



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/114

Judgment No.: UNDT/2011/173

Date: 6 October 2011

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

GORDON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision dated 27 May 2010 not to select him for the P-5 post of Chief of the Publishing Section, in the Department of General Assembly and Conference Management (“DGACM”).

2. He claims compensation for the harm resulting from the unlawfulness of that decision.

Facts

3. The Applicant joined the United Nations on 10 January 1986. On the date of the contested decision, he encumbered the P-4 post of Chief of the Printing Section, in the Publishing Service, at the United Nations Office in Geneva.

4. On 22 February 2007, the P-5 post of Chief of the Publishing Section, in the Meetings and Publishing Division, DGACM, was advertised on Galaxy, the former online United Nations jobsite.

5. The Applicant, who had applied for the post, was invited for an interview. On 10 May 2007, he was notified of the decision taken by the Under-Secretary-General, DGACM, to select another candidate for the post of Chief of the Publishing Section and to place the Applicant on the roster of candidates not selected but pre-approved for similar functions at the P-5 level.

6. On 17 August 2007, the P-4 post of Deputy Chief of the Publishing Section was advertised.

7. On 24 August, the Applicant applied as a 15-day candidate and shortly afterwards was invited to an interview. He was informed on 15 February 2008 that the Under-Secretary-General, DGACM, had decided not to select him and to appoint a 30-day candidate. Consequently, the Applicant was placed on the roster of candidates not selected but pre-approved for similar functions at the P-4 level.

8. On 25 January 2010, the post of Chief of the Publishing Section was again advertised on Galaxy, with a deadline for applications of 26 March 2010.

9. The Applicant applied on 9 February 2010 and was invited to an interview on 22 March 2010 after taking a written test on 19 March.

10. In a letter dated 1 June 2010, the DGACM Executive Officer informed the Applicant of the decision by the Under-Secretary-General, DGACM, to select the candidate who had been appointed to the post of Deputy Chief of the Publishing Section in February 2008. She also informed the Applicant that he would be placed on the roster of candidates pre-approved to perform similar functions.

11. On 15 July 2010, the Applicant requested a management evaluation of the decision of 1 June not to select him for the post of Chief of the Publishing Section. His request was rejected by a letter dated 13 September 2010.

12. The Applicant filed an application with the Tribunal on 10 December 2010. The Respondent submitted his reply on 13 January 2011 together with documents concerning the selection process and, by order dated 21 March 2011, the judge in the case instructed the Applicant to submit further observations, which he did on 7 April 2011.

13. By order dated 11 August 2011, the new judge in the case instructed the Respondent to submit his comments on the Applicant's observations, which he did on 1 September 2011.

Parties' submissions

14. The Applicant's contentions are:

a. The Administration did not define the selection criteria used. Three of the five panel members gave him the highest score and he had over 24 years of experience required for the vacancy;

b. It was the responsibility of the human resources unit to verify that candidates for the litigious post met the requirement of two lateral moves in order to be eligible to be considered for promotion to the P-5 level. Yet, despite the request made by the Applicant in his request for a management evaluation, the Administration provided no evidence that the selected

candidate had made two lateral moves. The documents produced by the Respondent do not reveal the duration of his reassignment in 2002 and the so-called lateral move in 2004 was in fact the extension of a special post allowance. The personnel action forms placed on record do not show any lateral moves;

c. The selected candidate did not meet the criteria set out in the vacancy announcement as regards the work experience required. The documents produced by the Respondent do not establish with any certainty that the selected candidate had 10 years of progressively responsible experience. In addition, he had been Deputy Chief of the Publishing Section for only two years and thus did not meet the requirement of three years' experience at the managerial level in printing/publishing, media or graphic design. The Respondent has not explained why the selected candidate had been awarded 50 points for experience in the preliminary evaluation of candidates ("Galaxy evaluation"), with a simple reference to the "various roles" assumed by the candidate. Similarly, during the selection process organized in 2008 for the post of Deputy Chief of the Publishing Section, the selected candidate should have been considered ineligible on the grounds of his number of years of experience;

