

Seniority is not a determining criterion in a selection exercise.

The Appellants are challenging the decision of the Local Government Service Commission to appoint the Co-Respondents instead of them to the post of Supervisor at the Council. As it is the same selection exercise, the appeals were heard together and only one determination is delivered.

Case of Appellant No 1

Appellant swore to the correctness of his Grounds of Appeal (GOA) and of his Statement of Case (SOC), as outlined hereunder:

- “1. *I joined service on 13 August 2001 as Tradesman (Electrician) and I have 20 years of service.*
2. *Im always early at my workplace.*
3. *I have new certificate in my trade (Installation of solar off grid system at the KB.TC”. (SIC)*

He expatiated on his GOA in his SOC as follows:

- (i) He meets the requirements for the post as laid down in the Scheme of Service;
- (ii) He is a qualified candidate and among those who were called for interview;
- (iii) He disputes the appointment of the Co-Respondents as they are junior to him, reckoning 9 years and 17 years service in the post of Tradesman/Field Supervisor whilst he had 20 years service in the post.
- (iv) In addition to being holder of a Certificate of Primary Education and a National Trade Certificate level 3 in Electrical Installation Work, he has also followed various training programmes including:
 - (a) Furniture making NTC 3;
 - (b) Build your Own OFF-the Grid Solar Panel;

- (v) He thus considers that he has extensive experience and possesses sound knowledge and skills to supervise different kinds of trade as compared to the Co-Respondents;
- (vi) Co-Respondents who have been appointed have less years of service and less experience than him;
- (vii) He has carried out the duties and responsibilities on numerous occasions during his career, even before Co-Respondents were appointed as Tradesman;
- (viii) He has always been in time at work, never received any warnings nor been subject to any complaint;
- (ix) He averred that, on account of his experience, seniority and qualifications, he should have been appointed to the post of Supervisor instead of the Co-Respondents.

Under cross-examination, Appellant admitted that the appointment was made following a selection exercise and that all the Co-Respondents met the minimum requirements as prescribed by the Scheme of Service. He also agreed that the Respondent had taken into account qualifications, experience and merit before seniority, in accordance with the relevant regulations of the Local Government Service Commission 1984.

He insisted, however, that he should have been appointed as he was more senior and more experienced than the Co-Respondents but he was unable to prove that Co-Respondents had lesser experience than him apart that he joined the Local Government Service earlier than them. He also could not provide evidence that he had performed better than the Co-Respondents in interview.

Case of Appellant No 2

Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and of his Statement of Case (SOC), as outlined hereunder:

- “1. *More experience, skills and merit.*
2. *Experience to lead and supervise.*
3. *More qualification & practical experience in the trade.*
4. *More senior in the post of trademan.*
5. *Better academic qualification.*

6. *Well performed at interview.*
7. *No adverse report.*
8. *The decision of the LGSC is unfair and not in order.*
9. *MARKING AT INTERVIEW FOR THE TRIBUNAL TO LOOK AT'. SIC*

He expatiated on his GOA in his SOC as follows:

- (i) He meets the minimum requirements for the post of Supervisor.
- (ii) He has been working as Carpenter for 20 years having been appointed as Tradesman by LGSC since 13 August 2001.
- (iii) He possesses the Certificate of Primary Education in addition to the following technical qualifications:
 - City and Guilds of London institute
 - Blocklaying, Bricklaying and Concreting Feb 97
 - Blocklaying, Bricklaying and Concreting Advanced Craft April 98
 - Carpentry and Joinery Craft March 98
 - General Course in Construction August 99
- (iv) He has been assigned duties of Supervisor for the following periods;
 - December 2004
 - January 2005
- (v) He has also been called upon on several occasions by his Supervisor to replace whenever the Supervisor was on leave.
- (vi) He applied for the post of Supervisor and was called for interview on the 29 June 2021.
- (vii) He averred that he ought to have been appointed to the post of Supervisor since he has more experience, knowledge and aptitude than the Co-Respondents.
- (viii) He performed well at interview.
- (ix) He has no adverse report.

