



**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

LENNARD

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, who holds the post of Chief, International Tax Cooperation Section, Department of Economic and Social Affairs (“DESA”) at the P-5 level, contests his non-selection for two posts of chief at the D-1 level: job openings (“JO”) 17202 and 17203. In addition to his non-selection for these posts, the Applicant is also contesting the decision to select a candidate other than him for JO 17203 following the decision of the candidate initially selected to decline the offer of appointment.

2. The Respondent submits that the claims with regard to the Applicant’s non-selection are without merit and time-barred.

## **Relevant background**

3. The Applicant joined the Organization at the P-5 level in the Financing for Development Office (“FDO”), DESA. FDO consists of two branches, each headed by a D-1: the Multi-Stakeholder Engagement and Outreach Branch (“MSEOB”) and the Policy Analysis and Development Branch (“PADB”). The two branches are in turn headed by a D-2 level Chief. Within each branch there are two units, each headed by a P-5 level manager. The Applicant was at the material time a staff member of PADB.

4. In December 2009, Mr. Trepelkov, the D-1 level Chief of MSEOB, vacated his post and took up the D-2 level position of Chief of FDO. Shortly thereafter, the D-1 level post of Chief, PADB, also became vacant.

a. On 18 February 2011, the two vacant D-1 posts within FDO were advertised on the United Nations employment website (“Inspira”) for two months until 19 April 2011. In respect of JO 17202, 23 candidates applied for the post. Ten candidates, including the Applicant, were found to meet the qualification requirements and were invited to participate in

a competency based interview. Two candidates subsequently withdrew their candidacy.

b. In respect of JO 17203, 33 candidates applied for the post. Twelve candidates, including the Applicant, were found to meet the qualification requirements and were invited to participate in a competency based interview. Two candidates subsequently withdrew their candidacy.

5. On 29 February 2012, following a 10-month delay in conducting the interviews for JO 17202 and 17203, an email was sent to each candidate asking that they confirm their continued interest in the vacancy announcements. The Applicant responded the following day that he was still interested in both positions.

#### *Selection process*

6. On 16 April 2012, the Applicant informed Mr. Trepelkov that he was ill and would be out of the office. That same day, an invitation was sent to three internal candidates from FDO, including the Applicant, to participate in an interview the following day. The Applicant's interview was scheduled for 3:45 p.m. The other candidates were provided with a request to attend an interview at varying times.

7. Upon returning to the office on 17 April 2012, the Hiring Manager, Mr. Trepelkov, asked the Applicant if he was available to participate in the interview later in the day. The Applicant responded that since he was previously unaware of the interview he would not be able to attend. The interview was rescheduled to a later date.

8. Due to the similarities between the requirements for the two JOs, a single combined interview, consisting of the same questions for each candidate, was conducted for both posts. The candidates were interviewed between 17 April 2012 and 30 May 2012, with the Applicant being interviewed on 30 April 2012. The interview panel was composed of Mr. Trepelkov; Ms. De Laurentis, Deputy

Director, United Nations General Assembly and Economic and Social Council (“ECOSOC”) Affairs Division; and Ms. Wade, Chief, ECOSOC and Inter-organizational Cooperation Branch Office for ECOSOC Support and Coordination.

9. A review of the documents produced by the Respondent in support of his reply and his response to Order No. 58 (NY/2014), dated 9 April 2014, indicates that following the interviews, the panel completed an Evaluation Sheet, which identified, with regard to each of the five competencies on which the candidates were assessed, whether their response was deemed “Unsatisfactory”, “Partially Satisfactory”, “Satisfactory”, or “Outstanding”. The result of these evaluation sheets were then aggregated into a single Interview Evaluation Summary for both vacancies listing the candidates in alphabetical order but without ranking the candidates from first to last.

10. The interview evaluation summary identified the twelve candidates that were interviewed for one or both vacancies and recommended six candidates for JO 17202, and seven candidates for JO 17203. Four candidates, including the Applicant, were recommended for both of the job opening whereas three candidates were not recommended for either one.

11. Of the nine recommended candidates, the responses of one candidate to JO 17202 were deemed “Outstanding” for two of competencies and “Satisfactory” for the other three competencies. Similarly, with regard to JO 17203, the responses of one candidate were deemed “Outstanding” for three of competencies and “Satisfactory” for the two competencies and the responses of another candidate were graded as “Outstanding” for one competency with remaining four being graded as “Satisfactory”. The panel evaluated the Applicant’s responses to the each of the five competencies as being “Satisfactory”. The Applicant was not graded as having provided outstanding responses to either of the five core competencies.

