

- **The Tribunal cannot adjudicate on Schemes of Service nor on a cut off date which is an administrative decision.**
- **Appellants must consult their Trade Unions at the time that a Scheme of Service is being circulated before it is approved.**

All parties agreed that the four Appeals be consolidated and that only one ruling will be delivered as the issue raised by Appellant concerned the same selection exercise and the same Co-Respondents. A copy will be filed in each Appeal Case File.

The Appellants' Case

The Appellants felt aggrieved by the decision of the Respondent to appoint to the grade of POFO the Co-Respondents who do not possess the "*Diploma in ...* They explained that as per the Scheme of Service dated..., appointment was made by promotion and the Diploma was one of the requirements amongst others, to be appointed as POFO.

However, the Pay Research Bureau in its report of 2016 recommended that the Diploma should be a requisite to be appointed as POFO. The Respondent did not implement this recommendation immediately but imposed a cut-off date of ...for appointment to be made as per the Scheme of Service dated ... Consequently, vacancies in the grade existing before ... were filled as per the above-mentioned Scheme of Service.

A new Scheme of Service was prescribed on ... incorporating the recommendation of the PRB Report 2016.

Respondent's Case

The Respondent submitted in its Statement of Defence that the appeal is devoid of merits and moved that the appeal be set aside on the following points of law:

- (a) the appeal is not against the appointment of the Co-Respondents but against the appointment of the 20 OFOs/SOFOs who did not possess the Diploma in ... at the cut-off date of ..., that is the exercise which took place prior to ... and therefore is time barred;*
- (b) the appeal is a disguised appeal against the decision to have the cut-off date at ... rather than against an appointment exercise;*
- (c) the appeal is in effect challenging the Scheme of Service which was prescribed on ... and therefore not within the jurisdiction of the Public Bodies Appeal Tribunal”.*

Counsel for Appellants moved that the prayers of Respondent in all the Appeals be thrashed out before the cases are heard on the merits. Respondent’s Counsel agreed to argue the case before the hearing.

Co-Respondents’ Stand

Co-Respondents decided to abide by the Ruling of the Tribunal.

Arguments

Respondent’s Counsel argued that in fact the Appellants were disputing the cut-off date in year..., based on which certain promotions were made on the basis of seniority without the requirement for the Diploma in ... or equivalent as a compulsory requirement. Later, on the..., a new Scheme of Service was prescribed rendering the said Diploma mandatory. Promotion was to be made on the basis of seniority but with the Diploma. She insisted that none of the Appellants, as per their own averments, possessed the Diploma. She further added that the Appellants were not concerned with the first exercise but with the second exercise. At that time, the Scheme of Service dated ... was already in force, and they were therefore not eligible to be promoted as POFO. She submitted that the Appellants were therefore indirectly contesting the new Scheme of Service. She produced some Rulings of the Tribunal which spelt out that the Tribunal has no jurisdiction concerning Schemes of Service.

The second point raised by the Counsel of Respondent was that the introduction of the cut-off date was an administrative decision and not a selection exercise. She

went on to say that even if the Tribunal would consider it, it was already outside delay and was therefore time-barred.

Counsel for Appellants opined that the recommendation of the PRB 2016 came as a surprise by imposing a Diploma in order to be appointed as POFOs. Prior to PRB 2016, OFOs/SOFOs were promoted based on their seniority. The implementation of the PRB report had a leapfrog effect upon the Appellants. He said that reasonableness and fairness demand that the Ministry should have given sufficient time to all officers to obtain their Diploma before implementing such a decision. The respite time should have been the period of time that the Authorities would take to provide all Appellants with the opportunity to follow the course in order to obtain the required Diploma. He further added that this should be the rationale behind the reasonableness of an administrative decision but the Ministry imposed a cut-off date of the ... to fill in the vacancies as it was facing a practical problem and it could not meet the needs for more POFOs. He also stated that the Ministry did provide for a course which began in January ... on a fast-track basis for a duration of one and a half years. However, the said course was abandoned and a new course started in ... and will end in He submitted that the respite time should be until ... and, in the meantime, promotion to the post of POFO should be made on the basis of seniority without the requirement of the Diploma.

Ruling

The Tribunal is established under the Public Bodies Appeal Tribunal Act 2008 and should act as per its jurisdiction provided in Section 3 of the Act which reads as follows:

Jurisdiction of Tribunal

(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, pertaining to an appointment exercise or to a disciplinary action taken against that officer.

(2) An appeal shall be made-

(a) within 21 days of the notification to the officer of the decision referred to in subsection (1), or within 21 days of such public notification of the decision as may have been made, whichever is the earlier; and ...”

The law also provides under Section 7 (6) that:

“In the hearing of an Appeal, the Tribunal is not bound by the procedures or legal forms of a court of law, and rules of evidence, but shall-

(a) Observe the principles of natural justice;” ...

The Tribunal observed that the cut-off date decided by the Respondent would indeed penalize those who do not possess a Diploma. However, this is an administrative decision and the Act does not provide that the Tribunal has jurisdiction to deal with such types of administrative matters.

The second point is that the Co-Respondents were appointed on the basis of a Scheme of Service which was prescribed on.... There was nothing to suggest in the Grounds of Appeal that the Appellants were appealing against the appointment of those 20 OFOs/SOFOs to the post of POFO without possessing the Diploma as prescribed in the Scheme of Service of 2018.

We are also aware that before a Scheme of Service is approved, the respective Trade Unions are consulted. The Appellants should have made their representations through their Trade Union well before the Scheme of Service was prescribed.

The Tribunal cannot adjudicate on the cut-off date nor on the Scheme of Service and therefore upholds the preliminary objections (b) and (c) of Respondent and sets aside all the Appeals.