



Before: Judge Coral Shaw

Registry: New York

Registrar: Hafida Lahiouel

CHARLES

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, a staff member in the Procurement Division (“PD”), Office of Central Support Service (“OCSS”), Department of Management (“DM”) of the United Nations in New York, contests the decision conveyed to him on 7 February 2011 not to select him for the post of Procurement Officer (“the Post”) in the Procurement Division in OCSS, DM. The Applicant alleges that his work experience was not properly considered in evaluating whether he met the work experience requirement for the post and that the selection process was tainted by procedural violations and bias.

2. In response to Order No. 288 (NY/2011) dated 30 November 2011, the parties agreed that the case could be decided on the papers. The Tribunal deems it appropriate to do so. This is not a disciplinary case and all the necessary documentation is to be found on the file.

3. On 23 January 2012, the Applicant filed an *ex parte* motion for leave to file his medical records and asked that these medical records be kept confidential. In that motion, he stated that “[i]n light of the increasingly negative impact of the on-going litigation and the resulting consequences, I hereby temporarily suspend my participation in all activities relating to the subject case until the end of February 2012”.

4. As this judgment was close to completion at the time the motion was received, no further requirement for participation by either party is required by the Tribunal before the judgment is rendered and published. In order to respect the confidentiality of the Applicant’s medical records, they will neither be taken into account nor referred to in this judgment.

Preliminary matter

5. In Order No. 288 (NY/2011), the Tribunal required the Respondent to disclose the following documents:

- a. The Vacancy Announcement (“VA”);
- b. The list of pre-screened candidates for the vacancy;
- c. The list of pre-approved roster candidates;
- d. The procurement division’s comments and annexes as sent to the MEU.

6. In its response to Order No. 288 (NY/2011), on 2 December 2011, the Respondent submitted a number of documents, including the personal history profiles (“PHPs”) of all the other prescreened candidates applying for the Post. The PHPs were provided on an “*ex parte* and confidential” basis to protect the personal information included in them.

7. On 8 December 2011, the Applicant submitted a lengthy reply in which he objected to the confidentiality of the PHPs. In addition, he advanced a number of arguments apparently in support of his case and to suggest a timetable for two further filings of documents and arguments by each party.

8. The Tribunal notes that although Order No. 288 (NY/2011) did not direct the Respondent to file the PHPs of all the prescreened candidates for the Post, the Respondent submitted these on his own initiative. In any event, the Respondent’s request for confidentiality of the PHPs is reasonable as all these documents contain personal and private information concerning third persons who are not directly involved in the present proceedings. This case is not about the personal records and characteristics of all these applicants for the Post. It concerns the lawfulness of the selection process as it was applied to the Applicant. None of the information in the PHPs is relevant to the present case and there is no reason why the personal details of third parties should be subject to publication. The Respondent’s request for confidentiality is therefore granted.

9. The Applicant’s response of 8 December 2011 included a lengthy analysis of the alleged way in which candidates are included on the roster and purported evidence

about the manner in which other vacancies were dealt with. This further argumentation was uncalled for and irrelevant to the issues in the present case. It is not necessary for the Tribunal to consider those further submissions as part of the present case.

Facts

10. On 13 August 2010, the Post was advertised as “VA 10-PRO-OFC OF Central Support Service-15389-R New York (G)”.

11. The VA describes the work experience requirement as follows:

A minimum of seven years of progressively responsible experience in managing procurement and contracting activities and delivering complex contracts is required. Experience in procurement of financial service is desirable.

12. On 23 August 2010, the Applicant, a permanent staff member at the P-3 level, step 8, applied for the post.

13. When responding to the ten pre-screening questions for the Post included in Inspira (the on-line United Nations jobsite), the Applicant responded “no” to the following two questions: “Do you have 7 years of experience in high-volume procurement operations” and “[h]ave you managed the procurement activities of a discrete unit in an organization at the international level?”.

14. In spite of these two negative answers, the Applicant’s job application, along with 33 other job applications for the Post, was released by the Office of Human Resources Management (“OHRM”) to the hiring manager. The hiring manager short-listed six rostered candidates as being the most qualified for the Post. The Applicant was not included in this short-list.

15. By email dated 7 February 2011, the Applicant was informed that his job application was unsuccessful.

16. On 11 March 2011, the Applicant requested a management evaluation of the decision not to select him for the Post. During the management evaluation process, PD indicated to the Management Evaluation Unit (“MEU”) that:

[The Applicant] has almost 12 years with the UN, mainly in the area of Finance. Of these, almost 3 years are as a Procurement Officer. As such he does not meet the relevant requirement for work experience of this Job Opening. Accordingly, the Application was not short-listed for the post.

17. On 8 April 2011, MEU conveyed its report to the Applicant, which found that the contested selection decision was proper.

Applicant’s submissions

18. The Applicant’s principal contentions may be summarised as follows:

a. The number of years of experience should only be one factor to be taken into account when evaluating candidates for a post, especially for internal candidates, and such evaluation must be conducted properly. This was not done in the Applicant’s case because his experience as a financial officer or in the field of administration and management of human and financial resources was not considered;

b. The pre-screening questions are to serve as a guide for short-listing of the candidates but an applicant is only required to satisfy at least 80 percent of the pre-screened questions to warrant further consideration;

c. The Applicant had sufficient work experience for the Post, namely 17 years of progressively responsible work experience within the field of administration and management of human and financial resources. It is not necessary to be employed in PD to have experience in United Nations procurement and the Applicant’s other experience compensated for that;

- d. The fact that the six short-listed candidates were rostered candidates is evidence of manipulation of the selection process.