Under cross-examination, Appellant admitted that it was the responsibility of the Interview Panel to assess the suitability of the candidates and that the Respondent had taken into consideration all documents, qualifications submitted by him in

connection with his application and that selection was done in accordance with prescribed procedures as per relevant regulations. He insisted that assignment of duties has given him experience and skills relevant to the post. He agreed that performance at interview was determinant and that he was not aware how other candidates had performed at interview. He claimed that he was better qualified technically than the Co-Respondents but he was unable to produce any documentary evidence to that effect. He also did not agree that the appointments were made according to the regulations.

Under re-examination, he stated that even if he was not provided with a letter for assignment of duties, yet he was paid allowance for same as evidenced from his payslip.

Case of Appellant No 3

Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and of his Statement of Case (SOC), as outlined hereunder:

- “ (a) *More experience, skills and merit*
(b) *Experience to lead and supervise*
(c) *More qualification, practical experience in the trade*
(d) *More senior in the post of tradesman*
(e) *Better academic qualifications*
(f) Well performed at Interview
(g) No adverse report
(h) The decision of the L.G.S.C. is unfair and not in order.
(i) I request the tribunal to look at my marking” SIC

He expatiated on his GOA in his SOC as follows

- (i) He has been working as Welder for 21 years following his appointment to that post on 17 March 2000 by the Local Government Service Commission.
- (ii) He meets the minimum requirements for the post of Supervisor.
- (iii) He possesses the Certificate of Primary Education and the General Certificate of Education (GCE) (O-level), in addition to the following technical qualifications:-
 - Basic Training Course in Sheet Metal Work

- City and Guilds of London Institute -Craft Certificate in Sheet Metal Work
- (iv) He has been assigned duties of Supervisor for the following periods:
- 2nd December to 20 December 2019;
 - From 31 March 2020 for a period of 3 months;
 - From 21 June 2021 for a period of 3 months or above.
- (v) Following the advertisement of the vacancy, he applied for the post and was called for interview on 29 June 2021.
- (vi) He has no adverse report.
- (vii) He performed well at interview.
- (viii) He considers that he ought have been appointed in view of his qualifications, experience, dexterity and skills.

Under cross-examination, Appellant agreed that it was the prerogative of the interview panel to assess the suitability of the candidates in accordance with the Scheme of Service but did not agree that Respondent had taken into consideration experience, qualifications, documentary evidence and performance at interview and that selection was done in a fair and impartial manner.

He also admitted that seniority is not a determinant criterion but rather performance at interview. However, he admitted that he was not aware about performance at interview of Co-Respondent No 3.

He agreed that even if assignment of duties does not give a claim for permanent appointment, this provides experience.

Case of Appellant No 4

Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and of his Statement of Case (SOC), as outlined hereunder:

Grounds of Appeal

- “ 1 *More experience, skills & merit*
2. *Experience to Lead and Supervise*
3. *More qualification & practical experience in the trade*
4. *More senior in the post of trademan*
5. *Better academic qualifications*

6. *Well performed at Interview*

7. *No adverse report*

8. *The decision of the LGSC is unfair and not in order.*

9. *MARKING at interview for the tribunal to look at” SIC*

He expatiated on his GOA in his SOC as follows:

(i) He joined the Local Government Service as Labourer on the 24 November 1994 and was confirmed in his post on 28 February 1996.

(ii) He has been working in the service for 27 years, occupying the positions of Tradesman Assistant (Mason) and subsequently Tradesman (Mason).

(iii) He meets minimum requirements for the post of Supervisor.

(iv) He possesses the Certificate of Primary Education and the following Technical qualification;

- IVTB – Trades Test in Mansory 1998

(v) He has been assigned duties as Supervisor for the following periods:-

- From 6 May to 4 June 2019
- From 15 July to 23 August 2019
- From 10 September to 11 October 2019
- From 6 November to 20 December 2019
- From 6 May to 20 December 2019
- From 21 December 2019, for a period of 3 months or above
- From 15 March 2021 for a period of 3 months or above
- 14 June 2021 for a period of 3 months or above.

