

The qualification as prescribed in the Scheme of Service should be reproduced in “*toto*” in the vacancy notice.

The Appellant is challenging the decision of the Respondent to appoint the Co-Respondent to the post of GAP in the PG Department.

Case of Appellant

Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and his Statement of Case (SOC).

The GOA is as follows:

- “1. *The Appointee was favoured regarding the initial appointment of POR.*
2. *The Appointee was favoured regarding Assignment Actingship to perform duties of GAP as from May 2019 thus benefitted in terms of experience.*
3. *There is conflict of interest regarding the filling of my Performance Management System (PMS) Form for the past years.*
4. *The Appointee did several grossly mistakes during her assignment/actingship as GAP.*
5. *The Appointee fails in term of several commitments in the production of jobs which of high importance and of national issues.*
6. *The Appointee abused of power during her assignment/actingship as GAP.*
7. *There is a case of bullying/harassment against the Appointee at the Public Body and consequently to the Industrial Court.*

8. *The Appointee Application Form was incomplete. She concealed information.*
9. *The Appointee did not follow the Government Policies of Vaccination for Covid 19. She didn't perform the Covid19 Vaccines as requested by the Government.” SIC*

In his SOC, he expatiated on the GOA. He averred that Co-Respondent and himself were appointed as APOR on the same date (19 June 2018) but he was promoted as POR on 6th August 2019 whereas the Co-Respondent was promoted on 6th May 2019. He explained that he found himself all of a sudden at a disadvantage in terms of seniority.

He further averred that that he had not benefitted of any assignment of duties since 2019. He explained that his PMS was done by Co-Respondent as Acting GAP whereas his PMS was normally carried out by the GDP. He considered that he was under rated and did not have a fair review. The more so, both of them were candidates to the post of GAP. He added that there was a case of bullying/harassment registered against the Co-Respondent at the Public Body and consequently to the Industrial Court and that Co-Respondent had concealed information on her Application Form. He finally averred that he strongly believed that he should have been appointed for the post of GAP.

Under cross-examination, he admitted that he was requested to produce equivalence for the qualification possessed by him, failing which he would be eliminated in the selection exercise. He stated that the Mauritius Qualification Authority did not provide him with any equivalence certificate as the diplomas that he possessed had no bearing on the required qualifications as prescribed in the Scheme of Service for the post of GAP. He also admitted that the Co-Respondent was senior to him in rank in the post of POR and that assignment of duties to higher post are granted to the most senior officer. He confessed that he had not seen the Application Form of the Co-Respondent but had relied on what the Co-Respondent told him to the effect that she did not make mention of certain things on her application form.

Case of Respondent

The representative of the Respondent solemnly affirmed as to the correctness of its Statement of Defence (SOD). Respondent averred that the Scheme of Service for the post of GAP provides that it be filled by selection from Officers holding in a substantive capacity the post of either SGA or POR who possess a diploma in PRG Technology or PRG Administration or Management or Business Administration or in a related field from a recognised institution or an equivalent qualification acceptable to the Respondent. There is also a proviso under the Note 1 that in the absence of candidates possessing the abovementioned qualifications, consideration would be given for selection from among officers in the grades of SGA and POR who reckon at least five years' service in a substantive capacity in their respective grade and possessing a Certificate in PRG Technology. Respondent averred that the Notice of Vacancy was issued under the core qualification only, excluding Note 1 upon the recommendation of the Responsible Officer.

Respondent also averred that assignment of duties is usually made on the basis of seniority and that the Co-Respondent, being the most senior officer in the grade of Printing Officer, was called upon to assign duties of GAP. As such, the Co-Respondent was entitled to oversee the work of Appellant and was called upon to appraise the Appellant for period July 2020 to June 2021 and the latter's overall performance was rated "Good". Respondent further averred that the Co-Respondent possesses a Master of Business Administration awarded by the University of Technology, Mauritius.

Under cross-examination, the Representative of the Respondent stated that there was no complaint whatsoever against the Co-Respondent.

Determination

It was brought to the attention of the Tribunal during the hearing that Appellant did not possess the required qualification as prescribed by the Scheme of Service and that he failed to produce the equivalence of his qualification acceptable to the Respondent. He was already warned that failure to produce the equivalence certificate, would entail his elimination in the selection exercise.

The Tribunal draws the attention of the Respondent that it is bound by Regulation 15 A to include the qualifications specified in the scheme of service, in the advertisement for the vacancy which has occurred. However, the Tribunal noted that the advertisement in respect of the vacancy in question did not contain the Note which prescribed alternate qualifications in the absence of the core qualification. The Tribunal cannot probe further as it was not a ground of appeal. In any event, Appellant would not have qualified for the post even under Note 1 as he did not possess the five years' service in a substantive capacity in the grade of POR. Otherwise this would have been a serious matter of concern in the selection process.

As regards the grounds of appeal, most of them are not under the jurisdiction of the Tribunal. For instance, Ground 1 is outside delay as the Appellant is challenging the initial appointment as POR dated May 2019.

Under Ground 2, It is obvious that assignment of duties is given to the most senior officer in the grade and Co-Respondent was the most senior officer. This ground fails.

Ground 3 relates to filling of the Performance Appraisal Form. It has been averred that Co-Respondent assessed the Appellant as Appraiser, being given that the Appellant was performing the duties of GAP at that particular and therefore as a grade higher than Appellant. Furthermore, Appellant had not shown any prejudice caused to him in the selection exercise, the more so, he had been rated "good". Had there been a divergence between the Co-Respondent and the Appellant at that particular time, the Appellant could have called upon the next level supervisor to moderate it. In any event, he was not qualified for the post. This ground also fails.

Grounds 4, 5,6,7 and 8

No evidence had been produced before the Tribunal to sustain these grounds and were mere allegations which were not proved and are frivolous. All these grounds fail.

Ground 9

This ground has no bearing whatsoever on an appointment exercise and has no merit.

In these circumstances, as all grounds of appeal fail, the Appeal has no merit and is set aside accordingly.