



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

---

Judgment No. 2024-UNAT-1473

**Anand Kumar Anand**  
**(Appellant)**

**v.**

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

**JUDGMENT**

---

Before:	Judge Leslie F. Forbang, Presiding Judge Gao Xiaoli Judge Nassib G. Ziadé
Case No.:	2023-1836
Date of Decision:	28 June 2024
Date of Publication:	14 August 2024
Registrar:	Juliet E. Johnson

---

Counsel for Appellant: Dorota Banaszewska, OSLA

Counsel for Respondent: Francisca Lagos Pola

**JUDGE LESLIE F. FORBANG, PRESIDING.**

1. Mr. Anand Kumar Anand, a former Administrative Officer, contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision not to select him for the P-5 position of Chief, Business Transformation and Accountability Unit (BTAU), Pension Administration, United Nations Joint Staff Pension Fund (UNJSPF) (contested decision).
2. By Judgment No. UNDT/2023/047 dated 8 June 2023 (impugned Judgment), the UNDT dismissed the application.
3. Mr. Anand filed an appeal.
4. For the reasons that follow, we dismiss Mr. Anand's appeal and affirm the impugned Judgment.

**Facts and Procedure**

5. On 11 February 2021, Mr. Anand joined the UNJSPF on a temporary appointment as Chief, BTAU, serving at the P-5 level.<sup>1</sup>
6. From 5 May 2021 to 18 June 2021, the UNJSPF advertised the position of Chief, BTAU, P-5. The hiring manager reviewed the 74 pre-screened applicants and conducted a preliminary evaluation against the pre-established evaluation criteria, which resulted in 39 job applicants deemed not suitable, nine job applicants longlisted, and 26 job applicants shortlisted.<sup>2</sup>
7. The UNJSPF invited the 26 shortlisted job applicants to participate in a video assessment of their technical skills. The passing mark for the technical assessment was established at 42 out of 60 points. Out of the 26 job applicants who participated in the technical assessment, four job applicants, including Mr. Anand, passed the technical assessment. The selected candidate scored the highest (47 points), followed by Mr. Anand (46 points).<sup>3</sup>
8. On 21 October 2021, the UNJSPF conducted a competency-based interview (CBI) for the four job applicants who had passed the video assessment. The CBI assessed the job applicants on the competencies of professionalism, communication, teamwork, vision and judgment, and

---

<sup>1</sup> Impugned Judgment, para. 4.

<sup>2</sup> *Ibid.*, para. 5.

<sup>3</sup> *Ibid.*, para. 6.

decision-making. The selected candidate scored as outstanding in three competencies out of five, and Mr. Anand scored as outstanding in two competencies out of five. The interview panel recommended both the selected candidate and Mr. Anand for the position.<sup>4</sup>

9. On 9 December 2021, on the basis of the documented record, the Hiring Manager recommended the selected candidate as the best suited for the functions of the position.

10. On 10 December 2021, the Chief Executive of Pension Administration endorsed the selected candidate as the best suited candidate for the functions.<sup>5</sup>

11. On 17 January 2022, the Central Review Bodies approved the selection.<sup>6</sup>

12. On 14 March 2022, Mr. Anand submitted a management evaluation request of the contested decision.<sup>7</sup>

13. On 29 March 2022, Mr. Anand received a response to his management evaluation request upholding the contested decision.<sup>8</sup>

14. On 27 June 2022, Mr. Anand filed his application before the Dispute Tribunal.<sup>9</sup>

15. On 8 June 2023, the UNDT issued the impugned Judgment. The UNDT held that Mr. Anand had been afforded full and fair consideration for the position, and the Hiring Manager acted within his reasonable discretion in assessing the candidates.<sup>10</sup> The UNDT further held that Mr. Anand had failed to show by clear and convincing evidence that he was denied a fair chance of selection. Accordingly, the UNDT found that the contested decision was lawful and dismissed his application.<sup>11</sup>

16. On 4 August 2023, Mr. Anand submitted an appeal, and on 6 October 2023, the Secretary-General filed his answer.

---

<sup>4</sup> *Ibid.*, para. 7.

<sup>5</sup> *Ibid.*, para. 9.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, para. 10.

<sup>8</sup> *Ibid.*, para. 11.