(vi) Following the advertisement of the vacancy, he applied for the post and was called for interview on 29 June 2021 by the Respondent.

(i) He considers that he ought to have been appointed instead of the Co-Respondents being given that he has more experience, knowledge and aptitude than the Co-Respondents.

During examination/cross-examination, Appellant admitted that the appointment was made following a selection exercise in accordance with the Scheme of Service and that it was the responsibility of the panel to assess the suitability of the

candidates. However, he was not agreeable that the necessary procedures have been followed and that Respondent had taken all elements namely qualifications, documents, performance at interview into consideration.

He asserted that he was qualified and most senior to all the Co-Respondents since he joined the local service as Labourer before them and appointed as Tradesman in 1999. He had performed assignment of duties from 13 to 14 months and that had provided him with experience. He also confessed that he did not know Co-Respondent No 3 nor had he ever worked with him.

Case of Appellant No 5

Appellant solemnly affirmed to the correctness of his Grounds of Appeal (GOA) and of his Statement of Case (SOC), as outlined hereunder:

Grounds of Appeal

- “(1) More experience, skills and merit.*
- (2) Experience to lead and supervise.*
- (3) More qualification & practical experience in this trade.*
- (4) More senior in the post of Tradesman.*
- (5) Better academic qualification.*
- (6) Well performed at interview.*
- (7) No adverse report.*
- (8) The decision of the L.G.S.C is unfair and not in order.*
- (9) Marking at interview for Tribunal to look at”.*

He expatiated on his GOA in his SOC as follows:

- (j) He has been working in service as Carpenter for 21 years following his appointment as Carpenter at the Municipal City Council of Port Louis on 6 December 1999.
- (ii) He meets the minimum requirements for the post of Supervisor.
- (iii) He possesses the certificate of Primary Education as well as the General Certificate of Education (GCE)(O Level) in addition to the following technical qualifications:

- Basic Training Course in cabinet making 1st, 2nd and 3rd phase from January to December 1983.
 - City and Guilds of London Institute – Certificate in Timber Vocations and 5 components February 2001.
- (iv) He has been assigned duties of Supervisor for the period 1st July 2019 to August 2019.
- (v) Furthermore, he was posted at the Parks and Gardens where there is no Supervisor and where he was responsible for a team since 2018.
- (vi) Following the advertisement of the vacancy, he applied for the post and was called for interview on 29 June by the Respondent.
- (vii) He has no adverse report.
- (viii) He performed well at interview.
- (ix) He considers that he ought to have been appointed as Supervisor in view of the fact that he has more experience, knowledge, aptitude than the Co-Respondents.

From cross-examination it has emerged as follows:

Appellant admitted that the appointment was made following a selection exercise in accordance with the Scheme of Service and that it was the prerogative of the Respondent (Interview Panel) to do the selection. However, he did not agree that the Respondent had taken into account qualifications, documents, etc disclosed by him when submitting his application. He was also not agreeable that all the prescribed procedures had been followed and that the selection exercise was carried out in a just and impartial way.

During re-examination, Appellant stated that he had three Trade Tests in addition to CPE, contrary to the Co-Respondents. He, therefore, explained that the interview panel should give him extra marks, for the additional qualifications. He also asserted that the assignment of duties provided him with skills and experience.

