

The relevant date from which time runs for lodging an appeal is the date when the Appellant was in fact informed of the decision which is the subject of his appeal.

Appellant is contesting his effective date of appointment and his ranking on the seniority list. He has lodged an appeal against the decision of the PSC on the grounds that he was not agreeable with the effective date of his appointment and with his ranking on the seniority list.

He further stated that he was selected in a substantive capacity as SICR and was assigned duties of Assistant Manager, ICR, a position which was vacant since.... However, due to administrative delays, he was not promoted to the post. In ..., he was temporarily transferred to PMO to work for a ...Project with the approval of the PSC, and the Director of ICR, Prime Minister's Office. On the ..., he was informed that he was assigned duty as Assistant Manager, which he accepted and reported to duty as per the date stipulated therein. He was then informed that they would refer the matter to the PSC as they received a request from PMO which could not release him in such a short notice of one day as he was instrumental to the project and his sudden departure from the office would cause prejudice to the project.

Respondent's Case

Respondent moved that the appeal be set aside and raised two preliminary points in law to the effect that:

1. It has been lodged outside the statutory delay of 21 days as provided in section 3(2) of the Public Bodies Appeal Tribunal Act;
2. In a letter dated ..., the Appellant had accepted his appointment as Assistant Manager, ICR in a substantive capacity, effective date being date of assumption of duty, in line with the PSC Circular No. 5 of 2008, the Appellant cannot therefore, proceed with the present appeal.

The key relevant dates with regards to the preliminary points raised above are as follows: On the ..., the Ministry of ... made an offer to the Appellant.

Appellant was offered the post of Assistant Manager, ICR in a substantive capacity at the Ministry of ... and he was informed that his promotion will take effect from the date of his assumption of duty. On the ..., the Appellant accepted the offer on the conditions set out in the letter.

It is to be noted that earlier, the Appellant had been assigned the duties of the same post and he had accepted same on ... On the ..., the Ministry of ... had sent a letter to Appellant informing him that, since he was not released from his existing duties, his promotion would only take effect as from his date of assumption of duty. Counsel was therefore of the opinion that Appellant was since that time aware that his promotion date would be the date of his assumption of duty and if he was not agreeable to same, he should have challenged it at the time. Moreover, Appellant having accepted the offer, on the terms and conditions stated, he could not now challenge the terms and conditions attached, especially that he did not sign under protest.

Appellant who was unrepresented at the hearing, stated that on the ..., he received the letter informing him of the appointment. It is only through the notification circular dated ..., that he realised that he would lose his seniority. It was therefore by mistake, according to Appellant, that he had put the relevant date as being the ... on his grounds of appeal.

Appellant further stated that he had informed the Director at the Ministry of ... that he would challenge the decision of the PSC which resulted in him losing his seniority. He explained having been given only one day notice to join the Ministry of ... and that, as at the date that the vacancy arose in ..., he was still in post, had the required qualifications and had been assigned duties for the past six years and should therefore have been appointed to the post.

Ruling:

This Tribunal has already in the past stressed on the fact that, although it can be lenient and flexible when it comes to evidence and process, it is bound by Section 3 (2) of the PBAT Act which clearly states that:

- “(2) An appeal shall be made –
 - (a) within 21 days of the notification to the officer of the decision referred to in subsection (1), or within 21 days of such public notification of the decision as may have been made, whichever is the earlier...”

It is clear that the Appellant had received his letter of appointment on the..., date on which he was notified of the decision of the PSC. The appeal was lodged on the..., i.e. on the 22nd day. However, in the present case, the letter of offer to appointment makes no mention of the seniority ranking of the Appellant. It is evident from the notification circular that he had lost his seniority but the notification circular arrived after his nomination letter. Since he only became aware of his effective date of appointment and seniority on the list further to the public notification, we find that the appeal was lodged within delay and that the relevant date is the....

With regards to the second objection raised by the Respondent to the effect that the Appellant could not appeal against the terms and conditions of his employment as he had already accepted the offer as is, the Tribunal has already ruled on this issue on previous occasions. In case (website number FR10 of 2013) the Tribunal had this to say:

“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”.

However, in the present case, based on evidence adduced before the Tribunal, the Appellant only became aware of his seniority ranking following the issuance of the public notification.

The Tribunal would like to hear more on the issue of change in seniority ranking concerning Appellants and Co-Respondents.

The case will proceed on the merits.