

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 02/2000

PARTIES

MS. MAUREEN TRAVERS  
(Represented by IMPACT)

AND

OFFICE OF THE REVENUE COMMISSIONERS

File No: EE 45/1998

## **1 DISPUTE**

- 1.1 This dispute concerns a claim by Ms Maureen Travers that the Office of the Revenue Commissioners discriminated against her on the grounds of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 and in contravention of Section 3 (2) of the Act in relation to promotion.

## **2 BACKGROUND**

- 2.1 Ms Travers is employed as an Inspector of Taxes since 1975. One of the methods of promotion from her grade to the next grade is based on the system seniority subject to suitability. On a number of occasions from 1981 Ms Travers has been advised that she was considered unsuitable for promotion. In mid-1997, Ms Travers maintains, she was advised by her District Manager that he considered her suitable for promotion.
- 2.2 In early February 1998 Ms Travers was informed, after a negative recommendation by a review board, that she had been deemed unsuitable for promotion. The Union maintains that the effect of this decision was to remove her from the position of most senior suitable officer for promotion to the higher Grade Inspector of Taxes and contrary to the terms of Employment Equality Act, to the benefit of a person of the other sex.
- 2.3 In July, 1998 Ms Travers through her Union referred the dispute against the Office of the Revenue commissioners to the Labour Court. The Labour Court in October, 1998 referred the case to an Equality Officer for investigation and recommendation.
- 2.4 The Equality Officer subsequent to the receipt of written submissions from the Union and the Office of the Revenue Commissioners held a joint hearing with the parties in April, 1999 and arising from the hearing he received further submissions from the parties. The last correspondence received in the matter was in January, 2000.

## **3 COMPLAINANT'S CASE**

- 3.1 The Union submits that Ms Travers was discriminated on the grounds of her sex in terms of Section 2(a) and in breach of Section 3 in relation to promotion. The Union explains that one method of promotion from one grade to the next in the Office of the Chief Inspector of Taxes is based on the system seniority subject to suitability. The complainant states that in February 1998 she was

verbally advised by her Regional Director that she had been deemed unsuitable for promotion. The effect of this decision was to remove her from her position as the most senior suitable officer for promotion to the higher Grade Inspector to the benefit of a person the other sex.

- 3.2** The complainant maintains that in 1997 her Regional Manager advised her that he considered her now suitable for promotion and would be recommending accordingly. On 18 November, 1997 the Director of Personnel wrote to Ms Travers stating "*as you know, you have, in the past been considered unsuitable for promotion to the grade of Inspector of Taxes, Higher Grade, this position has not changed. However, if desired by you, the position may be further reviewed specifically at this time*". Ms Travers states that she was taken aback by this letter and following discussions with her Union took up the invitation, contained in letter of 18 November 1997, copy at Appendix 1, to make a submission on her career and to attend a Review Board.
- 3.3** The Union submits that the line of questioning of the review Board had little to do with her performance as an Inspector and if anything was more like an interview for competitive promotion, which is an entirely different process. The Union argues that past assessments of the complainant are irrelevant to the alleged discrimination here because she was defined as unsuitable following an interview process, which had not been applied to others. The Union points that the system of promotion in contention here is seniority subject to suitability, and that the most senior person promoted subsequently was not subjected to a Review Board or a test in relation to the qualities, of which Ms Travers has been found lacking.
- 3.4** The Employment Equality Act 1977, the Union states, requires equality of treatment between Ms Travers and the male who was ultimately promoted with regard to the method of assessing their suitability for promotion. It is clear, the Union maintains, that this did not happen and that Ms Travers was subjected to a process which has not been applied to any of the candidates successful in promotion from the grade of Inspector of Taxes to Higher Grade, based on seniority subject to suitability.
- 3.5** Under the Employment Equality Act, the Union submits, that the Revenue Commissioners are required to have

methods of promotion, which are open, transparent and consistent. The Union states that

