



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

PARUMS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Karen M. Farkas, UNHCR

Introduction

1. By application filed on 26 May 2014, the Applicant, a staff member at the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision not to select her for the position of Representative, Rabat, Morocco, P-5, Job opening No. 8709, position No. 10011277 (“the position”).

Facts

2. The Applicant joined UNHCR as an Associate Protection Officer (“JPO”) in Kigali, Rwanda, in June 1993. Since then, the Applicant worked in various duty stations and assignments with UNHCR. She was granted an indefinite appointment in January 2000, promoted to the P-4 level in April 2002 and to the P-5 level in January 2011. She is currently on paid leave of absence pending posting.

3. The position was advertised in the September 2013 compendium of vacant positions up to June 2014. Eighteen candidates, including the Applicant applied for the position. Out of those, seven—including the Applicant—were short-listed by the Department of Human Resources Management (“DHRM”).

4. The meeting of the Senior Appointments Committee (“SAC”), presided by the Deputy High Commissioner (“DHC”) took place on 25 and 26 November 2013. Thereafter, from 9 to 12 December 2013, the position was reviewed by the Joint Review Board (“JRB”), which endorsed the recommendation of the SAC without observations. The High Commissioner subsequently appointed the successful candidate to the position.

5. The nomination decision was published in the *Summary of Decisions of the High Commissioner on Assignments*, Ref. No. 12/2013, dated 23 December 2013.

6. The Applicant filed a request for management evaluation against said nomination decision on 29 January 2014.

7. On 30 April 2014, the Inspector General (“IG”), UNHCR, responded to the Applicant’s request for management evaluation, informing her that since the Deputy High Commissioner (“DHC”) had chaired the meeting in which the contested decision was taken, the High Commissioner had appointed him as an independent reviewer to conduct the management evaluation. He informed her that the decision was upheld, taking note that the successful candidate “has a stronger profile in the functional area of the position ... [as] highlighted in his factsheet” and that the SAC had concluded that he was more suitable for the post.

8. The present application was filed on 26 May 2014 and the Respondent filed his reply on 7 July 2014, with some documents filed *ex parte* (annexes 3 and 5).

9. By Order No. 185 (GVA/2014) of 27 November 2014, the Tribunal ordered that the Applicant be granted access to the *ex parte* documents, as redacted by the Tribunal, and be given an opportunity to provide comments thereon. The Applicant filed comments on 12 December 2014.

10. By Order No. 26 (GVA/2015) of 4 February 2015, the Tribunal ordered the parties to attend a hearing, which took place in the presence of both parties on 19 February 2015. During the hearing, the Tribunal asked the Applicant whether she might consider withdrawing her application should she be successful in a current ongoing selection exercise. The Applicant informed the Tribunal on 25 February 2015 that she wished to maintain her application.

Parties’ submissions

11. The Applicant’s principal contentions are:

- a. The procedure was neither fair, nor transparent; her manager’s comments with respect to her nationality (Ivory Coast) as constituting an obstacle to her nomination as a Representative in Morocco—with a million asylum seekers from Ivory Coast—were contrary to the ethical values of the Organization and discriminatory; the Vacancy announcement did not contain any conditions that would exclude nationals from Ivory Coast from applying for the post;

b. In the response to her request for management evaluation, the IG accepted that the comments of her manager with respect to the Applicant were inappropriate; hence, implicitly recognizing that the posting procedure was neither fair, nor in accordance with the ethical standards of the Organization;

c. Similar comments had already been made by another manager in an earlier selection procedure, in which, although the JRB had recommended her, the HC selected another person, who—unlike the Applicant— was not at the level of the post;

d. Contrary to the Policy and Procedures on Assignments and Promotions (“PPAP”), she was not provided with the relevant minutes and other information, and she did not get the required assistance by the Division of Human Resources; neither the suitability assessment nor the comparative analysis by the SAC were done properly; the JRB did not properly fulfil its mandate under art. 117 of the PPAP, but was reduced to endorsing a recommendation of one candidate by the SAC; the transmission of only one name to the JRB by the SAC was contrary to para. 137 of the PPAP;

e. The SAC failed to fairly and comprehensively analyse her managerial and functional competencies, as well as her overall suitability for the post and the JRB did not have the opportunity to conduct a comparative review as stipulated in the PPAP;

f. Some criteria were not taken into consideration during the different stages of the process, namely her being a strong female candidate and on SIBA status since three years, the principle of rotation and the principle of geographical diversity;

g. As a consequence of the injustices she suffered, she had to go on certified sick leave for one month;

h. As remedies, the Applicant requests declaring the appointment decision of the successful candidate null and void, and recognizing that was subjected to humiliation, injustice and abuse of authority in the course of several consecutive nomination proceedings; she further requests financial and administrative compensation for the moral damage she suffered, and relocation to Rabat or another family duty station; finally, she requests enforcement of accountability of the managers who used their power to place their candidates instead of applying a transparent procedure.

12. The Respondent's principal contentions are:

a. The SAC, in accordance with its mandate under the PPAP, received a shortlist of seven candidates, including the Applicant and proceeded with a review of candidates at the level of the post (P-5), which were three in total, including the Applicant; it rated their respective experience and background; in its assessment, the SAC found that in view of his particular strengths, the selected candidate was the most suitable one for the position; it noted that he was preferred "as having the necessary combination of field, protection and managerial profile to confidently be able to discharge the duties and responsibilities of this delicate position";

b. The Appeals Tribunal confirmed that the Administration disposes of a broad discretion in the selection of staff and that it is not the role of the Tribunal to substitute its assessment to that of the Secretary-General;

c. The record shows that the Applicant was duly considered by the SAC, which found, however, that the successful candidate was more suitable; its recommendation was submitted to the JRB, in accordance with applicable procedures under the PPAP; the argument that the transmission of one single recommendation to the JRB was procedurally flawed is without merit;

d. The JRB is UNHCR central review body for selection decisions of international professional staff up to the D-1 level; its mandate is not to conduct a new comparative analysis of the various candidates; the JRB was

provided with a full set of documentation, including the DHRM shortlisting matrix and the minutes of the SAC, and duly fulfilled its mandate to review that the process was done in compliance with the prescribed policies;

e. The Applicant failed to prove that the decision was based on improper motives; the minutes of the SAC demonstrate that the Applicant's nationality was not taken into account when the SAC decided not to recommend her for the post; in fact, the nationality of a Representative can, in certain circumstances, be taken into account in the selection process; therefore, "depending on the political sensitivities on the ground", the manager's reference to the Applicant's nationality was not improper; it did, however, not have an impact on the SAC recommendation;

f. The Applicant's claim that she was not provided with the relevant documentation is without merit; she was provided with the minutes of the SAC, the JRB and the DHRM shortlist matrix, including the views of the manager, duly redacted with respect to other candidates, in accordance with para. 139 of the PPAP;

g. The PPAP does not provide prioritizing staff on SIBA status; gender and geographical representation may be given consideration only when there are substantially equal meritorious candidates; in the case at hand there was a more meritorious candidate.

Consideration

Scope of judicial control in appointment and promotion matters

13. With respect to appointment and promotion decisions, the Appeals Tribunal has constantly held that:

Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory

manner. The Tribunals' role is not to substitute their decision for that of the Administration. (see *Ljungdell* 2012-UNAT-265)

14. It further held that a selection decision should be upheld when a candidate has received full and fair consideration, when discrimination and bias are absent, when proper procedures have been followed and when all relevant material has been taken into account (*Rolland* 2011-UNAT-122; *Charles* 2013-UNAT-286).

15. The Tribunal has to examine the contested decision against these criteria which it will address in turn.

Mandate of SAC and Career Management Support Section ("CMSS")/DHRM

16. Regarding the proper application of legal provisions, the Tribunal takes note that, pursuant to the PPAP, the SAC has the mandate to recommend the assignment of positions of Representatives, including the matching exercise, while CMSS/DHRM mandate is limited to establish the initial short-list of suitable candidates.

17. Indeed, pursuant to the PPAP, the SAC mandate covers the following:

95. The SAC will recommend the assignment of Representatives ... on the basis of PPAP.

96. In exercising its mandate, the SAC:

a. Will consider the list of suitable applicants for a given position compiled by RPS and CMSS subsequent to a matching exercise applying the established criteria above;

b. In the course of consideration of the list of suitable applicants for a given position, shall seek the views of relevant managers and may consult with staff members; and

c. Will select the most suitable applicant for a given position and make a recommendation to the JRB which, following its review, shall transmit its recommendation to the High Commissioner.

CMSS/DHRM role in the selection exercise

18. In the present case, CMSS/DHRM found suitable both the Applicant and the successful candidate; hence, it put them on the short-list for review by the SAC. With respect to the Applicant, CMSS/DHRM noted that “[s]he has a strong protection background and experience as Representative and Head of Sub-Office”, while it noted the following with respect to the selected candidate: “[c]urrently UNHCR Deputy Representative in Beirut. Legal background but has also been on programme posts. Very good performer with varied experience. Praised for his managerial, diplomatic and communication skills. Speaks fluently French.”

19. The Tribunal notes that while CMSS comments were more elaborate with respect to the successful candidate than with respect to the Applicant, both of them were duly considered and short-listed. Therefore, since the actual mandate of CMSS/DHRM was limited to establish the short-list of suitable candidates—on which it included the Applicant—while the actual matching exercise fell under the mandate of the SAC, the Tribunal is satisfied that CMSS exercised its mandate in accordance with the PPAP.

Matching exercise by the SAC

20. With respect to the matching criteria to be applied by the SAC, the above-referenced sec. 96 a. of the PPAP, refers to those established on a list under the previous chapter (“Criteria for matching and selection”) of the PPAP, namely: grade of applicant, competencies, performance, languages, educational background, internal or external training, rotation history, operational context, diversity, special medical constraints, special consideration. On said list, the PPAP specifies in the annotations to the criterion of “grade of applicant” that “preference will be given to staff members at the grade of the position”.

21. With respect to the weight to be given to the above criteria, sec. 87 of the PPAP further provides in its relevant part that:

The criteria and annotations will not be applied in any order of priority, with the exception of grade of applicant, competencies

and performance which will be given more weight. All criteria need to be applied with due regard to the job description and operational specifications relevant to the position.

22. As such, in conducting the matching exercise in the present case, the SAC had to give priority to candidates at the level of the post, who had to be considered first. The personal grade of both the Applicant and of the successful candidate was at the level of the post (P-5); hence, the decision by the SAC to consider the successful candidate together with the Applicant was correct.

23. Moreover, with respect to the “Operational context”, the PPAP provides that:

The operational context related to the particular position should be taken into account. The managers’ specific position profile requirements shall be given due consideration. Security and political imperatives will be taken into consideration.

24. While the job description used for the selection exercise was generic, DHRM Shortlisting Matrix indicated *inter alia* under “Operational Context” for the position that:

[The Representative] should have a solid protection background (RSD, RST, mixed migration, development of national legislation and capacity building of government), excellent managerial and communication skills. The incumbent is expected to have sound negotiation skills and the ability to work collaboratively with difficult authorities in an extremely sensitive operational environment.

25. The Tribunal also took note of the manager’s views—as contained on the submission from CMSS/DHRM to the SAC—that the Applicant had less experience at the senior managerial level than the “first choice candidate”, and that she was “from Ivory Coast where most of refugees in Morocco are coming from”. The Tribunal further noted that in exercising its mandate and considering the list of suitable candidates, the SAC “may” consult with staff members and “shall seek the views of relevant managers”. The Tribunal also stresses that the managers’ comments have to be read in light of the operational context as

mentioned above and their actual impact, if any, on the SAC deliberations has to be taken into account when examining the SAC minutes (cf. para. 35 below).

SAC minutes

26. The minutes of the SAC, reflecting its exercise of its mandate to match candidates against the relevant criteria, equally have to be read in light of the job description and the operational context as partially quoted above.

27. The Tribunal notes that with respect to the minutes of the SAC, the PPAP provides under para. 104 that:

Minutes, which will include the record of the matching session and list of suitable applicants for a given position made by DHRM, shall record the process and reasons for which eligible applicants are determined suitable for a particular position and the selected candidate. The minutes shall contain any and all information on a staff member provided during the process. The minutes, signed by the Chairperson, shall be submitted to the JRB together with other documentation as specified in paragraph 124 in support of the recommendations.

28. The Tribunal notes that in its minutes, the SAC, with respect to the Applicant, stated:

[She] has a background in protection. She has served in a number of duty stations in Africa, as well as Senior Protection Officer in Azerbaijan. At the P4 level, she has performed the functions of Representative in Gabon, Senior Advisor and Senior Communications Officer at headquarters. Although performing as Head of Sub-Office in the DRC at P5 level since January 2010, she was promoted to P5 in 2011. She has passed the UNLPE in French and English.

29. With respect to the successful candidate, the SAC minutes emphasised:

[Mr. C.] comes with a varied profile combining general protection and programme. He has served in Protection related positions in Serbia and the Russian Federation, as well as in Programme related positions in Albania and Bosnia-Herzegovina. He was promoted to the P5 level in 2008, and he has performed at this level as Head of Unit, in DIP, and as Deputy Representative in Lebanon. He is known for his good managerial skills, dynamism and sound knowledge of the broad organizational requirements. He is also

considered a good negotiator and communicator, diplomatic and tactful in his approach to difficult situations. He is a native French speaker and has passed the UNLPE in Russian.

30. In its conclusions, the SAC found that “Mr. [C.] [had] the necessary combination of field, protection and managerial profile to confidently be able to discharge the duties and responsibilities of this delicate position. Therefore, the SAC recommends Mr. [C.] for this position”.

31. In light of para. 104 of the PPAP and the minutes as quoted above, the Tribunal has to consider whether the SAC minutes—as they were drafted in the present selection exercise—fulfil their purpose, and whether the record sufficiently reflects the reasons on the basis of which the SAC recommended Mr. C. as the most suitable candidate.

32. The Tribunal is mindful of the Applicant’s concern that the short narratives of the SAC hardly allow to conclude whether the SAC found that she did in fact qualify for the post, or not. It has to be noted, however, that the minutes must be examined in their totality. In reading the evaluation by the SAC of both the Applicant and Mr. C. together, the minutes become meaningful and leave no doubt that the SAC considered that Mr. C. was the most suitable applicant for the position, as compared to the other candidates at the level of the post, including the Applicant.

33. The Tribunal took also into account that the minutes of any meeting necessarily reduce the recording of oral discussion to a summary of the most important aspects deliberated. While the facts recorded in writing in the minutes of the SAC are limited, this does not imply that the SAC did not deliberate orally, in much more detail, the facts as they are contained in the candidates’ respective fact sheets, and how they relate to the job description and the operational context. For the minutes to “contain any and all information on a staff member provided during the process”, as requested by the PPAP (see para. 27 above), they must reflect the assessment of each candidate in a comprehensive way. To request less, would make it impossible for the Tribunal to review the process and to determine whether the SAC has fulfilled its legal obligation. In the case at hand, the above

requirements have only been met to the absolute minimal extent. From other cases, the Tribunal is aware of more comprehensive and informative minutes of similar bodies. The Respondent is invited to reconsider his practice of minute taking in order to avoid future problems.

34. Also, recalling the limited scope of its judicial control, which does not allow the Tribunal to substitute its assessment of the respective merits of candidates to that of the Secretary-General, the Tribunal is satisfied that the narratives as contained in the minutes with respect to both the Applicant and the successful candidate are supported by the record—particularly their respective fact sheets—and that the assessment of the successful candidate by the SAC was not based on wrong assumptions or errors. The Tribunal is further satisfied that the evaluation of both the Applicant and the successful candidate, as reflected in the minutes, were made against the criteria in the job description, duly taking into account the operational context, and that no irrelevant consideration was taken into account.

Extraneous considerations

35. In this respect, and more specifically with respect to the Applicant's argument that the decision was discriminatory in view of a manager's comments on her nationality, the Tribunal notes that the SAC minutes do not at all refer to the Applicant's nationality; hence, any mention thereof by the manager appear to not have been taken into account in the final decision making process. Therefore, the Tribunal considers that it does not need to assess whether the Applicant's nationality might have been a legitimate consideration in assessing her suitability for the position in view of the political implications relating to UNHCR mandate. In view of the foregoing, the Applicant's argument that the selection decision was based on extraneous considerations, namely discriminatory since influenced by her nationality, must fail.

Recommendation of only one candidate to the JRB

36. The Tribunal also noted that in recommending only one candidate to the JRB, the SAC correctly exercised its mandate pursuant to para. 96 c. of the PPAP. In this respect, it finds the Applicant's argument that the transmittal of only one

candidate to the JRB constitutes a violation of para. 137 of the PPAP (which relates to “Undue influence” exercised on the JRB), without merit: the rules explicitly provide for the SAC to only recommend one candidate, namely the most suitable one.

JRB exercise of its mandate

37. With respect to the JRB endorsement of the SAC recommendation, the Tribunal recalls that in the introduction of the PPAP, it is clarified that:

The [JRB] will function ... as a review body, ensuring that DHRM has complied with the prescribed policies and procedures. It is not the function of the JRB to make a *de novo* determination of matching decisions or to substitute its judgement for that of DHRM or the SAC in particular cases, unless the JRB is of the opinion that the procedures and policy were not followed.

38. In light of this, the Tribunal finds that the fact that the JRB minutes do not contain any narratives, and simply confirm that the SAC recommendation was “endorsed”, is not questionable but in line with the role of the JRB as defined by the PPAP.

Further considerations

39. In view of the above, any further considerations raised by the Applicant, namely her status as a SIBA, her being a female candidate, her rotation history and geographical distribution, are not relevant. Neither the PPAP, nor the Policy on SIBA provide for a priority consideration of applicants in between assignments. Also, any considerations with respect to gender and geographical distribution are factors that are only taken into account where candidates are equally meritorious. As reflected above, the Tribunal found that the SAC recommendation, as endorsed by the JRB, and by the High Commissioner when he selected Mr. C., that the latter was the most suitable and that the Applicant was not equally meritorious, was not based on erroneous facts or assumptions, or otherwise flawed. In view of the foregoing, considerations with respect to the Applicant’s gender and nationality (geographical distribution) were not relevant in the present selection exercise.

40. The Tribunal therefore concludes that the selection procedure was correctly followed, that the candidature of the Applicant was given full and fair consideration, and that there was no bias or procedural flaw.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 1st day of April 2015

Entered in the Register on this 1st day of April 2015

(Signed)

René M. Vargas M., Registrar, Geneva