Case of Appellant No 6

Appellant swore to the correctness of his Grounds of Appeal (GOA) and of his Statement of Case (SOC), as outlined hereunder:

Grounds of Appeal

- “1. *I am more experience in different trades.*
2. *I am more senior.*
3. *I wish that Tribunal look at the marking”. SIC*

He expatiated on his GOA in his SOC as follows:

- (i) He is employed at the Municipal City Council of Port Louis since 2002 and is attached to the field of “Technical and Mechanical Maintenance/Welding”.
- (ii) He has often been requested to train and coach new recruits.
- (iii) He holds the following qualifications: -
 - (a) Pre-Vocational Training Course at M.I.T.D;
 - (b) National Trade Certificate Level 3 in welding & metal fabrication.
 - (c) Course in Networking at Innovative & Creative Learning (I.C.L)
 - (d) Course in Photoshop at I.C.L
 - (e) Course in illustrator at I.C.L
 - (f) Computing (advanced office Applications).
- (iv) Based on his qualifications and experience, he considers that he meets all the requirements to be promoted to the post of Supervisor.
- (v) In the light of above, he considers that he has been unfairly prejudiced in the selection exercise and is thus seeking redress from the Tribunal.

From cross-examination, Appellant No 6 admitted that appointment to the post of Supervisor was made following a selection exercise according to the Scheme of Service and that all candidates convened for interview were eligible.

However, he was not agreeable that the selection was carried out in accordance with relevant legislation, prescribed procedures and performance at interview. He was also not agreeable that seniority is not the determining criterion.

He admitted that performance at interview was decisive to convince the selection panel that he was most suitable for the post but he conceded that he was not aware of the performance of Co-Respondent No 3. He agreed that the latter could have done better than him at interview.

During re-examination, he asserted that he was more qualified than the Co-Respondents and that he followed courses in Networking at Interactive Creative Learning, computing as well followed courses at MITD.

Case of Appellant No 7

Appellant swore to the correctness of his Grounds of Appeal (GOA) and of his Statement of Case (SOC), as outlined hereunder:

Grounds of Appeal

- “(1) Seniority*
- (2) Experience*
- (3) I want the Tribunal to look at the markings”.*

He expatiated on his GOA in his SOC as follows:

- (i) He is an eligible candidate, having the relevant qualifications, experience and no adverse report in the performance of his duties.
- (ii) The Co-Respondents who have been selected for the post have far less experience and are junior to him.
- (iii) He reckons 19 years of experience with the ...Council, starting as Scavenger, then Assistant Mason followed by Mason.
- (iv) He has worked in projects amounting to Rs20 millions, in collaboration with the National Development Unit.
- (v) He has led a team of workers successfully at time when the ... Council had a shortage of staff.
- (vi) He has record of long hours of overtime which have contributed to his experience.
- (vii) The appointment by selection to the post of Supervisor is most unfair, unjust, unreasonable and a denial of natural justice and against the legitimate expectations of the officers of the mason cadre.
- (viii) In the light of above, he considers that he has a legitimate expectation to be appointed in view of his work experience, unblemished record, qualifications, merit and seniority.

Under cross-examination, Appellant admitted that selection was carried out in accordance with Scheme of Service and all prescribed procedures and performance

at interview. He also agreed that Respondent took into consideration qualifications and documentary evidence submitted along with the application form and that seniority is not the only criterion, neither the more important one.

He also stated that he was not challenging the appointment of Co-Respondent No 3, but only that of Co-Respondent No1 as the latter did not have adequate experience, with only 8 to 9 years' experience as Tradesman, contrary to him with 14-15 years' experience.

Respondent's Case

Respondent filed a Statement of Defence (SOD) in each of the Appellant's case which were identical in view of the fact that the GOA of each Appellant were similar. The representative of the Respondent solemnly affirmed as to the correctness of the SOD.

In support of the decision of the Respondent to appoint the Co-Respondents to the post of Supervisor, Respondent averred as follows:

- (i) Appointment of the Co-Respondent has been made on the basis of the Scheme of Service for the post of Supervisor which provides as follows:

"By selection from among Tradesmen/Field Supervisors possessing: -

(a) the Certificate of Primary Education;

(b) at least a Trade Test Certificate;

(c) appropriate skills to lead and supervise workers performing different kind of trade;

(d) having at least 8 years' service as Tradesmen/Field Supervisors

Note: Proven knowledge of different trades would constitute an advantage".

