



**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

DESOUZA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Edwin Nhliziyo

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 23 November 2011, the Applicant, a Human Resources Officer in the Field Personnel Operations Services (“FPOS”), Field Personnel Division (“FPD”), Department of Field Support (“DFS”) of the United Nations Secretariat, contested the decision not to select her for either of two posts of Chief at the P-5 level (“the Posts”) within FPD.

2. The Applicant alleges that the selection exercise was biased. She states that the two candidates who were already encumbering the Posts on a temporary basis, and who were ultimately selected, were favoured to the detriment of others, including herself. She also makes other allegations regarding the eligibility of the successful candidates for consideration for the Posts. It is not necessary to go into those matters for reasons which are explained in the section on “Considerations”.

3. The Applicant claims that she should have been selected for one of the Posts from the roster because “[a]s a rostered candidate she had expected to be selected for one of the [P]osts without the need to submit to another competence based test” or, alternatively, her name should have been included in the list of recommended candidates sent for review to the Central Review Board (“CRB”).

4. The Respondent denies any unlawful conduct stating that the Applicant was short-listed for the Posts and invited to take part in a written test. It was only after the Applicant informed the Administrative Management Officer, FPOS, that she was declining to take the written test that had been sent to her that the selection exercise proceeded without her.

## **Issues**

5. The Tribunal issued several orders for further information and clarification and decided that, notwithstanding the Applicant's request, a hearing was unnecessary. The Tribunal has determined the merits of this case on the documents filed by both parties.

6. The Tribunal has identified the following issues in the case:

a. Was the Respondent obliged to consider or appoint the Applicant to one of the Posts since she was a roster candidate? If not, what was the ambit of the Respondent's discretion and was that discretion properly exercised in this case?

b. Was it a lawful requirement that the Applicant, as a candidate on the roster, be asked to take a written test for the particular post?

c. When the Applicant withdrew from taking part in the written test, was it permissible and reasonable for the Respondent to infer that she was in effect indicating that she was withdrawing her candidacy for the Posts and, if so, was it lawful to exclude her from further consideration?

d. Was the Respondent's omission of the Applicant's name from the list of candidates recommended to the CRB, notwithstanding that she was a candidate on the roster, a lawful exercise of his discretion?

## **Background**

7. The vacancy announcement for the Posts was advertised on 4 March 2010 with a closing date of 3 May 2010. Following an initial review, the Office of Human Resources Management ("OHRM") produced a list of 150 potentially eligible candidates. This list contained, in addition to the Applicant, the names of eight other roster candidates. On 23 April 2010, the roster candidates were requested to confirm

their interest to be considered for the Posts, as well as to confirm their availability to participate in a written test.

8. The Applicant initially responded affirmatively to this request on 28 April 2010. On 7 July 2010, FPOS informed her that she had been short-listed for the Posts and, once again, asked her to confirm her interest in them and availability to take a written test. The Applicant was the only roster candidate who was short-listed. She submits that during the three-month period between the two communications, she heard rumors amongst her colleagues that a decision had already been taken to confirm the two candidates who were encumbering the Posts in question on temporary contracts. She states that she was emotionally drained by these developments and, on 15 July 2010, informed the Administrative Management Officer, FPOS, that she was declining to take the written test that had been sent to her. Instead, she decided to rely on her understanding that, as a roster candidate who had expressed an interest in the Posts, and based on DFS' practice to encourage programme managers to select candidates directly from the roster, her name would be submitted to the CRB along with that of the other recommended candidates.

9. Once the Applicant informed FPOS that she had withdrawn from participation in the written test, the programme manager decided not to give her candidacy any further consideration and the selection exercise proceeded as planned, without the Applicant. In other words, the Applicant's withdrawal from the test was taken as a withdrawal from the selection exercise. The remaining candidates who met the requisite criteria following the written test were invited to participate in a competency-based interview on 20 January 2011, with the successful candidates' names being referred to the CRB. Following a review of the interview panel's selection, the CRB endorsed the recommendation for filling the Posts. The two successful candidates were informed of their selection on 31 May 2011.

## **Applicable Law**

10. ST/AI/2006/3/Rev.1 (Staff selection system), dated 11 January 2010 and applicable at the time, states, in relevant part:

### **Section 1**

#### **Definitions**

...

*Central review bodies:* joint bodies established under staff rule 4.15 to approve evaluation criteria and to ensure that candidates have been evaluated on the basis of such pre-approved evaluation criteria and/or that the applicable procedures have been followed.

...

*Roster:* list of candidates who have been endorsed by a central review body for a particular vacancy but not selected for it, and who have indicated an interest in being considered for selection for a future vacancy with similar functions at the same level. Roster candidates may be selected without referral to a central review body. The roster is valid for one year.

...

### **Section 2**

#### **General provisions**

...

