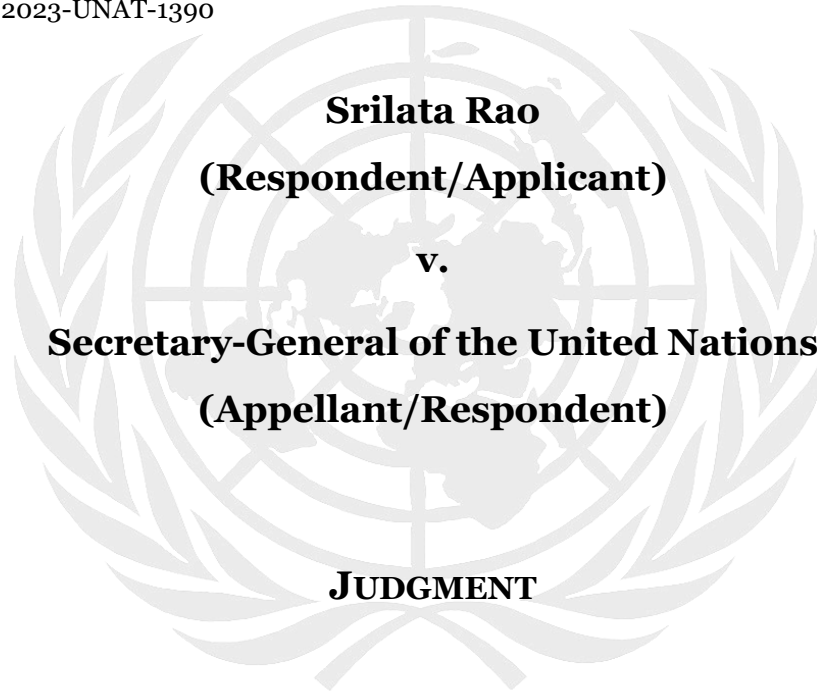




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1390



**Srilata Rao
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case No.:	2022-1756
Date of Decision:	27 October 2023
Date of Publication:	29 November 2023
Registrar:	Juliet E. Johnson

Counsel for Srilata Rao: Brandon Gardner, OSLA

Counsel for Secretary-General: Rupa Mitra

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Ms. Srilata Rao, a staff member of the Office of Internal Oversight Services (OIOS), contested the decision not to consider her for the position of Chief of Service, Monitoring and Evaluation, Department of Management Strategy, Policy and Compliance, Business Transformation and Accountability Division (DMSPC/BTAD) at the D-1 level (contested decision).
2. By Judgment No. UNDT/2022/092 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rescinded the contested decision and set a lump sum equivalent to three months' net base salary at her current level and step, as compensation in lieu of rescission.
3. The Secretary-General lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal grants the appeal and reverses the impugned Judgment.

Facts and Procedure

5. Ms. Rao joined OIOS in 2016. At the relevant time of events, she was the Chief of Section, Inspection and Evaluation Division of OIOS.
6. On 10 December 2019, OIOS advertised the position of Chief of Service, Monitoring and Evaluation, DMSPC/BTAD (the position) at the D-1 level in Job Opening (JO) 127555. One of the requirements for the position described in JO 127555 was “experience in leading large teams”.²
7. On 22 January 2020, Ms. Rao applied for the position. A total of 113 screened applications were released for review by the hiring manager. During the selection process, the Administration interpreted the aforementioned requirement as “experience in supervising at least 10 employees”.
8. On 16 March 2021, Ms. Rao was notified by e-mail that she had not been selected for the position.³

¹ *Rao v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/092.

² UNDT reply, Annex 2, JO 127555.

³ UNDT application, Annex 2, e-mail of 16 March 2021 from the Administration to Ms. Rao.