<sup>9</sup> *Ibid.*, para. 12.

<sup>10</sup> *Ibid.*, para. 23.

<sup>11</sup> *Ibid.*, paras. 27 and 28.

## **Submissions**

### **Mr. Anand's Appeal**

17. Mr. Anand submits that the UNDT erred in fact and law resulting in a manifestly unreasonable decision by finding that the Administration had afforded him full and fair consideration in the selection procedure for the position, and by finding that the Hiring Manager had acted within his reasonable discretion in assessing the job candidates. In particular, the UNDT erred in holding that the Hiring Manager had correctly assessed that the certificates the selected candidate had listed in her Personal History Profile (PHP) were related to the advertised position and by finding that the Administration had exercised its discretion correctly when it clearly disregarded the invalidity of the certificates listed by the selected candidate.

18. Mr. Anand requests that the Appeals Tribunal reverse the impugned Judgment and rescind the contested decision. He asks that the Appeals Tribunal direct the Administration to make a P-5 placement for him or, alternatively, to direct the Administration to establish a new recruitment process to remedy the deficiencies highlighted. Alternatively, he requests that the Appeals Tribunal award him an adequate amount of compensation in an amount that the Appeals Tribunal deems appropriate.

### **The Secretary-General's Answer**

19. The Secretary-General contends that the UNDT correctly found the non-selection decision to be lawful and dismissed Mr. Anand's application. The Administration has broad discretion in staff selection matters. In the present case, consistent with the provisions of Administrative Instruction ST/AI/2010/3 (Staff Selection System), the Hiring Manager reviewed the applications and evaluated them against the Job Opening, considering the requirements. The shortlisted candidates were invited to participate in a technical assessment and those who passed, including Mr. Anand and the selected candidate, were invited for an interview. In both assessments, Mr. Anand scored lower than the selected candidate. At the completion of the assessment, the Hiring Manager recommended the selected candidate and Mr. Anand for selection, while indicating that the selected candidate was the best suited for the job based on her professional

experience and that she “excelled in illustrating and demonstrating the required technical skills and competencies ... throughout the competitive selection process”.<sup>12</sup>

20. The Secretary-General contends that in considering who was best suited for the position, the Chief Executive considered that the selected candidate scored higher than Mr. Anand at every stage of the recruitment process; that she had 10 years of additional work experience and more technical certifications and language skills than Mr. Anand; and that her selection was consistent with the Organization’s policies on achieving gender parity. Thus, the Administration more than minimally demonstrated that Mr. Anand had been given full and fair consideration.

21. The Secretary-General submits that the UNDT did not err in determining that the Administration had properly assessed the candidates’ qualifications. One of the educational requirements for the position was the Lean Six Sigma (LSS) certification or an equivalent certification. When applying to the job opening, the selected candidate did not list in her PHP that she had the LSS certification; she however listed three certificates which the Hiring Manager considered to be equivalent to an LSS certification. Moreover, the UNDT did not fail to assess the necessity of renewal of the selected candidate’s certificates. There was no requirement in the job opening that the applicants renew their certifications. Hence, whether or not the selected candidate renewed the three certificates was irrelevant. In the present case, the Hiring Manger determined that the three certificates satisfied the requirements of the job opening and the Hiring Manager’s assessment was entirely reasonable.

22. The Secretary-General further contends that Mr. Anand’s argument that the UNDT failed to address the fact that the Administration presented a certificate obtained by the selected candidate after the selection procedure as proof that she had the skills and qualifications for the position is misconstrued. The selected candidate had not provided a copy of the Lean Sigma Black Belt Training certificate in her application because she did not have a copy of the certificate at the relevant time. Unlike what Mr. Anand contends, the Secretary-General was not attempting to show that the selected candidate had the LSS certificate at the time of submitting her application for the position, but rather that the selected candidate had the certificate at the time of recruitment. Moreover, as there were already three certificates submitted by the selected candidate at the time of applying for the position that showed that she had the required educational requirement for the post, there was no need for

---

<sup>12</sup> Annex 6 to Secretary-General’s Answer.

the UNDT to consider the Lean Sigma Black Belt Training Certificate that was submitted in the Secretary-General's additional submission.

