

Section 89 of the Constitution gives the Public Service Commission (PSC) exclusive power to appoint persons to hold or act in any offices in the public service even if they are working for an Authority.

The Appellant is contesting the decision of the Respondent to appoint the Co-Respondent as RAPOR in a substantive capacity with effect from ...

There were three points of law that were raised.

First, both the Respondent and the Co-Respondent had raised the point that the post of RAPOR was filled following a public advertisement and the Tribunal had no jurisdiction as per Section 3(3) of the Public Bodies Appeal Tribunal Act. This point was dropped as the public advertisement referred to the initial appointment as RAPOR in a temporary capacity. The present appeal refers to the subsequent appointment of RAPOR in a substantive capacity.

Second, a point was raised that the appeal was lodged beyond the 21 days delay as per the PBAT Act. This point was also dropped. There was no official notification until the Appellant was told about the appointment of the Co-Respondent. The 21 days delay started as from this date and as such the appeal was within the statutory delay. This was not disputed by the parties.

Third, Counsel for the Co-Respondent raised a point in law stating that the Appellant and the Co-Respondent were both employees of the Authority for RAPOR which was governed by an Act which came in force on.... The Act defines the role of the Authority which is headed by a Chief RAPOR, who is the supervising officer of the Appellant and the Co-Respondent. The functions of the latter are clearly spelt out in the Act. The Authority *“shall be administered and managed by a ...Council”* Counsel gave the composition of the Council and he was of the view that the Authority had a say in the appointment and should be made a party to the appeal as one of the Respondents. The Authority could not be left out of this appeal in the interest of justice.

The Tribunal has listened to the views of parties. It is not disputed that the Authority is a body governed by an Act and its business is spelt out and controlled by the provisions of the Act. However, one must not be oblivious to the fact that Section

89 of the Constitution gives the Public Service Commission (PSC) exclusive power to appoint persons to hold or act in any offices in the public service. The chief RAPOR may make recommendations for appointments to the Responsible Officer of his parent Ministry who in turn communicates such recommendations to the Respondent. The chief RAPOR is not and cannot be a decision-taker in the appointment exercise. He has no say in the appointment nor can he alter or rescind any decision relating to an appointment issue. The chief RAPOR or the Authority cannot be a Respondent. The Act cannot override the powers given to the Respondent by the Constitution. Officers of the Authority are public officers according to section 8(2) of the Act.

However, the Tribunal agrees that the Authority can be called to provide additional information or clarifications for the determination of the case and its representative will stand the test of cross-examination. This has been the normal practice in this Tribunal and it has worked very well. In any case, the Tribunal can also ask for additional confidential information from the Respondent who will invariably have to seek same from the Responsible Officer of the Ministry or in this case the Authority itself.

The Tribunal rules, therefore, that the Respondent be accompanied by a representative from the Authority as a witness who will provide any information that may be required at the hearing.