*"The method applied to Ms Travers was not open. Firstly, she was advised that she had been deemed unsuitable and that the position had changed. The evidence is that she was deemed 'not yet suitable' and that it had changed. In support of this, the Revenue Commissioners' in correspondence with the Union confirms that Ms Travers was only called before the Review Board because the recommendation with regard to promotion had changed. Secondly, the system was not transparent in that Ms Travers was advised that the purpose of the review Board was to review her suitability. This is not apparent from the line of questioning at the interview, and in any event, it did not apply to others, therefore, she was singled out for a particular type of interview. Furthermore, she was not given the outcome of that process and might not have been given it, but for the fact that she asked some two months later to be advised of it. It took a further three months to have that outcome confirmed in writing. Thirdly, the process only applied to her and not to others promoted before or after her. Therefore, the commissioners were not consistent."*

- 3.6 The Union maintains that it is clear from the evidence that Ms Travers was treated differently and that the effect of that treatment was that a male was promoted in her place. The Union asserts that it is already established by the European Court of Justice that the motive behind the different treatment is irrelevant if the effect is to discriminate. The effects of Ms Travers treatment here is that she was discriminated against.

#### **4 RESPONDENT'S CASE**

- 4.1 The Revenue Commissioners deny the allegation that they discriminated against Ms Travers. They state that she was not treated less favourably than a man. The Commissioners maintain that Ms Travers was not promoted because it was the considered opinion of management that she did not have the qualities required for the Higher Grade and that she would not be capable of discharging the duties of the higher grade - views which has been held consistently, since 1981, notwithstanding regular reviews.

- 4.2 The respondent asserts that the complainant was not, at any time, deemed suitable for promotion to the grade of Inspector of Taxes (Higher Grade) and therefore she has never been the most senior suitable officer in the grade of Inspector of Taxes. The respondent further asserts that the situation alleged by the Union of *"removing her from her position as the most senior suitable officer for promotion"* does not arise.
- 4.3 In the case of promotion by reference to seniority subject to suitability, the most senior person in the Inspector of Taxes grade who is considered suitable for promotion is deemed to be the best qualified officer. In order to be considered suitable for promotion, the officer must be considered capable of performing the full range of duties at the higher grade and it must be borne in mind that while satisfactory performance in the current grade is an obvious prerequisite it does not automatically or necessarily indicate suitability for promotion to the higher grade.
- 4.4 On a number of occasions from 1981 to 1995 Ms Travers was advised, orally, that she was not suitable for promotion. In mid-1997 the complainant's local Manager advised that, in his opinion, Ms Travers status with regard to suitability for promotion warranted a review. Ms Travers accepted the offer of a review of suitability for promotion and a meeting took place in December, 1997. The respondent points out that the review process has been applied to the grade of Inspector of Taxes (Higher Grade) as well as the Inspector of Taxes grade and to men as well as women.
- 4.5 In relation to the review board, Ms Travers, the Commissioners maintain, was treated in the same manner as three other Inspectors of Taxes, one women and two men, who were in a similar position to her (i.e. they were considered unsuitable for promotion and recent improvements had been noted). The Commissioners state that these four Inspector of Taxes were offered a review of their suitability for promotion, two accepted the offer - the complainant and a male colleague. In the Board's view it did not consider that Ms Travers had demonstrated suitability for the more advanced duties of the grade of Inspector of Taxes (Higher Grade), the Chief Inspector accepted the recommendation of the Board.
- 4.6 On 6 February, 1998, the respondent asserts, that her Regional Manager visited the complainant and informed

her of the outcome of the review. The respondent adds that the visit was prompted by the Regional Manager being formally advised of the Chief Inspector's decision. The complainant, the Commissioners state, did not ask the Regional Manager about the position prior to that visit nor did she ask him for a statement of the position in writing. A written statement was requested by the Union on the complainant's behalf on 10 March 1998 and this was provided by the Director of Personnel on 23 April 1998.

## **5 CONCLUSIONS OF THE EQUALITY OFFICER**

- 5.1** The Union's case in essence is that the decision, conveyed to the complainant in February, 1998, that she was deemed unsuitable for promotion had the effect of removing her from the position of most senior suitable officer for promotion to the higher Grade Inspector of Taxes, and contrary to the terms of Employment Equality Act, to the benefit of a person of the opposite sex.

