

Respondent should act fairly in all promotional exercises and must be consistent in its approach in similar circumstances.

DETERMINATION

The Appellant is challenging the decision of the Respondent to appoint him as FPPO in a temporary capacity whereas the Co-Respondents who are junior to him as per the official seniority list have been appointed to the same post in a substantive capacity.

Appellant's Case

The Appellant sworn to the correctness of his grounds of appeal and statement of case.

The grounds of appeal are as follows:

1. *"I am the senior most officer in the grade of FSPO on the establishment of the Rodrigues Regional Assembly.*
2. *On the 12th of June 2024, my junior colleagues got their appointment letter for the grade of FPPO in a substantive capacity as from their date of assumption of duty, while on the same date, I was offered the said post, but on a temporary basis with no limited time fixed.*
3. *In my letter of acceptance dated the 17th of June 2024 to the Island Chief Executive for the post, I mentioned the substantial difference between my letter of promotion and that of my colleagues. I then requested, among others, for prompt clarifications on the difference to avoid a double standard treatment towards me.*
4. *In the reply of the Island Chief Executive dated 25 June 2024, regarding the clarifications, I was informed, I quote "that the Public Service Commission has decided to promote you in a temporary capacity pending the outcome of the Police Case".*
5. *You would note that during my career, I have never been blamed for whatsoever misconduct or any other unprofessional attitude.*

6. *The alleged cases have nothing to do with my responsibilities as a Public Officer, more precisely as a FSPO, but are solely concerned with my engagement as the President of the Rodrigues Government Employees Association, a Trade Union.*
7. *I feel that I am being unfairly and unjustly discriminated and I am making an appeal to the Public Bodies Appeal Tribunal to give its ruling on the matter.”
SIC*

In his statement of case, he expatiated on the grounds of appeal and he explained that no person should be victimised or discriminated against on ground of his Trade Union activities. He added that:

- (a) He has never been informed of the alleged incidents by the Police;
- (b) Five years after the alleged incidents, he has never been summoned by the Police for any inquiry whatsoever;
- (c) There is no case, whether provisional or formal pending against his person in connection with the alleged incidents;
- (d) There is no awaiting court ruling or judgement relating to the alleged incidents pending against him.

During cross examination, he explained that he sent his appeal by mail and produced an acknowledge receipt from the Tribunal which proved that he submitted his appeal within delay. He also added that he is not challenging the appointment of the Co-Respondents and that he accepted the offer of appointment and at the same time he protested against the appointment in a temporary capacity when all the Co-Respondents were offered their appointments in a substantive capacity.

He also explained that his grounds of appeal did not specifically mention that he is charged with any criminal offence. He explained that he has not been contacted by the Police for any enquiry. He stated that there is also another officer who is presently an OT(E) who was involved and the latter was appointed in a substantive capacity to the Rodrigues Regional Assembly on 17th February 2023. This is why he found this as an act of discrimination against him.

Respondent's case

The Representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence (SOD). Respondent averred that according to the Scheme of Service, the post of FPPO is filled by promotion on the basis of experience and merit, of officers in the grade of FSPO who reckon at least four years' service in a substantive capacity in the grade and who possess-

- (a) The Diploma in Forestry and Fisheries from a recognised institution issued as at 31st December 2020

OR

A Diploma in Fisheries Science or A diploma in Fisheries Enabled Services from a recognised institution or an equivalent qualification acceptable to the Public Service Commission;

- (b) Good Organising and Supervisory Skills; and
- (c) Good Interpersonal and Communication Skills.

Respondent also averred that the Appellant, ranking first, in the grade of FSPO, is eligible for the post of FPPO in accordance with the Scheme of Service for the post as he satisfies the requirements of the post. However, the Rodrigues Police Department informed that he is involved in a police case. The Responsible Officer recommended in a letter dated 18th April 2024 that he be promoted FPPO in a temporary capacity with effect from the date of assumption of duty pending the outcome of the police case, and the six Co-Respondents be promoted FPPO in a substantive capacity with effect from date of assumption of duty.

Respondent further averred that according to its current policy, when considering the appointment/promotion of an officer involved in a minor offence it appoints him in a temporary capacity pending the outcome of the Police/ Court case against him, provided the case(s):

- I. Do not entail fraud or dishonesty;
- II. Are not related to the officer's employment; and
- III. Have been committed out of employment.

Under cross examination, the representative of Respondent stated that according to Public Service Commission Circular No. 2 of 2016 under ref. PSC/GEN9/3 V4, the post is usually reserved if the Officer concerned is under report or has any police case against him pending the finalisation of the case. He would not be promoted in the absence of any recommendation for promotion of that Officer. She added that in instances and in order not to deprive officers of their rights to enjoy the higher post, the Respondent, upon the recommendation of the Responsible Officer, took the decision to allow the appointment in a temporary capacity. However, she could not provide the Tribunal with any evidence to that effect but simply said it is a decision.

She also confirmed that the OT(E) was appointed on a substantive capacity and it was the same Responsible Officer who recommended Appellant to be appointed in a temporary capacity.

A representative of the Rodrigues Regional Assembly was called as a witness and deposed under oath. She explained that she sent several letters to the police to enquire about the status of the Police Case involving the Appellant. However, surprisingly, she admitted that nothing had been done in the case of the OT(E).

Case of Co-Respondents

All Co-Respondents are abiding to the decision of the Tribunal.

DETERMINATION

As all the grounds of appeal are linked together, the Tribunal will deal with all the grounds together. The main issue in the present matter is that the Appellant was promoted as FPPO in a temporary capacity while the Co-Respondents who are junior to him on the seniority list were promoted in a substantive capacity. The reason provided by the Respondent is that there is a police case filed against the Appellant. However, during the hearing, the Tribunal has noted some disturbing features in the process of the appointment exercise. It is to be noted that the present exercise is one of promotion.

The Appellant confirmed under oath that he was not aware of any police enquiry against him which allegedly took place in July 2019. He learnt it after querying the Responsible Officer. It came to light that there was also another Officer namely an OT(E) who was involved in the same Police Case and which was not disputed. The said Officer was appointed in a substantive capacity in the post of OT(E). It was confirmed before the Tribunal that the Responsible Officer only enquired on the status of the police case for the Appellant only and had not done so for the case of the OT. This is a matter of concern as the Respondent has adopted two different treatments with respect to two Officers involved in the same alleged police case.

Secondly, the Respondent averred in its SOD that it is the policy to appoint Officers in a temporary capacity whenever they are subjected to police enquiry or under disciplinary procedures. Whereas the representative of the Respondent stated under oath that according Public Service Commission Circular No. 2 of 2016, a post is reserved in such type of situation. She further added that in instances, it was a decision of the Respondent to appoint the Officer concerned in a temporary capacity so as not to deprive the said Officer from promotion. However, she was unable to explain to the Tribunal on the basis of which regulations or circulars, the Respondent is entitled to do so.

The Tribunal finds itself with three different versions and none of them is evidenced in support of the decision of the Respondent. Therefore, the Appellant has proved his case before the Tribunal.

Pursuant to Section 8 (4) (d) of the Public Bodies Appeal Tribunal Act 2008, the Tribunal orders that the Appellant be appointed FPPO in a substantive capacity and that he maintains his seniority as per the seniority list.