

Appellant had no *locus standi* to challenge the Scheme of Service before the Tribunal

This is a case in which the Appellants, two NOS contested the appointment of Co-Respondents as CNSM.

Grounds of Appeal (GOA)

The Grounds of Appeal (GOA) of Appellants were similar and were that:

- “1. The appointments are anti-constitutional under sec.16(2) and also, against the convention of elimination of all forms of discrimination against women. e.g. Article 2 that embody the ‘principle of equality’.*
- 2. The FNOS have the locus standi to oppose the appointment of MCN as same will influence the seniority position in the nursing cadre...*
- 3. The NRS hierarchy is so set that appointment of CNS cannot be considered in-isolation separately for male or female...*
- 4. Need to prone for an equality of male and female CNS and equitable proportion of female nominees as unit managers and supervisors in those mixed units to create vacancies for senior female NOS.*
- 5. The female NOS are victims of a so covert institutionalized discrimination that it appears rational, normal and looks legitimate to everyone as it has been the usual of so doing.*
- 6. Moreover, because of an unwarranted criterion, the prior female CNS appointments were subjected to that only those who had completed the MDF course were eligible for promotion to female CNS. This practice in the long run had created a gap between female and male nomination as per the batch of year of entry...*

7. *The appointment of the male batch of ... as CNS will be a big blow to the equality and entity of female NOS and will infringe the legitimate expectation of female NO batch of ... still waiting for appointment as CNS.*

8. *The appointment under the circular Ref. ... of ... need to be quashed and prompt redress need to be implemented as the actual practice is an attempt to the legitimate right of female NOS who were senior, mentor and coacher to those nominated male NOS for twenty-two years but from ... they turned juniors to them”.*

Grounds of Objections (GOO)

The Respondent had filed GOO as follows:

“The present appeal cannot be entertained inasmuch as-

*(a) the Appellant has no locus standi to challenge the appointment of the Co-Respondents to the post of CNSM since, ex facie the Scheme of Service prescribed on..., herewith attached and marked as **Annex A**, such post is filled by promotion from among male officers in the grade of NO who reckon at least eight years’ service in a substantive capacity in the grade; and*

(b) the Appellant, who is a female NO, was not eligible for the post of CNSM”.

On the date that the case came for Arguments, Counsel for Respondent informed the Tribunal that there were 18 vacancies for the post of CNSF and that Appellants were on the list of those who would be recommended. But the Tribunal decided to proceed with the arguments on the issues raised as there was no certainty on their appointments. The Tribunal then sought certain information from the Representatives of the Public Body who were present as witnesses in order to understand fully the issues raised by Appellants.

The Human Resource Manager explained the situation as follows:

The fact that female NOS had to follow the MDF course before being appointed, resulted in the gap between female NO and male NO since Male NOS did NOT have to follow that course as the post of “MDF” did not exist for them.

He also stated that recommendations have been made to the Pay Research Bureau on this issue, amongst others, but the Report was still awaited. The Acting Director of NRS stated that there were more women recruited than men given that there are more posts for female than male NOS. He added that normally both male and female NOS can attend ... in mixed units but not in all units.

The Representative of the Respondent added the following information:

The matter was dealt with before the ... Commission. Since..., the requirement for FNOS to follow the course of MDF has been stopped.

Appellant No 1 explained that in the unit, where she worked, there were mixed units except for the CRD Unit. All sections were not the same. But the issue is one concerning the future prospects of NOS who must become CNS before becoming Unit Managers. But the males having been appointed long before, have already occupied all the vacancies.

She also argued that even if she is now appointed she will have lost her seniority, the next post being Unit Manager by promotion. She further explained that there are more female Units than male Units in the whole country because there are more inter-related units.

Later the Human Resource Manager explained that for the post of Unit Manager there are two separate lists and Appellants would not lose their seniority.

Ruling

Any ordinary citizen will conclude that, in this case, the Appellants and all female NOs have been victims of discrimination based on sex. The Representative of the Respondent and the witnesses who deposed explained how this happened. The problem is systemic. Logically female NOs should have been given a choice to follow MDF courses or not, rather than be forced to do so, even though they never actually promoted.

Further, may be, it is high time to think in terms of specialization rather than gender. After all, professionals can be males or females. At a time when gender mainstreaming is a main focus in our country, there is a need to find ways and means of dealing with such issues.

The Tribunal wanted to give the Appellants a chance to vent their feelings by observing the principles of natural justice by virtue of section 7(6)(a) of the Public Bodies Appeal Tribunal Act 2008.

However, this Tribunal does not have the power to pronounce itself on either the Constitution or the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which Mauritius has ratified.

The issue is indeed one which is linked to the Scheme of Service. It was at the time that the Scheme of Service was being devised and adopted that the Trade Union should have voiced out the grievances of female NOS. But clearly this was not done.

It is now up to the Respondent to advise the Ministry concerned on how to close that gender gap in the future, pending the publication of the next Pay Research Bureau Report.

As it is, the Appellants do not have any locus standi as they were not eligible for the post of CNSM as per the Scheme of Service.

The appeal is therefore set aside.