- (ii) Out of 39 candidates, including the Appellants, who applied for the post, 19, including the Appellants were found eligible for appointment and were thus called for interview (on 29 June 2021 and 6 July 2021) to assess their suitability.
- (iii) Following the selection exercise, Respondent decided to appoint the Co-Respondents as Supervisor in a temporary capacity as from the date of their assumption of duty.

- (iv) The post is filled by selection in accordance with the Scheme of Service and seniority is not a determining factor for appointment.
- (v) The selection exercise has been carried out in accordance with Regulation 13(1)(b) of the Local Government Service Commission Regulations 1984 which provides that the Respondent shall “*take into account qualifications, experience and merit before seniority*”.
- (vi) Both Appellants and the Co-Respondents satisfied the requirements as stipulated in the Scheme of Service for the post of Supervisor and Respondent considered all the qualifications and documentary evidence as disclosed by the candidates.
- (vii) The Co-Respondents have not received any adverse reports as well.
- (viii) In the light of the above reasons, the appeals have no merit and should be set aside.

Under cross-examination, the representative of the Respondent produced the criteria of selection and admitted that additional marks are given for additional trade tests certificate and Appellant No 1 was more qualified and experienced than the Co-Respondents. The criteria of selection were as follows:

Qualifications, Experience, Communication skills, Leaderships and Supervisory skills and Knowledge of the job.

However, she pointed out that experience was only one criterion and that Respondent had assessed the candidates on the basis of other criteria, in addition to qualifications and experience.

She also admitted that more years of work in a trade provided more experience and that Appellants Nos 2 to 4 are more senior and have more years of service in the respective trades.

However, she was not agreeable that they should be given more marks and that it was up to the selection board to decide on the allocation of marks. She reported that the panel took into consideration all documents submitted by the candidates and gave additional marks for additional qualifications.

She also admitted that assignment of duties provides experience, skills (communication/leadership), knowledge of job etc but insisted that it was the

prerogative of the selection board to decide on the allocation of marks and that the performance at interview was determinant to assess the suitability of the candidates.

During cross-examination by Counsel of Appellant No 6, she admitted that Appellant No 6 was more qualified than the Co-Respondents and as such he should score more marks under criterion "qualifications".

Concerning knowledge of the job and skills, she pointed out that it was up to the Appellant No 6 to demonstrate and convince the interview panel.

She also pointed out, under cross-examination by Appellant No 7, concerning appointment of Supervisor from those coming from different trades, that the appointment was made according to Scheme of Service and it was for the selection panel to decide on the most suitable candidates,

Under cross-examination by Counsel for Co-Respondent No 3, she admitted that it was the performance at interview which was determinant for selection of the most suitable candidates, taking into consideration the fact that experience and qualifications account for less than one third of the total of marks. In addition to the qualifications and experience, the candidates should also possess other skills, such as communication skills, leadership skills, knowledge of the job.

Case of Co-Respondents

Co-Respondents Nos 1 and 2 were abiding to the decision of the Tribunal whereas Co-Respondent No 3 was represented by Counsel. However, the latter did not call his client for examination.

Submissions of Counsel for Appellants Nos 2 to 5

The submission of the Counsel for the Appellants Nos 2 to 5 focussed on the fact that additional qualifications attract additional marks and that assignment of duties provided experience, communication skills, leadership skills and knowledge of the job. Having regard to the selection criteria as circulated by the representative of the Respondent, he drew the attention of the Tribunal that consideration should be given to all the different elements constituting the selection criteria and submitted that it was the duty of the Tribunal to determine whether the assessment made by the Respondent was properly based on the marks allocated by the Respondent in respect of the different criteria.

He also highlighted that the Appellants had no adverse report and this element should be taken into consideration as well.

