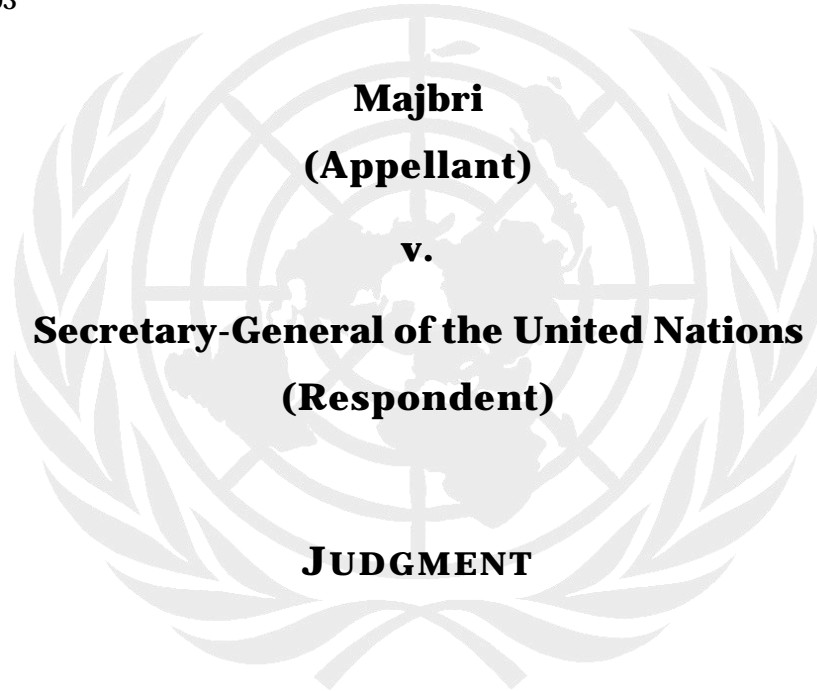




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-203



**Majbri
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Kamaljit Singh Garewal Judge Jean Courtial
Judgment No.:	2012-UNAT-200
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Appellant: George G. Irving

Counsel for Respondent: Amy Wood

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Moncef Majbri against Judgment No. UNDT/2011/026 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 1 February 2011 in the case of *Majbri v. Secretary-General of the United Nations*.
2. All the candidates that appear before an interview panel have the right to full and fair consideration. A candidate challenging the denial of a promotion must prove through a preponderance of the evidence any of these grounds: that the interview and selection procedures were violated; that the members of the panel were biased; that the panel discriminated against an interviewee; that relevant material was ignored or that irrelevant material was considered; and potentially other grounds depending on the unique facts of each case.
3. Mr. Majbri submits that the Interview Panel failed to take into consideration the investigation and rebuttal reports as well as the discriminatory treatment he was subjected to as a staff member in the Arabic Translation Service (ATS).
4. The Secretary-General submits that the Dispute Tribunal did not err in declining to consider the impact of the investigation and rebuttal reports seeing that the special report issued by the Interview Panel explained that Mr. Majbri, “[a]s a rostered candidate...was assumed to fully meet all requirements for the post” and that he was therefore “assessed, like all the other candidates, on his responses and his personal qualities”.
5. The Dispute Tribunal, having examined the documents and heard evidence from the Programme Case Officer (PCO) responsible for submitting the recommendation for the permanent appointment to this position, came to the conclusion that Mr. Majbri was given fair and adequate consideration and that there was no material irregularity in the selection process.
6. We affirm the UNDT Judgment.

Facts and Procedure

7. Mr. Majbri joined the United Nations in March 1981 and, since 2000, has held the post of Senior Reviser, P-5, ATS, Department of General Assembly and Conference Management (DGACM). In 2004, following the retirement of the Chief of ATS, Mr. Majbri and two other ATS staff members applied for the post of Chief of ATS. Mr. Majbri, as well as one other staff member, were not selected for the post and were added to the roster.

8. On 4 August 2005, Mr. Majbri requested a rebuttal of his 2004–2005 e-PAS as a result of the actions of the Chief of ATS whose comments and notes he considered were tainted with impropriety.

9. On 16 November 2005, a vacancy announcement was published in anticipation of the Chief of ATS' 1 April 2006 retirement. Mr. Majbri applied for the post and was short-listed for an interview along with four other applicants. Following the retirement of the Chief of ATS, and pending the permanent appointment of the new Chief, one of Mr. Majbri's colleagues was appointed as Officer-in-Charge (OiC) of ATS. Following the 23 May 2006 recommendation of the Interview Panel, the PCO submitted his recommendation for the permanent appointment to the position of Chief of ATS to the Under Secretary-General (USG) for DGACM.

