

GR/ 6 of 2014

Circular No.5 of 2008 provides that “*the 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) from the date the actingship/assignment of duties starts or (c) the date of vacancy whichever is the latest.*”.

The Appellants are contesting the decision of the Respondent to appoint them as PROSO with effect from ... and not earlier as they were assigned the duties of PROSO before that date.

The Respondent raised a point of law in this appeal, namely:

- (i) “The Appellants have accepted their appointments as PROSO in a substantive capacity with effect from ...and are debarred from proceeding with the present appeals”
- (ii) The Respondent also raised another point of law in its submission to the effect that:
“Appellants No 2 and No 3 have failed to lodge their appeal within the 21 days delay in as much as the decision to offer the appellants a promotion was notified to the appellants on ... and the appeal was lodged by Appellants No 2 and No 3 on the ... (i.e. more than 21 days after the notification). Appellants No 2 and No 3 cannot consequently be allowed to proceed with the present appeal”.

The Tribunal rules on these two points as follows:

Point (ii): It is true that the letter to the Appellants was dated... . However, the Appellants did not receive the letter on the same day. According to the Appellants, all those who were offered promotion were called on the ... and were given their letter of offer of appointment. They were asked to sign their acceptance on the letter, presumably because in the letter they were given one week to indicate their acceptance. The 21 days delay can only start as from the day they were actually handed the said letter. Their appeal, therefore, is within the 21 days delay. The point raised by Respondent is dismissed.

Point (i): The Respondent argues that the Appellants accepted the offer of appointment on the terms and conditions mentioned in the letter of offer and this

includes the effective date of the appointment. The Appellants cannot contest their date of appointment.

The Appellants referred to PSC Circular No 5 of 2008 to say that their appointment should take effect as from the date they were assigned the duties of PROSO. According to the Respondent, the Appellants were assigned the duties of PROSO as follows: (Different dates are referred to).

The Appellants therefore claim that their appointment should have been at an earlier date than the... . They feel aggrieved that this is not so and the Respondent has not given the reasons for this. Counsel for Appellant cited various precedents to support the need to give reasons. Natural justice requires that reasons are given when the Respondent departs from its own policy as contained in its Circular No 5 of 2008. This circular says that “*the 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) from the date the actingship/assignment of duties starts ; or (c) the date of vacancy whichever is the latest.....*”.

This Tribunal has given its ruling on cases where appointees accept offers of appointment on terms and conditions mentioned in their letters of offer and subsequently lodge appeals to challenge such terms and conditions (vide Ruling FR 10 of 2013 on the Tribunal’s website). The Tribunal stands by that ruling, unless the parties show that the terms and conditions lead to an absurdity. The onus then is on an Appellant to draw the attention of the Tribunal to this state of affairs and seek redress.

The question to be determined is whether, in this present appeal, there has been a deviation from the Respondent’s own principle as regards the determination of the effective date of the appointment. It is agreed that the appellants were assigned the duties of PROSO well before the.... In the normal course of events, their appointment should have been backdated to the dates they started acting as PROSO. However, the Scheme of Service for the post of PROSO was amended and became effective as from... . Therefore the “new” post of PROSO, as defined by the revised Scheme of Service, only exists as from that date.

The Respondent has not departed from its Circular No 5 which says *inter alia* “...the date of vacancy whichever is the latest”. The vacancy as PROSO under the old Scheme of Service existed before ... but it cannot be filled as there was a new

Scheme of Service at the time the post was filled. The appointment of the Appellants cannot be before this cut-off date. It is in order for the Respondent to appoint the Appellants as from this date.

The Appellants state that the Respondent should have given reasons for not appointing them as from the dates they were assigned the duties of PROSO. There is no need to give reasons as the Respondent has acted as per the provisions of its Circular No 5 of 2008. Had there been evidence that Respondent departed from the said Circular No 5, then natural justice would have required the Respondent to give reasons.

The Tribunal rules therefore that the appeals do not stand and are set aside