9. On 12 May 2021, Ms. Rao requested management evaluation of the decision not to consider her for the position. On 16 June 2021, the Chef de Cabinet, Executive Office of the Secretary-General, issued a written decision upholding the contested decision. It further concluded that Ms. Rao's candidacy was given full and fair consideration and noted that since the description of her Personal History Profile (PHP) did not indicate that she had supervised a team of at least 10 employees, her candidacy was lawfully considered not suitable.⁴

10. On 14 September 2021, Ms. Rao filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

11. On 28 September 2022, the Dispute Tribunal issued the impugned Judgment. It began by recalling that the Secretary-General has broad discretion in staff selections and that it is "not the role of the Tribunal to substitute its own decision for that of the Administration" and that its role is rather to "assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner".⁵

12. In the present case, the UNDT first found that the Administration erred in law in finding that Ms. Rao did not meet one of the JO requirements for the position because she did not have experience in supervising at least 10 employees. It noted that this determination was "not fair" because it did not correspond with the words used in JO 127555 and in the open-ended questions of the Job Fit Questionnaire (JFQ) which did not require "the candidates to specify that they had experience supervising a number of employees, or that (...) 'experience in leading large teams' should include experience in supervising".⁶

13. On the contrary, analyzing the wording of the JFQ open-ended question No. 3 (which specifically mentioned) "Experience in leading large teams is required"), as well as Ms. Rao's reply to this question, the UNDT found that her answers showed that "[she] was led to believe she needed to explain how she has had experience in leading large teams, which she then explained by the same wording".⁷ Moreover, the UNDT found that there was nothing in JO 127555 that restricted the number of persons with whom the selected candidate would have to interact with or suggested

⁴ UNDT application, Annex 4, management evaluation response dated 16 June 2021.

⁵ Impugned Judgment, paras. 13 and 14.

⁶ *Ibid.*, paras. 20 and 27.

⁷ *Ibid.*, paras. 25-26.

that it was “merely an office-based scenario”.⁸ Therefore, the UNDT found that the Administration’s failure to specify that “the hiring manager intended to apply a definition of large teams as meaning supervising a group of 10 or more persons” demonstrated an unjust selection process that failed to provide Ms. Rao a fair chance of selection.⁹

14. Second, the UNDT also concluded that the Administration erred in fact in finding that Ms. Rao did not provide sufficient evidence of “experience in leading large teams” and in interpreting this requirement the way it did.

15. The Dispute Tribunal found that the Administration failed to make a clear requirement of experience of supervising at least 10 employees and instead wrongfully restricted the meaning of “leading” to “immediate supervision”. It found that this ambiguity rendered the job announcement ineffective and arbitrary.¹⁰ The UNDT further explained that “[t]he leadership of a large team is different since day-to-day supervision could be delegated to subordinate officers if the goal of the project, department or service is clearly relayed to the entire team”.¹¹

16. Moreover, the UNDT found that the Administration also failed to clearly define “large teams” and rather wrongfully restricted it to the office environment.¹²

17. Therefore, the Dispute Tribunal concluded that while the hiring manager had discretion to define the requirements in JO 127555, its discretion was not unfettered and could not “outweigh fairness and the candidates’ rights”.¹³ In the present case, the UNDT concluded that the hiring manager erred in changing the requirement from leading to supervising during the selection process “without giving job applicants a fair chance to demonstrate how they could have met this criterion”, especially in the United Nations system where these two words do not have the same meaning.¹⁴

18. Consequently, the Dispute Tribunal found that Ms. Rao was entitled to remedies because “[h]ad the hiring manager used the plain meaning of ‘leading’ in the screening process, it [was] fair to assume that [Ms. Rao] would have been longlisted for the next phase of the selection process,

⁸ *Ibid.*, para. 24.

⁹ *Ibid.*, para. 19.

¹⁰ *Ibid.*, paras. 28-29.

¹¹ *Ibid.*, para. 44.

¹² *Ibid.*, para. 31.

¹³ *Ibid.*, para. 40.

¹⁴ *Ibid.*, paras. 40-41.

since the [Secretary-General] [did] not claim that [Ms. Rao] did not meet any other requirements in JO 127555”. The Dispute Tribunal further concluded that Ms. Rao would have had a realistic chance of selection, especially as she was benefiting from the temporary special measures implemented by the Organization to achieve gender equality.¹⁵

19. The UNDT rescinded the contested decision and determined that the selection process should be repeated to permit Ms. Rao’s candidacy to be fairly considered in light of the varied meaning that could be given to the term “leading large teams”.¹⁶ However, pursuant to Article 10(5) of the Dispute Tribunal Statute, the UNDT concluded that the Secretary-General could elect to compensate Ms. Rao for her loss of opportunity. In the present case, the Dispute Tribunal determined that a purely mathematical approach calculating the loss of opportunity of Ms. Rao simply by how many candidates applied to JO 127555 would not reflect her realistic chances of selection. Therefore, the UNDT, following a principled approach, concluded that a lump sum compensation for loss of opportunity equivalent to three months’ net base salary at her current step and level was appropriate.¹⁷

Procedure before the Appeals Tribunal

20. On 28 November 2022, the Secretary-General filed an appeal against the impugned Judgment with the Appeals Tribunal, to which Ms. Rao responded on 19 January 2023.