The Office of the Revenue Commissioners deny that there was any discrimination against the complainant. They maintain Ms Travers was not promoted because it was the considered opinion of management that she did not have the qualities required for the Higher Grade.

- 5.2** The system of promotion at the core of this case is one based on seniority subject to suitability. The complainant asserts that in 1997 she was advised by her Regional Manager that he considered her now suitable for promotion and would be recommending accordingly. The respondent denies that the Regional Manager informed her that she was suitable for promotion. The Commissioners maintain it was on foot of the opinion of her local manager that the Director of Personnel wrote to the complainant offering her a review of her suitability for promotion. I note that this letter, copy at Appendix 1, also states "as you know, you have, in the past been considered unsuitable for promotion to the grade of Inspector of Taxes, Higher Grade, this position has not changed".

I am satisfied, on the evidence available, that favourable comments on the complainant's suitability for promotion in 1997 were from her local manager. However, I am also satisfied that it was outside the remit of local management to deem Ms Travers suitable for promotion.

5.3 Ms Travers took up the respondent's offer of a review of her suitability for promotion and she attended before the Review Board in December, 1997. The Commissioners submit, and I accept, that the purpose of the Board is to consider the suitability of those officers with a question mark against them as regards suitability for promotion and that the process applies to males and females in the complainant's grade. I note, on the evidence available to me, that the same offers were extended to three other officers, two male and one female, who found themselves in similar positions to that of Ms Travers. I further note that one of these officers, a male, accepted the offer. I therefore cannot hold that there was discrimination or an inference of discrimination attached to the offer extended to the complainant to attend before the Review Board.

5.4 I note that the Union in its referral form to the Labour Court gives the date of discrimination as 6 February, 1998, which is the date that Ms Travers was informed of the Chief Inspector's decision. I further note the Union asserts "*that the effect of treating her differently was that a male was promoted in her place*", who was not subjected to the same process as the complainant. Notwithstanding my opinion that there was no unlawful discrimination attached to the process applied to the complainant, it may be useful to give my views on her treatment vis a vis the "*male promoted in her place*."

5.5 The next promotions based on seniority/suitability, after Ms Travers review took place, were in November, 1998 when four females and two males were promoted. I note that a male was the most senior of the six and that a female had the least seniority (sixth position). It seems to me if Ms Travers had been regarded as the most senior/suitable officer for promotion and that if she was then removed from that position, all officers deemed to be suitable for promotion would have all moved up one place on the list. As the six promotions took place on the same day it follows that the male highlighted by her Union as the beneficiary would have been promoted regardless of Ms Travers position on the list. It must also follow that the beneficiary was the person promoted last i.e. a female. Accordingly, the evidence before me does not establish or infer that there was any discrimination against the complainant in relation to these promotions.

5.6 I note that the Union argues that the system of promotion as applied to Ms Travers was not open, transparent or consistent. In relation to the Union's arguments on openness I do not accept that at any time was she deemed suitable for promotion. The nearest she came to that position was when she received favourable comments from local management. While I do not doubt that these comments were honestly held views it was not within local management's remit, as already stated, to deem the complainant suitable for promotion. In relation to the contention that the review system was not transparent I note, in the first instance, the system was applied to the complainant and a male colleague. In addition there is no evidence before me that the complainant was treated by the Board in a manner different to the male colleague who also opted to appear before it. The third point made by the Union that the process applied only to Ms Travers is not supported by the evidence in that a male colleague also opted to go before the review board. In relation to those promoted I note that they came from both sexes.

5.7 Having regard to the views that I have expressed in the preceding paragraphs I am satisfied that Ms Travers was not "*treated less favourably than a person of the other sex*". In reaching my conclusions in the present case I have taken into account all the submissions both oral and written made by the parties.

## 6 RECOMMENDATION

6.1 In view of my conclusions in the preceding paragraphs, I find that the Office of the Revenue Commissioners did not discriminate against Ms Maureen Travers contrary to the provisions of the Employment Equality Act, 1977.

-----  
Jim Clerkin,

Equality Officer.

02 February, 2000.