

## FR10 of 2013

**Agreement to take up a post on specified terms and conditions precludes an appointee from appealing against the said terms and conditions.**

The two Appellants were offered employment by Respondent. They were informed about their appointment from the Responsible Officer of the Ministry of ... stating the effective date of their appointment. The Appellants are contesting the decision of Respondent as to the effective date of their appointment.

Respondent resisted this appeal in a plea *in limine litis*. Counsel for Respondent stated that in the letter of ... to the Appellants it was clearly stated that the effective date was to be... Both Appellants did accept the offer of appointment "*on the terms and conditions specified in the letter under reference*". Legally, the Appellants are bound by the letter of offer and by the letter of acceptance and cannot, therefore, put this in question.

The Appellants agreed that they signed the letter of acceptance. However, they stated that they had only one week to give their acceptance. If they did not do so, they could lose their chance of promotion. They did not appeal to the Public Service Commission as they thought that the PSC would be judge and party in the matter and their chances of getting a favourable reply was weak. In any case, they thought that it would take too long and they would not be able to meet the mandatory 21 days delay to lodge an appeal to the Tribunal. According to them, they signed the letter of acceptance and decided to appeal to the Tribunal to have the effective date of appointment amended.

The Appellants are bound by the terms and conditions in their offer of appointment as they have agreed to take up the post "*on the terms and conditions specified in the letter under reference*". Consequently, they cannot now dispute those same terms and conditions and they have, in fact, as at the date of the appeal, been appointed to the said post.

The Tribunal would like to point out however that, in the same letter there was also a mention to the effect that *“Your promotion will be subject to the laws, rules and regulations governing the Public Service of Mauritius and to the Public Service Regulations for the time being in force as appropriate”*.

The Appellants in their Statement of Case, rightly referred to Circular No 5 of 2008 by the PSC itself which states that *“filling of vacancies in respect of grade to grade promotion should as from 1 January 2009 invariably take effect from either (a) the date of assumption of duty; or (b) the date of actingship/assignment of duties starts; or (c) the date of vacancy whichever is the latest*

*.....”*. This is the crux of the Appellants’ case, that they were assigned duties of ... much earlier than the specified date.

Respondent is not respecting its own circular No 5 of 2008. Respondent conceded in its Statement of Defence that the Appellants ought to have been appointed as from the dates their assignment of duties started. However, there was a previous promotion exercise to the grade. Had the Appellants been appointed from the dates of assignment of duties, this would have disrupted the seniority ranking of appointees of the previous batch. This is the problem when junior officers are assigned duties for administrative convenience and posts are subsequently filled by their senior colleagues while they still perform the duties for various reasons. When they in turn are then appointed, their appointment creates a problem if the effective date is to be the date they start their assignment of duties.

The Tribunal recommends that the Respondent should address the problem of assignment of duties for administrative convenience for long periods and the problem that it creates as in this present case. The Respondent is flouting its Circular No 2 of 2006 which says that *“The Commission has decided that acting appointment/ assignment of duties made on the ground of administrative convenience should not be of a long duration and should, as far as possible, be restricted to a period not exceeding six months”*.

Since the Appellants agreed to take up their new post on the terms and conditions specifically mentioned in their letter of employment, the Tribunal cannot intervene and question the decision of the Respondent.

The Tribunal has no alternative than to dismiss this appeal.