



Before: Judge Joelle Adda

Registry: New York

Registrar: Morten Michelsen, Officer-in-Charge

RUNA A

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Dorota Banaszewska, OSLA

Counsel for Respondent:
Jenny Kim, AS/ALD/OHR, UN Secretariat

Introduction

1. On 11 January 2022, the Applicant, a Public Information Assistant at the General Service 6 level, with the United Nations Secretariat, filed an application contesting the decision to exclude her from the selection procedure for the recruitment of a Professional 2 level (“P-2”) Associate TV/Video Producer within the Department of Global Communications (“the Post”).
2. On 11 February 2022, the Respondent filed his reply contending that the contested decision is legal, reasonable, and procedurally fair.
3. For the reasons set out below, the application is rejected.

Background

4. The Applicant currently serves as a Public Information Assistant at the GS-6 level.
5. In 2018, the Applicant passed the 2017 Young Professionals Programme (“YPP”) exam, as a G to N candidate, and was subsequently rostered as a successful YPP candidate.
6. On 3 May 2021, the Organization offered the Applicant a YPP placement in the Economic Commission for Africa.
7. On 5 May 2021, the Applicant contacted the YPP stating:

I have received several emails about JO openings for YPP candidate (thanks for sending them!) which indicate that my profile will be automatically submitted to hiring managers. I noticed that some of the [job openings] are not good fit with my skill set and are not in line with my previous working experience. I understand that there will be an opening soon, which matches very well my skills and experience, and I have a good chance getting it. I do not want to miss it.

8. YPP replied on the same day informing the Applicant that the Organization had already offered her a YPP placement at ECA, with a deadline of 10 May 2021 for accepting the YPP placement. YPP warned the Applicant that “failure to do so will result in [her] removal from the YPP roster.”

9. On 6 May 2021, YPP further informed her that refusing the YPP placement will result in her removal from “the list of successful candidates”.

10. On 10 May 2021, the Applicant sent an email to the hiring manager requesting a two-week extension of the deadline for accepting the YPP placement.

11. On 25 May 2021, YPP informed the Applicant that she had been removed from the YPP list of successful candidates.

12. On 6 June 2021, a job opening for the Post was issued and on 7 June 2021, the Applicant applied for the Post.

13. On 7 June 2021, the Applicant sought to be recruited into the Professional category by submitting an application for the non-YPP position of P-2 Associate TV/Video Producer (the Post).

14. On 27 July 2021, the Executive Office of the Department of Global Communications informed the Applicant that her application was not eligible for the P-2 position because she has been removed from the list of successful candidates to the competitive examination.

15. On 11 January 2022, the Applicant filed her application with the Dispute Tribunal.

Consideration

Issue of the case

16. Based on the parties' submissions, the Tribunal identifies the issue in this case to be whether it was lawful for the administration to exclude the Applicant, a General Service staff member, from the selection procedure for the recruitment of a Professional Level position, namely the Post.

The parties' contentions

17. The Applicant submits that the contested decision was unlawful on the following grounds:

- a. Firstly, the decision was issued without a legal basis as it resulted from an incorrect interpretation of the provisions of ST/AI/2012/2/Rev.1 (the Young Professionals Programme);
- b. Secondly, the Administration breached the provisions of the ST/AI/2010/3 (Staff Selection System), in particular, its secs. 6 and 7, since they deemed the Applicant ineligible to apply for the P-2 position and excluded the Applicant from the outset from the selection procedure for the Post by applying eligibility criteria not contained in the provisions of ST/AI/2010/3;
- c. Thirdly, the Administration's decision was arbitrary since the Administration ignored the Applicant's request to allow her to participate in the selection procedure for the Post contrary to the requirements set out in ST/AI/2010/3 and ST/AI/2012/2/Rev.1. Thus, the selection procedure for the Post has been tainted by a procedural error and the Applicant was not given fair and full consideration as a candidate;

d. Lastly, the Applicant claims that she did not fail to respond to the YPP placement offer by the 10 May 2021 deadline as “she simply requested a deadline extension to make an informed decision”.

18. The Respondent states in response that the contested decision was lawful on the following grounds:

a. The Applicant was not eligible to apply for and participate in the selection process for the Post because, after she passed the G to N exam, she was offered a YPP placement, and refused that YPP placement;

b. The Applicant has no legal right to be recruited to the Professional category. The Applicant, as a General Service staff, cannot be recruited to the Professional category without a competitive examination (staff rule 4.16(ii));

c. ST/SGB/2011/10 provides at sec. 1.2 that “the young professionals programme builds upon and replaces the national competitive recruitment examination, and incorporates the competitive examination for recruitment to the Professional category of staff members from other categories”. The competitive examination for recruitment of General Service staff to the Professional category was integrated into the YPP by the General Assembly in its resolution A/RES/65/647;

d. Consequently, the Applicant must comply with the YPP legal framework in order to be recruited to the Professional level category. The purpose of the YPP includes functional and geographical mobility to expose young professionals to different facets of the Organization, promoting professional development and personal growth and preparing them for senior positions later in their careers. The same rationale applies to General Service staff recruited to the Professional category;

e. Accordingly, staff rule 4.16(c) provides that to be recruited to the Professional category after a competitive examination, the Applicant, as a General Service staff member, is subject to mandatory reassignment. Paragraph 7.5 of ST/AI/2012/2/Rev. provides that the Applicant, as a “G to N” candidate, shall accept any position offered for her initial assignment, even if such position requires her to move to a different duty station;

f. On 10 May 2021, the Applicant failed to accept her YPP placement. By refusing her YPP placement, the Applicant forfeited her placement on the list of successful candidates as per para. 7.9 of ST/AI/2012/2/Rev.1. Accordingly, on 25 May 2021, the Applicant was removed from the list of successful candidates;

g. As staff rule 4.16(ii) applies to all recruitment from General Services to Professional services, the Applicant is not eligible for recruitment into the Professional category, including into non-YPP positions in the Professional category. The same is confirmed by para. 7.13 of ST/AI/2012/2/Rev.1 which clearly provides that only “successful candidates” may apply to non-YPP positions in the Professional category.

Was the contested decision lawful?

19. It is well established that the Secretary-General has broad discretion in matters of staff selection. When reviewing such decisions, the Tribunal shall examine “(1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration” (see *Abbassi* 2011-UNAT-110). The Appeals Tribunal has further held that the role of the Tribunals is “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, for instance, *Kinyanjui* 2019-UNAT-932).

20. As the Appeals Tribunal reiterated in *Lemonnier* 2017-UNAT-762, citing *Rolland* 2011-UNAT-122, “the starting point for judicial review is a presumption that official acts have been regularly performed”, at least when adjudicating non-selection cases. The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that the applicant’s candidature was given a full and fair consideration, the burden of proof shifts to the applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection.

21. The Applicant’s essential argument is that she was not given fair and full consideration for the Post. The Applicant states that the Administration violated ST/AI/2010/3 by deeming her application ineligible and excluding the Applicant from the selection procedure for the P-2 position. The Applicant argues that the Administration unlawfully introduced a new eligibility criterion from ST/AI/2012/2/Rev.1, in order to exclude the Applicant from the selection process.

22. The Tribunal notes that staff rule 4.16 provides that recruitment of General Service staff to the Professional category “shall be made exclusively through competitive examination.”

23. Regarding removal from the YPP roster, para. 7.9 of ST/AI/2012/2/Rev.1 states that:

Should a successful candidate refuse to participate in the placement exercise, which includes, but is not limited to declining a position after being selected, declining a formal written offer of appointment, withdrawing an application in Inspira, putting an application on hold in Inspira without prior approval from the Office of Human Resources Management, or failing to respond to e-mails or phone calls from hiring managers within a reasonable time period, he or she shall be considered to have withdrawn his or her candidacy from the young professionals programme and shall be removed from the list of successful candidates indicated in section 6 above of the present instruction. Selected candidates will be expected to report for duty within 90 calendar days of their acceptance of the written offer of appointment.

24. Section 7.13 of ST/AI/2012/2/Rev.1, expressly states that only “successful candidates” may apply to positions in the Professional category:

In addition to the placement exercise described in this section, successful candidates may also apply for positions advertised through the United Nations Careers portal that are not earmarked for the young professionals programme.

25. It is undisputed that the Applicant participated in and passed the 2017 YPP and was subsequently rostered as a successful YPP candidate who was eligible to be recruited to the Professional category.

26. On 3 May 2021, the Administration offered the Applicant a YPP placement at the P-2 Professional Level in the ECA. The Applicant, however, failed to accept the offer by the prescribed 10 May 2021 deadline.

27. The record shows that the Applicant was clearly warned of the consequences of her refusing the YPP placement that was offered to her. Specifically, on 6 May 2021, YPP quoted sec. 7.9 of ST/AI/2012/2/Rev.1 to the Applicant and informed the Applicant that refusing the YPP placement would result in her removal from the list of “successful candidates”.

28. Despite the warning from YPP, the Applicant failed to respond to the YPP placement offer by the 10 May 2021 deadline, but solely filed a request for extension of time, less than one hour before that deadline. Consequently, the Applicant was removed from the list of “successful candidates” and her request for a time extension was thereby also rejected, which fell squarely within the discretion of authority of the decision-maker to do (in line herewith, see the Appeals Tribunal in *Sanwidi* 2010-UNAT-084). Therefore, the Applicant was no longer on the roster, established by ST/AI/2012/2/Rev.1, for the YPP successful candidates.

29. The Applicant attempts to argue that she did not fail to reply to the YPP placement offer by 10 May 2021. Instead, “she simply requested a deadline extension to make an informed decision, but she did not receive any reply to her request from the Administration”. The Applicant therefore argues that she did not forfeit her placement on the list of successful candidates to the competitive examination or refuse her YPP placement. She contends that it was the Administration that removed the Applicant

from the list, “completely disregarding her request for a short deadline extension to reply to an offer”.

30. The Tribunal finds little merit to this line of argument. Firstly, ST/AI/2012/2/Rev.1 does not provide for any possibility of extension of deadline. Section 7.9 of ST/AI/2012/2/Rev.1 expressly states that “[s]elected candidates will be required to accept the offer within seven calendar days of the receipt of the written offer of appointment”.

31. Secondly, a request for an extension of deadline does not, in and by itself, reset or delay the deadline. This is only so if the requested is granted, which it was not in the present case. The Applicant failed to confirm her continued interest and availability for the YPP position by the deadline, and only made a request for an extension of deadline on 10 May 2021, the day the deadline lapsed. As no extension was granted in this case by the Hiring Manager, the Administration correctly had to deem that the Applicant declined the YPP placement. The legal consequence of the Applicant declining the YPP placement offered to her was that she was removed from the list of “successful candidates”.

32. The Applicant further argues that the contested decision concerns a position that was not earmarked for the YPP Programme and, on this basis, argues that even if she is no longer regarded as a successful YPP candidate, she should be eligible to apply for a non-YPP Professional level position.

33. The Applicant contends that by excluding her candidature, the Administration violated secs. 6 (Eligibility requirements) and 7 (Pre-screening and assessment) of ST/AI/2010/3 governing the Staff Selection System.

34. The Tribunal finds that the Applicant’s argument is unfounded based on the current legal framework. Section 3.2 (c) of ST/AI/2010/3 explicitly limits its scope as follows (emphasis added):

3.2 The system shall not apply to the following:

(a) Appointments at the Assistant Secretary-General and Under-Secretary-General levels;

(b) Temporary appointments;

(c) *Appointment of staff selected through a competitive examination under staff rule 4.16, in accordance with the principle that staff are recruited primarily through competitive examination at the P-1 and P-2 levels for positions subject to geographic distribution and normally through competitive examination at the P-3 level;*

(d) Movement of staff subsequent to recruitment under the provisions of the administrative instruction on managed reassignment for junior Professionals;

(e) Movement during the first five years of service of staff serving against a P-2 or P-3 language position who are subject to the provisions of the administrative instruction setting out special conditions for recruitment or placement of candidates successful in a competitive examination for positions requiring special language skills;

(f) *Recruitment of staff from the General Service and related categories to the Professional category;*

[...]

35. Based on the above, the provisions of ST/AI/2010/3 do not apply to the recruitment of staff from the General Service and related categories to the Professional category. The Tribunal finds that the Applicant, a General Service staff who was no longer on the list of “successful candidates” for the competitive examination, was therefore not eligible to apply for and participate in the selection process for positions in the Professional category, including the Post. The decision to exclude the Applicant from the selection procedure for the Post was therefore lawful.

36. The Tribunal notes that the YPP is designed to recruit junior professionals at the P-2 levels through competitive examinations and to provide them with professional development support. It is apparent that the current legal framework, which prevents a recruitment of staff from the General Service and related categories to the Professional category, poses a barrier to General Service staff members in their career development, requiring them to pass the YPP examination process in order to even apply for a position that they may well be qualified for. However, it is beyond the scope of the Tribunal to review the legality and rationale of the present legal framework.

37. Based on the above, the Tribunal finds the contested decision lawful.

Conclusion

38. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 13th day of January 2023

Entered in the Register on this 13th day of January 2023

(Signed)

Morten Michelsen, Officer-in-Charge, New York