Submission of Counsel for Co-Respondent No 3

In his submission, Counsel for Co-Respondent No 3 highlighted that, being qualified and having been assigned duties of Supervisor do not automatically give you right to be appointed in the post. The Appellants should demonstrate to the selection board that they have the necessary skills and knowledge of the job. He also submitted that the Tribunal should not substitute itself for the selection panel and that its role is only to “*assess how and whether there was fairness in the process*”.

Counsel for Appellant No 1 and Counsel for Respondent left the matter in the hands of the Tribunal.

Determination

The Tribunal has observed that the GOA of the Appellants are somewhat similar and has decided, for convenience of analysis, to group them as follows and to have only one determination.

A. Seniority

- Ground (1) of Appellant No 1
- Ground (4) of Appellant No 2
- Ground (d) of Appellant No 3
- Ground (4) of Appellant No 4
- Ground (4) of Appellant No 5
- Ground (2) of Appellant No 6
- Ground (1) of Appellant No 7

The above GOA relate to seniority. It is admitted by all parties that seniority is not a determining criterion under Regulation 13(1)(b) of the LGSC Regulations which provides that the Respondent in a selection exercise, shall “*take into account qualifications, experience and merit before seniority*”.

The above grounds have, therefore no merit.

B. Qualifications

- Ground 3 of Appellant No 1.
- Ground 3 and 5 of Appellant No 2.

Grounds (c) and (e) of Appellant No 3.

Ground 3 and 5 of Appellants Nos 4 and 5

The above GOA relate to additional qualifications. According to the selection criteria, possession of each additional trade certificate over and above the minimum requirements attracts one additional mark. Marks allocated to the Appellants correspond to their respective qualifications.

There is, therefore, no merit as well in the above Grounds.

C. Experience, skills, knowledge of the job

Ground 1 and 2 of Appellant 2.

Ground (a) and (b) of Appellant No 3

Ground 1 and 2 of Appellant No 4

Ground 1 and 2 of Appellant No 5

Ground 1 of Appellant No 6

Ground 2 of Appellant No 7

The above grounds relate to experience and skills. It is the contention of the Appellants and of their Counsel that more years of service and assignment of duties in the post of Supervisor provide experience and skills, such as leadership and communication skills. While this proposition is not disputed, it has been made clear that it is the prerogative of the selection panel to assess the suitability of the candidates. It was, consequently, up to the candidates to demonstrate to the selection panel to what extent they have the experience, skills and knowledge of the job.

The Tribunal can only determine that there has been no flaw or impropriety in the process of allocation of mark under this criterion.

The above grounds do not stand as well.

D. Conduct

Ground 2 of Appellant No 1

Ground 7 of Appellant No 2

Ground (g) of Appellant No 3

Ground 7 of Appellant No 4

Ground 7 of Appellant No 5

These grounds relate to conduct at work – punctuality and no adverse report. It has emerged during the hearing that all documents submitted in connection with the application for the post have been brought to the attention of the Respondent and have been taken into consideration by it.

There is, therefore, no merit in the above Grounds as well.

E. Performance at interview

Ground 6 of Appellant No 2

Ground f of Appellant No 3

Ground 6 of Appellant No 4

Ground 6 of Appellant No 5

These grounds relate to performance at interview. Although all the above-mentioned Appellants have averred that they have performed well at interview, there is no evidence adduced that they have performed better than the Co-Respondents. However, performance at interview is determinant in the selection of the candidates in most of the criteria. The Tribunal cannot substitute itself to the selection panel with respect to their assessment of the performance of the candidates during interview.

These grounds as well cannot, therefore, stand.

F. Improper Grounds of Appeal

Grounds 8 and 9 of Appellant No 2

Grounds (h) and (i) of Appellant No 3

Grounds 8 and 9 of Appellant No 4

Grounds 8 and 9 of Appellant No 5

Ground 3 of Appellants Nos 6 and 7.

The Tribunal considers these GOA to be not proper GOA and therefore cannot give a determination in respect of them.

Based on the above analysis, the Tribunal, having found no merit in any of the GOA of the Appellants, has, set aside the appeal.