

Any post personal to the holder does not exclude the latter from being appointed to a higher grade unless specifically mentioned in the Scheme of Service.

Appellant appealed against the decision of Respondent to appoint the Co-Respondent for the post of “**Principal MFW**” in the Public Body.

Appellant’s case

The Appellant solemnly affirmed to the correctness of the grounds of appeal (**GOA**) and her statement of case (**SOC**). Her GOA are as follows:

“Ground 1

The Co-Respondent, *being a Senior MFW (Personal) and having not opted to be a Senior MFW (on shift), is not eligible for and/or entitled to appointment as Principal MFW, the more so in view of the letter of the Scheme of Service, the letter of the Notice of Vacancy, the very purpose of option for Senior MFW (on shift) and previous inducing representations made by the Public Body.*

Ground 2

In any event, the Appellant is more meritorious than the Co-Respondent for appointment as Principal MFW in terms of experience and track-record, and should have been appointed in lieu and stead of the Co-Respondent, the more so in view of the fact that

(a) The Appellant has been performing the tasks and duties of Principal MFW since 2013 further to assignment of duty and acting ship, whilst the Co-Respondent has most entirely performed the tasks and duties of MFW/Senior MFW (personal) only;

(b) The Appellant has, in her capacity as Senior MFW (shift), gathered more valuable and significant experience than the Co-Respondent towards being able to perform the key tasks associated with the post of Principal MFW;

(c) Since Principal MFWS are required to work both in hospitals and other Health Institutions, The Co-Respondent does not have the relevant experience to meet this exigency as she has most entirely performed the duties and tasks of MFW/Senior MFW at a particular area during her career so far, without performing any work at the centre, whilst the Appellant has been performing work as MFW, Senior MFW and Acting Principal MFW at centres, areas and sub areas.

Ground 3

The appointment of The Co-Respondent as Principal MFW is contrary to the fair and legitimate expectations of The Appellant that she will be appointed to the vacant post, particularly in view of representations made to her that she is the next eligible officer for the post.

Ground 4

The experience gathered by, and postings of, the Appellant post her Interview held in August 2021 and until January 2023 ought to have been taken in consideration prior to taking the decision on appointment of the Principal MFW". (SIC)

She further expatiated on her GOA in her SOC to the effect that she was appointed as CMFW, now known as Senior MFW following the change of appellation under the Pay Research Bureau Report in 2008. She also averred that from January 2010 to June 2020 she was posted to JN centre as Senior MFW (On Shift). She further averred that having opted for the shift system, she was granted three additional increments along with Night Duty Allowance and Night Attendance Bonus compared to the Co-Respondent who did not opt for the shift system and her appellation was Senior MFW (Personal).

According to the Appellant, the Co-Respondent being a Senior MFW (Personal) is not eligible to be appointed as Principal MFW given that the Post of Senior MFW (Personal) and that of the Senior MFW (Shift) are substantially different with the scheme of duties and salary scale being different as well.

Under cross examination, she agreed that she joined the service at the same time as the Co-Respondent in 1996 as Trainee MFW and promoted to the post of MFW and subsequently to CMFW. She agreed that there was no shift at that point in time and following the recommendation of the Pay Research Bureau, there would be different cadre for the post of MFW to include shift system, mostly in centre and that her post was re-styled from CMFW to Senior MFW.

She confirmed that she opted for the shift system and remunerated with three additional increments compared to the Co-Respondent who did not opt for same. She explained that prior to the signature of the option form, she was explained that compared to Senior MFW(personal), those opting for shift would be better remunerated and that there will be better opportunities as this post would be phased out gradually.

However, she conceded that there was nothing in writing to support her version. She was further referred to the Scheme of Service where she agreed that the candidates eligible to apply for this post are Senior MFW (Shift) and Senior MFW. She agreed that assignment of duties is made for administrative convenience and such assignment does not give her any claim for the post. She agreed that the current post has been filled by a selection exercise.

