



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello, Officer-in-Charge

HASSAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR, UN Secretariat

Charlene Ndirangu, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Interim Security Force for Abyei (“UNISFA”), contests the decision not to select him for the P-4 post of Chief Finance and Budget Officer, UNISFA, advertised as “Recruit from Roster” Job Opening No. 198446.
2. For the reasons set forth below, the Tribunal decides to reject the application.

Facts

3. On 31 August 2014, the Applicant joined the Organization as a P-3 Finance and Budget Officer.
4. Between 26 December 2022 and 22 January 2023, the P-4 position of Finance and Budget Officer (Chief of Unit) (JO198446) was advertised in Inspira.
5. On 31 December 2022, the Applicant applied for the post as a rostered candidate.
6. Upon closure of the posting period, 28 applications that met all the minimum requirements were longlisted and released to the hiring manager (“HM”) for evaluation, including the Applicant’s. Following his evaluation against the pre-established evaluation criteria, four applicants were considered to have met all required and desirable criteria and, thus, shortlisted. The Applicant amongst them.
7. On 7 March 2023, the Chief of Mission Support (“CMS”), UNISFA, and the Acting Head of Mission (“HOM”) approved the selection of the successful candidate recommended by the HM.
8. On 21 March 2023, the Applicant became aware that a selection had been made because the status of the JO in Inspira indicated “filled from roster”.
9. On 21 April 2023, the Applicant requested management evaluation against the decision not to select him, which was upheld by the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) on 15 May 2023.

10. On 12 August 2023, the Applicant filed the instant application.
11. The Respondent filed his reply on 14 September 2023.
12. By Order No. 153 (GVA/2023) of 13 November 2023, the Tribunal ordered the Applicant to file a rejoinder by 13 December 2023. It also instructed the parties to explore resolving the dispute amicably and revert to the Tribunal in this respect by 20 December 2023.
13. On 5 December 2023, the Respondent filed a motion for leave to submit new evidence.
14. On 13 December 2023, the Applicant filed his rejoinder.
15. On 19 December 2023, the parties filed a joint submission informing the Tribunal that their discussion on a possible amicable settlement failed. They thus requested the Tribunal to proceed with the adjudication of the case and allow them the opportunity to file closing submissions.
16. By Order No. 5 (GVA/2024) of 17 January 2024, the Tribunal granted the Respondent's motion to submit new evidence.
17. By Order No. 57 (GVA/2024) of 23 May 2024, the Tribunal requested the Respondent: (a) to clarify what were the pre-determined criteria for shortlisting candidates, and (b) to explain how the Applicant had less budget experience than the other candidates given the work experience described in his Personal History Profile ("PHP").
18. On 3 June 2024, the Respondent filed his response to Order No. 57 (GVA/2024).
19. By Order No. 70 (GVA/2024) of 25 June 2024, the Tribunal instructed the Applicant to file his comments to the Respondent's response to Order No. 57 (GVA/2024), which he did on 5 July 2024.
20. By Order No. 122 (GVA/2024) of 27 September 2024, the Tribunal instructed the parties to file closing submissions, which they did on 11 October 2024.

Consideration

Scope of judicial review

21. Between 26 December 2022 and 22 January 2023, the position of Finance and Budget Officer (Chief of Unit) (JO198446) was advertised as a “Recruit from Roster” vacancy. The vacancy announcement stated that previously rostered candidates were not subject to any further assessment, and required the following as work experience:

A minimum of seven (7) years of progressively responsible experience in cost management and budget formulation, cost control and monitoring, accounting and financial reporting, or analysis and interpretation of financial results is required.

Experience in supporting international operations involving military/security, logistics, infrastructure development, or a similar undertaking is desirable.

22. The Applicant claims that he met all the minimum and desirable requirements for the position, including the work experience aforementioned. He contests the fact that he was not shortlisted for the position and alleges that his application was not given full and fair consideration, in violation of secs. 7.1, 7.4, 7.5, and 7.6 of ST/AI/2010/3/Rev.3 (“Staff selection system”).

23. In support, the Applicant submits his PHP and performance documents showcasing eight years of experience as a Finance and Budget Officer, including a number of times as Officer-in-Charge (“OiC”) of the Finance and Budget Unit.

24. Furthermore, the Applicant argues that the numerous procedural errors in the recruitment process under review, including the one that led to its cancellation, further supports his claim of partiality, breach of rules and regulations, and abuse of authority.

25. According to the Administration, however, the Applicant was not among the most qualified candidates to be shortlisted. That is because the shortlisting criteria focused on a minimum of seven years of progressively responsible experience in cost management and budget formulation, and the budget-related responsibilities in the JO. The hiring manager assessed the Applicant’s experience by considering

quantitative and qualitative components of the criterion, and his review concluded that the Applicant only had 3.57 years of relevant experience.

26. With respect to the procedural error that led to the cancelation of the recruitment exercise, the Respondent informed the Tribunal that there was an oversight in the screening exercise that allowed the successful candidate to be selected even though he did not have one of the requirements under the JO, which was professional recognition equivalent to that of a Certified Public Accountant (“CPA”) or chartered accountant. To correct the error, the USG/DMSPC directed UNISFA to repeat the recruitment for the position.

27. In this connection, the Respondent submits that the procedural error identified by the Administration did not impact the Applicant’s chance of selection. Even if the selected candidate had been excluded from the recruitment exercise from the beginning, the Applicant still would not have been shortlisted for the position. Of the four recommended candidates, three had CPA recognition, and only the selected candidate did not. All of them had more years of relevant experience than the Applicant and one of the recommended candidates was a female who would have benefited from sec. 2.1 of the Gender Parity Administrative Instruction due to UNISFA not meeting gender parity at the P-4 level at the time of the selection.

28. Finally, the Respondent contends that the Applicant’s own assessment of his experience is irrelevant. What matters is that the hiring manager exhibited no impropriety towards the Applicant and gave him full and fair consideration when assessing his professional experience against the requirements of the JO. The Applicant did not identify anything that would contradict the assessment made by the hiring manager, whose discretionary authority stands.

29. The Tribunal recalls that, in reviewing administrative decisions regarding appointments and promotions, the role of the Dispute Tribunal is limited to examining if the procedures set out in the Staff Regulations and Rules were followed and if the staff member was given full and fair consideration (*Abbassi* 2011-UNAT-110, para. 23).

30. The Secretary-General has broad discretion in making decisions regarding promotions and appointments and, in reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Administration (*Lemonnier* 2017-UNAT-762, paras. 30-31).

31. The role of the Tribunal is, therefore, “to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner” (*Ljungdell* 2012-UNAT-265, para. 30; *Lemonnier*, para. 31).

32. The Tribunal further recalls that in the case of *Mohamed* UNDT/2019/088, it was decided that the Applicant in a selection case would have to establish not only a procedural error but that he/she would have had a realistic chance of being appointed to the post (*Rao* UNDT/2022/092, para. 43). Procedural irregularities shall result in the rescission of the contested decision only when the staff member had a significant chance of selection or promotion. (*Qasem* 2024-UNAT-1467, para. 46).

33. Having considered the above and having examined the evidence on record, the Tribunal identifies the following issues for determination:

- a. Whether the Applicant was given full and fair consideration;
- b. Whether the Applicant would have had a realistic chance of being selected for the position if not for the procedural error;
- c. Whether the applicable procedures were properly followed; and
- d. Whether the Applicant is entitled to any remedies.

Whether the Applicant was given full and fair consideration

34. Having considered all the submissions and the evidence on record, the Tribunal considers that the main issue for determination is whether the hiring manager conducted a fair and unbiased assessment of the Applicant’s candidacy, giving it full and fair consideration. To achieve this, it is important to determine if the Applicant has sufficiently demonstrated that he met the minimum of seven years

of progressively responsible experience in the relevant areas, and that the hiring manager made a factual mistake in the assessment of his PHP.

35. The spreadsheet submitted by the Respondent in response to Order No. 57 (GVA/2024) sheds a light into the matter. This contemporaneous document showcases the hiring manager's thorough assessment of the Applicant's professional experience. Indeed, it shows that the Applicant's position as Budget and Finance Officer, UNISFA, was taken into consideration, including his time as OiC of the Finance and Budget Unit ("FBU"). And that as a result of this quantitative and qualitative assessment, the Applicant had 3.57 years of relevant experience in budget.

36. For example, the Applicant's 8.34 years in the role of Budget and Finance Officer was counted for his overall work experience, but only 0.91 years of that deemed relevant for the JO. As explained by the hiring manager:

[the Applicant's] budget experience is noted. However, his experience was otherwise Finance related - this is known by the hiring manager as [the Applicant's] Second Reporting Officer. Moreover, in [the Applicant's] [eight] years he remained a P3. His experience remained largely the same. Aside from the 11 months as OiC (01 June 2015 to 10 May 2016), it was not progressively responsible.

37. It is accepted that the Administration has discretion in selection matters and as long as that discretion is exercised lawfully, the Tribunal should not interfere with it. Furthermore, such exercise of discretion is presumed to be lawful unless it is rebutted by clear evidence provided to the contrary demonstrating how the Administration may have erred (*Rao*, para. 17).

38. The Applicant's submissions concerning his title, long satisfactory service, OiC experience, First Reporting Officer's comments, and workshop attendance on the new budgetary process do not demonstrate that he had more experience in the required area than what it was attributed to him. It is also not probative of any wrongdoing in him being left out of the shortlist.

39. Therefore, the Tribunal is satisfied by the evidence on record that the Applicant was given full and fair consideration by having his professional experience thoroughly assessed, and finds that the hiring manager's decision not to shortlist him was a lawful exercise of discretionary authority. Concomitantly, it finds no violation of secs. 7.1, 7.4, 7.5, and 7.6 of ST/AI/2010/3/Rev.3.

Whether the Applicant would have had a realistic chance of being selected for the position if not for the procedural error

40. The record shows procedural irregularities in the screening and shortlisting exercises, as the selected candidate lacked one of the required qualifications. This was a serious issue that impaired the rights of candidates and ultimately led the Administration to cancel the selection process.

41. Notwithstanding, the Tribunal agrees with the Respondent that the procedural error in question bared no impact to the Applicant's chance of selection.

42. As stated above, the reason for the Applicant not being shortlisted is that he did not have the seven years of progressively responsible experience in budget that the hiring manager used as a shortlisting criterion. In the Tribunal's view, the Applicant did not have a realistic chance of selection, regardless of the procedural error that invalidated the recruitment exercise.

43. Since the Applicant did not meet the criteria to be shortlisted, the Tribunal finds that the procedural error committed by the Administration in the recruitment exercise of JO198446 did not impact his chance of selection.

Whether the applicable procedures were properly followed

44. The Applicant argues that by not being notified of the selection results within 14 days of the decision, as indicated in sec. 10.1 of ST/AI/2010/3/Rev. 3, the Administration violated his rights.

45. The Respondent did not respond to this allegation.

46. Sec. 10.1 of ST/AI/2010/3/Rev. 3 provides that:

10.1 The executive office at Headquarters or the local human resources office shall inform the selected candidate of the selection

decision within 14 days after the decision is made. Candidates endorsed by the central review body and placed on a roster shall be informed of such placement within 14 days after the decision is made by the hiring manager or occupational group manager and be advised that they may be selected from the roster for similar vacancies that may become available within the stipulated time frame as described in sections 9.5 and 9.6. Other candidates convoked for assessments but not selected or placed on a roster shall be so informed by the hiring manager or the occupational group manager within 14 days after the selection decision is made in writing. Applicants eliminated prior to the assessment exercises shall be informed.

47. While the Tribunal agrees that the Administration failed to notify the Applicant of the selection decision within the prescribed deadline, it considers that this procedural deficiency did not affect the Applicant's right to request management evaluation and file the instant case. Indeed, for an unsuccessful candidate, it is essential to be informed in a timely manner of the selection decision to preserve his right to challenge an unfavourable decision. However, since the Applicant's rights to challenge his non-selection were preserved, any delay in the notification did not negatively affect him.

Remedies

48. Considering that the Tribunal did not find any factual mistake in the shortlisting exercise with respect to the assessment of the Applicant's candidacy, and did not find that the Applicant had a realistic chance of selection had the aforementioned procedural error not occurred, the Applicant is not, therefore, entitled to any compensation for loss of opportunity. Likewise, the Applicant did not provide any evidence that would entitle him to moral damages.

Conclusion

49. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Sun Xiangzhuang

Dated this 26th day of November 2024

Case No. UNDT/GVA/2023/041

Judgment No. UNDT/2024/099

Entered in the Register on this 26th day of November 2024

(Signed)

Liliana López Bello, Officer-in-Charge, Geneva