23. The Secretary-General asks that the UNAT dismiss the appeal and affirm the impugned Judgment.

### Considerations

24. This is an appeal against Judgment No. UNDT/2023/047 dated 8 June 2023 rendered by the Dispute Tribunal dismissing Mr. Anand's application contesting the decision not to select him for the P-5 position of Chief, BTAU, Pension Administration, UNJSPF.

25. We recall that the jurisdiction of this Tribunal is vested in it under Article 2(1) of our Statute, which provides that:

[t]he Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence; (b) Failed to exercise jurisdiction vested in it; (c) Erred on a question of law; (d) Committed an error in procedure, such as to affect the decision of the case; or (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

26. For an appeal therefore to come within the purview of the above law, it must demonstrate unambiguously any of the above errors.

27. The Secretary-General has broad discretion in matters of staff selection under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1. Bearing the above in mind, our jurisprudence has clarified that, in reviewing decisions of non-selection, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable law was applied and whether it was applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.<sup>13</sup>

---

<sup>13</sup> *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 30; *Schook v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-216, quoting *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084.

28. In *Rolland*, we stated that:<sup>14</sup>

The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

29. In the matter under review, Mr. Anand contends that the UNDT erred in finding that the Administration had afforded him full and fair consideration in the selection process for the position, and by finding that the Hiring Manager had acted within his reasonable discretion in assessing the job candidates. On his part, the Secretary-General submits that the UNDT had correctly found the non-selection decision lawful.

30. Therefore, the issues for adjudication before us are: (1) whether the UNDT erred in finding that Mr. Anand had been afforded full and fair consideration for the position; and (2) whether the Hiring Manager acted within his reasonable discretion in assessing the candidates. To these we shall now turn.

*Whether the UNDT erred in finding that Mr. Anand had been afforded full and fair consideration for the position*

31. In non-selection cases, the point of departure is the presumption that the acts of the Administration performed in the course of a selection process are regular. This rebuttable presumption stands satisfied, if the Administration is able to minimally show that full and fair consideration was given to the candidate. Thereafter, the burden of proof shifts to the staff member who must show through clear and convincing evidence that he or she was denied a fair chance of selection or promotion.<sup>15</sup>

32. A staff member seeking selection or promotion has a right to be fully and fairly considered through a competitive selection process untainted by improper motives like bias or discrimination. A candidate, however, has no right to a selection or promotion.<sup>16</sup> Therefore, a candidate challenging the denial of selection/promotion must prove through clear and convincing evidence

---

<sup>14</sup> *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 20.

<sup>15</sup> *Nazma Banaras Khan v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1199, para. 36; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-425, para. 23; *Ibekwe v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-179, para. 1; *Rolland* Judgment, *op. cit.*, para. 26.

<sup>16</sup> *Ross v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-944, para. 23.

that the procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored or potentially other grounds depending on the facts of the case.<sup>17</sup>

33. In the case at bar, the Secretary-General contends that the selection process was consistent with the provisions of ST/AI/2010/3, to wit: candidates were evaluated against the Job Opening requirements, shortlisted candidates were invited to participate in a technical assessment, and those who passed were invited for an interview. Considering the fact that Mr. Anand's application was pre-screened against pre-established evaluation criteria together with other applications, that he was shortlisted to participate in a video assessment of his technical skills, subjected to a competency-based review, and recommended for the position along with the selected candidate by the interview panel, we find that the Administration has satisfied its burden as required to minimally show that Mr. Anand was given full and fair consideration as a candidate for the position he was seeking.

34. The burden now rests with Mr. Anand to prove by clear and convincing evidence that he was denied a fair chance of selection. Mr. Anand submits that the Administration disregarded the invalidity of certificates submitted by the selected candidate. He argues that the selected candidate did not list in her PHP that she had an LSS certification and further that the certificates the selected candidate listed in her PHP were not related to the advertised position. Conversely, the Secretary-General contends that the selected candidate did not list in her PHP that she had the LSS certification but listed three certificates which the Hiring Manager considered to be equivalent to an LSS certification.