Submissions

The Secretary-General’s Appeal

21. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment, except for its paragraphs 18 and 19 finding that “[t]he process of advertising and setting out the criteria for selection was done lawfully” and that “[t]here [was] no evidence of a perverse decision or an incorrect application of the law in general terms”, and to uphold the contested decision.¹⁸

¹⁵ *Ibid.*, para. 45.

¹⁶ *Ibid.*, para. 48.

¹⁷ *Ibid.*, para. 56.

¹⁸ *Ibid.*, paras. 18-19.

22. First, with regard to the impugned Judgment, the Secretary-General submits that the Dispute Tribunal erred in law and exceeded its jurisdiction in substituting its own interpretation of the minimum JO requirements for that of the Administration.

23. Relying on *El Madhoun*¹⁹ to recall his broad discretion in matters of staff selections, the Secretary-General submits that by concluding that the hiring manager unfairly interpreted “experience leading” large teams to mean “experience supervising” large teams, the UNDT improperly stepped into the shoes of the hiring manager and substituted its own views for those of the Administration.

24. Referring to Appeals Tribunal jurisprudence, the Secretary-General observes that the UNDT may only rescind a selection process in “extremely rare circumstances” and that “[g]enerally, when a candidate has received fair consideration, absent discrimination and bias, with proper procedures, and when all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection”.²⁰ The Secretary-General observes that, in the present case, the same criteria was equally applied for all applicants and that the UNDT found no evidence of discrimination, bias or procedural irregularity.

25. The Secretary-General notes that the UNDT considered that the hiring manager made an error of fact in interpreting the language of JO 127555 the way it did.²¹ However, the Secretary-General notes that the UNDT did not cite any source of authority to support its analysis but rather “simply disagreed” with the hiring manager’s interpretation of the word “lead” to include “supervision” as part of its meaning. Therefore, the Secretary-General contends that, in the present case, the UNDT improperly substituted its own preferred interpretation of “lead” for that of the Administration.

26. Relying on multiple sources,²² the Secretary-General observes that the verb “lead” has many meanings and that the verb “supervise” can be found among its synonyms. Therefore, he submits that, in the present case, it was reasonable for the hiring manager to decide that the

¹⁹ *El Madhoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-947.

²⁰ *Samir Nazih Amineddine v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1125, para. 41.

²¹ Impugned Judgment, para. 28.

²² The Secretary-General refers the Appeals Tribunal to the Merriam-Webster, Cambridge, and Thesaurus’ dictionaries.

requirement of leading large teams must include that the candidate demonstrates experience in having supervised at least 10 employees.

27. Moreover, the Secretary-General submits that contrary to the Dispute Tribunal's finding, it would be impossible for the Administration to describe exactly what it is looking for in JOs and that it is for this reason that the Secretary-General is vested with broad discretion in matters of staff selection.²³

28. Second, the Secretary-General contends that the UNDT erred in fact in analyzing the responsibilities and other requirements set out in JO 127555. More specifically, the Secretary-General contends that the UNDT erred when it found that "nothing in JO 127555 suggested to the job candidates that they needed to have had experience supervising large teams" and that there was "no reference either in JO 127555, in the [JFQ] open-ended question No. 3 or in any other open-ended question requiring the candidates to specify that they had experience supervising a number of employees, or that for the purpose of the vacancy, 'experience in leading large teams' should include experience in supervising".²⁴ On the contrary, the Secretary-General notes that there were multiple references to the terms "supervise", "supervision" as well as to the ability to supervise employees in JO 127555.

29. In addition, the Secretary-General observes that a position at the D-1 level within the Organization is likely to involve supervision.

