

Ruling 5 of 2015

In order to decide on whether the Tribunal has jurisdiction, and specifically if any one of the two limbs provided for in section 3(1) of the PBAT Act regarding an appointment exercise or a disciplinary action, the tribunal must hear the appeal on the merits.

This is an appeal lodged by an ETR who has been reverted to his substantive post after he had been appointed as Senior ETR in a temporary capacity on....

The letter reverting him, dated ..., refers to termination “on the ground that you are not qualified to cross QB in your salary scale of ETR. The Respondent raised a preliminary objection in law as follows:

“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 pertaining to an appointment exercise or to a disciplinary action taken against the Appellant.”

A motion to adduce evidence made by counsel for Respondent was turned down and Counsel was invited to take the point on the merits but she opted to argue the point immediately rather than have the case fixed for Hearing. She referred to section 3(1) of the Public Bodies Appeal Tribunal (PBAT) Act 2008 and laid emphasis on the two limbs provided for in that section, i.e, appeals made by public officers must be about a decision “*pertaining to an appointment exercise or to a disciplinary action taken against that officer.*”

She insisted that this was not an appointment exercise and that, in his Grounds of Appeal, Appellant had not mentioned that it was a disciplinary action. She concluded that the Tribunal has no jurisdiction. Counsel for Appellant in reply stated that normally an appointment is made for six months on a provisional basis but that thereafter Respondent should confirm the appointment so that Appellant would have been employed in a permanent capacity. Therefore he stated it was all to do with an appointment. He further insisted that, in fact, in its effect a reversion is tantamount to a disciplinary action.

He concluded that this appeal was under both limbs of Section 3(i).

In the present case, what is disturbing is the fact that the letter of the ... refers to a specific reason for his reversion “*on the ground that you are not qualified to cross QB in your salary scale...*”.

Furthermore, his letter of appointment, dated ..., which was produced before the Tribunal, mentions at its paragraph 3: “*Your appointment may be terminated at any time in the event of incompetence, misconduct or insubordination and you will be reverted to your substantive post of ETR.*”

In view of the fact that the letter of appointment does not refer specifically to qualification to cross QB (which we are to understand to mean the “qualification bar”), the Tribunal would need to obtain more information to ascertain the exact circumstances in which Respondent decided to revert Appellant before pronouncing itself on the issue of jurisdiction.

The appeal must therefore be heard on the merits.