10. Around that time, as a result of Mr. Majbri's submission of a complaint with the Office of Internal Oversight Services (OIOS) alleging harassment and favouritism by the Chief of ATS, and also following up on a 29 April 2005 complaint filed with the Office of the Ombudsman, the selection of the permanent replacement for the departing Chief of ATS was delayed pending further investigation by a three-person fact-finding panel.

11. On 12 October 2006, the fact-finding panel released its report in which it concluded that Mr. Majbri had been "treated unfairly" as a result of "a conflict of personalities and agendas" though his actions were not those of "a hapless victim". On 6 November 2006, the Rebuttal Panel issued its report in which it concluded that as a result of improper motives by the graders, Mr. Majbri's 2004–2005 e-PAS should be set aside and his rating should be upgraded.

12. On 24 November 2006, the USG requested that the Interview Panel, in light of the Investigation and Rebuttal Panels' findings, review their assessment of the candidates for the post of Chief of ATS. On 6 December 2006, the Interview Panel issued a special report in

which it concluded that the findings of the two panels “did not contain any recommendations or findings that had any bearing on the evaluation of Mr. Majbri or any of the other candidates for the post under consideration”. Consequently, it maintained its evaluations of the five candidates that had been interviewed for the post of Chief of ATS.

13. On 16 January 2007, following the endorsement by the Central Review Board of the USG’s selection, Mr. Majbri was informed that he had not been selected for the post of Chief of ATS.

14. On 9 February 2007, Mr. Majbri filed a request for administrative review of the decision not to select him for the post of Chief of ATS and, on 19 March 2007, Mr. Majbri submitted an appeal to the Joint Appeals Board (JAB) alleging that he was denied full and fair consideration for the post of Chief of ATS. On 15 July 2008, the JAB found that the Interview Panel had fully and fairly considered Mr. Majbri's candidacy and dismissed his appeal. On 23 September 2008, the Secretary-General decided to follow the JAB’s recommendations.

15. On 14 November 2008, Mr. Majbri filed an application with the former Administrative Tribunal which, as a result of the implementation of the new internal justice system, was transferred to the UNDT on 30 June 2009. On 1 February 2011, the Dispute Tribunal issued Judgment No. UNDT/2011/026 in which it found that “there was no material irregularity in that all relevant procedures and guidelines were followed”.

16. Mr. Majbri appealed the UNDT Judgment on 25 February 2011 and the Secretary-General filed his answer on 14 April 2011.

Submissions

Mr. Majbri’s Appeal

17. Mr. Majbri submits that the Dispute Tribunal erred in finding that the decision of the Interview Panel “was the only concrete administrative decision [he] could contest” seeing that ignoring the “results of the two inquiries validated the prejudice that imbued the entire [post selection] process”. Mr. Majbri submits that he was not afforded full and fair consideration for the post of Chief of ATS as critical parts of the post selection process were undocumented and were influenced by discriminatory practices.

18. Mr. Majbri submits that the Dispute Tribunal erred in not taking into account the fact that the PCO confirmed during the oral hearing that his written recommendation, which despite multiple requests was never produced, accounted “for no more than 20 to 25 [per cent] of the total evaluation” and that the “USG had taken into account the other criteria”. Mr. Majbri submits that the Dispute Tribunal could not expect him “to present to the tribunal evidence of a specific type of prejudice when relevant or potentially relevant material and the reasons for the decision [were] withheld”.¹

19. Furthermore, Mr. Majbri contends that the Dispute Tribunal erred in not taking into account the fact that he was at a disadvantage in relation to the OiC seeing that the latter, as a result of the discriminatory practices in place at the time, had an unfair advantage due to his hands-on knowledge of the position.

20. Mr. Majbri submits that, as shown by the investigation and rebuttal reports, his “full and fair consideration [...] was an impossibility” and the Interview Panel should therefore have taken the investigation and rebuttal reports and “the effects of [the] discriminatory treatment on [his] professional life” into account.

21. Mr. Majbri requests that the Appeals Tribunal overturn the Dispute Tribunal’s Judgment, promote him with retroactive effect to the D-1 post, and afford him compensation for the violation of his rights.

Secretary-General’s Answer

22. The Secretary-General recalls that the Dispute Tribunal has consistently supported the application of the Secretary-General’s broad discretion with regard to the appointment of staff members as long as it could be shown that the procedural rules were followed and that the candidates were given “full and fair consideration”. Moreover, the Appeals Tribunal has also stated that with regard to the appointment of staff members, the official decisions of the Secretary-General are afforded a “presumption of regularity”.²

23. The Secretary-General further submits that the USG, “out of an abundance of caution, took the unprecedented action of requesting the Interview Panel to re-review its

¹ *Obdeijn v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/032.

² *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122.

evaluation in light of the” issuance of the investigation and rebuttal reports. As a result of this request, the Interview Panel clearly expressed that none of Mr. Majbri’s contentions regarding the rebuttal of his e-PAS or the investigation into his complaint regarding a pattern of discrimination towards his person had materially affected the selection process and that they did not have “any bearing on the evaluation of Mr. Majbri or any of the other candidates”.

24. The Secretary-General contends that while the investigation and rebuttal reports may have shown that there were professional problems between some of the staff members in ATS, they did not show that Mr. Majbri was the best suited for the post of Chief of ATS. Rather, the Secretary-General submits that, in addition to the fact that Mr. Majbri does not claim that there were any procedural irregularities in the selection process, the Dispute Tribunal did not err in finding that the Interview Panel had given Mr. Majbri’s candidacy full and fair consideration.

25. The Secretary-General submits that the Dispute Tribunal did not err in limiting its review to the interview process. Indeed, not only are Mr. Majbri’s claims regarding the production of additional documents without merit, as he did not show that he was denied a fair chance of promotion, but they are also legally unsustainable as his claims do not meet the “exceptional circumstances” requirements of either the Dispute Tribunal’s or the Appeals Tribunal’s Statute.

26. Furthermore, the Secretary-General contends that the production of additional documents was raised during the extensive hearing of the PCO and that Mr. Majbri’s counsel stated that they would be satisfied by “a good faith effort on the part of the Administration”. It would therefore be improper to adduce negative evidence from the absence of the requested documents. Furthermore, the PCO explained during the hearing that the 20 to 25 per cent weight afforded to the interview process is a generic requirement which was not applied to this selection.

27. The Secretary-General submits that the Dispute Tribunal did not err in declining to consider the impact of the investigation and rebuttal reports seeing that that the Special Report issued by the Interview Panel explained that Mr. Majbri “[a]s a rostered candidate...was assumed to fully meet all requirements for the post” and he was therefore “assessed, like all the other candidates, on his responses and his personal qualities”.

28. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Majbri's appeal in its entirety.

Considerations

29. Mr. Majbri contests the findings of the UNDT that he was afforded full and fair consideration for the position of Chief of ATS and the rejection of his claim that he suffered unfair and discriminatory treatment.

30. All the candidates that appear before an interview panel have the right to full and fair consideration. A candidate challenging the denial of a promotion must prove through a preponderance of the evidence any of these grounds: that the interview and selection procedures were violated; that the members of the panel were biased; that the panel discriminated against an interviewee; that relevant material was ignored or that irrelevant material was considered; and potentially other grounds depending on the facts of each case.

31. Mr. Majbri submits that the Interview Panel failed to take into consideration the investigation and rebuttal reports as well as the discriminatory treatment he was subjected to in ATS.

32. Mr. Majbri questions the decision by the UNDT to limit its analysis to the interview process. He submits that the rebuttal report confirmed a pattern of discriminatory treatment that denied him proper professional development and a proper e-PAS for the period that immediately preceded the selection process, rendering his full and fair consideration for the post of Chief of ATS impossible.

33. The Secretary-General submits that the UNDT did not err in its Judgment as the Special Report issued by the Interview Panel clearly explained that Mr. Majbri, as a rostered candidate, was assumed to fully meet all the requirements for the post and that like all the other candidates he was assessed on his responses and personal qualities.

34. Furthermore, there is evidence that the Interview Panel reviewed both the investigation and the rebuttal reports and found that the issues addressed in those reports did not affect the outcome of the selection process.

35. In reviewing administrative decisions regarding appointments and promotions, the UNDT has to examine the following: “(1) whether the procedure as laid down in the Staff regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration”.³

36. The UNDT applied these principles and came to the conclusion that there was no material irregularity in that all the relevant rules, procedures and guidelines were followed. It also found that the JAB’s examination of the facts was not tainted by procedural errors or bias. Finally, it found that there was no cogent evidence that Mr. Majbri’s interview performance was adversely affected by the manner in which he had been treated by the Chief of ATS or evidence that the Chief of ATS had influenced the outcome.

37. We find that there was no valid claim of unfair treatment and discrimination by Mr. Majbri against the former Chief of ATS and the UNDT therefore correctly limited its consideration to the interview process.

38. We also find that Mr. Majbri merely repeats arguments that have been adequately considered by the UNDT.

39. We do not find any reasons to reverse the Judgment of the UNDT as there was no evidence that would call into question the fairness and objectivity of the selection process.

Judgment

40. The appeal is dismissed.

³ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.

Original and Authoritative Version: English

Dated this 16th day of March 2012 in New York, United States

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Courtial

Entered in the Register on 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar