



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** Liliana López Bello

KRIOUTCHKOV

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Tamal Mandal, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a Translator working with the United Nations Economic and Social Commission for Asia and the Pacific (“ESCAP”) in Bangkok, filed an application contesting the decision not to select him for the position of Reviser at the P-4 level in the Russian Language Unit (“RLU”) of ESCAP.
2. For the reasons set forth below, the Tribunal decides to reject the application.

## **Facts**

3. On 3 February 1990, the Applicant joined the Organization. He is currently a Translator at the P-3 level at ESCAP with a permanent appointment.
4. From 10 October to 23 November 2022, the position of Reviser, Russian at the P-4 level, Job Opening No. 192434 (“JO”) was advertised through Inspira. The Applicant applied for the position on 20 October 2022.
5. On 10 November 2022, the hiring manager noted that only four candidates met the evaluation criteria and requested ESCAP Human Resources to extend the deadline for the JO until 8 December 2022. The JO was shared in various global networks to attract more candidates.
6. A total of nine pre-screened candidates, including the Applicant, were released to the hiring manager for a preliminary evaluation. The hiring manager shortlisted five candidates, including the Applicant, for a competency-based interview (“CBI”). However, only three candidates participated in the CBI, as one candidate declined to attend the interview, and another withdrew his application.
7. The interview panel assessed five competencies, namely: accountability, professionalism, technological awareness, teamwork, and planning and organizing.
8. The Comparative Analysis Report dated 7 April 2023 indicated that the Applicant successfully met the requirements of teamwork and planning and organizing and partially met the requirements for accountability, professionalism, and technological awareness. The Panel recommended two candidates who fully demonstrated the required competencies for the position.

9. On 4 April 2023, the hiring manager sent a transmittal memo to the Central Review Board (“CRB”). The CRB subsequently determined that one candidate the hiring manager had rated as “not suitable” should have been shortlisted. The hiring manager corrected this error, interviewing that candidate on 24 April 2023. Following the interview, the Panel did not recommend that candidate for selection.
10. By email dated 3 May 2023, the CRB endorsed the recruitment process.
11. By email dated 4 May 2023, the Administration notified the Applicant his non-selection for the position. This is the “contested decision”.
12. On 30 June 2023, the Applicant requested management evaluation of the contested decision.
13. By letter dated 26 July 2023, the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) wrote to the Applicant upholding the contested decision.
14. On 23 October 2023, the Applicant filed the instant application.
15. On 24 November 2023, the Respondent filed his reply in which he seeks the rejection of the application on the basis that the contested decision was lawful.
16. By Order No. 6 (GVA/2024) dated 18 January 2024, the Tribunal directed the Applicant to file a rejoinder and instructed the parties to explore resolving the dispute amicably and to revert to it by 26 February 2024.
17. On 19 February 2024, the parties filed a joint submission requesting the Tribunal to suspend the proceedings for 30 days to engage in informal settlement discussions.
18. By Order No. 17 (GVA/2024) dated 19 February 2024, the Tribunal suspended proceedings until 20 March 2024. Following the parties’ request, the Tribunal extended this deadline until 22 April 2024.

19. On 22 April 2024, the parties submitted a joint submission pursuant to Order No. 17 (GVA/2024) informing the Tribunal that they did not reach a settlement agreement and requesting it to decide the matter on the merits.

20. On 27 April 2024, the Applicant filed a rejoinder.

21. By Order No. 112 (GVA/2024) dated 19 September 2024, the Tribunal ordered the parties to file their respective closing submission, which they did on 26 September 2024.

## **Consideration**

### *Preliminary issue*

22. With his application and, most predominantly, in his rejoinder, the Applicant requested the following:

- a. The “selection dossier for the Post” to better prepare for his case and permission to amend his application based on any new information he might discover from this evidence; and
- b. The Tribunal to conduct a hearing in person, “[inviting] staff members mentioned in [his] original application.”

23. The Respondent produced a Transmittal Memorandum, CBI certification of panel members, a redacted Comparative Analysis Report and approval from the CRB, and did not respond to the Applicant’s requests.

24. The Applicant’s requests above were partially dealt with by Order No. 112 (GVA/2024) when the Tribunal stated that it “considers itself fully briefed to render its judgment without the need for additional disclosure of evidence or the holding of a hearing on the merits”.

25. Noting, however, that it did not address the Applicant’s requests with a substantiated analysis, the Tribunal observes the following.

26. It is a well-established practice that parties requesting the production of evidence and information must be able to identify the relevant documents and

information they wish the other party to produce, and indicate why such evidentiary production is necessary.

27. The Applicant, however, did not identify the relevant document he was seeking. Instead, he made a broad request for a “selection dossier” that led the Tribunal to conclude that his request for disclosure of evidence amounted to a fishing expedition that it could not indulge.

28. With respect to the hearing, the Tribunal recalls that, as per art. 16.2 of its Rules of Procedure, “a hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure”, which is not the Applicant’s case.

29. The Tribunal is of the view that, apart from the disciplinary cases, oral hearings should be conducted following a case-by-case analysis of the evidence on record and only in those cases that would require the examination and cross-examination of witnesses to determine facts essential to the case. This is not the Applicant’s case.

30. In this connection, the Tribunal also recalls that the Organization has resources available for staff members who claim to have been the subject of workplace harassment and/or abuse of authority, and that an application against a non-selection decision is not the appropriate path to deal with such allegations.

#### *Scope of judicial review*

31. The primary legal issue before the Tribunal is whether the decision not to select the Applicant for the position of P-4 Reviser (Russian) was lawful.

32. It is well-established that the Secretary-General has broad discretion in matters of appointment and promotions and that, 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).

33. The Tribunal’s role is limited to 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, para. 23; *Majbri* 2012-UNAT-200, para. 35; *Ljungdell* 2012-UNAT-265, para. 30; *Savado* 2016-UNAT-642, para. 40).

34. The Tribunal recalls that in selection and appointment matters, there is a presumption of regularity concerning the performance of official acts (*Krioutchkov* 2021-UNAT-1103, para. 29; *Rolland* 2011-UNAT-122, para. 26). Accordingly, in a recruitment procedure, if the Administration minimally shows that a staff member's candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must then be able to show through clear and convincing evidence to have been denied a fair chance of promotion (*Flavio Mirella* 2023-UNAT-1334, para. 61).

35. In view of the foregoing, and having reviewed the parties' submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the applicable procedure was properly followed;
- b. Whether the Applicant was given full and fair consideration; and
- c. Whether the Applicant is entitled to any remedies.

*Whether the applicable procedure was properly followed*

36. The Tribunal refers to the Administrative Instruction ST/AI/2010/3/Rev. 2 on Staff selection system ("Staff Selection AI"), which sets out the procedure for filling vacancies in the professional and higher categories, up to and including those at the D-2 level.

37. The Staff Selection AI applies to the instant case as it "integrates the recruitment, placement, promotion and mobility of staff within the Secretariat".

38. The Applicant submits that the selection process was marred by procedural irregularities for several reasons.

Delay and extension of the period for advertising the JO

39. The Applicant asserts that the “vacancy announcement process” was not started two months before the incumbent’s retirement as provided by the rules. Although the Reviser, Russian is a key post within RLU because the incumbent is responsible to monitor the whole translation process and staff performance, the vacancy in question was only advertised on 13 October 2022.

40. The Respondent submits that on 8 June 2023, the Chief, Human Resources Office, ESCAP, emailed the Applicant to explain that the delay in advertising the position was because it had to be reclassified to align it with the most recent Department for General Assembly and Conference Management (“DGACM”) requirements.

