

- **The Tribunal has no jurisdiction to deal with issues concerning Scheme of Service.**
- **If an Appellant does not qualify under the Scheme of Service which is in force, he cannot appeal to the Tribunal.**

The Appellant provided his Grounds of Appeal (GOA) with a document named “Appeal Overview” in which he averred that he is the only staff of the NAUT office possessing the CAM qualification while all other qualified officers at the NAUT possess the CAT qualification. The decision to appoint the two junior officers holding CAT qualifications to the post of PUR is unfair, unreasonable and prejudicial to the Appellant’s legitimate expectations for a career progression in the NAUT. As a result, the Appellant avers that he has been unfairly superseded and will probably continue to be superseded by all CAT qualified Officers.

The Annex called Grounds of Appeal (GOA) was a two-page document in which Appellant gave information which was not relevant and did not constitute GOA. We will mention the subtitles *seriatim*.

The first part concerned the “*NAUT Role in providing relevant experience for CAT/CAM membership/MIR Registration*”.

Then followed “*MIR Registration qualification and the performance of duties in the NAUT*” and

“*The NAUT as an Equal Opportunity Employer*” and

“*Career Progression at the NAUT*”.

The Respondent communicated its Grounds of Objection as follows:

“*The Respondent avers that the PBAT has no jurisdiction to hear and determine the present appeal in as much as the Appellant is challenging the Scheme Of Service*

made in accordance with the prescribed Scheme Of Service for the post and in accordance with Section 89 of the Constitution and PSC Circular No....

Consequently the Respondent moves that the present appeal be set aside".
(SIC)

Submissions in writing

The Tribunal requested the Appellant and Respondent to provide written submission on the Grounds of Objection (GOO) to the Tribunal.

Submissions of Counsel for Respondent

The Respondent submitted that in Appellant's GOA, he is in fact challenging the Scheme of Service for the post of PUR in as much as he is at a disadvantage for not being registered with the MIR as required by the Scheme of Service.

Respondent referred to Section 3 of the Public Bodies Appeal Tribunal (PBAT) Act 2008 concerning the jurisdiction of the Tribunal and to section 89 of the Constitution with regard to the powers of the Public Service Commission to appoint and promote officers in the public service. It also referred to the PSC Regulations which Respondent miscited.

Respondent cited Regulation 13 which provides as follows:

"13. In order to discharge its duties under this Part, the Commission shall exercise supervision over and approve –

- (a) all schemes for admission to any public office by examination, whether specified or not in the relevant schemes of service, and all schemes for the award of scholarships for special training for the public service; and*
- (b) all methods of recruitment, including the appointment and procedure of boards for the selection of candidates".*

Respondent also cited Regulation 15(1) of the Public Service Commission Regulations which provides as follows:

“15. (1) *The Commission shall, where a scheme of service is to be prescribed for a public office, consider and agree to the statement of qualifications and duties for, and, where appropriate, the mode of appointment to, the public office before the scheme of service is prescribed*”.

But in fact she probably meant Regulation 15(A)(1) and (2) of the revised Public Service Commission Regulations which provides as follows:

“15A. (1) *The Commission shall determine the form of advertisement to be issued in accordance with regulation 14.*

(2) *The advertisement shall include the qualifications specified in the scheme of service for the public office in respect of which the vacancy has occurred*”.

Respondent submitted that section 3 of the PBAT Act 2008 must be read together with Regulation 15(1) of the Public Service Commission Regulations.

Respondent referred to the case of **Hurry Sattiavatte v The Government of Mauritius (1996) SCJ 1996** where it was held that “*it stands to reason that the duty to prepare schemes of service rests on the responsible officer but that these must obtain the sanction of the Head of the Civil Service and agreed by the Public Service Commission (Reg.15)... It is not for this Court to substitute itself for Ministries and tell them how to run their departments. The Court can only intervene when there has been a departure from established legal rules and procedures, but it is certainly not the function of the Court to direct Ministries or government departments how schemes of service should be prepared or amended to suit the needs of society*”.

Respondent also referred to the case of **Heeramun v Local Government Service Commission (1991) SCJ 188**, in which the Court held that: “*We know of no rules which prevents an appropriate authority from altering a scheme of service to provide for different qualifications*”.

Respondent then referred to the case of **Planche v Conservatoire de Musique Francois Mitterand Trust Fund and Ors (1994) SCJ 129**, in which the

Court held that *“it could not, on an application for judicial review, substitute its own views on schemes of service”*.

Respondent then submitted that the PBAT has no jurisdiction to hear an appeal which is challenging the Scheme of Service and prayed that the appeal should be set aside.

Submission of Counsel for Appellant

Counsel for Appellant also referred to Section 3 of the PBAT Act 2008 and submitted that, as the Tribunal has jurisdiction to hear appeals on appointment, it has to look at matters regarding procedures of appointment *“which is a matter intrinsic to an appointment exercise”*.

He agreed that some of the GOA pertained to the Scheme of Service and are not being pressed by Appellant.

Ground 18 was highlighted as it read *“Established procedures concerning the Appellant’s case were not always respected by the Appellant’s employer. At time of recommendations for assignment of duties, the NAUT incorrectly recommended the Appellant’s supersession to the PSC without submitting his consent for supersession”*.

Respondent submitted that this Ground of Appeal spells out that the established procedures have not been respected.

He further added that the RO had to follow procedures as spelt out in the Regulation through the filling of PSC Form 1 and 2.

He referred to Regulation 14(4) of the Public Service Commission Regulations which provides that: (1) *“Recommendations made to the Commission for promotion, in cases other than those covered under paragraph (5), shall state whether the person recommended is the senior public officer in the particular class or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of each person in that same class or grade over whom it is proposed that the person recommended should be promoted”*.

He submitted that

- i. *“Recommendations for promotion were wrongly made according to regulation 19(3)(b) instead of PSC Regulations 14(4)”.*
- ii. *Appointment procedures for reporting vacancies were wrongly followed owing to a mix- up of appointment by promotion and by selection under regulation 19(5).*
- iii. *The Responsible Officer misrepresented facts to the Respondent while certifying facts reported in the P.S.C. Forms 1 and 2”.*

He referred to the case of **Public Service Commission v/s Public Bodies Appeal Tribunal (2011) SCJ 382** in which it was held that *“It is significant to note that (1) the hearing of an appeal is not limited to reviewing the decision of the Public Service Commission on the basis of the record or affidavit evidence only but the hearing takes the form of an oral hearing with the hearing of witnesses as was done in the present case; and (2) there is an unrestricted right of appeal which is not limited only to a review of the decision-making process of the PSC but it has full powers to enquire into the merits of the decision of the PSC”.*

He then cited Ruling 3 of 2015 to the effect that *“with regard to his two points raised at point 12 (ii) and 12 (iii) that they could be taken proprio motu by the Tribunal “if we find that there is a fundamental flaw in the procedure adopted by the public body”. He spoke of “error on the face of the record or that it is a flagrant breach of natural justice ...” and that “the Tribunal has the right to scrutinise the whole process in detail and look for any flaw or bias, after the hearing of the appeal, by examining all confidential information which Respondent will communicate to it for its eyes only. It will then draw any conclusion which can be done within the ambit of the PBAT ACT 2008”.*

He maintained that the Tribunal had jurisdiction to hear the Appeal as not all the grounds of the GOA pertain to challenging the Scheme of Service and repeated Ground 18 concerning non respect of established procedures.

Ruling

After having carefully analysed the GOA of Appellant and the GOO of Respondent as well as the submissions in writing of Counsel for both parties the Tribunal rules as follows:

The Tribunal may have full powers to enquire into the merits of the decision of the PSC but it cannot refer to matters which are not raised in the Appellant's Grounds of Appeal. The Tribunal reminds Appellant that Section 6(1) (a) of the PBAT Act 2008 provides that an appeal made under section 3 "*shall set out concisely and precisely the grounds on which the appellant seeks to have the decision of a public body quashed or dealt with otherwise; and...*"

Section 6(5) of the PBAT Act 2008 provides that "*The Tribunal shall not entertain any grounds of appeal not raised in the grounds of appeal*".

Section 3(2) of the PBAT Act 2008 provides that such 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*
- (b) *in such form and manner as may be prescribed by the Tribunal.*

The Appellant is well aware of these very strict provisions of the law. Even in Statements of Case, no new GOA can be raised. The more so in submissions in writing, Counsel should refer very strictly to the GOA and not introduce arguments on new points.

In this appeal, the Appellant has given wide details concerning issues which are not relevant to the appointment exercise as per the Scheme of Service which provides clearly as follows:

"By promotion, on the basis of experience and merit, of officers in the grade of SUR who:

- (i) *reckon at least two years' service in a substantive capacity in the grade;*
- (ii) *are registered with the MIR in accordance with section 51 of the ... Reporting Act; and*
- (iii) *have proven management ability".*

Clearly Appellant is not registered with the MIR and therefore did not qualify under the Scheme of Service of.... There is no question of supersession nor issues of seniority.

What Appellant wants the Tribunal to do is to quash the decision of Respondent on these grounds. But in fact, he wants to ventilate his grievances on the fact that those with the CAM qualifications are not being treated the same way as those with the CAT qualifications.

That is not for the Tribunal to do because Section 3 of the PBAT Act 2008 is quite clear on the jurisdiction of the Tribunal.

Further, as rightly submitted by Counsel for Respondent, the case of **Hurry Sattiavatee v The Government of Mauritius (1996) SCJ 1996** is quite clear on the issue.

As for ground 18, it refers to assignment of duties which again does not fall within the jurisdiction of the Tribunal.

In Ruling 3 of 2015 (website reference R/3 of 2015) the Tribunal did indeed rule that it can "*scrutinise the whole process in detail to look for any flaw or bias, after the hearing of the appeal...*". But it can certainly not listen to a case on the merits when clearly Regulation 14(4) of the Public Service Commission Regulations refers to officers eligible for promotion. The GOA do not reveal that Appellant was eligible as per the Scheme of Service. Appellant's Counsel has submitted that Appellant gives up all grounds concerning Scheme of Service.

For all the above reasons, the Tribunal rules that the Appeal does not reveal any matter which falls under its jurisdiction. The Appellant simply does not meet the requirements of the Scheme of Service for the post.

The appeal is therefore set aside.