

**The issue concerned the relevant date of qualification for an appointment: That when the vacancy arose, or the actual date of appointment. There could be no ruling in the absence of some evidence and the case was fixed for Hearing.**

This case concerns three appeals against the appointment by promotion of Co-Respondent as PCRE.

The three appeals were consolidated.

Each Appellant solemnly affirmed to the correctness of her Grounds of Appeal (GOA). The GOA were similar and read as follows:

- (1) *Appointment for the post of PCRE being based on, and in order of, seniority from eligible SCRE, the purported appointment of the Co-Respondent, as PCRE on ... should be set aside, quashed, reversed and/or otherwise dealt with by the Tribunal inasmuch as the Appellant*
  - (a) *was eligible for appointment as PCRE as at ... (date of appointment as Co-Respondent);*
  - (b) *is senior to the Co-Respondent;*
- (2) *As at the date of appointment of the Co-Respondent as PCRE, i.e..., the Appellant was eligible for appointment to the said post but verily believes that she has not even been considered for appointment.*
- (3) *The purported appointment of the Co-Respondent, being junior to the Appellant, in effect reverses the order of seniority and accordingly unfairly entitles him to prior consideration for future promotions as CER, SEAR and CEAR respectively, and this to the detriment of the Appellant.*

- (4) *The Appellant had a legitimate expectation that, although she was not yet eligible for the post as at the date of vacancy (for having not yet completed the relevant Diploma due to reasons beyond her control),*
- (a) the filling of any vacancy for the post of PCRE would, as is customary in the department, await her completion of the relevant Diploma so as to ensure that her rank in the order of seniority is preserved, and/or*
  - (b) appointment to the post of PCRE would be effected based on seniority and eligibility as at the date of appointment, and not as at the date the vacancy arose, and/or*
  - (c) since she was already eligible for the post as at the date of appointment, she ought to have been considered for appointment as PCRE prior to the Co-Respondent being considered for appointment as such.*

The Respondent having raised a preliminary objection in law solemnly affirmed as to the correctness of the preliminary objection which read as follows:

*“1. the post of PCRE is one filled by promotion, on the basis of experience and merit, of officers in the grade of SCRE who reckon at least three years’ service in a substantive capacity in the grade and who possess –*

- (i) a Diploma in ... from a recognized institution or an equivalent qualification acceptable to the Public Service Commission; and*
- (ii) good organising and supervisory skills”.*

The Co-Respondent also solemnly affirmed as to the correctness of his notice of Preliminary Objection in law which read as follows:

*“1. The present appeals have no raison d’être and are devoid of any merit inasmuch as the Respondent exercised its prerogative pursuant to its regulations, as from the date that the vacancy occurred, to appoint the Co-Respondent, and at which point in time, the Co-Respondent was the only one who was eligible for the said post.*

2. *The post of PCRE is one filled by promotion, on the basis of experience and merit, of officers in the grade of SCRE who reckon at least three years' service in a substantive capacity in the grade and who possess:-*

a. *A Diploma in ...from a recognised institution or an equivalent qualification acceptable to the Public Service Commission; and*

b. *Good organising and supervisory skills.*

3. *As stated by the Respondent, the vacancy to fill the post of PCRE occurred on ... and as at that date, the Appellants were not eligible for promotion inasmuch as they did not have the required qualifications stated in Paragraph 2(a) above.*

4. *The decision of the Respondent is therefore fully in line with the aforementioned scheme of service, and cannot be said to be in breach of the legitimate expectations of the Appellants (which legitimate expectations are in any case denied and could not have arisen in the circumstances). The regulatory and/or statutory powers of the Respondent cannot be overridden by any notion of legitimate expectation which the Appellants may have held (albeit wrongly and unjustifiably held).*

5. *The Tribunal cannot therefore interfere in the powers vested with the Respondent in its balancing and weighing exercise of the various relevant considerations when reaching its decision to appoint the Co-Respondent as PCRE.*

6. *In light of the above, the Co-Respondent reiterates the present appeals have no raison d'être, are devoid of any merit whatsoever and ought to be set aside/dismitted'.*

After having heard the submissions of all parties and seen the documents produced, the Tribunal has decided that it needs to obtain more information and further evidence in order to give a proper Determination of the Appeal.

The case will therefore be processed and be fixed for Hearing.