



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/036

Judgment No.: UNDT/2020/120

Date: 15 July 2020

Original: English

**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

XING

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Elizabeth Gall, ALD/OHR, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. The Applicant, a staff member of the United Nations Security Council Counter Terrorism Committee Executive Directorate, challenges the decision not to select her for a position of Political Affairs Officer at the P-3 level (“the post”) in the Asia and the Pacific Division of the Department of Political and Peacebuilding Affairs and Department of Peace Operations (“APD/DPPA-DPO”). In response, the Respondent submits that the application is without merit.

2. For the reasons stated below, the Tribunal is satisfied that the Applicant was afforded full and fair consideration and rejects the application.

## **Facts**

3. The post was advertised from 11 February to 28 March 2019 on Inspira (the online jobsite for the United Nations Secretariat). At that time, the Applicant was on temporary assignment as Political Affairs Officer at the P-3 level in the section where the post was advertised.

4. The Applicant applied for the post through Inspira on 14 February 2019.

5. On 25 February 2019, the Director, APD/DPPA-DPO, who was the Hiring Manager, informed the Applicant in person that she had not been selected for the post because she had not applied for the post. After the Applicant stated that she had indeed applied for the position, she met with the Hiring Manager, to express her concerns that she had not been fairly considered for the post.

6. The recruitment process was put on hold following the concerns raised by the Applicant. On 26 February 2019, the Applicant’s job application, along with other applications that had been marked as “screen” in Inspira and not released, was manually released to the Hiring Manager.

7. The Hiring Manager reviewed the additional applications received from roster candidates, including the Applicant's application. By memorandum dated 4 March 2019, the Hiring Manager submitted a comparative analysis of the four most suitable candidates to the Head of Department. The Applicant was among them. On 12 March 2019, the Hiring Manager informed the Applicant in person that she had not been selected for the post.

## **Consideration**

### *Legal framework*

8. The Secretary-General has broad discretion in the selection and appointment of staff (see *Abbassi* 2011-UNAT-110; *Frohler* 2011-UNAT-141; *Charles* 2013-UNAT-286; art. 101.1 of the Charter of the United Nations and staff regulations 1.2(c) and 4.1).

9. In matters of staff selection, it is the role of the Dispute Tribunal to review the challenged selection process to determine whether the applicable regulations and rules have been applied and whether a candidate has received full and fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration (see for instance, *Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540; *Verma* 2018-UNAT-829; *Kinyanjui* 2019-UNAT-932). The Tribunal's role is not to substitute its decision for that of the Administration.

10. The official acts of the Respondent enjoy a presumption of regularity (*Rolland* 2011-UNAT-122). If the management is able to even minimally show that an applicant's candidature was given a full and fair consideration, then the presumption of law stands satisfied (*Finniss* UNDT/2012/200 (affirmed by 2014-UNAT-397)).

11. To rebut this minimal showing, the applicant “must [then] show through clear and convincing evidence that [s/he] was denied a fair chance of promotion” in order to win the case (*Lemonnier* 2017-UNAT-762).

12. Even if the Tribunal finds that the procedure was not properly followed, such irregularity will only result in the rescission of a non-selection decision if the candidate would have had a significant chance of selection (see, for instance, *Vangelova* 2011-UNAT-172; *Bofill* 2011-UNAT-174; *Ross* 2019-UNAT-926).

*Was the Applicant fully and fairly considered?*

13. In her application, the Applicant states that “The grounds for contesting the administrative decision is prohibition of discrimination and abuse of authority as contained in ST/SGB/2008/5 [(Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)] [...]”. The Applicant argues that she was discriminated in her application because her name was excluded by Inspira as the external candidate encumbering the temporary post and her candidacy was not released to the Hiring Manager.

14. In her additional submission filed on 27 June 2019, the Applicant requests the Tribunal to order the disclosure of additional documents to allow her to compare how the application package of the selected candidate and its processing during the selection process compared to her own.

15. In the submission filed by the Applicant at the Tribunal’s direction on 5 July 2020, the Applicant requested additional documentation from the Respondent pertaining to the fact that her candidature for the post was initially screened out. In essence, she distrusts the explanation provided by the Respondent and suggests that the Administration attempted to exclude her from the recruitment process. She further states that in application of the gender parity policy ST/AI/1999/9 (Special Measures for the Achievement of Gender Equality), her being the only qualified female candidate

for the job, she should have been selected over the other three shortlisted candidates, who were all male.

16. In his reply, the Respondent explains that after the Administration realized that the Applicant's candidature for the post had erroneously been withheld in Inspira, the recruitment process was put on hold to allow the Hiring Manager to review the job applications from the rostered candidates that had been screened out in error, including the Applicant's application. Having proceeded to the review of these additional applications, on 4 March 2019, the Hiring Manager provided the Head of Department with a comparative analysis of the four most suited roster candidates, including the Applicant.

17. On 12 March 2019, the Director, APD/DPPA-DPO informed the Applicant in person that her candidacy was not successful.

18. The Tribunal reviewed the evidence provided by the Respondent concerning the recruitment process and finds that it supports the Respondent's explanation of the events.

19. The email communications from the Executive Office from February to May 2019 show that after it was verified that the applications of several roster candidates were screened out in error, they were released to the Hiring Manager for his review. The Tribunal is satisfied that in this case, the Administration acknowledged its error and took immediate steps to correct it. Moreover, the documentation shows that the Applicant's was not the only application that had been screened out in error, therefore, the Applicant has shown no grounds to substantiate her claim that she was discriminated against or that her application was tampered with.

20. In light of this evidence, the Tribunal finds the Applicant's claims of ulterior motive and her requests for additional disclosure unsubstantiated.

21. The evidence further shows that having reviewed all the released roster candidatures, the Hiring Manager conducted a comparative review of the four roster candidates meeting all the requirements for the post, including the Applicant. In his 4 March 2019 memorandum to the Head of Department, the Hiring Manager summarized the qualifications and competencies of the four shortlisted candidates and recommended the selection of another candidate. The recommendation was confirmed by the Head of Department.

22. To his memorandum, the Hiring Manager further appended an organigram of DPPA in New York showing the gender of the staff members incumbering all the posts in APD/DPPA-DPO in New York. The Tribunal notes that prior to the completion of the selection exercise under review, APD/DPPA-DPO in New York counted six male staff members, ten females and two positions were vacant. All three P-3 level posts were encumbered by female staff members. In his memorandum, the Hiring Manager notes that with the selection of the recommended candidate, a male, APD/DPPA-DPO in New York would still maintain its gender balance at the P-3 level.

23. The Tribunal notes that the preferential consideration of female candidates only applies when women are under-represented according to sec. 3(c) of the memorandum from the Secretary-General of 11 February 2019 on the implementation of ST/AI/1999/9 (Special measures for the achievement of gender equality). The evidence shows, however, that women are not under-represented in APD/DPPA-DPO in New York in New York. Therefore, the Applicant was not entitled to preferential consideration due to her gender.

24. Having reviewed the evidence, the Tribunal is satisfied that the Administration has shown that the applicable procedure was followed and that, after the initial erroneous screening out of the Applicant's candidature was corrected, she was afforded full and fair consideration.

25. The Applicant has not shown that she was discriminated against or that any other undue motive tainted the selection process.

**Conclusion**

26. In light of the above, the application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 15<sup>th</sup> day of July 2020

Entered in the Register on this 15<sup>th</sup> day of July 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York