12. On 27 July 2012, the Hiring Manager transmitted two separate memoranda to the Under-Secretary-General, Economic and Social Affairs (“USG/DESA”) with

the recommended list of candidates. With regards to JO 17202, the list provided contained the Applicant's name along with that of five other recommended candidates whereas the list submitted with respect to JO 17203 contained the Applicant's name along with that of six other proposed candidates. Each list was organized in alphabetical order. On 28 August 2012, the Central Review Board ("CRB") endorsed the selection process.

13. On 5 September 2012, the USG/DESA selected from the list of recommended candidates the two candidates who had been graded as having provided "Outstanding" responses to one or more of the core competencies. That same day, the Applicant was notified that he had not been selected for either post but that he was being placed on a list of rostered candidates pre-approved for similar positions in the future.

14. On 1 October 2012, the candidate selected for JO 17202 assumed his functions. On 25 October 2012, the candidate selected for JO 17203 declined the offer to take up the appointment. On 17 December 2012, the USG/DESA selected the third candidate who had provided outstanding responses to one or more of the core competencies amongst the list of candidates recommended for JO 17203. The Applicant was advised of the selection of the successful candidate on 20 January 2013, the day prior to this candidate taking up the duties for the post.

*Management evaluation no. 1*

15. On 4 November 2012, the Applicant requested management evaluation of the decision to select a candidate other than him for JO 17202 and JO 17203. The Management Evaluation Unit ("MEU") provided the Applicant with a response on 5 December 2012, affirming the selection decisions.

*Management evaluation no. 2*

16. On 2 February 2013, the Applicant requested management evaluation of the decision to select a candidate (other than himself) for the post advertised under JO 17203, which was notified to him on 20 January 2013. The MEU responded to the Applicant on 4 March 2013 that the contested decision was lawful.

17. On 5 March 2013, the Applicant filed an application contesting the decisions. Due to filing delays, the full and complete application was not received until 15 March 2013. Upon being served with the application the Respondent filed his reply on 17 April 2013.

18. On 23 May 2013, in response to Order No. 108 (NY/2013), dated 23 April 2013, the parties filed a joint statement of factual and legal issues, identifying agreed and disputed issues of fact and law.

19. On 11 November 2013, by Order No. 303 (NY/2013), the Tribunal requested that the parties inform the Tribunal as to whether an oral hearing was necessary and whether they sought the disclosure of any documents. In response the Applicant requested the Tribunal to hold an oral hearing and to order the production of the documents identified in Annex 1 of his application, namely “all contemporaneous records of the Applicant’s Interview ... All contemporaneous records of the interviews of the successful candidates ... The List of scheduled interviews, and of the notice given to the candidates ... The [Personal History Profile] and any other selection process documents relating to the work experience of the third successful candidate”. The Respondent submitted that he did not believe an oral hearing was necessary nor did he request the production of additional documents.

20. By Order No. 328 (NY/2013), dated 2 December 2013, the Tribunal ordered the Respondent to produce to the Applicant “a copy of the notes taken by each panel member during the recruitment exercise for [JO 17202] with appropriate redactions”.

In response to the Tribunal's Order, the Respondent submitted that he had not managed to locate the requested notes. The Respondent further stated that each panel member had completed an evaluation sheet and that the said sheet and narrative evaluation were appended to his original reply.

21. On 23 December 2013, the Applicant filed a motion requesting the Tribunal to order the Respondent to produce: time sheets of the interviews, contemporaneous notes of the interviews, and "a record of differences, if any, between the evaluations "drafted straight after" the interview and the final form of those evaluations appended to the Respondent's Reply". The Applicant further noted that while Order No. 328 appeared to be limited to JO 17202, it should also apply to JO 17203.

22. By Order No. 58 (NY/2014), dated 9 April 2014, the Tribunal requested the Respondent to explain the basis upon which the ASG/DESA determined who was the best suited candidate for each job opening, together with supporting documentation including documents ranking the candidates in merit order. Considering its factual findings and its request for additional evidence, the Tribunal considered that it was not necessary for a just disposal of the case to grant the Applicant's request for the production of documents. On 17 April 2014, the Respondent provided his response to Order No. 58, identifying the information that formed the basis for the ASG/DESA's assessment and decision.