30. Third, the Secretary-General submits that the UNDT made further errors of fact when it took into account irrelevant matters. More specifically, the Secretary-General argues that the UNDT made an "irrelevant" and "factually erroneous" observation regarding JO 127555 when it held that "there [was] nothing in these words that restrict[ed] the number of persons with whom [Ms. Rao], if successful, would have to interact".²⁵ The Secretary-General contends that he never indicated any restriction with regard to the number of persons with whom the successful candidate would have to interact. He also argues that even if the UNDT was rather referring to the requirement of a large team consisting of at least 10 persons (instead of interactions), this element would still be irrelevant as Ms. Rao made no legal argument based on the hiring manager's interpretation of the word "large" to mean "10 or more".

²³ Impugned Judgment, para. 42.

²⁴ *Ibid.*, paras. 27 and 39.

²⁵ *Ibid.*, para. 24.

31. Moreover, the Secretary-General submits that the UNDT also erred in observing that the reference to “large teams” in JO 127555 had been conceptually restricted to an “office-based” experience in an “office environment as the Administration argue[d]”.²⁶ The Secretary-General notes that the Administration did not make such restriction and that, on the contrary, the hiring manager did not omit Ms. Rao from the longlist based on her lack of “office-based experience”. He also notes that this argument was never raised by Ms. Rao.

32. Fourth, the Secretary-General contends that the UNDT applied the wrong standard of judicial review in its analysis of the contested decision. The Secretary-General submits that when the UNDT concluded that it was not fair to interpret the term “leading” as including “supervising”, it wrongfully applied a standard of “fair” consideration in the selection process.²⁷ Relying on Appeals Tribunal jurisprudence, the Secretary-General contends that the UNDT should instead have applied the presumption of regularity that official acts have been regularly performed, which arises when the Administration can minimally demonstrate that the staff member’s candidature was given full and fair consideration.²⁸

33. Referring to Ms. Rao’s application before the UNDT, the Secretary-General observes that her challenge of the contested decision was not based on the fact that it was “unfair” to require supervising experience but rather on the fact that the hiring manager should have found that she had met this requirement.²⁹

34. The Secretary-General contends that even if the hiring manager had not applied the term “leading” to include “supervising”, Ms. Rao would still have failed to clearly demonstrate that she had led large teams. Indeed, analyzing Ms. Rao’s answer to the JFQ open-ended question No. 3, the Secretary-General observes that she only provided an undetailed example of experience in “leading large teams” as a management consultant between 2002 and 2006. Therefore, the Secretary-General argues that it was within the hiring manager’s discretion to conclude that Ms. Rao did not show that she met the requirement of “leading large teams”.³⁰

35. Last, the Secretary-General submits that the UNDT erred on a question of law in awarding damages to Ms. Rao. More specifically, the Secretary-General contends that, in awarding

²⁶ *Ibid.*, paras. 24 and 31.

²⁷ *Ibid.*, para. 40.

²⁸ *Marius Mihail Russo-Got v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1095, para. 32.

²⁹ UNDT application, para. 22.

³⁰ UNDT reply, Annex 3, Ms. Rao’s PHP.

compensation to Ms. Rao, the UNDT misapplied the standard that an irregularity in the selection process will only result “in the rescission of a non-selection decision, or (...) of a decision not to shortlist a candidate, if the candidate would have had significant chance of selection”.³¹

36. The Secretary-General contends that the UNDT erred in assuming that Ms. Rao would have been longlisted for the next phase of the selection process if the hiring manager had used the plain meaning of the word “leading” in the screening process.³²

37. The Secretary-General also argues that even if Ms. Rao had been longlisted, there is no indication that she would have been shortlisted, especially as this interpretation of the term “leading” would have applied equally to all 113 candidates and this would have further “diluted” her chances of being selected.

38. Moreover, the Secretary-General submits that the hiring manager was also not persuaded by Ms. Rao’s abilities to prepare reports (which was one of the other requirements of JO 127555), especially based on her “limited abilities” to describe her own professional experience in answering the JFQ open-ended questions. Therefore, he submits that it is “not at all clear” that she would have had a significant chance of selection for the position even if the hiring manager had used the plain meaning of the word “leading” in the screening process.

