

CIVIL SERVICE ARBITRATION TRIBUNAL**AWARD****RN 919****Before:**

Rashid HOSSEN	-	Ag President
Said HOSSENBUX	-	Assessor
Philippe Noel JEANTOU	-	Assessor

In the matter of:-**Government Servants' Association****And****Ministry of Health & Quality of Life**

The then Ag. Honourable Prime Minister and Minister of Civil Service and Administrative Reforms, after considering the present dispute as mentioned in a letter addressed to the Government Servants' Association, has advised that, with a view to promoting a settlement of the dispute under section 82 (1) (e) of the Industrial Relations Act, the dispute be referred by the Government Servants' Association to the Civil Service Arbitration Tribunal.

The Government Servants' Association is herein referred to as the Applicant and the Ministry of Health and Quality of Life as the Respondent.

The agreed Terms of Reference read as follows:-

1. *Whether the amendments brought to the scheme of service for the post of Chief Health Inspector were in order and within the spirit of the recommendations of the PRB Report 2003.*
2. *Whether the amendments were made without consultation with the Government Servants' Association/State Employees Federation to which the Associations affiliated, and in breach of established practice.*

In its Statement of Case, the Applicant avers:-

1. On 13th May 2004, the Ministry of Civil Service and Administrative Reforms wrote to the Applicant, asking for its comments and views on a series of alterations in the schemes of service for the Health Department, which Respondent No.2 was proposing to implement.
2. The previous scheme for the post of Chief Health Inspector, provided that appointment in the said post would be by promotion on the basis of seniority, experience and merit from the post of Deputy Chief Health Inspector.
3. Respondent proposed to amend the scheme of service and the main objective of that amendment was to alter the mode of appointment in the post of Chief Health Inspector from the promotion basis to the selection basis from the grade of Deputy Chief Health Inspector.
4. The Applicant was duly consulted initially on the proposed scheme of service.

5. The Applicant duly expressed its refusal to such an amendment, the Respondent unilaterally went ahead with the altered scheme of service
6. It changed the mode of appointment in the post of Chief Health Inspector by replacing the mode of promotion by that of selection.
7. This unilateral alteration was made without any prior consultation with the Applicant and in complete disregard of the response of the Applicant and/or the established practice.
8. This decision was implemented on the eve of a promotion exercise in the post, in such a way that it appeared abrupt, uncalled for in that no affordable opportunity was left to the Applicant to record its disapproval and enter into meaningful consultation and negotiation.
9. The altered scheme of service was applied in the subsequent appointment exercise. The officer who was subsequently appointed is now no longer in office. Mr. Sohun, now the senior most Deputy Chief Health Inspector warranting experience and merit for the post of chief Health Inspector, can be deprived of the said post if the altered scheme of service is applied for the appointment exercise.
10. These issues are therefore:
 - (i) Whether the 2 Ministries acted in breach of the legitimate expectations of the said Mr. Sohun and in breach of the principles of natural justice by altering the mode of appointment on the eve of a promotion exercise.
 - (ii) Whether the abrupt decision to change the scheme of service did not

render purposeless any ongoing consultation process and is not in breach of the established practice of prior consultations with the Trade Unions.

(iii) Whether the mode of appointment by 'selection' does not amount to a breach in the recommendations of the PRB Report in that the Ministry has adopted a fragmented and erroneous approach to the Report.

11. The PRB Report never recommended, in the cadre of health Inspector, any change in the Scheme of service of Chief Health Inspector, as compared to other posts of responsibilities within the Civil Service where there are specific recommendations to that effect.
12. It is not disputed that the general guidelines laid down in paragraph 14.3.10 of the PRB Report recommend the possibility of introducing selection in certain posts. However paragraph 14.3.10 (d) of the same report provides that: "the selection exercise, both for the middle and higher levels, should not necessarily be a competitive examination but should consist of an assessment of training received and experienced, length of service, an oral examination, a performance test, a factor based on recorded service ratings, a factor based on formal in service training courses successfully completed, a written objective test or any combination thereof."
13. No prior training and no assessment has been made with regards to any of the factors recommended at paragraph 14.3.10. Only the mode of appointment has been altered, without any due consideration or application of the recommendations of the PRB Report.
14. However, with a view to enable the organization to prepare and choose the right candidates for the promotional post, recommendation is made at paragraph 14.3.8 that performance management should be introduced as

soon as possible. The recommendation, laid down in a paragraph 14.3.8 has also been ignored, such that it would appear that the Respondents have only altered the mode of appointment, without implementing any of the pertinent recommendations, which should have been applied before any change in the mode of appointment. Hence all interested parties and/or potential beneficiaries under the scheme were deprived the right preparatory accompaniment for the purposes of appointment opportunities.