Respondent's case

The Representative of the Respondent affirmed to the correctness of the Statement of Defence (**SOD**). The Respondent expatiated on its SOD and averred that both the Appellant and the Co-Respondent were found eligible to be convened at the interview. It is also averred that there is no record of any notes of meeting with the then Responsible Officer stating that only Senior MFW (on shift) would be promoted to higher posts. Further it is averred that the Respondent did comply with regulation 14 of the PSC regulations and all training courses, seminars and workshops as

disclosed in their application forms for the post have been taken into consideration by the selection board during the interview.

Under cross examination, she stated that the grade of CMFW has been re-styled as Senior MFW and confirmed that those who opted to work on a shift system were granted three additional increments increase. She further explained that following the PRB Report 2008, there was a change of appellation to the effect that those holding the post of CMFW will be now known as Senior MFW and the implementation of that Report was made in the Civil Establishment Order of 2008. She also explained that those who did not opt for the shift system would have a personal salary scale. She also stated that according to the Criteria of Selection for the post of Principal MFW and that the fact it is mentioned Senior MFW (Shift) and Senior MFW does not exclude Senior MFW (Personal).

Further the Human Resource Manager from the Public Body and was called as witness and confirmed that they joined the service at the same time. She also stated that they both were working in the centre as Senior MFW and that the Co-Respondent had the required experience to become a Principal MFW. She also stated that the duties, as per the Scheme of Service for the post of Senior MFW (on shift) and Senior MFW (Personal), are the same.

Co-Respondent's case

Co-Respondent solemnly affirmed to the correctness of her SOD and was cross examined. She stated that she is not agreeable that she did not carry out deliveries inasmuch as when she was posted at the centres she carried out same and that no deliveries are carried out in areas. She did not agree that only Senior MFW (on shift) could be appointed as Principal MFW and not Senior MFW (Personal). She further agreed that she did not opt to work on shift and did not perceive the three increments as compared to Senior MFW (on Shift). She also stated that she applied for the post of Principal MFW as she is a Senior MFW with more than four years of service as prescribed in the Scheme of Service. She finally stated that as Senior MFW she does give particular treatments and also assist professionals in special sessions.

Determination

The Tribunal has given due consideration to the GOA, SOC of the Appellant as well as the SOD of the Respondent and Co-Respondent.

Ground 1

Under this ground, Appellant's main contention is that the Co-Respondent was not eligible to apply for the post of Principal MFW in the first instance in as much as the scheme of service for the post of Principal MFW did not mention Senior MFW (Personal) could apply for the said post.

As per the Respondent, the reason as to why the Co-Respondent was eligible is that following the PRB recommendation and subsequently the Civil Establishment Order 2008, those who did not opt for the shift system would have a salary scale personal to them as compared to those on shift who had perceived three increments added to their salary.

Moreover, given that the post of Community MFW was re-styled to that of Senior MFW, both the Appellant and the Co-Respondent were Senior MFW before the former opted for the shift system to become Senior MFW (On shift) carrying out their salary scale and those who did not opt had another salary scale. Furthermore, even the Appellant agreed that the post was opened to Senior MFW.

As such the Tribunal does not find that there has been anything contrary as to eligibility of the Co-respondent. Hence ground 1 has no merit.

Ground 2

Under this ground, the crux of the contention by the Appellant was that she worked most of her career in Centres compared to the Co-Respondent. The Appellant insisted that the tasks with regards to Senior MFW (Shift) is different from Senior MFW (Personal). We have evidence from the Human Resource Manager who confirmed that according to the Scheme of Service, they have same duties.

Furthermore, 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 ground 2 fails.

Ground 3 and 4

With regards to ground 3, as rightly conceded by Counsel for the Appellant, same had not been substantiated as per evidence on record. Concerning Ground 4, at the outset, Counsel did not insist on this ground given that the experience claimed was post interview.

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