39. Finally, the Secretary-General contends that the UNDT’s reliance on the temporary special measures on gender parity is misplaced. Indeed, pursuant to Section 3.4(a) of Administrative Instruction ST/AI/2020/5 (Temporary special measures for the achievement of gender parity) “[t]he [JO] shall be filled by one or more women candidates on the list or the roster, provided that the women candidates meet the requirements for the [JO] and that their qualifications are substantially equal or superior to those of the competing male candidates”. However, in the present case, the Secretary-General observes that there were already three women who were shortlisted.

³¹ *Pinto v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-878, para. 24.

³² Impugned Judgment, para. 45.

Ms. Rao's Answer

40. Ms. Rao requests the Appeals Tribunal to dismiss the appeal in its entirety.

41. First, Ms. Rao submits that the UNDT correctly held that the Administration arbitrarily excluded her from further consideration based on its unreasonable interpretation of the term “experience in leading large teams”.

42. Referring to *Scott*,³³ Ms. Rao contends that the plain meaning principle of statutory interpretation is well established in the internal justice system and that it applies to the requirements specified in vacancy announcements. Ms. Rao further contends that, in the present case, the UNDT properly held that the Administration’s interpretation of the term “experience in leading large teams” did not correspond to the common meaning of the phrase.

43. Moreover, relying on Appeals Tribunal jurisprudence, Ms. Rao also recalls that the Administration’s discretion to introduce eligibility criteria is not unfettered and must be exercised lawfully, reasonably, and fairly.³⁴

44. In the present case, Ms. Rao submits that the UNDT exercised appropriate judicial review in concluding that the Administration did not give full and fair consideration to her candidacy because it arbitrarily applied the requirement of experience in leading large teams to mean supervising.³⁵

45. Ms. Rao notes that the Secretary-General’s reference to *El Madhoun*³⁶ is misplaced because in that case, the UNAT found that it was lawful for a hiring manager to shortlist only the candidates that had a university degree, since it was clearly indicated in the vacancy announcement that a university degree or equivalent experience was required. On the contrary, in the present case, the Administration screened out Ms. Rao from the longlist based on an interpretation of the requirement “experience in leading large teams” that it interpreted as “experience in supervising a team of 10 or more employees”.

³³ *Scott v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-225, para. 28.

³⁴ *Smith v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-785, para. 30.

³⁵ Ms. Rao refers the Appeals Tribunal to the impugned Judgment, paras. 23-27.

³⁶ *El Madhoun* Judgment, *op. cit.*

46. Ms. Rao contends that the UNDT also correctly found that she had demonstrated experience in leading large teams.³⁷

47. With regard to the Secretary-General's argument that the UNDT erred in noting that "nothing in JO 127555 suggested to the job candidates that they needed to have had experience supervising large teams", Ms. Rao notes that the impugned Judgment correctly identifies that the term "supervise" was present in JO 127555, but that "supervising large teams" was not.

48. Ms. Rao notes that the Secretary-General's arguments are mostly a reiteration of the same ones that he unsuccessfully raised before the UNDT.

49. Second, Ms. Rao submits that the UNDT did not err in concluding that she had a significant chance of selection and in awarding her three months' net base salary "to remediate the effect of the contested decision in denying [her] a significant chance of selection".³⁸

50. Ms. Rao contends that pursuant to Article 10(5)(b) of the Dispute Tribunal Statute, the UNDT had the discretion to award compensation as an alternative to rescission of the contested decision and that this discretion to compensate "should not be set aside on appeal merely because the Appeals Tribunal would have preferred the UNDT to have followed a different course than the legitimate one it opted to follow".³⁹

51. Finally, Ms. Rao submits that a pure mathematical approach to calculate the loss of opportunity would not reflect her realistic chances of promotion and the harm resulting from the contested decision and that, therefore, a lump-sum award for such a loss was the correct approach to adopt.⁴⁰

Considerations

52. The present appeal raises two main issues: i) whether the UNDT erred in fact or in law in holding that the Administration misinterpreted "experience in leading large teams" provided for in JO 127555; and ii) whether the UNDT erred in fact or in law in holding that Ms. Rao had a fair chance of selection that warranted in-lieu compensation.

³⁷ Ms. Rao refers the Appeals Tribunal to the impugned Judgment, para. 25.

³⁸ Impugned Judgment, para. 53.

³⁹ *Rhyan Ramsaroop & Miksch et. al. v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1165, paras. 41-42.

⁴⁰ Impugned Judgment, para. 55.