d. The selection decision was taken even before the process had been approved by the central review body;

e. The selection process to fill the post of Chief of the Publishing Section (P-5) is biased in favour of the candidate selected. He had already been selected for the post of Deputy Chief (P-4) of the Section in 2007, although he was a 30-day candidate and the Applicant was a 15-day candidate. The Applicant's candidacy was therefore not given priority at that time and this fact should be taken into consideration in order to appreciate the irregularity of the selection process organized in 2010. In addition, the same person, namely the Under-Secretary-General, DGACM, took the decisions to reject the Applicant's candidacy in 2007, 2008 and 2009.

15. The Respondent's contentions are:
- a. The Applicant has not provided the necessary proof of the alleged irregularities;
 - b. The Applicant's candidacy was given full and fair consideration. There was no 15-day candidate and there were four 30-day candidates. Because one withdrew his application and one was found not to meet the requirements of the post, there were thus two competing candidates remaining: the Applicant and the candidate finally selected. As required by section 7.5 of administrative instruction ST/AI/2006/3/Rev.1 (Staff selection system), both took a written test and were then invited for an interview, following which the Applicant scored 116.5 points out of a possible total of 130 points, whereas the selected candidate scored 122 points;
 - c. Whether the selected candidate meets the criterion of the required work experience is a matter for the assessment of the programme manager, in other words of the hiring manager, and not of the Tribunal. In this instance, the selected candidate did indeed meet this criterion, as well as the criterion of lateral moves;
 - d. The Under-Secretary-General, DGACM, approved the selection of the successful candidate after the central review body had approved the process;
 - e. The irregularities allegedly committed during earlier selection processes, which were not contested at the time, do not demonstrate any bias as regards the selection process for the post of Chief of the Publishing Section;
 - f. The fact that the Under-Secretary-General, DGACM, made the selection decisions in three different processes in no way establishes that they were flawed, since he is responsible for approving recommendations made for all selection processes up to the D-2 level;

- g. The Tribunal is requested to preserve the confidentiality of the data concerning the selected candidate.

Consideration

16. It appears from the documents on record that the vacancy announcement for the post of Chief of the Publishing Section was issued on 25 January 2010 and that therefore, in pursuance of section 12.1 of administrative instruction ST/AI/2010/3 (Staff selection system) of 21 April 2010, which specifies that ST/AI/2006/3/Rev.1 issued on 11 January 2010 “shall continue to govern recruitment, placement and promotion in respect of applications for job openings advertised before 22 April 2010 through the ‘Galaxy’ system”, the administrative instruction issued in January applies to this dispute.

17. Section 4.4 of ST/AI/2006/3/Rev.1 states:

4.4 At the same time as he or she prepares the vacancy announcement, the programme manager shall prepare for subsequent review by the appropriate central review body the criteria to be used in evaluating candidates unless a central review body has previously approved the evaluation criteria for a position with similar functions at the same level. The evaluation criteria must be objective and related to the functions of the post and must reflect the relevant competencies.

18. While the Applicant maintains that the above provision was violated since no selection criterion had been determined at the time when the vacancy announcement was issued, the Respondent maintained on the other hand, without being contradicted by the Applicant, that in accordance with the above administrative instruction the applicable evaluation criteria had already been approved by a central review body and that it was on the basis of those criteria, indicated in the vacancy announcement, that the candidates had been interviewed.

19. The Applicant maintains that the candidate finally selected did not meet the requirement of two lateral moves established in section 5.3 of ST/AI/2006/3/Rev.1, which states:

5.3 Staff members in the Professional category shall have at least two prior lateral moves, which may take place at any level in

that category, before being eligible to be considered for promotion to the P-5 level, subject to the following provisions:

(a) In order to meet the General Assembly's concern about high vacancy rates in some regional commissions and duty stations, particularly those in developing countries, the requirement shall be reduced to one lateral move when a staff member has served in the Professional category in Nairobi or a regional economic commission other than the Economic Commission for Europe for one year or longer, or when a staff member is applying for a P-5 position at those duty stations from another duty station;

(b) Staff recruited at the P-4 level shall become eligible for promotion to P-5 after one lateral move at the P-4 level;

(c) Cumulative service for a total period of one year or longer on mission or other temporary assignment with or without SPA shall also qualify as one lateral move.