2.3 Selection decisions are made by the head of department/office when the central review body is satisfied that the evaluation criteria have been properly applied and that the applicable procedures were followed. ...

### **Section 7**

#### **Consideration and selection**

...

7.4 The programme manager shall evaluate new candidates and roster candidates transmitted by OHRM or the local personnel office for consideration at the 15-, 30- or 60-day mark on the basis of criteria pre-approved by the central review body.

7.5 For candidates identified as meeting all or most of the requirements of the post, interviews and/or other appropriate evaluation mechanisms, such as written tests or other assessment

techniques, are required. Competency-based interviews must be conducted in all cases of recruitment or promotion. Programme managers must prepare a reasoned and documented record of the evaluation of those candidates against the requirements and competencies set out in the vacancy announcement

...

7.8 Should an eligible roster candidate be suitable for the vacancy, the programme manager may recommend his or her immediate selection to the head of department/office, without reference to the central review body, as provided in section 9.4.

## **Section 8**

### **Central review bodies**

The central review bodies shall review the proposal for filling a vacancy made by the department/office concerned to ensure that candidates were evaluated on the basis of the pre-approved evaluation criteria and/or that the applicable procedures were followed, in accordance with sections 5.1 to 5.6 of ST/SGB/2002/6.

## **Section 9**

### **Decision**

...

9.4 Candidates for posts up to and including at the D-1 level included in the roster may be selected by the head of department/office for a subsequent vacancy, without reference to a central review body, after the programme manager has reviewed the applications of new candidates for a vacancy included in the compendium, together with the pre-approved roster candidates transmitted by OHRM or the local personnel office, subject to the provisions of section 9.2.

11. Staff regulation 4.2 of ST/SGB/2009/6 (Staff Regulations) provides that:

The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

## Considerations

12. The Applicant raises issues of substance regarding the eligibility of the two successful candidates and alleges bias in the selection process. However, the fundamental question for the Tribunal to address is whether she has standing to bring a complaint that she has been denied a full and fair opportunity to have her candidature considered. Namely, should the Applicant, as a roster candidate, have been considered for the Posts even though, after initially confirming her interest and willingness to undertake a written test for the Posts, she declined to do so after the test was sent to her. Whether there was in fact any bias, favoritism, breach of procedures or due process, the Applicant must, as a first step, establish that she has standing to bring this case.

13. As stated by the Tribunal in *Charles* UNDT/2013/040, one of the benefits of being placed on a roster of candidates pre-approved and endorsed by the CRB is that the rostered staff member does not have “to go through the central review body process, if selected”. However, the benefit of being placed on the roster should not be at the expense of other candidates that participate in the selection exercise. Indeed, in *Charles*, the Tribunal stated that roster candidates

are not a separate privileged class of candidates for position-specific job openings and cannot be treated as such. This was not the purpose of the roster, which was mainly to speed up the recruitment process by avoiding the stage of a referral to the central review bodies if a roster candidate is considered the best candidate when compared to all other candidates.

14. Being placed on the roster does not remove the requirement that rostered candidates still have to be compared against other non-rostered candidates, as not doing so may result in the breach of the rights of the non-rostered candidate to have their candidacy being given proper consideration. However, and while a hiring manager has broad discretion in the choice of the assessment methods,

the assessment method has to be the same for all the candidates and may require testing and interviews for both roster and new candidates (see *Charles*).

15. By deciding not to undertake the written test for the Posts, the Applicant removed the hiring manager's capacity to effectively compare the Applicant's skills to that of the other candidates. Had the hiring manager continued to consider the Applicant for the Posts it would arguably have resulted in a breach of the other candidates' rights as not all of the candidates would, as a consequence, have been assessed in an equitable and comparable manner.

16. The Applicant submitted that while she chose not to take the written test, she expected that "her name would still be submitted to the CRB along with that of the selected candidate for confirmation". By sec. 8 of ST/AI/2006/3/Rev.1, the purpose of the CRB is to (a) "review the proposal for filling a vacancy made by the department/office concerned" and (b) "ensure that candidates were evaluated on the basis of the pre-approved evaluation criteria and/or that the applicable procedures were followed".

17. By not taking the written test the Applicant effectively withdrew from the entire approved selection process and she could no longer enjoy the right of having the CRB verify that she had been evaluated appropriately, and against the pre-approved criteria. Consequently, none of the Applicant's rights were breached during the selection exercise for these posts.

*Other matters*

18. Although the Applicant alleged bias and discrimination, the Tribunal notes that the record before it does not support this allegation. Rather, it appears that DFS applied the correct procedure by disregarding the Applicant's application upon her not being willing to participate in the selection process.



**Conclusion**

19. The application is dismissed.

*(Signed)*

Judge Goolam Meeran

Dated this 20<sup>th</sup> day of March 2013

Entered in the Register on this 20<sup>th</sup> day of March 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York