

Ruling 03 of 2016

Although the law is strict concerning the delay of 21 days since the notification of appointment to lodge an appeal to the Tribunal, the Respondent must prove that the officers concerned were in fact notified on a given date.

The Appellants lodged an appeal against the Public Service Commission (PSC) with regard to the promotion of several officers to the post of CHR. Appellants were themselves promoted but challenged the decision of the PSC on the following grounds which are common to all of them:

“1. *The decision is contrary to established practice inasmuch as the effective date of a promotion starts as from the date of actingship as provided for in PRB 2013 Recommendation 4 (inter alia, when there is no gap between the actingship/assignment of duties and the date of offer of appointment). In the present case my actingship started (sic) in*

*2. The decision is unfair inasmuch as the vacancy existed as from ... in my case and the promotion of other junior officers was **backdated** as from their date of vacancy, although there has been gap between the date of vacancy and their assumption of duties.*

3. The decision not to backdate my promotion is contrary to the Performance Appraisal System reports filed by my superiors wherein I was appraised in my capacity as CHR and not as Temporary PCNF.

4. *The decision adversely affects my seniority placement vis-à-vis my juniors in the General cadre whose promotion have been backdated whereas my promotion in the same cadre is to take effect now and this without cause and/or justification.*

5. *The decision is contrary to establish practice; inasmuch as in previous a temporary NF promoted to the post of CHR had his promoted backdated.”*

Respondent's case

The Respondent raised a plea in *limine litis* as follows:

“Respondent moves that the present appeals be dismissed in as much as Appellants have:-

- (i) lodged the appeals outside the 21 days statutory delay;*
- (ii) been informed that they were being promoted as CHR with effective date as from their assumption of duty and have accepted their promotion as CHR with effective date as from the date of their assumption of duty. Appellants cannot therefore proceed with the present appeals.”*

Ruling

On the issue of statutory delay, the Tribunal notes that the notification letter dated ... bears a written note “to notice board” which is signed by the responsible officer of the concerned centre 6 days after the date of the notification letter.

Some of the Appellants added to their Grounds of Appeal the following “*the notification of appointment by promotion was not notified to me as per established procedure*”. It was notified to them 25 days after the date of the notification letter. They filed a document which is in fact the list of all those appointed and they signed opposite their own names at the appropriate rank with the date on which Appellants were notified. The document is also countersigned by an officer of the centre on the same date.

Upon an enquiry at the Tribunal itself, it is now clear that the Appellants came to lodge their appeals on the date on which they were notified. But since they did not provide a Notification Circular other than the letter of appointment, they were asked to ask for an appropriate one with the relevant date and information, which they then produced 2 days after the date on which the Appellants were notified, as described above.

As the officer of the centre is no longer working there, his successor came to give evidence on this issue but he was unable to clarify matters.

In the circumstances the Tribunal rules that the Appeals may be heard on the merits. But Respondent will be allowed to adduce better evidence on the issue of delay if they have such evidence.