



**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

SIMMONS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a Programme Budget Officer at the P-3 level with the Office of Programme Planning, Budget and Account (“OPPBA”), Department of Management, filed an application on 15 June 2011 alleging that:

a. She was not selected for a position at the P-4 level in OPPBA (advertised by vacancy announcement VA-09-ADM-DM-OPPBA-422344-R-New York);

b. Her candidacy for a position at the P-4 level in the Office for the Coordination of Humanitarian Affairs (“OCHA”) was unlawfully disrupted by the withdrawal of the vacancy (advertised by vacancy announcement VA-09-ADM OCHA-421839-R-Multiple D/S).

2. The Respondent submitted that all of the Applicant's claims were without merit and in any event none of them was receivable. If they were considered to be receivable it would be the Respondent’s submission that the Applicant’s claims are based on an erroneous understanding of the staff selection procedure.

3. The Tribunal decided the issue of receivability as a preliminary question and delivered judgment on 11 February 2013. The Tribunal found in *Simmons* UNDT/2013/015 that the claims regarding vacancy announcements VA-09-ADM-DM-OPPBA-422344-R-New York and VA-09-ADM OCHA-421839-R-Multiple D/S were receivable, but that the claim regarding the electronic performance evaluation system reports was *res judicata* and was dismissed.

4. The parties consented to judgment being given on the basis of the documents before the Tribunal, including replies to the Tribunal’s orders.

## **Findings of fact**

### *VA-09-ADM-DM-OPPBA-422344-R-New York*

5. The Applicant was a rostered candidate. On 28 January 2011, she was invited to take a written test which was administered pursuant to sec. 7.5 of ST/AI/2006/3 (“Staff selection system”). At first the Applicant refused to participate in the test claiming that the administration was biased against her. As a result, her supervisor initially suspended the selection process and subsequently rescheduled the test to 26 April 2010, when the Applicant subsequently agreed to take it. It was administered and assessed anonymously. The Applicant did not perform satisfactorily on this test.

6. The Respondent submits that the fact that there were delays in completing the Applicant’s e-PAS report did not disadvantage the Applicant because she was from a roster of pre-approved and eligible candidates. The Tribunal finds that the delays in completing her electronic performance appraisal reports had no impact on this selection exercise.

7. The Applicant alleges that her candidacy was not properly and fairly considered. The question for decision by the Tribunal is whether the Applicant’s lack of success in relation to this exercise was because of her unsatisfactory performance on the written test or due to bias and unfairness which infected the entire process.

8. The Applicant was deemed to have met most of the requirements for the post. A test was administered to all candidates to assess the competencies of professionalism and written communication. The candidates’ identity was not disclosed to the panel who evaluated the Applicant’s professionalism as less than acceptable. In the circumstances she was not invited for any further assessment and consideration by the panel.

9. The Applicant's allegation that management officials of the Department of Management were continually seeking to sabotage her career development through bias and unfair consideration of her candidature is a serious allegation, which the Applicant has not been able to support by evidence or, in the absence of affirmative evidence, by arguments or submissions of substance. The Applicant's reliance on the fact that over the years she has been complaining about abuse of authority and unfair treatment is not of itself sufficient for her to get over the hurdle of producing a sufficiency of evidence, which would present the Respondent with a case to answer.

*VA-09-ADM OCHA-421839-R-MULTIPLE D/S-P4*

10. On 5 December 2007, the Applicant applied for the vacant post number VA 09-ADM OCHA-421839-R-MULTIPLE D/S-P4 (Administrative Officer). She was interviewed and placed on the roster as a successful candidate. She was advised by the management of OCHA that she was a suitable candidate to fill the vacant post.

11. On 12 December 2009, the Applicant received an email from Ms. Chiraz Boutiba, OCHA Human Resources Unit, requesting confirmation of her availability for an interview on 21 January 2010. The interview took place as scheduled.

12. On 22 January 2010, the Applicant received an email captioned, "Congratulations—you passed your interview for the P-4 Administrative Officer, OCHA-Roster".

13. OCHA requested the Applicant to provide an attestation of work from her current employer, copies of her two most recent e-PAS reports (i.e., for 2007–2008 and 2008–2009), contact information of all universities attended and completed degrees, and an updated personal history profile with updated information including email addresses of supervisors from year 2000 to date.

14. OCHA is responsible for the management of humanitarian field operations in over forty countries. The nature of their work is such that they have a need to deploy their staff rapidly to respond to complex emergencies and natural disasters. Since the staff selection exercises take between four to six months to complete, OCHA selects its staff from an emergency response roster. When a need arises OCHA has to have the ability to deploy suitably qualified staff on short-term assignments within forty-eight hours.

15. As a rostered candidate, the Applicant had already received clearance by the Central Review Committee. In 2009, OCHA circulated ten generic vacancy announcements for its emergency response roster, including a generic vacancy announcement for administrative officer. Although the Applicant did not apply for this particular vacancy her name was submitted to OCHA because she had been rostered for a similar position in the past. She was invited for an interview in December 2009, following which, together with twelve others, her name was included in the first batch of recommended candidates for the emergency response roster. Since some of these candidates were external, they were subject to reference checks as part of the process of obtaining designation clearance. Such clearance was not required of the Applicant as an internal candidate. The Applicant is mistaken in her belief that the omission to seek such clearance in her case was indicative of bias or otherwise an unwillingness to give her candidacy fair and proper consideration.

16. On 26 April 2010, all roster candidates, including the Applicant, were invited for expressions of interest for possible posts in Jerusalem and Pakistan. The email was explicit in stating that “this is not an official offer”.

17. The Applicant expressed her interest in the post of Administrative Officer in Jerusalem. The Respondent states that the post was cancelled without any candidate being chosen. They gave as the reason for cancellation of the post organisational needs and budgetary constraints. By Order No. 23 (NY/2013), the Respondent was directed to produce documentary evidence recording the decision to cancel the post

in Jerusalem, indicating the identity of the decision-maker and the date on which the decision was taken. They were also ordered to produce documentary evidence showing that OCHA had solicited the Applicant's interest in a new post in the Democratic Republic of the Congo.

18. In response, the Respondent submitted a copy of a memorandum dated 31 March 2011 from Mr. Philippi Lazzarini, Officer-in-Charge, Coordination and Response Division ("CRD"), to Ms Catherine Bragg, Assistant Secretary-General, Deputy Emergency Relief Coordinator, informing her that the P-4 post had not been filled and requesting that the funds be deployed to functions in New York. The Respondent asserts that the post in Jerusalem was planned but never materialised due to budgetary limitations. The Applicant contests this explanation in her response to Order No. 45 (NY/2013), which asked her whether she accepted the explanation offered by the Respondent or whether she wished to continue with their claim regarding the vacancy in Jerusalem. The Applicant indicated that she wished to continue with her claim. She was ordered to provide any legal or factual arguments in support thereof.

19. In a detailed rebuttal, comprising nine pages, the Applicant pointed out that the Respondent had not complied with the strict terms of the Tribunal's order to produce documentary evidence recording the decision to cancel the post, the date when the decision was taken and the author of the decision.

20. Notwithstanding the Applicant's criticism, the Tribunal's task is to ask if, in substance, the Respondent had provided sufficient information that was corroborative of its case that there was an innocent explanation for not filling the vacancy. The Tribunal finds that Mr. Lazzarini's letter of 31 March 2011 does provide a written confirmation that a decision was taken not to fill the P-4 vacancy of Administrative Officer for organisational and business reasons.

21. The Applicant also pointed to an apparent logical inconsistency between the position of the Respondent that the post in Jerusalem could not be filled for budgetary reasons and limitation in funding, and the assertion that the limited funding available could be applied to functions within the Office of the Director, CRD, in New York. Whilst understanding the Applicant's concern, the Tribunal is not persuaded by the contention advanced.

22. The question for the Tribunal to consider is whether, notwithstanding the Applicant's criticisms, the Respondent has shown that the reason for not filling the vacancy was not, in any way, related to the Applicant's candidature.

23. The Respondent's reply and the Respondent's responses to Orders has to be considered as a whole, together with such documentary evidence as has been provided, including the fact that the vacancy had never been filled since January 2011. The Respondent has shown that the reasons for not filling the vacancy were not related to the Applicant's candidacy, as she alleged.

### **Consideration**

24. In *Abbassi* 2011-UNAT-110, the United Nations Appeals Tribunal considered the test to be followed when reviewing administrative decisions on appointments and promotions. The first task for the Tribunal is to examine whether the Administration followed properly the procedures laid down in the Staff Regulations and Rules. Having done so, the Tribunal will consider whether the staff member was given fair and adequate consideration.

25. Where an Applicant, as in this case, alleges bias or prejudice or claims that the selection process and the implementation of decisions regarding a particular selection exercise was tainted by procedural irregularities, it is for the Applicant to discharge the onus of proof. Allegations of bias and prejudice are easy to make and usually extremely difficult to prove because of the absence of affirmative evidence. Accordingly, the Tribunal must be prepared to draw inferences from the primary

facts. If the facts established do not reasonably point to the possibility of bias or prejudice that will normally be the end of the matter. However, where they may tend to show that the possibility of bias, prejudice or improper considerations may possibly have infected the process the onus shifts to the Respondent to show that bias or prejudice did not in any sense whatsoever taint the selection process and final outcome.

26. The Respondent's explanation for the decisions being challenged is credible. The Applicant has not adduced a sufficiency of evidence or arguments of substance to call into question the decisions and the way in which they have been reached.

**Conclusion**

27. The Application fails and is dismissed in its entirety.

*(Signed)*

Judge Goolam Meeran

Dated this 13<sup>th</sup> day of March 2013

Entered in the Register on this 13<sup>th</sup> day of March 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York