35. We note that one of the educational requirements for the position was an LSS certification or an equivalent certification. The decision to determine what an equivalent certification relating to an advertised position is remains the exclusive prerogative of the Administration or Hiring Manager. For that reason, due deference must be given to the decision of the Hiring Manager to determine which requirement is crucial in the recruitment process because he/she can best assess the service and skills needed, and not the unsuccessful candidate. Mr. Anand was not in a position to determine whether the other three certificates listed by the selected candidate were relevant to the advertised position. Therefore, the UNDT did not err in holding that it was within the

---

<sup>17</sup> *Niedermayr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-603, para. 23, quoting *Rolland* Judgment, *op. cit.*, paras. 20, 21 and 26.



discretion of the Hiring Manager to assess whether the certificates the selected candidate had listed in her PHP were equivalent to an LSS certification, as required for the advertised position.

36. In the same vein, we stated in *Khan* that “in exercising its discretion to make a selection, the Administration is not restricted to factors or considerations explicitly listed in any governing legal instruments. It may consider all relevant factors, as long as such factors are not arbitrary, irrational or capricious.”<sup>18</sup> Therefore, the Hiring Manager had the discretion to look beyond the requirements listed in the job opening. On that basis, we agree with the Secretary-General’s submission that there is no indication that the Hiring Manager did not properly exercise his discretion in considering that the three certificates submitted by the selected candidate constituted an “equivalent certification” to an LSS certification.

37. Further, Mr. Anand argues that the Administration presented a certificate obtained by the selected candidate after the selection procedure as proof that she had the skills and qualifications required for the position. The Secretary-General, on the other hand, contends that the selected candidate did not provide a copy of the certificate in her application because she did not have a copy of same at the relevant time and had already submitted three certificates that satisfied the requirements of the Job Opening. As stated earlier, the Administration sets the job description and is in a unique position to assess the extent to which candidates fulfil the job requirements. This Tribunal shall not interfere with such right.

38. In the same vein, we stated in *Bofill* that: “it is up to the [Administration] to determine the relative importance of the criteria used to select the staff members who will be promoted”.<sup>19</sup> The Appeals Tribunal has consistently held that the Secretary-General has a broad discretion in matters of selection or promotion and it is not the function of this Tribunal, or the UNDT, in the absence of evidence of bias, discriminatory practices or *mala fides* to substitute their judgment for that of the competent decision-maker.<sup>20</sup>

---

<sup>18</sup> *Khan* Judgment, *op. cit.*, para. 38.

<sup>19</sup> *Bofill v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-383, para. 20, quoting *Bofill v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/165.

<sup>20</sup> *Bofill* UNAT Judgment, *op. cit.*, para. 21; *Charles v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-242; *Fröhler v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-141.

39. From the foregoing, we find that Mr. Anand has not discharged the burden of proving by clear and convincing evidence that the Administration did not give his candidacy full and fair consideration.

40. Consequently, the UNDT did not err in finding that Mr. Anand had been afforded full and fair consideration for the position.

*Whether the Hiring Manager acted within his reasonable discretion in assessing the candidates*

41. In the instant case, the Hiring Manager had to make a choice between two candidates. The broad discretion of the Administration in staff selections empowers the Hiring Manager to select from the pool of candidates, the candidate best suited for a particular task or role. Furthermore, the UNAT has consistently affirmed that the Secretary-General's broad discretion in matters of the appointment of staff members implies the duty to choose the best evaluation method to assess which candidates are most qualified for selection.<sup>21</sup>

42. In addition, the Charter of the United Nations, the Staff Regulations and Rules, and administrative issuances require the Secretary-General to secure the highest standards of efficiency, competence, and integrity when appointing staff members to the service of the Organization.<sup>22</sup> Considering that the selected candidate scored higher than Mr. Anand at every stage of the recruitment process, had 10 years of additional work experience compared to him including significantly more supervisory experience, and had more technical certifications, we find that the Hiring Manager reasonably and correctly exercised his discretion not to select Mr. Anand.

43. Accordingly, we hold that the Hiring Manager acted within his reasonable discretion in assessing the candidates.

---

<sup>21</sup> *Riecan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-802, para. 22.

<sup>22</sup> *Khan Judgment*, *op. cit.*, para. 37.

**Judgment**

44. Mr. Anand's appeal is dismissed, and Judgment No. UNDT/2023/047 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Forbang, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Ziadé

Judgment published and entered into the Register on this 14<sup>th</sup> day of August 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar