



Before: Judge Goolam Meeran

Registry: Geneva

Registrar: René M. Vargas M.

KRIOUTCHKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a Russian Translator (P-3) at the Economic and Social Commission for Asia and the Pacific. He contests the decision not to select him for the post of Russian Reviser (P-4), Russian Translation Service, with the Department of General Assembly and Conference Management, at the United Nations Headquarters, advertised under Job Opening (“JO”) 13-LAN-DGACM-31928-R-NEW YORK (L).

Facts

2. The JO was advertised in Inspira from 17 December 2013 to 15 February 2014. The Applicant applied, was shortlisted, and invited to take a written test.

3. Between 5 and 22 April 2014, the Applicant and the JO Hiring Manager exchanged numerous emails on the logistics of the written test. These emails show that the test was rescheduled to accommodate the Applicant’s conflicting commitments, and also that, to the Applicant’s query on whether any special equipment and/or skills were required, the Hiring Manager replied that no specific equipment was required “but naturally [he needed] a computer with internet connection, a web browser and [his] favourite text editor”.

4. On 30 April 2014, the Applicant opened the on-line link to the two-question written test. On the same day, he wrote to the Hiring Manager stating that the test required special equipment, such as a Russian keyboard and a printer, and special skills, i.e., typing, and added that the Hiring Manager’s “misleading statements prevented [him] from taking the test”. The Applicant did not answer either of the two questions.

5. The Applicant was notified of his non-selection for the post by an automated email of 27 August 2014.

6. This application was filed on 20 February 2015. The Respondent replied on 30 March 2015. The receivability of the claim is not in issue.

7. By Order No. 122 (GVA/2015) of 18 June 2015, the proceedings were suspended to allow mediation efforts to proceed. These efforts were unsuccessful, and the proceedings resumed on 2 November 2015.

8. By Order No. 54 (GVA/2016) of 17 March 2016, the parties were informed that the case had been assigned to Judge Meeran, and they were invited to comment on the proposal that the case be determined on the basis of the documents.

9. On 22 March 2016, the Applicant filed a motion to retain the Judge to whom this case was previously assigned and to hold an oral hearing, calling the Hiring Manager as a witness.

10. On 29 March 2016, the Applicant moved for leave to file comments on the Respondent's reply. On 13 April 2016, he filed comments without having received leave.

11. The Respondent made no comments.

Parties' submissions

12. The Applicant's principal contentions are:

a. He was not fully and fairly considered, as the written test was based on a skill not required in the JO or the relevant Generic Job Profile, i.e., typing, particularly in Russian. The imposition of this requirement prevented him from taking the test;

b. The Manual on Translation and Revision of UN documents, the main reference document for translators and revisers, provides for translations to be dictated or handwritten, and do not involve typing, keyboarding and/or text processing. Such functions are carried out by trained typists; and

c. He has been subjected to what he described as "[d]uty station based long-time discrimination". Furthermore, the Administration's practices are inconsistent with its mobility policy and the intent of the roster facility.

13. The Respondent's principal contentions are:

- a. The decision to conduct a written test fell within the discretion of the Hiring Manager, and was in conformity with Administrative Instruction ST/AI/2010/3 (Staff Selection System). It was reasonable to expect the Applicant to be able to type his answers, all the more since he was given 12 hours to complete the test, which was sufficient time to enable any candidate to do so, regardless of his/her typing proficiency;
- b. The Applicant was given information about the equipment and material required to take the test two weeks in advance, providing him with sufficient time to make any necessary arrangements;
- c. As the Applicant chose not to submit his answers to the written test, he was deemed to have failed the technical assessment and was, accordingly, removed from the competitive selection process; and
- d. The claims of improper motives have no merit. The Applicant has no automatic right to selection as a result of being included in the roster.

Consideration

Preliminary matters

14. Before addressing the merits of the case, the Tribunal will rule on a number of motions submitted by the Applicant.

15. The Applicant requests that this case should remain with the Judge to whom it had been initially assigned, and who has conducted a number of other applications he has filed. The Tribunal rejects this motion, stressing that the assignment of cases to judges is an internal organizational matter, and the parties have no entitlement to appear before a particular judge. Moreover, the fact that different judges may review various applications lodged by the same applicant does not affect the Tribunal's ability to consider, in each case, all the factual and legal issues that might be relevant to a determination of the issues in that particular case.

16. The motions that a hearing be held with a particular witness to be called and for leave to file additional written comments are rejected. The unsolicited filing of 13 April 2016 will not be taken into consideration. The Tribunal is of the view that, given the issues at stake and the evidence on file, neither the testimony of the proposed witness, nor an oral hearing or a new round of written submissions are likely to assist it in a just disposal of the case.

Merits of the application

17. The Applicant identified the contested decision as his non-selection for the post at issue. Accordingly, the Tribunal will deal with the primary claim regarding non-selection. However, in challenging the decision, the Applicant has expended considerable effort in criticising the manner in which the written test was administered. Since this particular criticism stems from a deeply held belief of the Applicant and is repeated in other cases before the Tribunal, it will be dealt with in the interest of reaching finality in disposing of this particular bone of contention. However, and insofar as he might be deemed to be including a challenge to the intermediary or preparatory requirement that the written test answers be typed, the application would not be receivable in any event (see *Ishak* 2011-UNAT-152), in accordance with art. 2.1(a) of the Tribunal's Statute and the related jurisprudence on what constitutes an appealable administrative decision (*Tabari* 2010-UNAT-030, *Schook* 2010-UNAT-013, *Al-Surkhi et al.* 2013-UNAT-304, endorsing the definition adopted in the former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003)), that an appealable administrative decision is

[a] unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order.

18. All shortlisted candidates were requested to take a written test that involved typing the answers to two questions designed to assess skills in Russian translation and revision. The Applicant did not submit his answers because he considered that the Administration was not entitled to impose on him a requirement to type in Russian. In the circumstances, the Applicant could not

progress to the next step in the selection process and, consequently, he was not selected.

19. The administration of a written test is a lawful and a common means of assessing the technical skills of candidates in a selection process. It is consistent with sec. 7.5 of ST/AI/2010/3, which explicitly mentions written tests as an example of an acceptable assessment method. Given that this requirement was imposed on all shortlisted candidates, the core issue arising from the manner in which the applicant argues his case is whether it was lawful to require the Applicant to type in Russian as part of the competitive selection exercise.

20. The Applicant strongly argues that the normal working procedure for translations within the Organization is to dictate, or else handwrite, the translated texts, and not to type them. However, even if that were the case, he has not referred to any rule prescribing that the methodology used for a written test must necessarily replicate the internal workflows.

21. The Tribunal has ruled previously that candidates in a selection process must comply with the instructions given for a written test, and take personal responsibility for making the necessary arrangements to meet the requirements for such compliance. Failure to do so may properly lead to their exclusion from the recruitment process (*Charles* UNDT/2013/030). The only applicable requirement is that the methodology of the tests be fair and reasonable, and not designed deliberately to confer an advantage on a preferred candidate or, alternatively, to disadvantage a particular candidate, who may then challenge the decision by filing a claim alleging that there has been a material irregularity in the selection process. Applying that principle to this case, the Tribunal finds that the Administration's decision requiring relatively senior specialists in the Russian language to be able to type in Russian is within the discretion allowed to the Administration and, absent irrationality or perversity, it is not for the Tribunal to interfere.

22. In addition, the Applicant had a proper chance to object in advance of the test. Indeed, while it was not expressly stated, it was apparent from his correspondence with the Hiring Manager that he was expected to type his

answers—particularly from the email mentioning that he would need a “text editor”. Instead of raising his concerns, he chose not to submit his answers.

23. In these circumstances, the decision to exclude the Applicant from further consideration, which resulted in his non-selection for the post, was not in violation of the Applicant’s right to be fully and fairly considered for the post in question.

24. By not completing the written test the Applicant effectively deprived himself of the opportunity of further participation in the selection exercise. He has no grounds to challenge the decision that he be not selected for the post in this case. Accordingly, it is not necessary to examine his allegations of discrimination.

Conclusion

25. It is the Judgment of the Tribunal that there is no merit in the contentions advanced by the Applicant.

26. The application fails and is rejected.

(Signed)

Judge Goolam Meeran

Dated this 26th day of April 2016

Entered in the Register on this 26th day of April 2016

(Signed)

René M. Vargas M., Registrar, Geneva