



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

DOLGOPOLOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented
Anthony K. Wilson (co-counsel)

Counsel for Respondent:

Jenny Kim, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member with the Department of Operational Support (“DOS”), filed an application contesting his non-selection for the temporary job opening (“TJO”) of Administrative Officer at the P-3 level with the United Nations Human Settlements Programme (“UN-Habitat”) in Nairobi, Kenya under TJO #161651 (“the Post”).

2. The Respondent filed his reply contending that the application is without merit as the selection decision was lawful.

3. For the reasons set out below, the application is rejected.

Background

4. The Applicant serves as a P-2, Associate Administrative Officer at DOS in New York on a continuing appointment.

5. On 4 February 2021, the Applicant applied for the temporary position of Administrative Officer, P-3 level with UN-Habitat in Nairobi, Kenya advertised under TJO #149241. He was invited to participate in a written assessment and a competency-based interview. The Administration shortlisted the Applicant but eventually selected another candidate who was graded higher in the interview process.

6. Following the withdrawal of the selected candidate, the Administration cancelled TJO #149241 and planned to re-advertise the post. On 11 August 2021, the Administration informed the Applicant about the cancellation and that the temporary position would be re-advertised. On the same day, the temporary position of Administrative Officer, P-3, was re-advertised under TJO #161651, for which the Applicant applied.

7. On 20 August 2021, the TJO #161651 closed in Inspira, with a total of 60 applicants. The Administration shortlisted four candidates, including the Applicant.

8. The Administration used a comparative analysis to score the four shortlisted candidates. The Applicant was ranked second and was one of two candidates recommended for the position. The Administration selected the candidate with the higher score on the comparative analysis.

9. On 12 November 2021, the Applicant filed a request for management evaluation contesting his non-selection for the Post.

10. On 20 December 2021, the Management Evaluation Unit informed the Applicant of its recommendation to uphold the non-selection decision.

11. On 30 January 2022, the Applicant filed the present application.

Consideration

12. The basic principle on staff selection is set out in art. 101.3 of the United Nations Charter and reflected in staff regulation 4.2 that, “The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible”.

13. Staff regulation 4.3 provides that “In accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex or religion. So far as practicable, selection shall be made on a competitive basis.”

14. Article 3.5 of the ST/AI/2010/4/Rev.1 on Administration of temporary appointments provides that “The department/office will assess the candidates’ applications in order to determine whether they are eligible, and whether they meet the minimum requirements, as well as the technical requirements and competencies of the temporary position. Such assessment will be undertaken through a comparative analysis of the applications. The assessment may also include a competency-based interview and/or other appropriate evaluation mechanisms, such as written tests, work sample tests and assessment centres. Following a competitive

process, the head of department/office shall make the selection decision, up to and including the D-1 level.”

15. Section 4.2 of ST/AI/2020/5 on Temporary special measures for the achievement of gender parity provides: “When selecting an internal candidate for a temporary job opening, due regard shall be given to the need to broaden career development opportunities for women. When there are one or more internal women candidates, the temporary job opening shall be filled by one of those internal candidates, provided that the qualifications and experience of the candidate meet the requirements for the temporary job opening and are substantially equal or superior to those of competing male candidates.”

16. 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” (*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).

17. 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”. 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.

18. In *Verma* 2018-UNAT-829, the Appeals Tribunal further held that, “Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all

relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion”.

19. The Tribunal will now assess the application in light of the above standard.

Did the Applicant receive full and fair consideration?

20. In the present case, the Applicant claims that his application for the Post did not receive fair and adequate consideration and that there were procedural irregularities during the recruitment process. The Applicant states that he believes he was the strongest candidate for the Post for three reasons. First, the “top result” on the technical assessment and competency-based interview confirmed that the Applicant had the highest knowledge, skills and experience required for the Post. Second, the information contained in the Applicant’s PHP constitutes evidence that the Applicant possesses more knowledge, skills and experience than required by TJO #161651. Third, as a national of an under-represented country (the Russian Federation), the Applicant should have been given priority consideration per article 101.3 of the United Nations Charter and staff regulation 4.2.

21. The Respondent replies that the Applicant was afforded full and fair consideration and the non-selection decision was legal, reasonable, and procedurally fair. The Respondent states that in compliance with sec. 3.5 of ST/AI/2010/4/Rev 1, the Administration conducted an analysis of the candidates’ applications to determine whether they were eligible and whether they met the minimum requirements, as well as the technical requirements and competencies of the temporary position and next the Administration used a comparative analysis to score the four shortlisted candidates. The Applicant was given fair and adequate consideration and scored second on the comparative analysis. The applicable regulations and rules were applied in a fair, transparent and non-discriminatory manner resulting in the Administration selecting the candidate with the higher score on the comparative analysis.

22. Having reviewed the record, the Tribunal notes that following the Applicant’s application for the Post, the Administration conducted a comparative

analysis to assess candidates, which included criteria directly related to TJO #161651. The comparative analysis included the required level of education along with the required and preferred work experience. The comparative analysis allocated points as the following: 25 points for the required advanced university degree; 25 points for the required five years of progressively responsible experience in administration, finance, accounting, human resources management or related field; 20 points for the required experience in recruitment and staff selection using integrated information management systems; 15 points for the desirable experience in administration of large-scale staffing table; and 15 points for the desirable experience supporting an organizational-wide change management programme.

23. According to the record, the Applicant scored 89 out of 100 and was ranked number 2 in the comparative analysis. The recommended candidate scored 98 out of 100. On 27 August 2021, the selection memo to the Executive Director of UN-Habitat provided that the recommended candidate “[d]emonstrated length of experience at the required grade. The candidate has substantial experience in HR Management and administration in the international environment. She has a track record in implementing HR Operational roles at the peacekeeping field missions. The selected candidate has the requisite breadth, knowledge, and strategic thinking required for the post”. The selection memo also recommended, as a second choice, the Applicant who “matched all the requirements for the job and has relevant academic and professional experience. He also demonstrated solid knowledge of Human resources required by the job opening”. In regard to the evaluation of the shortlisted candidates, the record does not indicate that the Applicant was a better candidate than the selected candidate.

24. The Tribunal notes that the selected candidate was a female and therefore her selection helped the Organization achieve its gender targets, as per sec. 4 of ST/AI/2020/5, on Temporary special measures for the achievement of gender parity, as the gender parity targets were not yet met at the P-3 level (45 female:55 male) at the time of the recruitment.

25. In terms of the factor of geographical representation, the Respondent correctly points out that the Applicant, a Russian national is already a United

Nations staff member and therefore his selection would not have any impact on the representation level of the Russian Federation at the United Nations. The appropriate representation level of each Member State is assessed in the staff of the United Nations as a whole.

26. It follows from the above that the selected candidate had more experience than the Applicant and was therefore appropriately ranked the strongest candidate. Based on the documented record and the recommendation of the Hiring Manager, the Executive Director of UN-Habitat lawfully selected the candidate best suited for the functions of the position, taking into account the Organization's gender targets.

Was the selection process tainted with procedural irregularity?

27. The Applicant contends that “the Respondent failed to conduct the comparative analysis [for TJO #161651] in line with the requirements to properly document the evaluation criteria and establish the scoring methodology for each criterion prior to undertaking the comparative analysis”. The Applicant cites *Chhikara* 2020-UNAT-1014 setting out the basic minimum standards that must apply when administering a written test, and argues that the same principles should apply to the comparative analysis of candidates for temporary appointments. In *Chhikara* the Appeals Tribunal found that a grading methodology was published for a written test, but not subsequently followed. The Applicant argues that “although there was no written test in the instant case, a similar principle should be applied to the comparative review of the applications for the TJO: a proper and reasonable grading methodology must be adopted prior to conducting the review with a clear explanation of points allocation, and records of the grading must be developed that clearly describe how each job candidate was assessed, which would allow a third party, such as the [Dispute] Tribunal, to review and verify that the entire process was handled in a proper manner.”

28. The Respondent responds that the Applicant's claim is without merit. The present case concerns the abbreviated assessment procedures in ST/AI/2010/4/Rev.1 (Administration of temporary appointments).

ST/AI/2010/4/Rev.1 only requires a “comparative analysis of the applications”. It does not require the Hiring Manager to establish a “scoring methodology” nor does it require the Hiring Manager to conduct a written assessment and/or competency-based interviews. Those procedures are optional. *Chhikara*, on the other hand, concerns the extensive assessment procedures in ST/AI/2010/3 on the Staff selection system.

29. The Respondent explains that the purpose of ST/AI/2010/4/Rev.1 “is to enable the Organization to effectively and expeditiously manage its short-term staffing needs”. In line with the purpose of temporary appointments, the assessment procedures in ST/AI/2010/4/Rev.1 are abbreviated for expediency. The Respondent states that given the need to fill TJOs expeditiously, the Administration often conducts a comparative analysis to assess candidates.

30. The Tribunal notes that in compliance with Section 3.5 of ST/AI/2010/4/Rev.1 UN-Habitat undertook a comparative analysis of the four shortlisted candidates, including the Applicant. The Applicant’s reliance on *Chhikara* is misguided as the situation in *Chhikara* was different from the present case. In *Chhikara*, the selection process was related to a permanent, not temporary, post and so subject to the extensive assessment procedures in ST/AI/2010/3 on Staff selection system which are not applicable in the present case.

31. The Tribunal agrees that a grading methodology can be helpful during the recruitment process; however, it notes that this is not required. In *Chhikara*, the Appeals Tribunal required that in the case of a written test, “a proper and reasonable grading methodology must be adopted and shared with the graders”. In the present case, there was no such written test. The Tribunal finds that the grading in the “Evaluation Matrix Shortlisted Applications Position”, provided by the Respondent, remains within the discretion of the Respondent to choose evaluation criteria. Additionally, the Appeals Tribunal has held that experience requirements are considered objective criteria for selection, which reduce the risk of subjective and unfair comparisons (see *Charles* 2013-UNAT-284).

32. Having reviewed the evidence, the Tribunal is satisfied that the Administration has shown that the applicable procedure was followed and that the Applicant's candidacy was afforded full and fair consideration.

33. Accordingly, the decision not to select the Applicant for this position was lawful.

Conclusion

34. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 14th day of August 2023

Entered in the Register on this 14th day of August 2023

(Signed)

Isaac Endeley, Registrar, New York