20. According to the terms of the administrative instruction, a lateral move is a "move to a different position at the same level for a duration of at least one year. The new position may be in the same or a different department or office, in the same or a different duty station and in the same or a different occupational group".

21. The documents placed on record by the Respondent show that the candidate selected, who previously worked in the News and Media Division of the Department of Public Information, was reassigned effective from 1 September 2002 with no change in level to the United Nations Publications Sales and Marketing Section within the Library and Information Resources Division, in the same Department, and that he remained in that Section until he was promoted to the next level in September 2006. Thus this reassignment must be considered as a lateral move within the meaning of the provisions cited above.

22. ST/AI/2006/3/Rev.1 also specifies that "temporary assignments of at least three months but less than one year with or without special post allowance ... shall also qualify as a lateral move when the cumulative duration of such assignments reaches one year".

23. In this case, the selected candidate was assigned, effective 2 July 2004, to a vacant post one level higher than his own. This assignment, which was extended to 31 August 2006, entitled him to a special post allowance. It must therefore also

be considered as a lateral move and, contrary to what the Applicant maintains, the selected candidate did have the requisite number of lateral moves entitling him to be considered for promotion to the P-5 level.

24. With regard to the required work experience, the vacancy announcement stated:

Work experience

At least 10 years of progressively responsible experience, including at least 3 years at the managerial level, in printing/publishing, media, graphic, or related area. Experience in project or programme management, including management of contracts, budget and financial resources is required. Experience in multicultural institutions is desirable.

25. The documents placed on record show that the selected candidate joined the Organization in June 2000 in the Department of Public Information, where he was initially responsible for broadcast messages from the Organization and then, starting in September 2002, for the sale of United Nations publications. His personal history profile also states that, as an information officer from June 2000 to August 2002, he participated in the launch and implementation of a pilot project and that, when he was working in the United Nations Publications Sales and Marketing Section, he “[s]upervise[d] marketing, technology and bookshop staff”, was responsible for “management of the contracted staff” and “oversaw the launch of a newly developed e-commerce driven website”. In addition, he was appointed Deputy Chief of the Publishing Section in February 2008 and, in that capacity, supervised the staff responsible for document reproduction and distribution and oversaw the launch of the Section’s website. The Tribunal considers, in view of all these activities, that the Administration did not commit a manifest error in evaluating the experience of the selected candidate.

26. While the Applicant maintains that he has more work experience than the selected candidate, it appears from the vacancy announcement that at least 10 years of work experience were required of candidates and also that the selection did not have to be made solely on the basis of that criterion but could legitimately be made by the selection and interview panel on the basis of professionalism, technological awareness, communication, client orientation, managing

performance and, lastly, leadership. In addition, apart from cases of factual error or manifest error of assessment, it is not for the Tribunal to substitute its own assessment for that of the panel concerning the two pre-selected candidates.

27. Lastly, the Applicant maintains that the selection process was flawed because of bias against him, especially as he was previously included several times on the roster of candidates selected as being eligible to perform similar functions but was finally not selected by the same Under-Secretary-General, DGACM. However, the fact that he was not selected for posts for which he previously applied cannot establish such bias, since those selection processes were either not contested before this Tribunal or, when one of these selection processes was deemed to be unlawful (see Judgment No. UNDT/2011/172), it was not so deemed on grounds of bias. In addition, the fact that it was the same department head who took the decisions not to select the Applicant cannot be considered as a presumption of bias since, under section 9.1 of ST/AI/2006/3, it was his responsibility to take such decisions as department head.

28. It results from all the foregoing that the Applicant has not proved the unlawfulness of the contested selection process.

Conclusion

29. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 6th day of October 2011

Entered in the Register on this 6th day of October 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry