

## **PUBLIC BODIES APPEAL TRIBUNAL**

**No. 10 of 2012**

**In the matter of:-**

**G. Heeramun**

**(Appellant)**

**versus**

**The Public Service Commission**

**(Respondent)**

### **Ruling**

The Appellant, Mr Heeramun, an Educator (Secondary), lodged two appeals against the decision of Respondent for the filling of vacancies for the post of Deputy Rector in two separate appointment exercises. He was not appointed and he felt aggrieved.

When the appeal came for Hearing, Counsel for Respondent raised a point of law to the effect that Appellant had added points in his Statement of Case which were not included in the grounds of appeal at the time of application. She said that this would be against the provision of section 6(5) of the Public Bodies Appeal Tribunal Act of 2008 (hereafter referred to as the Act) which stipulates that "The Tribunal shall not entertain any ground of appeal not raised in the grounds of appeal". Counsel gave the sections in the Statement of Case which she was contesting and moved that the Tribunal should not entertain any of these new grounds of appeal as this would be in conflict with the Act.

Counsel for Appellant argued that the Tribunal should be flexible on the matter. He referred to section 7 (5) of the Act which says that "in performing its functions, the Tribunal shall endeavour to combine fairness to the parties with economy, informality and speed." Counsel said that when an appellant fills the appeal form he has 21 days to do it and very often he/she is not assisted by a legal

person. It is reasonable to assume that he/she may not have the aptitude to put the grounds of appeal in a legal language and style. It is when the appellant gets Counsel to put in shape the Statement of case that things become clearer.

In the present cases, Counsel for Appellant said that the points raised in the Statement of Case would need to be put in the proper context. These points were not additions to the original grounds of appeal but Appellant was only expatiating on them. The fact that there were more items listed in the Statement of Case would not mean that Appellant had travelled outside the original grounds of appeal.

Counsel for Co-Respondent was of the view that Appellant would not be correct to add new grounds to his appeal. He joined Counsel for Respondent on section 6 (5) of the Act to say that the Tribunal “shall not entertain any new ground “ stating that this provision of the Act was mandatory and left no discretion to the Tribunal for accepting new grounds of appeal.

This Tribunal is very cautious as regards Section 6 (5) of the Act. The Tribunal adopted the system of Statement of Case to allow an Appellant to expatiate on the original grounds of appeal. The Tribunal is very conscious of the pressure put on appellants to lodge their appeals within the 21 days delay. In fact, the Trade Unions had at the start of the Tribunal requested that this time limit be raised to allow sufficient time for aggrieved officers to lodge their appeals in the best of conditions. It seems that public officers are now more aware of the appeal process and do not face serious difficulties in adhering to the time limit. Be that as it may, the Statement of Case is still a useful instrument for appellants to make their stand clearer and to put the Appeal in context. It also helps Respondent to know what case to answer. Otherwise Appellant would in fact come with details of his case orally when he depones. This should not be used as a pretext to get new grounds in the appeal through the back door.

The Tribunal does not wish at this early stage to decide on the admissibility or non-admissibility of the points listed in the Statement of Case. This may be construed as if the Tribunal is taking position when it does not have a full picture of the substance of the arguments of Appellant. It may be seen as if the Tribunal is pre-judging and giving support to or discarding points on which the parties have yet

to give their views as part of the adversarial process before this Tribunal. The Tribunal does not want to give an inquisitorial slant to its proceedings. It is the considered view of this Tribunal that the points raised by Appellant be thrashed out at Hearing on the merits. The Tribunal reserves the right at the Hearing to stop debate on any point which overflows beyond the boundaries of the original grounds of appeal. This will be fair to Appellant who is given a chance to expatiate on the grounds of appeal and for Respondent to make sure that no new grounds are being imported in the appeal which will be in conflict with section 6 (5) of the Act. All arguments on law can also be put forward at the time of submission at the end of the depositions of the parties.

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**S. Aumeeruddy-Cziffra**  
Chairperson

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**G. Wong So**  
Member

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**P. Balgobin-Bhojru (Mrs)**  
Member

Date: -----

**Note: This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. The Supreme Court upheld the Determination of the Tribunal which has now become final.**