

Appellant cannot claim his seniority placing at her original post after having been appointed and accepted to join another cadre.

This is a Ruling concerning an appeal entered by the Appellant against the Respondent for having appointed Co-Respondent to the post of MRAHS.

The grounds of appeal (GOA) were:

- “(i) The two listed officers promoted to post of ... are junior to me. Seniority is one of the main criteria for this promotion exercise.*
- (ii) The promotion exercise is inconsistent with the existing scheme of service for the post of MRAHS.*
- (iii) This promotion exercise infringes my right of promotion and my career prospects”.*

The appeal relates to a similar case which the Tribunal had set aside on ... and which was the subject of an application for judicial review before the Supreme Court. The Supreme Court having set aside that application on..., the Tribunal requested Appellant for her stand in the present appeal which had been kept in abeyance. She maintained the appeal. The Tribunal then requested the Respondent for its stand.

Respondent’s observations

- “1. Notwithstanding the Judicial Review findings, the Appellant is maintaining all her appeals before the PBAT;*
- 2. The Respondent has already filed its Statement of Defence in the above appeals;*
- 3. In the circumstances, the Respondent is maintaining its to the effect that the above appeals are resisted as set out in the statement of defence filed;*
- 4. Incidentally, in the light of the outcome of the Judicial Review application, the Tribunal may exercise its statutory powers under Section 6 (4) (a) of the Public Bodies Appeal Tribunal Act to dismiss the above appeals as on grounds of frivolity, vexation and frivolity”.*

Background

On..., the Tribunal gave a Determination in the appeal entered by the Appellant, then a HSER, challenging the decision of Respondent to appoint nine Co-Respondents to the post of MRAHS.

Her Grounds of Appeal (GOA) were as follows:

“The 9 officers promoted to the post of MRAHS were all junior to me. I have not been promoted. The exercise is procedurally unfair and has frustrated my legitimate expectations and rights. In addition, it has caused prejudice to my career prospects.”

She averred that she was appointed HNRE on ... and ranked immediately after Co-Respondent No In the meantime, the Co-Respondents were assigned duties as MRAHS and 8 of them who were junior to her were then promoted and, on ..., they were offered appointment in a substantive capacity.

Respondent had relied on Public Service Commission (PSC) Circular No ... of 2008 as regards the effective date of appointment for this selection exercise.

In ..., after having been assigned duties as HSER for 9 months, Appellant had opted to take a post of SAR at the Public Body. Her assignment of duties then lapsed.

She then lost her seniority placement and her effective date of appointment started as from the date that she assumed duty. As she had not occupied the post of SHRE in a substantive capacity for four years, as per the scheme of service, she did not qualify for appointment as MRAHS and the Tribunal set aside her appeal.

Being dissatisfied with the Determination of the Tribunal, Appellant then applied to the Supreme Court for a judicial review for

- “(a) *a writ of certiorari directing the respondent and co-respondent No.... to bring up their respective records to the Supreme Court in order to have the decisions of the respondent and co-respondent No.... quashed, set aside and reversed for being wrong, in breach of natural justice, unfair, unreasonable in the Wednesbury sense and in breach of the rules of fairness; and*
- “(b) *a declaration that applicant was eligible and entitled to be promoted to the post of MRAHS”*

Counsel for Appellant then declared before the Supreme Court that:

“The only issue which the Court had to decide was whether notwithstanding the fact that the applicant did not have ... years’ experience as required by the scheme of service she should have been appointed to the post of MRAHS”.

After having agreed that Appellant did not reckon ... years’ service in a substantive capacity as HSER, Counsel then stated that he is simply contesting the decision as being wrong, unreasonable and unfair.

The Honourable Judges of the Supreme Court agreed that *“the only issue which the Court had to decide was whether notwithstanding the fact that the applicant did not have ... years’ experience as required by the scheme of service she should have been appointed to the post of MRAHS”.*

The Honourable Judges also found that Appellant *“however, disagreed that her effective date of appointment was ... as according to her, the effective date of appointment should have been..., that is, the date on which, she had earlier, and before taking appointment as SAR in a temporary capacity, been assigned duties as HSER.*

It stands to reason that when the applicant took appointment as SAR in a temporary capacity in..., her assignment of duties as SHRE lapsed. On the basis of the above, we find that since it was only on that applicant assumed duty as HSER in a substantive capacity (and not on...) her appointment to the post of SHRE could only take effect as from....

In the circumstances we do not find that the decision of the PBAT maintaining the decision of co-respondent No.1 not to appoint the applicant to the post AMHR can be said to be unreasonable in the Wednesbury sense or unfair”.

On ..., the Tribunal was informed that the Appellant had been offered appointment by promotion to the post of MRAHS in a temporary capacity on

Ruling

The grounds of appeal of Appellant in this appeal were essentially the same as in her first appeal, in which the Tribunal had given a judgement on ... and in which her application for judicial review was set aside by the Supreme Court.

Appellant fails to understand that once that she had lost her seniority placement in..., she will never get it back and that this has been confirmed by the Tribunal and the Supreme Court.

In the circumstances, after having carefully analysed the GOA and the stand of the Respondent, the Tribunal rules that the appeal is frivolous and vexatious.

Therefore, the appeal is dismissed under section 6(4)a of the Public Bodies Appeal Tribunal Act 2008.