 2019.

Co-Respondent No.10 solemnly affirmed as to the correctness of his SOD and during the course of cross-examination he stated that he joined as GWK since the 18th July 2018 and has failed the CPE exams. He also stated that he was not aware that Appellant No 2 was acting as DRV since 1st July 2019.

Determination

The Tribunal has taken due consideration to the GOA, SOC as well as the SOD and submissions of learned Counsel.

We shall deal with all the grounds of both appellants altogether as they are inter-related.

Grounds 1 and 2

The above grounds canvassed by the Appellants are based on experience and seniority of the post. Firstly, it is not denied that the current exercise was a selection exercise and not by way of promotion. Respondent averred that the appointment was made in accordance with the requirements of the scheme of service.

In addition, the marking sheet was submitted to the Tribunal under special cover and it is noted that marks have been consistently allocated to each of the candidates, according to the criteria set out. As such both grounds fail.

Ground 3 and 4

With regards to Grounds 3 and 4, which relates to adverse report either for the Appellants or Co-Respondents, no evidence has been adduced to support this. Both grounds are devoid of merit as well.

Ground 5

This ground is not for the Tribunal to probe in and in any event, the representative of the Respondent has confirmed that there is none for the time being. Hence this ground fails as well.

In light of the above, as all the grounds of the appeal have failed, the Appeal has no merit and is set aside accordingly.