53. In the impugned Judgment, the UNDT held that the Administration misinterpreted JO 127555 with regard to the definition of “experience in leading large teams”. The Administration interpreted that provision as being a requirement to have previous experience of direct supervision of 10 people or more. By doing so, the Dispute Tribunal found that the Administration conflated leadership with supervision, two completely different concepts from the UNDT’s perspective, rendering the vacancy announcement ineffective.⁴¹

54. The Secretary-General submits that the UNDT committed an error of fact and of law in its interpretation of the forementioned provision.

55. We agree with the Secretary-General.

56. We remind first that under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c), 4.1, and 4.2, the Secretary-General has broad discretion in making decisions regarding promotions and appointments.⁴²

57. Second, we recall that under Section 1(f) of Administrative Instruction ST/AI/2010/3 (Staff selection system), evaluation criteria is defined as follows: “criteria used for the evaluation of applicants for a particular position. Evaluation criteria must be objective and related to the functions of the generic job profile or the individually classified job description and must reflect the key competencies that will be assessed.”

58. Third, we affirm that the amount of discretionary power afforded to the Administration in matters of selection/promotion varies depending on multiple factors, including, not only the nature of the recruitment phase, but also the nature of the specific components within that same phase. Hence, if the amount of discretion appears to be broad in the shortlisting and selection phase,⁴³ it can be similarly broad in some of the aspects of the pre-screening/longlisting phase, where the question is whether an applicant fulfils the minimum requirements set for the job. The amount of discretion in the latter phase depends on the nature of the requirement and the terms used to express it in the vacancy announcement.

⁴¹ *Ibid.*, paras. 27-28.

⁴² *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, paras. 30-31.

⁴³ *El Madhoun* Judgment, *op. cit.*, paras. 13-14. We held, in this regard, that “[e]specially for the shaping of a short-list, the discretion of the Administration is broad even if, as mentioned above, not unfettered”.

59. Our Tribunal applied in this regard an analytical matrix to review vacancy announcements, distinguishing quantitative and qualitative components.⁴⁴ When the requirement is set as numerical or quantitative, the discretion of the Administration becomes limited to verifying if the applicant fulfills the required threshold. However, when the requirement is qualitative, the Administration enjoys wide discretion in determining what exactly it is looking for and if the applicant fulfills this requirement. Such a requirement may stem not only from the explicit mention in the vacancy announcement, but also from the reflections made in various parts of the JO.⁴⁵ In any case, the determination shall be upheld by the Tribunal if it is found that the Administration did not go beyond what is reasonable in its interpretation and determination and if the vacancy announcement was “reliable enough not to create false expectations, nor give incorrect information”.⁴⁶ This goes in line with our ruling in *Smith*, that “[t]he choice of eligibility criteria *and their application* must be reasonable, or at least rationally based, in the sense, *inter alia*, of not being arbitrary, capricious, improperly motivated or based on irrelevant considerations”.⁴⁷

60. The question in the present appeal concerns the interpretation of “experience in leading large teams” provided for in JO 127555, and especially in JFQ open-ended question No. 3. The definition of “large teams” was not disputed by the parties.⁴⁸ Only the question of the interpretation of “leading” was in dispute, which appears to be a qualitative component.

61. According to the plain meaning principle of statutory interpretation, recognized by our Tribunal and applied equally to both statutes and vacancy announcements,⁴⁹ [w]hen the language

⁴⁴ *Flavio Mirella v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1334, para. 68.

⁴⁵ *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 32. As ruled in that case, “experience in resettlement was a professional requirement in the job description for the post. Although managerial and diplomatic skills were not specifically mentioned, it was reflected in ‘the engagement and the degree of relationships that the incumbent is expected to have with clients/partners, and the impact of actions’ under Section 2.2 of the job description. The same provision required that the incumbent of the post develop and implement strategies and tools to enhance collaboration with key stakeholders, including non-governmental organizations. It was, therefore, reasonable to expect that a suitable candidate would have managerial and diplomatic skills”.

⁴⁶ *Antonio Ponce-Gonzalez v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1197, para. 46.

⁴⁷ *Smith* Judgment, *op. cit.*, para. 30 (emphasis added).

⁴⁸ Impugned Judgment, para. 41.