41. The Tribunal notes that while the Applicant refers to “rules” requiring the Administration to issue a JO two months before the incumbent’s retirement, he has not cited any rule to support his argument. The Staff Selection AI does not include such requirement. Furthermore, the record shows, as submitted by the Respondent, that the P-4 position was reclassified in line with the relevant DGACM requirements.

42. The Applicant further argues that the JO posting period was extended by approximately two weeks and that this measure was directed against him since he was the only roster candidate.

43. In this respect, the Respondent contends that the hiring manager acted reasonably in extending the period for the JO to attract more candidates.

44. The Tribunal finds it reasonable to extend the posting period of a JO when the number of candidates is low. Therefore, the hiring manager properly exercised his discretion in extending the posting period for around two weeks which resulted in additional candidates for the JO.

45. Furthermore, the Applicant has not provided any evidence that any delay in advertising the JO or extension of the advertisement period negatively affected him.

In fact, the record shows that the Applicant's candidacy was properly pre-screened and he was shortlisted for a CBI.

46. The Tribunal, therefore, finds that the alleged delays were not unlawful.

Non-notification in advance of the panel composition and alleged interference by the Chief, Conference and Documentation Services Section ("CDSS")

47. The Applicant claims that the decision-making process for the position lacked fairness and integrity since he was not informed about the panel composition and, as a result, he was not able to question the presence or absence of some members therein resulting in the denial of a fair chance of selection.

48. The Tribunal recalls the Appeals Tribunal's ruling that section 7.5 of ST/AI/2010/3 which governs the interview process "does not impose an obligation on the Administration to inform the staff member of the composition of the assessors prior to the interview" (*Amineddine* 2021-UNAT-1125, para. 47).

49. Therefore, the Applicant's claim that the failure to inform him of the panel composition created him stress and anxiety is meritless as well as his attempt to link the nationality of a panel member to his non-selection under the guise of the "current geopolitical situation".

50. The Applicant further avers that the Chief, CDSS, ESCAP, who had a hostile attitude towards him, interfered in the selection process. However, there is no evidence to conclude that the Chief, CDSS, ESCAP, who was not a panel member, interfered in the selection process. In fact, the Applicant's apprehension of a conflict of interest never materialized.

51. Section 1(b) of ST/AI/2010/3/Rev. 2 defines an assessment panel as "normally comprised of at least three members, with two being subject matter experts at the same or higher level of the job opening, at least one being a woman and one being from outside the work unit where the job opening is located, who will undertake the assessment of applicants for a job opening".

52. In line with this provision, the Tribunal notes that in the present case, the panel consisted of four staff members at the P-4 level, the same level as the



advertised position: three subject matter experts, and one female panel member from outside the work unit where the position is located. The panel was therefore properly composed. The Applicant had no right to propose panelists for the CBI interviews.

53. Considering the above, the Applicant's arguments are rejected.

The CBI duration and the unfriendly attitude of a panel member

54. The Applicant alleges that while he was informed that the CBI would last 75 minutes, it only lasted 56 minutes in his case. He claims that was not allowed to fully demonstrate his competencies and the Chief, RLU, ESCAP improperly influenced the interview process.

55. The Respondent submits that it is an established practice at ESCAP that for scheduling purposes, the interview panel allocates 15 minutes per competency to provide adequate time for eliciting responses from the candidates. In the present case, there were five competencies to assess, and all candidates were informed that the duration of the interview would be for a maximum of 75 minutes.

56. The interview invitations indicated that "the interview may take up to 75 minutes per candidate" meaning that 75 minutes was the maximum total duration, not that it must last for 75 minutes. In fact, the duration of an interview depends on multiple factors including the questions made by the panel and the answers provided by the candidate.

57. While the Applicant claims that the Chief, RLU, ESCAP rushed him through his answers, showed impatience and not allowed him to finish his sentences, he failed to provide any evidence on the alleged hostility against him and how the additional 19 minutes would have contributed to his selection.

58. In view of the foregoing, the Tribunal determines that the Applicant did not suffer any prejudice and that the Administration properly complied with the procedure of the Staff Selection AI.

59. Accordingly, the Applicant's allegations of procedural irregularities in the selection process are unsubstantiated.

*Whether the Applicant was given full and fair consideration*

60. Section 7 of ST/AI/2010/3/Rev. 2 provides in its relevant part:

7.4 Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment of shortlisted candidates shall not commence before the deadline for applying for the job openings, as provided for in sections 4.7 and 4.9 above, has passed. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as written tests, work sample tests or assessment centres.

7.5 For each job opening, up to and including the D-1 level, the hiring manager or occupational group manager, as appropriate, shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and a selection decision by the head of entity.

7.6 For vacancy-specific job openings, up to and including the D-1 level, the hiring manager or occupational group manager shall transmit the proposal for one candidate or, preferably, a list of qualified, unranked candidates, including normally at least one woman candidate, to the appropriate central review body through the official whom the head of entity has designated to ensure that, in making the proposal, the hiring manager or occupational group manager has complied with the process.

61. The Tribunal notes that after reviewing the applications based on the established evaluation criteria, four candidates were deemed not to be suitable and five candidates, including the Applicant, were shortlisted for CBIs.

62. Following the CBIs, the panel concluded that the Applicant did not fully meet all the required competencies, namely accountability, professionalism and technological awareness. As a result, he was not recommended for selection.

63. The Tribunal reviewed the Comparative Analysis Report dated 7 April 2023, which indicates that the Applicant successfully met the requirements of teamwork

and planning and organizing, and describes the rest three competencies in respect of the Applicant's interview as follows (emphasis added):

**Accountability**

The Panel agreed that the candidate met [the] following [indicator]:

1. Operates in compliance with organizational regulations and rules[.]

The Panel agreed that the candidate partially met [the] following indicators:

1. Takes ownership of all responsibilities and honours commitments[;]
2. Delivers outputs for which one has responsibility within prescribed time, cost and quality standards[; and]
3. Takes personal responsibility for his/her own shortcomings and those of the work unit, where applicable.

The Panel agreed that the candidate did not meet following indicators:

1. Supports subordinates, provides oversight and takes responsibility for delegated assignments[.]

...

The candidate partially meets the requirements.

**Professionalism**

The Panel agreed that the candidate met [the] following [indicator]:

1. Remains calm in stressful situations[.]

The Panel agreed that the candidate partially met [the] following indicators:

1. Shows pride in work and in achievements[;]
2. Is conscientious and efficient in meeting commitments, observing deadlines and achieving results[;]
3. Is motivated by professional rather than personal concerns[;]
4. Shows persistence when faced with difficult problems or challenges[; and]

5. Takes responsibility for incorporating gender perspectives and ensuring the equal participation of women and men in all areas of work.

The Panel agreed that the candidate did not meet [the] following [indicator]:

1. Demonstrates professional competence and mastery of subject matter.

...

The candidate partially meets the requirements.

### **Technological Awareness**

The Panel agreed that the candidate met [the] following indicators:

1. Keeps abreast of available technology[;]

2. Understands applicability and limitations of technology to the work of the office[.]

The Panel agreed that the candidate did not meet following indicators:

1. Actively seeks to apply technology to appropriate tasks[; and]

2. Shows willingness to learn new technology[.]

...

The candidate partially meets the requirements.

64. Following the interviews, the Panel recommended a female and a male candidate who fully demonstrated all required competencies of the JO for selection.

65. The Applicant was consequently not recommended for the position.

66. In his application, the Applicant submits that the contested decision violates his contractual rights as the selection process did not provide him with full and fair consideration for several reasons.

### Failure to recognize the Applicant as a rostered candidate

67. The Applicant asserts that sec. 15.6 of the Hiring Manager's Manual was ignored since the Applicant was a roster candidate who should be prioritized and

considered as an eligible recommended candidate for the position. He indicates that while he has been in the roster for almost 15 years without being selected for a position, the selected candidate was not in the roster as far as he knows.

68. The Respondent submits that following the reclassification of the position on 13 September 2022, none of the candidates who applied for the position were listed on the roster associated with job code 5877 when they submitted their applications. He referred to the Appeals Tribunal ruling in *Asariotis*, 2015-UNAT-496, para. 21, that an “Instruction Manual for the Hiring Manager on the Staff Selection System” does not have mandatory force. Following *Asariotis*, the Respondent asserts that the Dispute Tribunal have rejected similar arguments based on the Manual and only considered it as a guidance document.

69. The evidence on record shows that neither the Applicant nor the selected candidate were listed on the roster associated with the reclassified P-4 post.

70. The Tribunal notes that while the Applicant “completely understand[s] that there was no guarantee of the selection from the roster”, he claims his chances to be selected from the roster might have been as high as 66 percent.

71. In this respect, UNAT has consistently held that “being on the roster does not create an expectancy or entitlement to promotion”, and “[t]he mere fact of being on the roster does not guarantee a promotion.” (*Krioutchkov*, 2016-UNAT-707, para. 29).

72. In any case, since the Applicant was not in the P-4 roster associated with the reclassified P-4 post, he could not claim that the Administration failed to consider him as a roster candidate.

Another candidate being interviewed upon the recommendation of CRB

73. The Applicant submits that CRB found that based on the applied criteria, an additional candidate who had initially been deemed as ‘not suitable’ should have been shortlisted and interviewed. This, in his view, reflects the low quality of the selection process and violates “the equal treatment principle”. He claims that under the circumstances, the whole process should have been cancelled and restarted to

assure the “equality of all candidates, including proper consideration of roster members”.

74. The Respondent contends that CRB’s mandate is to ensure that candidates have been evaluated based on approved evaluation criteria. After correcting the error raised by CRB and following the assessment of the additional candidate, it was determined that the candidate did not meet the competencies and was not recommended for selection. Upon reviewing the selection and evaluation criteria, CRB endorsed the recruitment process.

75. The Tribunal 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).

76. As indicated above, the Applicant was not recommended based on his partially meeting three of the five required competencies during the interview. Hence, he had no realistic chance of being selected to the P-4 post.

77. Therefore, Tribunal finds that the Applicant was not prejudiced by the assessment of the additional candidate who was ultimately not recommended for further selection.

78. It follows that the Applicant’s argument is rejected.

Alleged discrimination and improper motive

79. The Applicant further asserts that the non-objective, unfairness and bias of the Chief, RLU, ESCAP affected the selection process. He claims that he was discriminated against by the Chief, RLU, ESCAP.

80. The Respondent submits that the Applicant’s allegations are without merit and unfounded. He asserts that the Applicant failed to prove these allegations by

adducing clear and convincing evidence to rebut the general presumption of regularity.

81. The Tribunal understands that the Applicant may be frustrated by the fact that he has been on a roster for many years without obtaining a promotion. However, contrary to his argument, his long satisfactory service at the P-3 level does not necessarily give him a right to a promotion. It is well-settled that a staff member has a right to full and fair consideration, not to a promotion (*Andrysek* 2010-UNAT-070, para. 17).

82. Furthermore, the Applicant produced no evidence to substantiate his allegations of discrimination or bias. Therefore, the Tribunal determines that the Applicant was given full and fair consideration in the selection process for the P-4 Reviser, Russian position.

83. Accordingly, the decision not to select him was lawful.

*Whether the Applicant is entitled to any remedies*

84. In his application, the Applicant requests the Tribunal to order, *inter alia*, the rescission of the contested decision, and monetary or other compensation.

85. Since the contested decision is deemed lawful, the Applicant is not entitled to any remedies.

### **Conclusion**

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

*(Signed)*

Judge Sun Xiangzhuang

Dated this 5<sup>th</sup> day of December 2024

Entered in the Register on this 5<sup>th</sup> day of December 2024

*(Signed)*

Liliana López Bello, Registrar, Geneva