

FR 3 of 2013

Experience in a parastatal body which has been wound up will count as experience for those who were legally transferred to a Ministry and may be considered for appointment if their experience is cumulated with their experience at the Ministry itself.

There are eight Appellants in this appeal. Five of them are represented by Counsel and three by Trade Union Representatives. Their appeal concerns the appointment of the Co-Respondents in the Ministry of ...

Before the appeal was heard on merits, Counsel for Appellants raised a point of law as to the interpretation of one of the requirements for eligibility to the post advertised in Circular No ... of 2011 in relation to filling of vacancies. The advertisement specified that candidates must be in a specific post who “reckon at least eight years’ service in a permanent and pensionable capacity in that post .

Counsel for Appellants submitted that since six of the ten (10) Co-Respondents were employed by a parastatal body in 2007 and the post was advertised in 2011, these Co-Respondents could not meet the criterion of eight years experience. They were, therefore, not eligible as they did not meet an essential requirement of eligibility.

The Appellants further submitted that it was unfair that the Co-Respondents have been considered eligible for the post. They resented the fact that the Co-Respondents, considered by the Appellants as outsiders, joined the Ministry afterwards and were appointed to posts which existing employees legitimately aspired to after very long years of service. The Trade Union Representative spoke in the same vein and highlighted that the Co-Respondents were allowed to join the Ministry on humanitarian grounds and that one of the conditions was that they would not retain their seniority. They both stressed on the fact that the computation of their length of service was to be reckoned for pension purposes only.

Counsel for Respondent did not share the point of view of the Appellants’ representatives. He submitted that the Co-Respondents were already working in the

post in question and when they were transferred to the relevant Ministry they continued to work in that post. There is therefore continuity as far as experience was concerned. The eight years experience requirement was not limited to experience at the Ministry but experience acquired in a permanent and pensionable capacity. This includes experience at the parastatal body until its winding up.

The Tribunal has given consideration to the arguments of the parties. The fact that the candidates for the posts had to have eight years' experience as Tradesman is not disputed. Where there was divergence of views concerns those Co-Respondents who came from the parastatal body and how to compute their number of years of experience.

The History of the parastatal body in question and the Act which relates to its winding up explains how workers who were not redeployed would be compensated.

It is clear, therefore, that Government's policy was to have a smooth winding-up of the parastatal body and afford an opportunity to those who could be redeployed in the public service to do so on the best terms. In the letter dated 30 January 2007 from the Responsible Officer of the Ministry that was given to the Co-Respondents from the parastatal body it said, inter alia, that "*Your length of service at the... will be reckoned for pension purpose but will not be considered for purpose of seniority*" and "*Your accumulated leave and passage benefits as at 28 January 2007 will be carried forward to this Ministry.*" This shows that the Co-Respondents concerned became full-fledged members of the public service and enjoyed all the benefits, save on the issue of seniority. Thus, there was a smooth transition from the ... to the public service.

The question is whether the years served as in the parastatal body can be cumulated with the number of years in similar position in the Ministry to arrive at the eight years experience eligibility as the Co-Respondents concerned only had four and a half years experience at the Ministry. The answer to this question seems to be YES. The Co-Respondents were in a statutory body and their employment was permanent and pensionable. The Scheme of Service does not say that such experience must have been obtained while in employment at the Ministry but simply experience as It is true that, were it not for the closure of the ... and the

redeployment of Co-Respondents, the applicants for the posts would have come from existing employees in the Ministry. The fact that “outsiders” have come and disturbed the appointment exercise may give way to some frustration but this should not deny the wider ambit of the eligibility criterion. Experience acquired at the ...was experience in the job in question and should be reckoned in the appointment process.

The Tribunal rules that the appeal should proceed on the merits.