Respondent's submissions

19. The Respondent's principal contentions may be summarised as follows:
- a. The decision not to include the Applicant on a short-list of the most qualified candidates was reasonable and a lawful exercise of discretion. The Applicant only had 3.5 years of work experience in procurement;
 - b. No procedural errors were made. In accordance with section 7.1 of ST/AI/2010/3 (Staff selection system), candidates for a post are pre-screened and those job applications meeting the minimum post requirements are released to the hiring manager whose task is to then prepare a short-list of the "most qualified" candidates, in accordance with section 7.4. This was done in the present case;
 - c. The Applicant's allegation of bias is not supported by any evidence.

Considerations

The issues of the case

20. There are two issues to be determined in the present case:
- a. Did the Respondent give full and fair consideration to the Applicant's candidature by accurately assessing the Applicant's work experience against the vacancy requirement?
 - b. Did the Respondent discriminate against the Applicant in the selection process?

The hiring manager's consideration of the Applicant's work experience

21. ST/AI/2010/3 on UN staff selection, governs the selection process in this case. Its sections 7.1 and 7.2 provide that OHRM pre-screens applicants applying for job openings to determine whether they meet the minimum requirements of the job opening. OHRM then releases the list of pre-screened candidates together with the list of candidates pre-approved for consideration for selection (rostered candidates) to the hiring manager.

22. In the present case, it is a matter of fact that OHRM pre-screened the Applicant and released his job application to the hiring manager. There is no factual basis to the Applicant's argument that a procedural error was committed because he was not properly pre-screened on the basis of his answers to the pre-screening questions.

23. Section 7.4 of ST/AI/2010/3 provides that the hiring manager "shall further evaluate all applicants released to him/her and shall prepare a shortlist of those who appear most qualified for the job opening based on a review of their documentation".

24. That section vests the authority to "further" evaluate all pre-screened applicants in the hiring manager. The Applicant's argument that the hiring manager committed a procedural error by evaluating the applicants is not correct.

25. Sections 7.5 and 7.6 provide that the hiring manager is to assess the short-listed candidates and prepare a reasoned and documented record of the evaluation made. Again, the language of the provision is clear. A reasoned and documented record is made of short-listed candidates. No such formal requirement exists for pre-screened candidates who are not short-listed. The Applicant's claim that the hiring manager committed a procedural error in that he did not prepare a reasoned and documented record of his assessment also fails.

26. However, this provision does not remove the obligation from the Respondent to be in a position to justify its decisions at all times to ensure they are fair and just and not

arbitrary. In the present case, during the management evaluation process, the hiring manager provided the reasons why the Applicant was not short-listed. As mentioned above, the hiring manager took into account that, at the time of the job application, the Applicant had almost 12 years of work experience with the United Nations, mainly in the area of finance. Of this work experience, only almost three years had been in the field of procurement, and the Applicant therefore did not meet the work experience requirement for the post, namely “a minimum of seven years of progressively responsible experience in managing procurement and contracting activities and delivering complex contracts”.

27. The Tribunal observes that one of the characteristics of the United Nations selection process is the use of objective criteria (such as the use of a requirement of seven years of experience in managing procurement and contracting activities and delivering complex contracts). The advantage of this objective and quantifiable approach is that it reduces the risk of decision-makers reaching subjective and possibly unfair comparisons of candidates’ suitability for vacant posts, including of such matters as levels of experience.

28. In evaluating the Applicant’s suitability for this post, the Respondent was bound to consider whether he met the requirements of the Post as stated in the VA, including the requirements regarding work experience. In this regard, there was a mandatory requirement of a “minimum of seven years of progressively responsible experience in managing procurement and contracting activities and delivering complex contracts”. The Applicant himself acknowledged in the pre-screening question in respect of this issue in his application that he did not have the necessary “7 years of experience in high-volume procurement operations”. It was not a question of whether his prior work experience had been properly assessed, but the application of a single objectively defined question.

29. The Applicant clearly does not accept that his work experience is insufficient to meet the post requirement. He wishes the Tribunal to assess his previous experience and

rule on whether that is sufficient to meet the criteria required for this post. The Tribunal has neither the power nor the ability to make such an assessment and substitute its assessment for that of the Respondent. As stated in the United Nations Appeals Tribunal's judgment in *Rolland* 2011-UNAT-122, the role of the Tribunal is limited to determine whether an applicant received full and fair consideration of her/his candidature and not to enter into a substantive analysis of her/his application (see para. 4 of the Judgment):

We hold that the selection process conducted by an interview panel can be rescinded under 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 selection shall be upheld.

Discrimination against the Applicant

30. The Appeals Tribunal stated in *Azzouni* 2010-UNAT-081 that “[w]hen a staff member alleges discrimination, he or she bears the burden of proving on a preponderance of evidence that discrimination occurred” (see para. 35). The Tribunal notes that the Applicant has not submitted any evidence to support his claim that the Respondent was biased towards him and nothing in the case record suggests otherwise. His contention therefore fails.

Conclusion

31. The Tribunal finds that the Applicant was fully and fairly considered for the post. The present application has no merit and is dismissed in its entirety.

Observation

32. The Tribunal observes that staff members' right of access to the formal system of internal justice should not be abused by the bringing of frivolous cases. There was no factual or legal basis for the Applicant's claims of procedural error or discrimination for the reasons given in this judgment. It is irresponsible to bring what is a serious

allegation of bias without any supporting evidence. The Applicant also filed unnecessary, irrelevant and lengthy submissions, which were of no assistance or relevancy to his case. The Tribunal strongly discourages such frivolous litigation and reminds the Applicant that the Tribunal's resources as well as those of the Respondent must not be misused.

(Signed)

Judge Coral Shaw

Dated this 10th day of February 2012

Entered in the Register on this 10th day of February 2012

(Signed)

Hafida Lahiouel, Registrar, New York