

**The Tribunal has no jurisdiction to hear appeals regarding assignment of duty or arrangements to supervise a Ministry in the absence of the Responsible Officer.**

Appellant has lodged an appeal before this Tribunal on the following grounds:

*“I was not assigned duties of PESY during absence of leave of PESY from ...while junior Deputy PESY have been assigned duties of PESY”.*

Respondent has at the very outset, raised a preliminary point in law as follows:

1. *Respondent moves that the present appeal be set aside as the Public Bodies Appeal Tribunal has no jurisdiction to hear the present matter in as much as the appeal does not relate to any decision of the Respondent pertaining to an appointment exercise or to a disciplinary action taken against the Appellant.*
2. *Should the Public Bodies Appeal Tribunal find that it has jurisdiction to hear the present appeal, Respondent avers that the appeal should be set aside as any decision of the Tribunal would be purely academic.*

Referring to the Section 3 of the PBAT Act which reads as follows:

- (1) *Subject to subsections (2) and (3), the Tribunal shall hear and determine an appeal made by any public officer, or any local government officer, against any decision of the Public Service Commission or the Local Government Service Commission, as the case may be, pertaining to an appointment exercise or to a disciplinary action taken against that officer.*

Counsel for Respondent laid emphasis on the fact that Appellant's contention related to assignment of duties and not disciplinary action or appointment. She further argued that the Appellant's claim did not even relate to

an assignment of duty. In any case, assuming that Appellant was correct and her case referred to an assignment of duties, Regulation 22(4) PSC Regulations makes a clear distinction between assignment of duties and appointment. Regulation 22(4) is reproduced below:

*(4) Notwithstanding paragraph (3), a responsible officer may recommend that a public officer be assigned the duties of another office and the Commission may so assign such duties where –*

- (a) the public officer cannot be appointed to perform the functions of that other office in an acting capacity because the officer –*
  - (i) does not hold the official qualifications applicable to that office;*  
*or*
  - (ii) is not the most senior officer serving in the particular class or grade from which an appointment in an acting capacity would normally be made; and*
- (b) such assignment of duties is considered to be in the interests of departmental efficiency and desirable on the ground of administrative convenience.*

In the light of the above, Counsel for Respondent maintained that the appeal could not be entertained by the Tribunal.

With regards to the second limb, Counsel stated that should the Tribunal find that it has jurisdiction to hear the present appeal, its findings would be of purely academic interest as the assignment of duties was over.

Appellant on the other hand, referring to the PSC Regulations and Circular No.1 of 2011, maintained that actingship is the basis for appointment. Assignment meant assigning or allocating a job to someone, according to the Oxford dictionary. She stated that despite the fact that she was qualified, she was never assigned duties as PESY. PSC Regulations 1967 defines appointment as “*the conferment of an office of emolument in the public service,*

*whether or not subject to subsequent confirmation, upon a person not in the public service.”*

She also did not agree that any decision reached by the Tribunal would be purely academic, insisting that she was suffering financial loss and that her juniors were being given actingship instead of her. She maintained that her chances of promotion were being jeopardized by the fact that she was not granted assignment of duties.

The Tribunal has carefully considered the submission of Counsel for Respondent, as well as the views of the Appellant which she put forward at the Hearing. The crux of the matter is whether assignment of duties can be considered as part of an “appointment exercise” as envisaged by the legislator.

Appointment in the PSC Regulations also includes “the appointment of a public officer to act in any public office other than the office to which he is substantively appointed”.

In PSC Regulation 22 (4) it is specifically mentioned that assignment of duties is done in the interests of departmental efficiency and based on administrative convenience and does not give rise to any claim for a permanent post. Paragraph 18.10.3 of the Pay Research Bureau 2013 defines an acting appointment (and not an assignment of duties) as “an assignment given to an officer deemed capable of performing the full duties and assuming the full responsibilities of a vacant position on the replacement of an employee who is on authorized leave of absence, including sick leave, maternity leave, leave without pay, pre-retirement leave or a vacancy arising until it is filled on a permanent basis”. Paragraph 18.10.4 further reads “the Responsible/Supervising Officer seeks approval from the appropriate Service Commission or under delegated power appoints an officer from the immediate lower grade (generally the most senior one) in an acting capacity in a higher office”. Paragraph 18.10.6 further states that “beneficiaries of actingship are, therefore, provided with an opportunity for advancement both in terms of reward and experience thus leading to

enhanced career development. The acting appointment does not give any claim to permanent appointment to the higher post”.

The PSC Circular no 1 of 2001 relates to delegation of power for acting appointment and assignment of duties and stipulates that the Responsible Officer is delegated the power to make acting appointment/assignment of duties in their respective Ministry/department and that the Responsible Officer should exercise this power personally in cases where, amongst other things, acting appointment/assignment of duties made on the basis of seniority and assignment of duties made on the basis of administrative convenience. It further stipulates that acting appointments/assignment of duties made on the basis of seniority should not be made on the basis of administrative convenience without the prior approval of the Commission. Further, acting appointment and assignments of duties should not be for a period not exceeding 120 days and it is also clearly stated that acting appointment/assignment of duties vice temporary vacancies which will become permanent should as far as possible not be made on ground of administrative convenience and, if this is unavoidable, the period of actingship/assignment should not go beyond the date on which the vacancy becomes permanent, without the approval of the Commission.

The PSC Circular no 2 of 2006 sheds more light on acting appointment and assignment of duties stating that the assignment should be made in accordance with Regulation 22 of the PSC Regulations and the PSC Circular no 1 of 2001. It is clearly stated that when an acting appointment/assignment of duties is likely to last for a long period, that is, more than six months, the most senior officer serving in the particular grade from which an appointment would normally be made, should be considered for such acting appointment/assignment of duties. In such circumstances, acting appointment/ assignment of duties should not be made on the ground of administrative convenience and assignment done on that ground should not be for a period exceeding six months.

In this particular case, it is clear that the ‘assignment’ was done for a short period of three days while the PESY was on leave. It can be seen from the letter

dated ... signed under the hand of the ...and addressed to ... who held the post of ... which is a higher post than that of PESY, that he has been requested to “supervise” the Ministry of ... during the absence of the PESY from office, which probably explains why Counsel for Respondent has alluded to the fact that we are not even dealing with an assignment of duties in this particular case. Moreover, the jurisdiction of the Tribunal is limited to appointment exercises and disciplinary measures. It is clear that there was no appointment of any public officer to act in the office of PESY here or ‘*a conferment of an office of emolument in the public service, whether or not subject to subsequent confirmation, upon a person not in the public service*’ but only a request to ‘supervise’ the work for a few days. We bear in mind that PSC Regulation 22 (4) mentions that assignment of duties is done in the interests of departmental efficiency and based on administrative convenience and does not give rise to any claim for a permanent post. We are not dealing with a case for actingship here but a request to supervise or at most an assignment of duties. Therefore, the jurisdiction of the Tribunal is automatically ousted.

Having found that we have no jurisdiction, there is no need to consider any further issues. As such, we find that the Tribunal has no jurisdiction to consider assignment of duties

The appeal is therefore dismissed.