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Public Service Tribunal

PST Appeal No. 2 of 2017

Mrs. Halalilika 'Etika

Appellant

Public Service Commission

Respondent

PUBLIC SERVICE TRIBUNAL:

Mr. 'Aisea H Taumoepeau, SC

Chairman

Lady 'Eseta Fusitu'a

Member

Mr. Timote Katoanga

Member

REPRESENTATION:

Appellant:

Mr. Sione 'Etika

Counsel

Respondent:

Mr. Sione Sisifa, SC
Ms. Lynette Foliaki

Solicitor General
Legal Officer,
Public Service Commission

Date of Hearing:

27 June, 2017

Date of Ruling:

20 July, 2017

Mrs. Halalilika 'Etika (Appellant) v Public Service Commission (PSC)

PST Appeal No. 2 of 2017

ORDERS SOUGHT

1. This is an appeal by the Appellant seeking the following decision from the Tribunal:
 - (i) That PSC Decision No. 25 of 20 January 2017 be set aside;
 - (ii) That the Appellant be promoted to the position of Senior GIS Specialist (Band I), and be paid at \$30,240 plus 5% with a salary range of \$30,340 to \$45,360 with effect from 01 August 2016 (date of assumption after completion of her Master's degree);
 - (iii) That she is awarded one (1) increment in recognition of her successful completion of a Bachelor of Arts in Land Use Planning in 2014, and further two (2) increments thereafter in recognition of her successful completion of her Master of Applied Science (Geospatial information) with Distinction, with effect from 01 August 2016.

GROUND OFS OF APPEAL

2. The Appellant relied on the following grounds, namely:
 - a) Decision of the CEO of Respondent on Savingram dated 17 October 2016 to void annual increment credits as of 01 July 2016 thereby depriving the Appellant of her entitlement for one increment credit from her Bachelor of Arts degree as per advise to her on PSCD 262 of 30 July 2014 was unconstitutional and void.
 - b) Decision of the CEO of the Respondent on Savingram dated 17 October 2016 to void annual increments and incremental credits as of 01 July 2016 was in breach of a legitimate expectation of the Appellant:
 - (i) For an award of one (1) increment in recognition of her successful completion of her Bachelor of Arts degree in Land use Planning in 2013;
 - (ii) For award of two (2) increments upon her successful of her Master's degree on or about 31 July 2016.
 - c) Item 1 of PSCD 25 of 20 January 2017 for her due increment (given under PSCD 262 of 30 July 2014) to await transitional arrangement, is unreasonable and based on no rational grounds.

d) Item 2 of PSCD 25 of 20 January 2017 that –

“she is promoted to the position of Senior GIS Specialist banded in Band J of the remuneration table with a salary range of \$26,880 to \$40,320 with effect from the date of assumption of duty in the approved position”,

was unreasonable and based on no rational grounds.

e) Item 2 of PSCD 25 of 20 January 2017 that –

“she is promoted to the position of Senior GIS Specialist banded in Band J of the remuneration table with a salary range of \$26,880 to \$40,320 with effect from the date of assumption of duty in the approved position”,

was unfair and contrary to the purpose of Instruction 1A.5.1 Determining Salary Band of the Public Service Policy Instructions 2010 as amended 13 January 2017.

f) In determining the salary band for the post of Senior GIS Specialist the Respondent failed to take into account relevant considerations to achieve the purpose of Instruction 1A.5.1 of the Public Service Policy Instruction 2010 as amended 13 January 2017.

BACKGROUND

3. The Appellant was first appointed to the Public Service on 22 February 1988 as a Cadet Draughtsman at the Ministry of Lands and Natural Resources.
4. In January 2000, the Appellant was awarded a scholarship to study for a Diploma in Geoinformatics in the Netherlands and she successfully completed it in November 2000.
5. The Appellant was one of 4 (four) members of staff who established a new section in the Ministry of Lands and Natural Resources in 2001, called the Geographical Information System (GIS). This section was later renamed as the Lands Geographical Information System Unit (LGIS Unit).
6. In July 2004, the Appellant was promoted to the position of Assistant Geodetic Surveyor within the LGIS Unit.
7. In 2010, the Appellant was awarded a Tongan Government Scholarship to study for a Bachelor of Arts in Land Use Planning at the University of the South Pacific in Fiji. The Appellant successfully completed this training program in November 2013 and resumed duty on 25 November 2013.