### **Applicant's submissions**

23. The Applicant's principal contentions may be summarized as follows:

- a. The selection process was carried out in an improper, irregular or otherwise flawed manner resulting in a breach of ST/AI/2010/3 (Staff selection system), ST/SGB/2011/7 (Central review bodies) and the guidance of the "Hiring Manager's Manual, Instructional Manual for the Hiring Manager on the Staff Selection System (*inspira*)" (2011) ("Hiring Manager's Manual");

- b. The Hiring Manager, as a former incumbent of the post for which the Applicant was being considered, could not be part of the interview panel (see para. 33 of *Nwuke* UNDT/2012/116), which resulted in the Applicant's evaluation being tainted;
- c. It does not appear that the Applicant's outstanding electronic appraisal system ("ePas") reports were taken into account. Rather, the panel only relied on the assessment conducted during the interview, which contravenes the applicable rules, while also asking him questions that deviated from the accepted interview format. Furthermore, the Applicant was not provided with proper notice, namely at least five working days, for the conduct of the interview, and the notice period was inconsistent across the candidates being considered for the posts;
- d. The Organization did not follow the applicable rules when initially selecting an external candidate, nor did the candidate that was ultimately selected meet the experience requirements;
- e. The contested decisions should be rescinded and the Applicant should be awarded damages.

### **Respondent's submissions**

- 24. The Respondent's principal contentions may be summarized as follows:
  - a. The record of the post selection process shows that there were no flaws in the selection process and that all of the applicable rules were followed;
  - b. The Hiring Manager's Manual only restricts staff members from "normally" participating in the recruitment process for a post that they are currently encumbering. Furthermore, the Hiring Manager's Manual only



contains guidance regarding the interview process. Consequently, the information contained therein are only suggestions;

c. The content of a candidate's performance appraisal may be taken into account during the process of identifying the shortlisted candidates to be interviewed. However, they are not part of the interview process and they are not relevant to the outcome of the selection exercise. The interview process was conducted according to the administrative instructions on staff selection (ST/AI/2010/3) and the role of the CRB (ST/SGB/2011/7);

d. In accordance with General Assembly resolution 65/247, the Office of Human Resources Management ("OHRM") no longer requires prior justification for the appointment of external candidates but, in any event, contrary to the Applicant's belief, no external candidate was appointed.

## **Consideration**

### *Receivability*

25. The Respondent submits that the Applicant did not file his application with the Tribunal regarding his non-selection for the two job openings, which was communicated to him on 5 September 2012, within the requisite time limits. The Respondent submits that any appeal of this contested decision was due on or before 5 March 2013, but the Applicant did not file his application until 15 March 2013.

26. However, the Respondent has clearly abandoned this contention given that as part of the parties' joint submission, they agreed that the application had been filed with the Tribunal on 5 March 2013, within the time limits. Although there was a delay in completing the necessary procedural requirement regarding the filing of documents, the Tribunal is satisfied that the application met the necessary

requirements under art. 8.1(i) of the Tribunal's Statute and was filed in time.  
In the circumstances no issue of receivability arises.

*Applicable law*

27. ST/AI/2010/3 (Staff selection system) states:

**Section 9**

**Selection decision**

...

9.3 When recommending the selection of candidates for posts up to and including at the D-1 level, the hiring manager shall support such recommendation by a documented record. The head of department/office shall select the candidate he or she considers to be best suited for the functions. Prior to selection of an external candidate, that decision must be justified in writing to, and approved by, OHRM. ...

...

**Section 10**

**Notification and implementation of the decision**

...

10.4 If the selected candidate fails to take up the functions within the specified time frames for personal reasons or vacates the position within one year, the head of department/office may select another candidate from the list endorsed by the central review body with respect to the particular job opening, or in the case of peacekeeping operations or special political missions, from the roster within the same occupational group. If no such candidate is available, the head of department/ office may select another candidate from the roster or recommend the position be advertised in the compendium if no roster candidate is found to be suitable.

28. ST/SGB/2011/7 (Central review bodies) states:

**Section 4**

**Functions of the central review bodies**

...

4.6 In so doing, the central review bodies shall consider whether:

(a) The recommendation of candidates is reasoned and objectively justifiable based on evidence that the pre-approved evaluation criteria set out in the job opening were properly applied;

(b) The record indicates that there was no mistake of fact or mistake of procedure, prejudice or improper motive that could have prevented a full and fair consideration of the candidates' requisite qualifications;

(c) The record contains a fully justified analysis of each of the competencies listed in the job opening, which must be evaluated during the competency-based interview and/or other assessment methodologies for all short-listed candidates.

29. The Hiring Manager's Manual states (emphasis in original):

**Chapter 9: Conducting Assessments**

...

