

thirteen other candidates applied, the examination was held, ten candidates are on the resultant eligible list, and there have been no certifications to date. The petitioners were found to be ineligible as they lacked the required amount of permanent status in a title to which the examination was open. Specifically, candidates were required to possess an aggregate of one year of continuous permanent service as of the September 30, 2021 closing date. The petitioners had five months, one day of continuous permanent service as of the closing date, and therefore lacked six months, 29 days.

On appeal to the Civil Service Commission (Commission), the petitioners request retroactive seniority to August 3, 2020, and admittance to the subject examination. They argue that, on July 29, 2020, Judge Mendez ordered prospective permanent promotions for other individuals, and prospective “acting capacity”¹ appointments of others until further order of the Court and pending ultimate resolution of the litigation. The Judge did not identify any individuals by name in the Order, although it is assumed that the petitioners were included in those ordered to an acting capacity. On April 29, 2021, attorneys for the permanently promoted individuals filed a letter brief requesting that their positions be made permanent, and they included the credentials of the individuals. That brief indicated that some individuals were promoted to acting positions on August 3, 2020 (although the petitioners were not named), and requested permanent promotions. In an Order dated September 29, 2021, Judge Mendez ordered permanent appointments of the individuals in the letter, effective April 29, 2021, the date of their request. Subsequently, the petitioners were given this effective date as well. The petitioners disagree with the Judge’s decision and request a retroactive permanent appointment date to August 3, 2020, the date that they began the duties of Police Lieutenant.

The petitioners submit an unsigned letter from the Business Administrator requesting a waiver to allow five Police Lieutenants to take the examination as the Court Order did not give them permanent appointments to August 3, 2020, which is fundamentally unfair. Additionally, the Business Administrator stated in that letter that retirements and promotions are expected to exhaust the list. The petitioners argue that the April 29, 2021 effective date subjects them to irreparable harm as they cannot take the Police Captain examination at this time.

CONCLUSION

N.J.A.C. 4A:4-2.4(b) states that when the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of one year of permanent service who meet the open competitive requirements. *N.J.A.C.* 4A:4-2.6(a) (Eligibility for promotional examination) states in pertinent part that applicants for promotional examinations

¹ Actually, provisional appointments.

shall, by the closing date, meet the criteria of having one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15. *N.J.A.C.* 4A:4-2.6(g) states that the time requirements specified may be reduced to completion of the working test period if: 1. there is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list; 2. it appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that can result from the examination; or 3. other valid reasons as determined by the Commission.

In the instant matter, the petitioners were correctly found ineligible for the subject examination since they did not possess one year of continuous permanent service as Police Lieutenants as of the closing date. Rather, as of the announced closing date, they had five months, one day of permanent service, and thereby lacked six months, and 29 days. Regarding the announcement, only the appointing authority can request that the one-year time in grade requirement be reduced to the completion of the working test period at the time of the subject announcement. As a result of this appeal, Agency Services was contacted for its response to the request for a waiver, and it stated that no request from the appointing authority had been received by its office. Thus, the appointing authority had not requested a reduction of time in grade for these examinations prior to the announcement date, and the petitioners lack the standing to make this request. *See In the Matter of Daniel McKee* (MSB, decided February 8, 2000) (There is no provision in the rules allowing for granting a waiver of the continuous permanent service requirement at the request of the applicant, as only the appointing authority has the option to make this request). Further, as this request was not received prior to the issuance of the announcement, the request has no bearing on the instant matter.

Based on a Court Order, the petitioners have already been given retroactive seniority to April 29, 2021. The petitioners disagree, in essence, with the judge's assignment of effective dates of permanent appointments of multiple individuals to various titles, including themselves, to April 29, 2021. They request retroactive seniority to August 3, 2020. In this regard, the decision of the judge in the Court Order is controlling in this matter. It is noted that that Order indicated that the Court would retain jurisdiction as it relates to any issues not already adjudicated for the time period prior to June 24, 2021, the date Civil Service was reinstated. While the examination announcement was issued in September 2021, this issue of retroactive seniority was raised prior to June 24, 2021. As such, the Court retains jurisdiction in that matter, and a request to the Commission to change permanent appointment dates is misdirected. Nonetheless, the petitioners did not have one year of continuous permanent service as Police Lieutenants as of the September 22, 2021 closing date. Accordingly, they were correctly found to be ineligible for the Police Captain (PM4445C) examination.

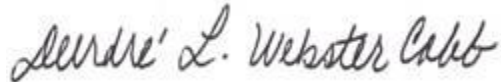
Accordingly, a thorough review of the record indicates that the petitioners have failed to demonstrate entitlement to relief, and the decision of Agency Services, that they did not meet the announced requirements for eligibility by the examination closing date, are amply supported by the record and they provide no basis to disturb these decisions.

ORDER

Therefore, it is ordered that these requests for retroactive seniority, and the appeals for admittance to the examination, be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF JUNE 2022



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