



Before: Teresa Bravo

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, AAS/ALD/OHRM, UN Secretariat

Introduction

1. The Applicant, a Russian translator in the Economic and Social Commission for Asia and the Pacific (“ESCAP”), contests the decision not to select him for a position of Russian translator, at the P-4 level, in the Division of Conference Management (“DCM”) in the United Nations Office in Vienna (“UNOV”) (“the post”).

Facts and Parties’ submissions

2. The Applicant applied for the post on 17 August 2017 and was invited to take part in an informal interview on 17 October 2017. On 17 January 2018, the Applicant was notified of his non-selection for the post.

3. The Applicant claims, in essence, that he was not given full and fair consideration, that the Administration committed several errors in the process (for instance, to hold an informal interview in Russian) and that the outcome of the selection process was pre-arranged to exclude all candidates from other duty stations.

4. The Respondent contends that the Applicant was fully and fairly considered for the post in accordance with ST/AI/2010/3 (Staff selection system), i.e., it was decided that the selection process would be done from the P-4 roster, a Panel of three senior language professionals was established to assess the candidates and the Hiring Manager decided to conduct an informal interview with all of the shortlisted rostered candidates, including the Applicant.

Consideration

5. The Appeals Tribunal has adopted the principle of regularity by which if the Respondent 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”. Thereafter, the applicant “must show through clear and convincing evidence that [s/he] was denied a fair chance of promotion” to rebut this presumption (*Lemonnier* 2017-UNAT-762, para. 32).

6. The complaints made by the Applicant concern the assertion that the informal interview took place in Russian, that he was not officially informed about the outcome of the selection process within the prescribed 14 days, that all the promotions for Russian translators continue to be done within the same unit and service and finally, that he has been subject of discrimination as he is serving in a regional commission which is not part of the Department for General Assembly and Conference Management (“DGACM”).

7. The Tribunal recalls that in the context of selection and recruitment exercises it has to assess: i) if the procedure followed the pre-established rules and regulations and ii) if the Applicant was given full and fair consideration.

8. Having reviewed the parties’ submissions and the documents on file, the Tribunal is persuaded by the Respondent’s clarifications and finds that the Applicant’s allegations are not supported by the evidence.

9. In fact, it results from the file that following the deadline for the submission of job applications, namely 21 September 2017, the Hiring Manager identified three pre-approved roster candidates among the job applicants.

10. According to section 9.4 of the staff selection system, a Hiring Manager may lawfully select from a pool of pre-screened candidates without further assessment or referral to a central review body.

11. However, in the case at hand, the Hiring Manager decided to establish a Panel of three senior language professionals to conduct informal interviews with the pre-selected candidates, including the Applicant, which took place between 16 and 17 October 2017.

12. There is no provision in the Staff Rules that prevents those interviews from being held in Russian.

13. The Applicant further argues that he did not receive a formal notice within the 14 days after the completion of the recruitment exercise. UNOV has admitted said delay. However, the Tribunal does not find that this delay may have caused any negative impact on the Applicant's employment rights.

14. The Applicant further contends that he was discriminated since he has been serving in a regional commission which is not part of the DGACM.

15. However, the Applicant has not provided any evidence of said discrimination. According to the evidence on record, the selected candidate appears to have been selected for her competencies and not her duty station or the origin of her service department.

16. Finally, the Applicant complains about the loss of concrete chances for career development, due to limited or no mobility within the UN translators' professional group, notwithstanding his long-lasting placement on a roster of eligible candidates and the obligation for the Administration (as per some General Assembly resolutions) to reward staff members' excellent performance.

17. The Tribunal finds, as in previous judgments, that these claims are not relevant for the adjudication of the present case, where the Applicant challenges, and is entitled only to challenge, a specific administrative decision (which in the case at hand was lawful) and not a general administrative practice as alleged. In any case, the facts recalled by the Applicant do not create any expectancy or entitlement to promotion.

18. In light of the entirety of the evidence and considering the parties' arguments, the Tribunal is satisfied that the Applicant's candidacy was given full and fair consideration. Moreover, the Tribunal does not find that the Applicant has proved by clear and convincing evidence any ulterior motive in his non-selection.

19. The Applicant's claims are therefore ill-founded.

Conclusion

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

The application is rejected.

(Signed)

Judge Teresa Bravo

Dated this 1st day of September 2020

Entered in the Register on this 1st day of September 2020

(Signed)

René M. Vargas M., Registrar, Geneva