**9.2 Composition of Assessment Panel**

...

3. In identifying and assigning the panel of assessors, by nomination, the *Hiring Manager* must ensure that the individuals selected fulfil the appropriate requirements as follows:

...

c. Freedom from outside pressure – There are no conflicts of interest situations, e.g. where the previous incumbent is due to retire, he/she may participate as a Panel Member. A previous incumbent who is leaving the position as a result of a selection for another position should not participate in panels for his/her succession.

30. The Secretary-General has a broad discretion with regard to determining the suitability of candidates *Abbassi* 2011-UNAT-110. Nevertheless, the Secretary-General's discretion is not unfettered and the Tribunal may review whether a selection process was carried out in a proper manner and whether the selection decision was tainted by undue considerations or was manifestly unreasonable (see *Rolland* 2011-UNAT-122; *Charles* 2012-UNAT-242).

*Composition of the interview panel*

31. The Applicant contends that Mr. Trepelkov, who previously held one of the posts for which the selection process was being conducted, should not have been a member of the interview panel. In support of his submission, the Applicant refers to sec. 9.2, para. 3(c), of the Hiring Manager's Manual, which states that "[a] previous incumbent who is leaving the position as a result of a selection for another position should not participate in panels for his/her succession" and that the purpose of this rule "is to prevent a former incumbent of a position from playing an undue role in determining his or her successor, or the creation of 'dynasties'".

32. Section 9.2 of the Hiring Manager's Manual states that a staff member "should not" participate in a panel for his or her succession when he or she is leaving that same position for a new post. However, sec. 9.2 does not limit an incumbent's involvement with regard to the selection of his or her successor for a post that has already been vacated, especially when, as agreed by the parties in their joint submission, Mr. Trepelkov vacated his post over a year prior to it being advertised and close to two-and-a-half years prior to the Applicant being considered by the interview panel on which he sat.

33. Mr. Trepelkov's involvement in the interview panel did not violate or contradict any of the provisions of the Hiring Manager's Manual or any properly promulgated administrative issuance, nor did it breach any of the Applicant's rights, because Mr. Trepelkov was not in the process of leaving the contested posts for another position.

*Notice of scheduling for the interview*

34. The Applicant submits that sec. 9.6 of the Hiring Manager's Manual provides that candidates should normally be informed of the scheduling of the interview for a JO at least five working days prior to the interview taking place but that in his case

he benefited from less than a day's notice to prepare for an interview which had been pending for over a year.

35. The Respondent submits that the Applicant has no basis for this contention as he had been contacted on 29 February 2012 for the purpose of confirming his interest in the position and that, ultimately, an interview date of 30 April 2012 was agreed upon, thereby providing the Applicant with nearly two-week notice.

36. The Tribunal notes that, as part of his submission, the Applicant stated that "ultimately the notice of interview was adequate". Nevertheless, the Applicant adds that the fact that the notice was ultimately adequate does not take away from the fact that a "reasonable inference ... can be drawn from these events ... that the interview process was not intended as a fact-finding exercise to identify the best candidate, but as meeting the formal requirement for the interviews". Such an inference is, in the view of the Tribunal, a step too far.

37. Taking into consideration the evidence produced during these proceedings, the Tribunal finds that the candidates, including the Applicant, were treated similarly with regard to the scheduling of their interviews. The Tribunal further notes that the interview panel accommodated the Applicant's request for an alternative interview date. The Tribunal finds that the Applicant in this respect was treated fairly. Furthermore, the Applicant has not provided the Tribunal with any evidence that would support his submission that an inference should be drawn from the scheduling of the interviews that are consistent with an ulterior motive to disadvantage him.

*Relying solely on the interview*

38. The Applicant contends that the interview panel erred in not taking into account his ePas reports as part of the evaluation of his candidature for either post.

39. Section 7.4 of ST/AI/2010/3 provides the Hiring Manager with the authority to further evaluate the list of applicants released to him by OHRM for the purpose of

preparing a short list of those who appear most qualified for the job opening based on a review of their documentation. While ST/AI/2010/3 does not specify the type of documentation that may be used, it is noteworthy that this documentation is only to serve the purpose of preparing a short list of those candidates who appear the most qualified for the job opening.

40. Section 7.5 of ST/AI/2010/3 provides that candidates shall be assessed to determine whether they meet the requirements for the job opening; it further provides that the assessment may include a competency-based interview and other appropriate evaluation mechanisms, such as written tests.