⁴⁹ *Mohamed v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-985, paras. 31-32.

used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation”.⁵⁰

62. However, the plain meaning principle for interpretation is not exclusive or absolute, relying on the existence of a plain and common word. An *a contrario* understanding of this principle can also be inferred. When the language used causes problems of comprehension as to its exact meaning and scope, it is wise to adopt a contextual interpretation. Such interpretation takes the entire surrounding context into consideration.

63. In JO 127555, “leading large teams” is listed as a requirement under its section “Work Experience”. Later in the JO, the JFQ open-ended question No. 3 related to that specific requirement and asked applicants to reflect on this issue in light of their experiences. It reads: “Experience in *leading large teams* is required. Please explain below how your experience meets this criterion using examples.”⁵¹

64. The Administration interpreted this requirement as needing to have previous experience in direct supervision of 10 people or more. The UNDT, assuming a literal interpretation but applying a contextual one, did not agree with the Administration, finding that such an interpretation was “not fair” for Ms. Rao.⁵² The Dispute Tribunal especially found that leadership, not only was not equivalent to supervision, but also excluded it.⁵³

65. We believe that the literal meaning of “lead” is very general. It does not, by itself, allow for an exact comprehension of the intended meaning. As it can mean “to guide on a way especially by going in advance”, i.e., moral leadership, it also means “to direct the operations, activity, or performance [of someone]”, i.e., operational leadership.⁵⁴ Therefore, a contextual interpretation is necessary to convey the context under which such a word appears. The context relied upon in this case is the overall narrative of JO 127555 that allows for a fair understanding of what exactly was expected from applicants like Ms. Rao at the relevant time of events.

66. The question is therefore whether the interpretation of the Administration was at least consistent with the contextual interpretation of this JO. It is not up to this Tribunal to decide whether it fully agrees with the interpretation of the Administration in this regard. It suffices that

⁵⁰ *Scott Judgment, op. cit.*, para. 28.

⁵¹ UNDT reply, Annex R-3, Ms. Rao’s PHP (emphasis added).

⁵² Impugned Judgment, para. 20.

⁵³ *Ibid.*, para. 27.

⁵⁴ See <https://www.merriam-webster.com/dictionary/lead> (accessed on 15 September 2023).

we conclude that the interpretation adopted by the Administration was not unreasonable, regardless of our belief of what would have been a better or more efficient interpretation.

67. JO 127555 was related to the post of Chief of Service, Monitoring and Evaluation, at the D-1 level. The incumbent is accountable to the Director of DMSPC/BTAD.

68. The forementioned JO made several references to leadership intertwined with supervisory tasks. Under its section “Responsibilities”, it was expected from the applicant that he/she, *inter alia*, “[o]versees the management of activities undertaken by the Service [and] ensures that programmed activities are carried out in a timely fashion”. Also, it was expected that he/she “[l]eads, supervises and carries out the work programme of the Service under his/her responsibility” as well as “[e]nsures that all outputs produced by the Sections under his/her supervision meet required standards before completion to ensure they comply with the relevant mandates”. Lastly, it was also expected that he/she “[m]anages, guides, develops and trains staff under his/her supervision”.

69. The same reference was made under its section “Competencies/Professionalism”. It was required for the applicant to dispose of a “[p]roven record of building and managing teams and creating an enabling work environment, including the ability to effectively lead, supervise, mentor, develop and evaluate staff and design training/skills enhancement initiatives to ensure effective transfer of knowledge/skills”.

70. The question of “direct supervision” was further reflected in the information required from applicants, asking them to provide the “[n]umber and kind of employees directly supervised by [them]” in each of their previous positions.

71. In light of this context, we find that it was not unreasonable for the Administration to interpret the requirement of “leading large teams” as including direct supervision. We understand that the Administration interpreted “leading” as equivalent to “supervising”.⁵⁵ However, such a conflation does not impair the outcome of the exercise, as the used criterion remains one of the aspects of leadership, i.e., supervision, or direct supervision in that context. We recall, in the same vein, that it was not disputed that the Administration applied the same criterion consistently among the applicants.⁵⁶ The exercise led to the longlisting of 27 candidates who, understanding

⁵⁵ UNDT application, Annex 4, management evaluation response dated 16 June 2021, p. 4.