8. In recognition of her above achievement, the Appellant was awarded one increment. However, this arrangement was deferred until she is promoted to a higher position because she was already at the maximum point of her salary scale as an Assistant Geodetic Surveyor.
9. In January 2015, the Appellant was awarded an Australian Government Scholarship to study for a Master of Applied Science in Geospatial Information for eighteen months at the RMIT University in Melbourne, Australia. The Appellant successfully completed this training program and resumed duty on 01 August 2016.
10. Before the Appellant left to study for her Master's degree, Section 5A.11.2(e) of the Public Service Policy Instructions 2010 (as amended) stated that:

“any appointee or returning scholar with a Master's degree from a recognised University in a discipline relevant to the work of the Ministry to which he is appointed, receives two increments”
11. The policy on increments was repealed on 01 July 2016.
12. The Appellant was promoted to the position of Senior GIS Specialist (Band J) in the Ministry of Lands and Natural Resources on 20 January 2017, and was also advised that her due increment awaits transitional arrangement (PSC Decision No. 25).
13. On 07 February 2017, the Appellant appealed to the Tribunal about the PSC Decision No. 25.

PSC ACTION AND DECISION

14. On 30 July 2014, the PSC made the following decision (PSC Decision No. 262):

“That Mrs. Halalilika 'Etika, Assistant Geodetic Surveyor, Ministry of Lands, Environment, Climate Change and Natural Resources be granted one (1) increment in recognition of her successful completion of a Bachelor of Arts in Landuse Planning from the University of the South Pacific, Fiji with effect from the date of her next promotion.”
15. The Chief Executive Officer (CEO) for Lands & Natural Resources sent a Savingram to the CEO of the PSC on 02 August 2016 to advise that the Appellant has resumed duty on the 01 August 2016 and had successfully completed her Master of Applied Science (Geospatial Information).
16. There were several e-mail correspondences between the office of the Ministry of Lands & Natural Resources and the office of the PSC from 06 September 2016 to 05 October 2016 to verify and confirm the information regarding the Appellant's increment.

17. On 10 October 2016, the Acting CEO for Lands & Survey sent a Savingram to the CEO of the PSC to provide the following information and recommendations:

“

- *Mrs. Halalilika 'Etika is currently employed as an Assistant Geodetic Surveyor (Band L) in the Geographical Information System of the Ministry of Lands and Natural Resources.*
- *Mrs. 'Etika has graduated with a Bachelor Degree in 2014 and successfully completed her Master in Geospatial Information in July 2016. Her official graduate ceremony will be on the 14th December 2016.*
- *Mrs. 'Etika has reached the maximum salary point of her current position in 2014 and therefore, cannot apply the Incremental Credit Policy for her Bachelor's degree obtained.*
- *PSC Decision No. 262 dated 30 July 2014 informed the Ministry of Lands and Natural Resources that Mrs. 'Etika be granted one (1) increment in recognition of her successful completion of a Bachelor Degree with effect from the date of her next promotion.*
- *The Scholarship Department has confirmed Mrs. 'Etika's completion of her Master in Geospatial from RMIT University and also returning scholar.*
- *Given that there is a vacant position of GIS Specialist (Band I); the Ministry would like to seek your kind consideration to allow Mrs. 'Etika to fill the post in recognition of her higher qualification.*
- *Mrs. 'Etika's work is critical in the Ministry as she is the Acting Head of Geographic Information System Section and also in the GIS Specialist position since resuming back to work from her study leave.*

Recommendations:

1. *That Mrs. Halalilika 'Etika, Assistant Geodetic Surveyor be awarded one increment for completing her Bachelor and two increments for successfully completing her Master's degree in Geospatial Information with effect from the date of promotion.*
2. *That Mrs. 'Etika be promoted to vacant position of GIS Specialist in recognition of her higher qualification.”*

18. The CEO of the PSC responded in a Savingram dated 17 October 2016 and state the following:

“ ...

PSCD 262 of 30 July 2014

Kindly note that any reference to Annual Increments and Incremental Credits is void as of 1st July 2016.

Relevant sections of the policy instructions includes:

8A. Repeal and Transition

8A.1 Annual increments

- (1) Annual increments will no longer apply as of July 1st 2016.*
- (2) Any reference to the incremental credits in the instructions is voided.*

However, the PSC Office is currently working on amendments to the policy instructions to take into account transitional arrangement for employees who were issued an Incremental Credit PSC Decision prior to 1st July 2016 but were placed at the maximum salary scale. This proposed amendment will take into account Ms Etika's PSCD 262 of 30 July 2014.

Returning Scholar with Master's Degree:

With regards to Ms. 'Etika's completion of Master's degree kindly be informed of relevant sections of the policy instructions:

6E.1 Conditions for Long-Term Scholarship:

- (1) Employees selected for long-term Government scholarship training whose absence from duty shall amount to one academic year or more, are required;*
- (d) on successful completion of long term scholarship training, the employee is required to resume duty at the post at which he left and the extra qualification will only be recognized through the grant of increment¹;*
- (e) A returning scholar shall be promoted to a higher vacant position provided he/she meets the minimum requirements of the higher position;*

MOFNP had confirmed that a Senior GIS Specialist is vacant in 2016/17 staff list which can be considered for Ms Etika as per your Office's savingram dated 10 October 2016 (ref 021201_Sav 10/4). ...”

¹ This provision is currently under revision since increments are no longer applicable.

19. Lavinia Fonokalafi of the Ministry of Lands and Natural Resources sent an e-mail to Alamoni Grace Nafe of the PSC Office on 31 August 2016 and stated that:

“... We have been advised from the RA, as per telephone conversation between (‘Ilaisaane/’Ana) that if the JD for the vacant position of Senior GIS Specialist is still the same with the one that submitted for banding and already banded from RA as it appeared on page 123 of the first RA Report submitted to Cabinet as attached, then there is no need for re-banding of the position. Since the JD for the position still remain the same, it is suggested that you proceed with processing of Halilika’s promotion. ...”

20. On 01 November 2016 Franz Koenig Tu’uhetoka of the PSC Office sent an email to ‘Ana of the Remuneration Authority (RA) Office and stated the following:

“... MLNR had a position that was banded on the first release of the 2nd Report (GIS Specialist). The post holder resigned in November 2015 vacating post. After the update of the report in July 2016, the vacated post was removed and was not in the final update of the report (2nd).

Now the Ministry wants to advertise the position using the Band from the first release of the 2nd report which from my view is no longer valid.

So I just want to confirm that the final updated version of the 2nd report overwrites the first release so anything that is not in the final update must be re-evaluated.”

21. ‘Ana from the RA Office responded by e-mail on 02 November 2016 to inform Mr. Tu’uhetoka of a suggestion from the RA members *“... that the Ministry provides all relevant information for the post to be re-evaluated because the post was not on the Update to the Second Report.”*
22. Alamoni Grace Nafe from the PSC Office sent an e-mail to Lavinia Fonokalafi of the Ministry of Lands and Natural Resources on 02 November 2016 to convey the following information:
- “... Please note koe email below from Remuneration Authority, ‘e kei fiema’u ke toe band ‘a e lakanga GIS Specialist.*
- As such, please submit JD, Organizational structure and Remuneration JD questionnaire for the Senior GIS specialist to assist in further processing this case.”*

23. The PSC Office made a submission to the Commissioners Meeting's of 20 January 2017 and recommended the following:

“

1. *That Mrs. Halalilika 'Etika's promotion be granted, while her due increment of PSCD 262 of 30 July 2014 awaits transitional arrangement.*
2. *Subject to (1) above, that Mrs. Halalilika 'Etika, Assistant Geodetic Surveyor, Ministry of Lands and Natural Resources be promoted to the position of Senior GIS Specialist (Band J) in the same Ministry and that she be paid \$28,987 plus 5% of her current basic salary of the Salary Band J with a salary range of \$26,880 to \$40,320 with effect from the date of assumption of duty in the approved position.”*

24. The above recommendations were approved and the CEO of the PSC conveyed this PSC decision to the Acting CEO for Lands and Natural Resources on 20 January 2017.

SUBMISSIONS

25. Both parties submitted written submissions, and the Tribunal is grateful to both Mr Sione 'Etika (on behalf of the Appellant) and the Solicitor General (on behalf of the Respondent). They also backed up their respective submissions with helpful oral elaboration and clarification.
26. The Appellant's submission was in support of the grounds of appeal as enumerated in paragraph 2 above, and it will not be repeated here.
27. The Respondent's submission may be summarized as follows:
 - (a) The repeal of incremental credit effected on 1st July 2016, was not unconstitutional, as it was done through the legislative process, and the transitional arrangement is not yet completed. This claim is premature.
 - (b) The voiding of “incremental credits” did not breach the legitimate expectation of the Appellant, because there is transitional arrangement being currently prepared and is nearing completion. This claim is premature.
 - (c) The decision of the PSC to await the transitional arrangement is not unreasonable, and the claim of the Appellant is premature. The incremental credits cannot be effected because the law does not allow that any more. The transitional arrangement is likely to provide alternative benefit.

- (d) The decision of the PSC to promote the Appellant to Band J position was not unreasonable, and proper processes were carried out by the RA and endorsed by the Respondent. Due consideration were given by the RA (on behalf of the Respondent) to the relevant Job Description, Organizational Structure, and a Questionnaire in the evaluation of the position of Senior GSI Specialist.
- (e) The decision by PSC to promote the Appellant to the Band J position was not contrary to the purpose of Instruction 1A.5.1 (as amended 13 January 2017). It was fair and in accordance with processes duly carried out.
- (f) The Respondent had not failed to take into account relevant consideration to achieve the purpose of Instructions 1A.5.1. Due consideration were given by the RA (on behalf of the Respondent) to the relevant Job Description, Organizational Structure, and a Questionnaire in the evaluation of the position of Senior GSI Specialist.

TRIBUNAL'S FINDINGS

First ground of appeal:

- 28. It must be pointed out that the voiding of the incremental credits was not a decision made by the CEO of the Respondent in her Savingram of 17 October 2016. The change to the relevant policy instruction relating to incremental credits was made by delegated legislative action.
- 29. With regard to the assertion of loss of Appellant's constitutional right, that can only be determined once the transitional arrangement is completed. The claim is premature.
- 30. This ground fails.

Second ground of appeal:

- 31. The second ground of appeal is that the decision of the CEO of the Respondent to void the incremental credits of the Appellant was a breach of legitimate expectation of the Appellant.
- 32. As pointed out above, that decision was not made by the CEO of the Respondent. It was the result of legislative action. Furthermore, as advanced by the Solicitor General, this claim is premature as transitional arrangements are being prepared. The law has changed and the Appellant must await the new arrangements to be completed, because it is now impossible to effect what the Appellant is claiming (incremental credits). The

Appellant was not recommended for promotion until 10 October 2016, and promoted on 20 January 2017. The voiding of incremental credits was effected on 1 July 2016.

33. The instrument of the Appellant's promotion, PSCD 25 of 20 January 2017 also stated that "*her due increment of PSCD 262 of 30 July 2014 awaits transitional arrangements*". It is not yet determinable whether she is adequately compensated or not. The claim is premature.
34. This ground fails.

Third ground of appeal:

35. This is a claim that Item 1 of PSCD 25 of 20 January 2017 relating to the Appellant's "*due increment*" given under PSCD 262 of 30 July 2014, to await transitional arrangements, is unreasonable and based on no rational grounds.
36. Again, the incremental credit cannot be specifically awarded because the law does not allow that any more. The transitional arrangement is currently being prepared to off-set the due increments that can no longer be given. The claim is premature.
37. This ground fails.

Fourth ground of appeal:

38. This is an assertion that the promotion of the Appellant to Senior GIS Specialist position in Band J of the remuneration table, was unreasonable and based on no rational grounds.
39. The work carried out by the Remuneration Authority (RA) was done as agent of the Respondent. The evaluation process of the RA was carried out, and the Senior GSI Specialist was evaluated in the same process (*based on Job Description, Organizational Structure, and the Questionnaire*). There were other post-evaluation processes that were carried out by the RA. Those included re-consideration of banding and an appeal procedure.
40. The work carried out by the RA is on-going and the door is not closed. It is still open for the Appellant to resort to those processes, in conjunction with her Ministry.
41. This ground fails.

Fifth ground of appeal:

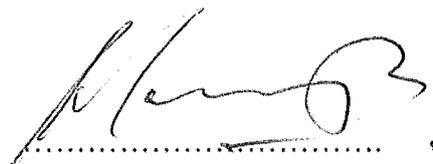
42. This is an assertion that the promotion of the Appellant to Senior GIS Specialist in Band J was unfair and contrary to the purpose of Instruction 1A.5.1 as amended 13 January 2017.
43. This is directed at the placing of the position of Senior GSI Specialist at Band J. As discussed above, due process was carried out in the evaluation of the position by the RA, and endorsed by the Respondent.
44. The purpose of Instruction 1A.5.1 is for the Respondent to determine classification, band and remuneration of all posts, in a fair and equitable, and transparent way.
45. As discussed above, the RA carried out the evaluation processes on behalf of the Respondent. The evaluation was based on Job Description, Organizational Structure, and a Questionnaire. Due process was carried out, and for the purposes of Instruction 1A.5.1, the Respondent complied accordingly.
46. This ground fails.

Sixth ground of appeal:

47. This is an assertion that the placing of the position of Senior GIS Specialist in Band J the Respondent failed to take into account relevant considerations, to achieve the purpose of Instruction 1A.5.1 as amended 13 January 2017.
48. Again, this matter is discussed above. The Respondent denies this claim and says that all due consideration was given in the evaluation process carried out by the RA on the Respondent's behalf.
49. The Tribunal believes that proper processes were carried out by the Respondent and its agents.
50. This ground fails.

ORDER OF THE TRIBUNAL

51. Section 21F of the Public Service Act 2002, as amended, provides that the Tribunal may make an order to affirm, vary, or set aside the PSC's decision.
52. **The Tribunal makes the following order:**
- (a) **The PSC's decision No. 25 on 20 January 2017 is affirmed;**
 - (b) **The orders sought are refused;**
 - (c) **The parties are at liberty to apply.**



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Aisea H Taumoepeau, SC



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Lady Eseta Fusitu'a



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Timote Katoanga