



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2017-1079

**Chhikara
(Appellant)**

v.

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

Order No. 286 (2017)

1. On 25 July 2016, Mr. Virendra Chhikara filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), contesting his non-selection for the position of Chief Aviation Security Officer at the P-5 level with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo. By Order No. 246 (NY/2016) dated 20 October 2016, the UNDT granted Mr. Chhikara's request to order the Secretary-General to provide evidence on details of the selection process, including:

The answers and the corresponding results/marks of each candidate (internal and external), including: (i) for the 25 situational judgment questions, including a list of all these questions; (ii) the correct answers and the method of evaluation for each question.

2. In response to Order No. 246 (NY/2016), the Secretary-General filed a document of 133 pages on 4 November 2016. This document, *inter alia*, stated that "[a] copy of the 25 [situational judgment questions] and the key response per each is attached". However, neither the aforementioned questions nor the method of evaluation for each question was attached to the document.

3. On 8 November 2016, Mr. Chhikara filed a submission asking for the production of the outstanding evidence as well as some additional evidence arguing that based on the evidence submitted by the Secretary-General on 4 November 2016, new questions

arose. By Order No. 269 (NY/2016) the UNDT stated that the Secretary-General had filed the “documents requested” and found that “sufficient evidence ha[d] been submitted for it to determine the case” and thus rejected the request for additional evidence.

4. On 6 March 2017, the UNDT issued Judgment No. UNDT/2017/012 in the case of *Chhikara v. Secretary-General of the United Nations*. It concluded that the “required procedures were not respected and [Mr. Chhikara’s] fundamental right to be fully and fairly considered for the Post was breached”¹ but that a rescission of the non-selection decision would be disproportionate. It awarded Mr. Chhikara compensation in the amount of USD 4,000 for procedural violations. In its Judgment, the UNDT noted that “the content of the 25 situational questions/scenarios, the correct answers and/or the score used for each question were not presented by the Respondent as part of the evidence”.²

5. Mr. Chhikara appealed the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) on 4 May 2017. On 30 May 2017, he filed a “Request to honorable UN Appeals Tribunal to order the respondent to produce evidence”. He requested that the Secretary-General be ordered as follows:

- a. “...to provide the list of the 25 Situational Judgment questions and also indicate ‘the particular indicator for the corresponding Competency’ that each of these Situational Judgment questions was trying to evaluate”;
- b. “... to indicate the methodology used in selecting the ‘Correct’ answers to these 25 questions”;
- c. “... to produce the answers of all candidates and the ‘Correct’ answers thereof, to the ... five Situational Judgment questions” that were eliminated from the situational part of the test “as [they] apparently displayed ‘poor reliability and validity of psychometric properties’”;

¹ *Chhikara v. Secretary-General of the United Nations*, Judgment No. UNDT/2017/012, para. 64.

² *Ibid.*, para. 62.

- d. "... to produce any document/instruction which requires that 'psychometric' testing of candidates is to be a part of the staff selection process in the UN";
- e. "... to produce all the [remaining] e-mails [regarding the change [of] the scoring matrix...]";
- f. "... to produce the marks [on the essay part of the selection exercise] of all candidates invited for the interview";
- g. "to provide emails based on which the ... change of Recruitment Strategy [to not take into account the results of the lone essay type question] was arrived at".

Mr. Chhikara further asked the Appeals Tribunal to grant him, once the evidence is produced, two weeks to prepare and submit his "Closing Submissions".

6. On 12 June 2017, the Secretary-General filed his comments on the motion, claiming that Mr. Chhikara has not demonstrated exceptional circumstances for the Appeals Tribunal to receive additional evidence and pleadings on appeal.

7. Pursuant to Article 2(5) of the Statute of the Appeals Tribunal (Statute) and Article 10(1) of its Rules of Procedure, the Appeals Tribunal may receive additional evidence or order the production of additional evidence in exceptional circumstances, if it is in the interest of justice and the efficient and expeditious resolution of the proceedings. Mr. Chhikara primarily requests production of the 25 situational judgment questions and the methodology used to find the "correct" answers. Given that the UNDT explicitly dealt with the question as to whether these questions were related to the responsibilities of and experience required for the position,³ and Mr. Chhikara's appeal refers to the issue, I find that the evidence sought to be produced may be relevant to the Appeals Tribunal's review of his case and it is thus in the interest of justice to compel its production. Exceptional circumstances, as required by Article 2(5) of the Statute, result from the fact that the Secretary-General failed to comply with the UNDT's Order No. 246 (NY/2016) and has, as of now, not presented any justification for

³ *Ibid.*

its lack of compliance. Therefore, Mr. Chhikara's request should be granted in this regard.

8. With respect to the remaining evidence requested (see paragraph 3 c) - g) of this Order), Mr. Chhikara has not demonstrated any exceptional circumstances warranting an order compelling the production of additional evidence. In addition, he has not – at this point – established any exceptional circumstances justifying the need to file additional pleadings and, thus, his request to be given two weeks to file “closing submissions” should be denied.

IT IS HEREBY ORDERED that Mr. Chhikara's motion IS GRANTED in part and that, by 5:00 p.m. on Friday, 21 July 2017, the Secretary-General is to file

a list of the 25 situational judgment questions including those that were eliminated from the evaluation as well as the methodology used in selecting the “correct” answers to these questions.

Original and Authoritative Version: English

Dated 13th day of July 2017 in Vienna, Austria.

(Signed)
Judge Deborah Thomas-Felix
President

Entered in the Register on this 13th day of
July 2017 in New York, United States.

(Signed)
Weicheng Lin, Registrar