15. Moreover the Respondent has altered the scheme of service without revising or remodernising any of the duties of Chief Health Inspector. In fact and in truth the duties are specified to include 'Occupational Health and Safety Hygiene'. The Respondents failed to pay regard to the fact that some of the duties laid down in the scheme of service of Chief Health Inspector namely 'Occupational Health and Safety Hygiene' are no longer carried out by the Chief Health Inspector. The Respondents failed to change this scheme of duties and included duties which are now obsolete
16. This only reinforces the fact that the Respondent only contented itself with altering the mode of appointment without having regard to any other recommendations forming part and parcel of any change in the scheme of service. It would therefore appear that the change in the mode of appointment has only been used as colourable device to deprive the senior most Deputy Chief Health Inspector of the post of Chief Health Inspector and that in any rate, it was a sham exercise that was illogical in its approach, farcical and whimsical in that it did not take all the circumstances in to account.
17. Furthermore in the view of the fact that the Deputy Chief Health Inspector deputises the Chief Health Inspector in the performance of his duties, as is explicitly mentioned in the scheme of services, he is the most suitable

candidate to be appointed in the post of Chief Health Inspector. As such, the promotion mode would be the most appropriate.

18. Indeed for posts such as Chief Sanitary Engineer and Director of Natural Archives, the schemes of service have been amended after the PRB Report 2003, but the promotion basis of seniority, experience and merit has been preserved.
19. The Applicant therefore prays that the Tribunal declares to be null and void
 - (i) the altered scheme of service which has been implemented without due consultation, in breach of the established practice;
 - (ii) to declare null and void the altered scheme of service which has implemented a fragmented and therefore erroneous interpretation of the PRB Report;
 - (iii) To direct the Respondents not to make any new appointment in the mode of selection in the said post, pending the determination of the present matter; and
 - (iv) to restore the principle of due process in the procedures applied for the purposes of the above and for the harmonious relationship between State employees and the State generally.

In its Statement of Case, the Respondent avers:-

1. It admits paragraph 1-3 of the Applicant's statement of

case. The Revised Scheme of Service for the post of Chief Health Inspector is effective since 10 March 2005. Copy of the present and former Scheme of Service is at Annex I and II.

2. Paragraph 4 of the Applicant's statement of case is admitted. The Applicant was written to on 13 May 2004.
3. The Respondent takes note of paragraphs 5 and 6 and avers that the views of the Applicant were sought on the proposed alteration to the Scheme of Service. In accordance with established procedures, the views of staff associations are referred to the Ministry of Civil Service and Administrative Reforms and forwarded to the Public Service Commission.
4. Paragraph 7 of the Applicant's Statement of Case is denied.
5. Paragraph 8 of the Applicant's Statement of Case is denied. The Respondent avers that the Scheme of Service was amended to reflect the general recommendation at paragraphs 14.3.9 and 14.3.10 of the PRB Report 2003 and Ministry of Civil Service and Administrative Reforms Circular No. 41 of 2004.
6. Paragraph 9 is admitted with respect to the averment that appointment to the post of Chief Health Inspector is made by selection from among Deputy Chief Health Inspectors. As regards Mr Sohun, the averments at Paragraph 9 are pure speculation.
7. The Respondent takes note of paragraph 10 and maintains that the exercise was carried out in accordance with established procedures to implement the recommendation at Paragraph 14.3.10 of the PRB report 2003.
8. The Respondent takes note of Paragraph 11 and avers that the recommendation at Paragraphs 14.3.9 and 14.3.10 of the PRB Report 2003 was of a general nature.

9. Paragraph 12 of the Applicant's Statement of Case is admitted.
10. The Respondent denies Paragraph 13 and avers that the selection exercise is carried out on the basis of the length of service, confidential reports, ad hoc reports and performance at interview.
11. Paragraph 14 of the Applicant's Statement of Case is denied and it is averred that it is not necessary that performance management should be introduced before amending any Scheme of Service.
12. The Respondent denies paragraph 15 and avers that the duties as mentioned in the former Scheme of Service are still valid.
13. Paragraph 16 is denied in its form and tenor.
14. Paragraph 17 is denied and it is averred that there are in fact three Deputy Chief Health Inspectors. Selection, in this context, ensures that the most suitable candidate is promoted.
15. Paragraph 18 is noted and it is averred that, in accordance with paragraph 14.3.9 of the PRB Report 2003, grade to grade to promotion is determined on a case to case basis depending upon a series of factors like establishment size specifications and profile.
16. The Respondent maintains that the amended Scheme of Service is in order.

We therefore note that most of the facts are actually undisputed. The only bone of contention that remains is with regard to the amendment made presumably by the Public Service Commission and which amendment had not been effected in consultation with the Union.

Mr Sunil Kumarsing Sohun deponed on behalf of the Applicant to the effect that he holds the office of acting Chief Health Inspector at the Ministry of Health and Quality of Life. On the 26th of November 2005 an industrial dispute was declared to the Ministry regarding appointments and scheme of service of the Chief Health Inspector from the post of Deputy Chief to Chief Health Inspector. The disagreement was with respect to the alteration of the scheme of service which according to the witness was made in breach of the rules namely the guidelines of the PRB 2003. The one that existed at that time were in relation to grade to grade which has been changed to selection. It was promotion from the relevant grade to the next hieratical grade on the basis of experience, merit and seniority. That scheme had been dispensed with and replaced by new scheme on the basis of selection.

According to the witness the selection exercise could not be entertained in the new scheme of service because it was not in compliance with the PRB Report 2003 which has been signed and agreed upon. The PRB Report 2003 proposed selection for certain appointments provided training is given to the officers prior to the exercise for appointment. In the witness's case there was no training that was provided. Soon after the PRB Report 2003 the Ministry of Civil and Administrative Reforms issued a circular asking all officers in charge of Ministries and Departments to submit the training needs. The Permanent Secretary of the Ministry of Health then issued a circular to that effect. The Chief Health Inspector, Mr Baurhoo submitted a list training needs for the inspectorate cadre. No training had been given to the Deputy Chief Inspector up to now. Apart from the submission of the list of requirements for training, there was no implementation or follow up. In the meantime the witness had been performing the duties of acting Chief Health Inspector. He has been acting since June 2005 except for a period of three months when he applied for sick leave.

The witness stressed that the new proposed scheme of service which was henceforth applicable was in fact not a new scheme at all save for the issue of selection and promotion. The body to the scheme of service has remained the same

for 25 years and the latest one does meet new trends and patterns regarding performance at work. The prescribed scheme of service consists of occupational health and industrial hygiene and which duties are performed by special unit called the Occupational Health Unit at the Ministry and it is composed of 12 doctors, they are accountable to the Ministry for all matters relating to occupational health and industrial hygiene and the witness is in no way responsible for that. According to the witness the proposed new scheme was made after consultation with his department and his union. Following an immediate application to the new scheme of service, the witness was not selected for promotion. He states that he felt victimized by this new amended scheme of service and the person who was appointed did not have the experience he had. There are three schemes of service, the old one, the one proposed for the sake of comments and thirdly the one that was never ventilated at all to the Public Service Commission. The witness added that the one who was appointed on the basis of this new scheme has left office and the witness is performing in an acting capacity again.

Mr V. Beessoon, Vice President of applicant's Association stated under oath that following the publication of the scheme of service relating to the present matter the applicant had protested to the authorities. On the issue of absence of consultation in relation to the amendment, the Association considers that the new scheme of service was never sent to it or any other representative for their comments. What was sent to them was in fact not the scheme as proposed. The witness confirmed to the correctness of the applicant's statement of case.

Mr Dev Anand Fowdar, Senior Personnel Officer is the only witness called by the Respondent. He stated that the former scheme of service was with regard to the filling of post by promotion on the basis of merit, experience whereas the second one is based on selection, with supervisory and administrative skills added to it. So far the Ministry has carried one selection exercise with reference to the new scheme of service. It was in April/May 2005. He explained that the PSC takes into consideration the confidential report, ad hoc report from the Ministry and the

performance at interview. Before amendments are made to the scheme of service, there are consultations with the union. On the 13th May, 2004 the Ministry wrote a letter to the GSA submitting a proposed scheme of service. In a letter dated 4th June 2004, the Association sent their comments. In the initial proposal made to the union the Ministry proposed that the post be filled by selection from Deputy Chief Health Inspector and Principal Health Inspector. In the actual version of the scheme of service the Principal Health Inspector has been removed and it is only the Deputy Chief Health Inspector that is to be made by selection. The Ministry had a meeting at the Ministry of Civil Service Affairs when representatives of State Employees Federation were present and during that meeting it was agreed that the Principal Health Inspector is to be removed and that only the Deputy Chief Health Inspector's post is to be filled by selection. That meeting took place on the 14th September, 2004 and the witness produced a document to that effect. With respect to the issue of selection, the witness stated that the Ministry based itself on the recommendations of the PRB Report contained at paragraph 14.3.10 wherein it is mentioned that for grades at higher levels such as first or second in command appointment is to be made by selection. The Ministry believed that the Chief Health Inspector's post is a job at a higher level because the topmost post in the Health Inspectorate Cadre. There is the Health Inspector, the Senior Health Inspector, the Principal Health Inspector, the Deputy Chief Health Inspector and ultimately the Chief Health Inspector. The witness further added that in the recommendation of the PRB it is mentioned that there should be training, experience, length of service, examination and some of these criteria have been taken into account. The Ministry felt that there is no necessity to provide for training before implementing the scheme of service. Appointment is to be based on experience, length of service, oral examination at an interview and contents of confidential and ad hoc reports. He denied that the amendment made to the scheme of service was a colourable device to deprive Mr Sohun of his legitimate expectation.

We refer here to what we held in **State Employees' Federation and Ministry of Agro- Industry and Fisheries, Ministry of Civil Service and Administrative Reforms and Public Service Commission (RN 915) (2008):-**

*“It is clear to us judging on the tenor of the terms of reference that what the Applicant is seeking is in fact a declaratory judgment which in the normal course of things should have been by way of judicial review before the Supreme Court. The Applicant is asking us to declare whether an act done by the executive is in order or not. This is a matter referred to us by the parties as advised by the Ministry of Civil Service Affairs and Administrative Reforms by virtue of **Section 82 (1) (e)** of the Industrial Relations Act of 1973 as amended and which provides that where an industrial dispute has been reported to the Minister, the latter may among other things with a view to promoting a settlement of the dispute refer the parties to the Commission for consultation. The terms of reference before us are in fact agreed terms of reference by both parties. In other words their contents are not disputed. There is nothing more that the union is asking than a declaration, i.e. to make a declaration regarding an act done by the executive. We find it apposite to refer to **S. Hurry v. Government of Mauritius SCJ 51 of 1996** where the Court held the following:-*

*“It stands to reason therefore, 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 to by the Public Service Commission (Reg. 15). The application cannot succeed as one of the main parties is not before us: see **Heeraman v. Local Government Service Commission [1991SCJ 188]**. But even on the merits of the application, leave should not be granted. 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 changing needs of society. In **Heeraman***

v. Local Government Service Commission (supra), the Court made the following observations:

“We know of no rule which prevents an appropriate authority from altering a scheme of service to provide for different qualifications. Indeed learned Counsel for the applicant conceded that he could only press his point if we assume that the alteration was made overnight.”

*In **Planche** v. (1) Conservatoire de Musique François Mitterrand Trust Fund; (2) The Permanent Secretary, Ministry of Education and Science [1994 SCJ 129], the Court held that it could not, on an application for **judicial review**, substitute its own views on schemes of service.*

The application is therefore set aside.

What we find therefore is that judicial bodies will not interfere with executive’s decisions unless and until the principles of natural justice are being clearly offended. The purpose of the Industrial Relations Act as amended is to maintain good industrial relations. Our wide powers given under the Act should not go as far as interfering with executive decisions unless such cause is justified.”

Is it a prejudice when the mode of appointment is changed from promotion to selection? We need therefore to see what are the powers of the Public Service Commission regarding that issue. The Public Service Commission is an emanation of the Constitution which holds its powers under **section 89 (1) of the Constitution**. **Section 89 (1)** reads thus:

“(1) *Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.*

The powers of the Public Service Commission with regard to appointments and promotion in the public service are contained in the Public Service Commission Regulations 1967. It is relevant here to quote Regulations 13, 14 and 15:

7. *In order to discharge its duties under this Part, the Commission shall exercise supervision over and approve all schemes for admission to any public office by examination, for the award of scholarships or the grant of study leave for special training for the public service, and over all methods of recruitment including the appointment and procedure of boards for the selection of candidates.*

8. *(1) In exercising its powers in connection with the appointment or promotion of officers in the public service, the Commission shall have regard to the maintenance of the high standard of efficiency necessary in the public service and shall –*
 - (a) give due consideration to qualified officers serving in the public service and to other persons;*

 - (b) in the case of officers in the public service take into account qualifications, experience and merit before seniority in the public service; and*

 - (c) where a public office cannot be filled either –*
 - (i) by the appointment or promotion of a suitable person already in the public service; or*

 - (ii) by the appointment of a suitable person who has been specially trained for the public service, wholly or partly at public expense, call for applications by public advertisement unless –*
 - (A) for special reasons it decides not to do so; and*

 - (B) where it is satisfied that no suitable candidates with the requisite qualifications are available in Mauritius, it decides that recruitment be undertaken by some agency outside Mauritius and arrange for such recruitment to be carried out.*

- (2) Recommendations made to the Commission for promotion 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.

(3) *To be eligible to be considered for appointment or promotion to a vacancy in the public service, a candidate, whether or not a public officer, shall have the official qualifications and shall be available to assume the functions of the office within a reasonable period of time to be determined by the Commission.*

9. (1) *The Commission shall determine the form of advertisement issued in accordance with regulation 14 (1) (c).*

(2) *The qualifications specified in the advertisement shall be the official qualifications specified by the Head of Civil Service and Secretary for Home Affairs, with the agreement of the Commission, for the vacancy under consideration.*

In Regulation 13, the important words relevant to the present case are “supervision” and “approval”. The preparation is not done by the Public Service Commission and we believe that basic logic requires that since appointment and promotion are within the province of the employer, so should be the scheme of duties as well. In **E. CESAR and C.W.A RN 785 of 12.10.05** the Tribunal stated:- *“The Tribunal holds that, subject to an abuse of powers on the part of management (Mrs D.C.Y.P. and Sun Casinos RN 202 of 1988), matters regarding appointment and promotion of employees are essentially within the province of management. (M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998).”* Hurry (Supra) confirms: *“It stands to reason therefore, 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 to by the Public Service Commission (Reg.15).”* We further add that in its supervisory role, we do not see anything ultra vires on the part of the Commission when the latter proposes an amendment to the scheme and asks for the agreement of the Ministry concerned.

The following in the Personnel Management Manual is self-explanatory:-

Scheme of Service

- (1) **(1.1.4)** *Unless provided by an enactment, or otherwise decided, there shall be in respect of each office in the public service an official scheme of service.*
- (2) *A scheme of service shall specify the salary, qualifications, duties and responsibilities of an office in a Ministry/Department, and where appropriate, the mode of appointment.*
- (3) *A scheme of service must be prepared with utmost care objectivity in relation to the organizational needs of Ministries/Departments.*
- (4) *Responsible Officers shall take direct responsibility in the preparation of schemes of service to ensure that the duties and qualifications are specified in clear and concise terms. Guidelines for the preparation of schemes of service are set out at Appendix IB.*
- (5) *The procedures for the prescription of schemes of service are as specified in Appendix 1C.”*

Paragraph 1.1.4(4)

GUIDELINES FOR PREPARATION OF SCHEMES OF SERVICE

1. TITLE OF THE POST

- (a) *The title of the post should be as laid down in the Civil Establishment Order. It should indicate as clearly as possible the function and level of responsibility of the job.*
- (b) *If a post is to be filled by female candidates or male candidates only, this should be clearly specified in the scheme of service, unless indicated by the title of the post.*

2. SALARY

Should be as set out in the Civil Establishment Order.

3. QUALIFICATIONS

- (a) *Qualifications, experience and personal skills and abilities required of a job holder should be determined only after the knowledge required and the duties of the post have been carefully analysed.*

- (b) *Qualifications should be correctly and clearly stated. A clear demarcation should be made between those qualifications which are (i) essential and (ii) those which are desirable. Qualifications listed should be as exhaustive as possible.*
- (c) *Once academic qualifications have been prescribed for an entry post in a Cadre, they should not be as a general rule be repeated for higher posts in that Cadre.*
- (d) *Where different qualifications are proposed, these should be equivalent to one another. Care and objectivity should be exercised in weighing and balancing different sets of qualifications. In case of doubt, advice should be sought from the National Accreditation and Equivalence Council before any proposed scheme of service is submitted to the Ministry of Civil Service Affairs and Administrative Reforms for consideration.*
- (e) *Qualifications should, as far as possible, be capable of valid proof.*
- (f) *The upgrading/lowering of qualifications of a post has an incidence on the salary grading of the post. Therefore, any change in qualifications must be fully justified.*
- (g) *Qualifications should not contain any conditions which might encroach upon the constitutional prerogatives of the Service Commissions.*
- (h) *In schemes of service where training is provided, it is necessary to indicate clearly the type of training provided, its duration and whether it will be sanctioned by an examination or not.*
- (i) *Age limit should be specified, if necessary.*
- (j) *If holding a "substantive appointment" is to be a condition for eligibility to a post this should be mentioned in the scheme of service.*

4. DUTIES

- (a) *The duties should be defined in relation to organizational goals and objectives. They should be derived from an analysis of what work needs to be done and tasks that have to be carried out by the job holder, if the purpose of*

the organization or of an organizational unit is to be achieved.

- (b) They should reflect, as succinctly as possible, the specific demands of the job taking into consideration the level of responsibility, the qualifications experience and personal attributes needed to perform the job.*
- (c) Duties should be as comprehensive as possible covering all aspects of the job to be done.*

5. GENERAL OBSERVATIONS

- (a) In devising new schemes of service, provisos may be inserted to safeguard the interests of serving officers. Such provisos should, however, be limited in time and should in no way cause prejudice to the scheme of service proper.*
- (b) Jobs, whether new or existing, should be designed/redesigned in such a way so as to fit into the existing structure of the Ministry/Department concerned.*
- (c) In cases of restructure or the creation of new organizations, submissions of schemes of service to the Ministry of Civil Service Affairs and Administrative Reforms should invariably be accompanied by an organization chart.*
- (d) There should be only one scheme of service for one grade in Ministry/Department, although there may be a number of posts in the same grade under different divisions of the same Ministry/Department. If it is considered desirable that vacancies in the Division be filled by officers from that Division only, then the necessary provision regarding qualifications and duties appropriate to the Division should be made in the scheme of service.*
- (e) When reviewing a scheme of service for a post in a cadre, it is necessary to consider whether the scheme of service for other posts in the same cadre should not be reviewed simultaneously.*
- (f) Any request for a review of a scheme of service should be accompanied by the reasons therefore.*

We need now to address our mind to paragraph 1.1.4 (5) (2) of the Procedures for Prescription on Schemes of Service attached to the Personnel Management

Manual which according to us should not be read in isolation. We therefore reproduce the procedures in toto:

Paragraph 1.1.4(5)

PROCEDURES FOR PRESCRIPTION OF SCHEMES OF SERVICE

- (1) *A Responsible Officer, after consultation with his Minister shall submit to the Secretary for Public Service Affairs, any proposed scheme of service for examination.*
- (2) *Where the proposed scheme of service is found to be acceptable at official level, the Responsible Officer shall consult the appropriate staff association and shall submit the views of the latter together with his comments thereon, to the Secretary for Public Service Affairs.*
- (3) *The Secretary for Public Service Affairs shall consult the Staff Side.*
- (4) *The proposed scheme of service shall then be forwarded to the appropriate Service Commission for consideration and agreement.*
- (5) *Where the agreement of the appropriate Service Commission has been obtained, the scheme of service shall be prescribed in its official form.*

We understand that it is an exercise that is done in concert with the three parties, the Employer, the Employee and the Public Service Commission. While the Employer should retain his power to define the duties of the job, the Public Service Commission can have its say and blessing. But whatever is being done, should not be behind the back of the employee, in particular on issues that may have important bearings on the mode of appointment, the more so as they are directly linked to issues like qualifications and experience, among other things. We consider that in the present case an amendment brought to the mode of promotion to selection should have been done with more transparency i.e. informing the Union of such development although the latter's approval is not a *sine qua non*.

We read at paragraph 9 of the Applicant's Statement of Case "the altered scheme of service was applied in the subsequent appointment exercise. The officer who was subsequently appointed is now no longer in office. Mr. Sohun, now the

senior most Deputy Chief Health Inspector warranting experience and merit for the post of Chief Health Inspector, can be deprived of the said post if the altered scheme of service is applied for the appointment exercise.” There is no evidence except a fear, of any prejudice that may be actually caused to Mr Sohun as a result of the amendment to the Scheme of Service.

The disputes are otherwise set aside.

Rashid HOSSEN
Ag. President

Said HOSSENBUX
Assessor

Philippe Noel JEANTOU
Assessor

Date: 22nd August, 2008