41. The Hiring Manager's Manual indicates that the Hiring Manager "may conduct his/her preliminary evaluation of the applicants' education, work experience ... immediately when an application is released to him/her". It is therefore at this preliminary stage that the information contained in a candidate's performance appraisal may be taken account. However, the Hiring Manager Manual states that the "most promising candidates ... must be short-listed to undergo at least a competency-based interview and/or an assessment exercise".

42. A review of JO 17202 and 17203 indicates that the vacancy announcements specifically identify the method by which each candidate was to be evaluated for the job openings: "Qualified candidates may be given a written assessment. Successful candidates may be invited to a competency-based interview". There is no reference to the Applicant's argument that supporting documentation of any kind could, should or was going to be used as part of the assessment method of the qualified candidates under consideration.

43. While it may be helpful for an interview panel to take a staff member's performance appraisal into consideration when conducting its assessment of a candidate, the panel's decision in this case not to do so did not constitute a breach of any procedural requirement nor does it support any inference or conclusion that failure to do so constituted a material irregularity or was unfair to the Applicant.

44. The detailed record of the assessment of each candidate that was produced to the Tribunal in support of the Respondent's reply indicates that each candidate was assessed by the interview panel using the same methodology and a competency-based interview with no extraneous documentation being taken into consideration.

45. Consequently, none of the Applicant's rights were violated by the fact that his prior performance appraisals were not taken into account by the interview panel when assessing his candidature.

*Interview questions*

46. The Applicant submits that the interview panel's specific intervention with regard to certain competency questions resulted in the conduct of his interview not being conducted fairly and equally. More specifically, the Applicant stated that upon addressing the competency "Judgment/Decision-making" the "the Hiring Manager appended a request to address a particular issue of his own choosing" prior to him being able to respond to the question for that competency which resulted in the panel "effectively attempting to choose an example for the Applicant in relation to staff purportedly coming in late to work".

47. As part of his reply, the Respondent clarifies that "the Applicant was given an opportunity to answer the question put to all the other candidates, albeit, he was also given an opportunity to address a specific example provided to him by the Hiring Manager".

48. A review of the evidence shows that the Applicant was asked the same questions as the other candidates and that the panel noted the example he provided in response to the contested question resulting in him being considered as meeting the required competency. More importantly, the record of the interview does not contain any negative comment with regard to the fact that the Applicant chose to address the question using an example of his own choosing, as suggested by the original question. The Tribunal finds that no negative inferences were drawn

from his response, rather he was found to meet the competency for which the question was being posed.

49. Accordingly there is no evidence that the Hiring Manager's inquiry had any impact on the course of the Applicant's interview or his ultimate consideration for either JO.

*Appointment of a candidate other than the Applicant*

50. The Applicant submits that following the decision of the external candidate not to accept the appointment to the post advertised under JO 17203, the Hiring Manager erred in selecting a candidate other than the Applicant as that candidate did not meet the experience requirements for this job opening.

51. There is nothing before the Tribunal that would indicate that the selection process, which was later affirmed by the CRB, and which resulted in the Applicant and five other recommended candidates being added to the roster of candidates pre-approved for similar positions, was tainted by any irregularities. The Applicant's submission that the candidate selected for JO 17203 did not meet the requirement of 15 years of "work experience" is unsupported by evidence. On the contrary, there is nothing to cast doubt on the Respondent's submission that the selected candidate actually exceeded the experience requirement for JO 17203 by possessing "around 25 years post advanced degree experience".

52. With regard to the actual selection of a candidate from the roster, sec. 10.4 of ST/AI/2010/3 states that if "the selected candidate fails to take up the functions within the specified time frames ... the head of department/office may select another candidate from the list endorsed by the central review body with respect to the particular job opening".



53. Both the initial candidate and the candidate that, following the withdrawal of the former, was ultimately appointed for JO 17203 were endorsed by the CRB with respect to that particular job opening and were graded above the Applicant for JO 17203. The Tribunal therefore finds that Mr. Trepelkov, the Hiring Manager, followed the policy under sec. 10.4 of ST/AI/2010/3 and there is no merit in the Applicant's claim of impropriety regarding the selection of a candidate other than himself for this post.

### **Conclusion**

54. The Tribunal finds that the selection process was lawful and that the selection of candidates other than the Applicant was not tainted by bias or other improper considerations.

55. The application is dismissed.

*(Signed)*

Judge Goolam Meeran

Dated this 21<sup>st</sup> day of April 2014

Entered in the Register on this 21<sup>st</sup> day of April 2014

*(Signed)*

Hafida Lahiouel, Registrar, New York