

Section 7(8) of the PBAT Act provides for the request to Public Bodies for production of articles and documents. Section 91A(9)(b) of the Constitution restricts the communication of such documents to any party. They are for the eyes of the Tribunal only.

The Appellant lodged an appeal to this Tribunal contesting the appointment by Respondent of the Co-Respondents to the post of SRSN in a temporary capacity at

The Respondent has raised objections in law on two of the prayers of the Appellant as contained in his Statement of Case as follows:

“31(2) Order the Respondent to disclose whether there has been any recommendation from the Director ofin relation to that promotion exercise pursuant to Regulation 14 (5) of the PSC Regulations” and

“31(3) Declare that the Appellant is more experienced and more qualified than some of the Co-Respondents”.

The Respondent moved that these prayers be set aside in as much as the present Tribunal does not have the jurisdiction to entertain same.

Counsel for Respondent argued on prayer 31(2) that under the PSC Act 23 of 1953 it is provided that no person shall, in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission or the Chairperson or a Commissioner and Government or the President or the Head of a Department of Government. The document which the Appellant is requesting falls squarely within the provisions of section 12 of this Act. Counsel stated that it is not clear to what the word “President” referred to as the PSC has a Chairperson under the same Act and not a President. The Act was amended by Act 48 of 1991 and the word “President” was

replaced by “Governor General”. Counsel also stated that she was not aware whether the Act had been amended subsequently.

As regards prayer 31(3), Counsel stated that the Tribunal has no jurisdiction and referred to sections 6 and 8 of the Public Bodies Appeal Act which deal with the powers of the Tribunal. Under section 6 sub-section 4 (a) of the PBAT Act, it is provided that the Tribunal has the power, based on the grounds set out in the appeal, to dismiss the appeal where it appears to the Tribunal that it is trivial, frivolous or vexatious. Under paragraph 6 (4) (b) the Tribunal has the power to call for reports from the public body and request information. Under section 8 of the same Act, the Tribunal can confirm the decision of the public body, quash the decision and remit the matter back to it. The Tribunal may make such order as it deems appropriate. However, the Tribunal has no power to make a declaration on the rights of parties as this power is only within the ambit of the Supreme Court. The Tribunal cannot declare that the Appellant is more experienced and more qualified than the Co-Respondents.

She therefore moved that the two prayers be set aside.

Counsel for Appellant joined Counsel for the Respondent on the issue of request for information. He stated that, as in the Tribunal’s previous rulings, the Tribunal has the power to request for information on the understanding that such information remains confidential. However, as regards prayer 31(3), Counsel argued that the Tribunal has a wide array of powers for it to function as a judicial body. The Tribunal has an unrestricted right which is not limited only to the review of the decision-making process of the PSC but it has full powers to inquire into the merits of the decision of the PSC. He refers to Hansard which states that “any aspects of the decisions of the lower authority may be reconsidered and this implies that an aggrieved officer may ask the Tribunal to rule that he is more meritorious than others”. He stated that the word “finding” should be used rather than “declaration” as it is not meant as declaratory of rights but rather as declaratory of the findings.

Counsel for Co-Respondents submitted that the word President, as stated in the Act establishing the PSC, cannot refer to the President of the Republic as this will remove the perception of independence of the PSC. He reminded the Tribunal that the grounds of appeal must be precise and concise. The grounds of appeal of the Appellant is that the appointment exercise was unreasonable, most unfair and biased in as much as the Appellant considered himself more qualified and experienced but he was not appointed.

In the course of the arguments, Counsel for the Appellant decided to drop the prayer 31(3) in which he requested the Tribunal to declare that Appellant was more experienced and more qualified than some of the Co-Respondents.

The Tribunal is therefore left to rule on prayer 31(2) regarding the disclosure issue.

There is the meaning of “President” in Act 23 of 1953. It cannot mean the President of the Republic, as may have been thought, as it is unlikely that those who drafted this piece of legislation in 1953 had the premonition that the country would become a Republic. However, this is a moot point as the mindset about disclosure of confidential information has evolved over time.

In the Service Commissions Regulations of 1981 it is said:

“4. Any report or other communication, written or oral. Or record of any meeting, inquiry or proceedings which a Commission may make in the exercise of its functions or any commissioner may make in the performance of his duties, and any application form, report or other communication dispatched to a Commission in connection with the exercise of its functions, and in the possession of a Commission shall be privileged in that its production may not be compelled in any legal proceedings unless the Chairman certifies that such production is not against the public interest”

This refers to Service Commissions in general but the wordings are along the same line as in the PSC Act of 1953. In the PSC Regulations 1967, the reference to public interest was still there as in its sections 28 and 31. However, when the PSC

Regulations were amended in 2010, reference to the broader “public interest” was narrowed down to “the interest of the public service”.

The PBAT Act 2008 is clear at its section 7 (8) that:

“The Tribunal may-

(a) Make such orders for requiring the attendance of persons and, subject to section 6(4)(b) and (c) , the production of articles or documents, as it thinks necessary or expedient;

However, section 9 (b) of the Constitution (Amendment) Act 2008 setting up the Tribunal, makes it also very clear that:

“(b) the Public Bodies Appeal Tribunal shall not be bound to communicate to any other person the contents of any report , document or other material produced by any Commission or public body and, except where necessary for the purpose of making its decision, the Tribunal shall make no reference to the contents thereof in its decision”

This Tribunal is conscious that disclosure of sensitive information may hamper the public body in the performance of its duties. The Tribunal exercises restraint in seeking such confidential information from the public bodies and adheres to a strict need to know principle. After a lot of effort, and following a ruling delivered by the Tribunal, the Tribunal now obtains the information it requires for the delivery of fair and just determinations. Such information is given for the eyes of the Tribunal members only and has been used cautiously to protect the interests of all parties.

The Tribunal rules that the prayer 31(2) cannot be acceded to. The Tribunal will ask such information for its eyes only if in the course of its determination of this appeal it is found necessary to do so.

The appeal will be heard on the remaining prayers of the Appellant.