⁵⁶ UNDT application, para. 17.

the scope of the question, managed to show that they effectively and directly supervised large teams. We also recall that Ms. Rao herself argued, in her application submitted before the UNDT, that she cleared the required threshold “whether defined in terms of leading or supervising”. If the contextual meaning of “leads” was completely independent of “supervisees”, Ms. Rao would not have claimed in her UNDT application that her PHP was fit both for “leads” and “supervises”.

72. Therefore, we find that the UNDT erred in law in its interpretation of that requirement.

73. Having set aside the UNDT’s determination, we therefore affirm the lawfulness of the criterion used by the Administration. However, our finding does not suffice to immediately dismiss the entirety of Ms. Rao’s application. We must still examine whether the Administration erred in determining that Ms. Rao, through her answer to the JFQ open-ended question No. 3, did not demonstrate the requisite experience of direct supervision of 10 people or more.

74. For the fair and expeditious disposal of the case, ready to be decided on the papers, we shall submit our views on this question as follows.

75. Article 7.1 of ST/AI/2010/3 provides that “[a]pplicants applying to [JO] will be pre-screened on the basis of the information provided in their application to determine whether they meet the minimum requirements of the [JO]”.

76. We remind that Ms. Rao argued, in her UNDT application, that she cleared the required threshold “whether defined in terms of leading or supervising”.⁵⁷ More precisely, in her answer to the JFQ open-ended question No. 3, providing that “Experience *in leading large teams* is required. Please explain below how your experience meets this criterion using examples”,⁵⁸ she submitted, in relevant part, that:

A notable example is the large team I led in the management of change of India's largest telecommunications company in the areas of culture and people-related systems and processes, including leadership development and succession planning. This project had four modules with 4-5 staff on each module.

77. The Administration, drawing on the established criterion of direct supervision of 10 people or more, examined the answer given by Ms. Rao, not only against the elements of

⁵⁷ *Ibid.*, para. 22.

⁵⁸ Emphasis added.

her answer to the JFQ open-ended question No. 3, but also in light of the information provided in her PHP with regard to the various positions she previously held.⁵⁹

78. The Administration found that Ms. Rao, in her answer to the JFQ open-ended question No. 3, did not specify her role “versus the other team members”. The Administration further explained that her PHP indicated zero staff under her supervision in her position of management consultant between 2002 and 2006. Moreover, the maximum number of staff under her supervision in her other positions was nine as the Chief of Section, Inspection and Evaluation Division of OIOS. Therefore, the Administration found that Ms. Rao did not meet the minimum requirement of having previous experience directly supervising 10 people or more.⁶⁰

79. We uphold the finding of the Administration in this regard. We recall first that the presumption of regularity applies to the present case, as it relates to a question of fact. We find that the Administration has minimally shown that a full and fair consideration was given to Ms. Rao. We agree with the Administration in its determination that Ms. Rao's answer to the JFQ open-ended question No. 3 was not specific and did not allow for an understanding of her supervisory role vis-à-vis the other team members. Read against the relevant parts of her PHP, there was still no indication neither of the role exercised by Ms. Rao in her forementioned previous position, nor of the number of team members under her supervision, unless for what was set as zero. The description of duties and achievements provided no further information about this issue. Therefore, we find that the Administration did not err when it found that the maximum number of staff under Ms. Rao's supervision in her previous position of Chief of Section, Inspection and Evaluation Division of OIOS was nine, and accordingly, that she did not fulfil the requirement of having directly supervised 10 people or more.

80. Finally, without casting doubt on our conclusions about the discretion that the Administration is entitled to exercise in this case, we, nevertheless, wish to offer the following for assistance and guidance. In such appointment processes, in order to try to avoid litigation about similar issues in the future, we commend to the Administration, to the extent possible, the use of clear and unequivocal terms in communications with potential applicants. This will ensure that there are no, or at least fewer, misunderstandings about what is required of applicants. Everyone, potential applicants and the Organization itself, will benefit from this.

⁵⁹ UNDT application, Annex 4, management evaluation response dated 16 June 2021, p. 2.

⁶⁰ *Ibid.*

81. Having vacated the impugned Judgment and upheld the contested decision, we find no need to examine the second contention of the Secretary-General related to the in-lieu compensation that is consequently overruled.

Judgment

82. The appeal is granted, and Judgment No. UNDT/2022/092 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Gao

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 29th day of November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar