



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2024/001
Judgment No.:	UNDT/2025/036
Date:	23 June 2025
Original:	English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

PHAKATHI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Tamal Mandal, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is an Associate Programme Management Officer, at the P-2 level, with the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (“OHRLLS”) in New York. On 14 January 2024, he filed an application contesting the decision not to select him for a temporary job opening #208549 (“TJO”) for the P-3 level Programme Management Officer position in a Sub-Programme (“the Position”) within the Small Island Developing States (“SIDS”) Unit in OHRLLS (“the contested decision”).
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.

Factual and procedural background

4. The Applicant joined the Organization in 2013. At the time of the contested decision, the Applicant encumbered a P-2 position as an Associate Programme Management Officer within the SIDS Unit in OHRLLS.
5. The Position was advertised on Inspira from 9 May 2023 to 15 May 2023.
6. On 15 May 2023, the Applicant applied for the Position.
7. The Applicant was among 31 pre-screened candidates, whose profiles were released to the hiring manager. Following a preliminary assessment, six candidates, including the Applicant, were found to meet the required and desirable criteria and shortlisted and invited to participate in competency-based interviews (“CBI”).
8. On 2 June 2023, a three-member interview panel (the “Panel”) conducted the CBIs.
9. The Panel determined that the Applicant did not meet the competency requirements for the Position, namely, professionalism, planning and organizing,

and communication. On this basis, the Panel did not recommend the Applicant for the Position.

10. The Panel found that two other candidates satisfactorily met the competency requirements for the Position. The Panel found that one candidate satisfactorily met two competency requirements and exceeded the third competency requirements. The Panel recommended this latter candidate for selection.

11. On 19 June 2023, the Under-Secretary-General and High Representative, OHRRLLS endorsed the Panel's recommendation in a memorandum to the Executive Officer, Department of Economic and Social Affairs ("DESA").

12. On 28 June 2023, the selected candidate was notified of the selection decision.

13. On 17 September 2023, the Applicant requested management evaluation of the contested decision.

14. On 16 October 2023, the Under-Secretary-General, Department of Management Strategy, Policy and Compliance, endorsed the findings and recommendations of the Management Evaluation Unit and upheld the decision not to select the Applicant for the Position.

15. On 14 January 2024, the Applicant filed the present application.

16. On 28 February 2024, the Respondent filed his reply.

17. Pursuant to Order No. 046 (NY/2024) dated 12 April 2024, the Applicant filed a rejoinder to the Respondent's reply on 17 May 2024.

18. The case was assigned to the undersigned Judge on 25 October 2024.

19. Pursuant to Order No. 128 (NY/2025) of 23 December 2024, the Tribunal instructed the parties to file their closing submissions, which they duly filed.

Consideration

20. 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, “[t]he 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”.

21. Staff regulation 4.3 provides that “[i]n 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”.

22. Section 3.7 of the ST/AI/2010/4/Rev.2 on Administration of temporary appointments provides that assessments of job candidates may also include a competency-based interview and/or other appropriate evaluation mechanisms, such as written tests, work sample tests and assessment centres.

23. 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, para. 23). 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” (*Kinyanjui* 2019-UNAT-932, para. 14; *Ponce-Gonzalez* 2023-UNAT-1345 and *Dolgoplov* 2024-UNAT-1497).

24. As the Appeals Tribunal stated 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” (para. 32). 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.

25. In *Verma* 2018-UNAT-829, the Appeals Tribunal reiterated that, “[g]enerally 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” (para. 14, citing *Rolland*, para. 20).

26. In *Anand* 2024-UNAT-1473, the Appeals Tribunal further held that, “[a] staff member seeking selection or promotion has a right to be fully and fairly considered through a competitive selection process untainted by improper motives like bias or discrimination. A candidate, however, has no right to a selection or promotion. Therefore, a candidate challenging the denial of selection/promotion must prove through clear and convincing evidence that the procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored or potentially other grounds depending on the facts of the case” (para. 32).

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

Did the Applicant receive full and fair consideration?

28. The Applicant contends that he did not receive full and fair consideration for the Position. He states in his closing statement that “[d]espite [his] longstanding service and substantial contributions, and at the backdrop of other instances of marginalization and discrimination, [...] [his] non selection decision [involved] a well-orchestrated scheme that swiftly advanced a G6 and SIDS staffer, in about two months, into a P3 position”. The Applicant further adds that his candidacy for the Position was subject to “[d]iscrimination which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise of [his] rights, including equitable career growth”.

29. The Respondent responds that the application has no merit and should be denied. The Respondent states that the contested decision complied with ST/AI/2010/4/Rev. 2 and the TJO criteria. The Applicant was given full and fair consideration for the Position and the Staff Regulations and Rules were applied in

a fair, transparent, and non-discriminatory manner. The Applicant was not selected for the TJO as he was not successful in the CBI.

30. Having reviewed the record, the Tribunal notes that pursuant to sec. 3.4 of ST/AI/2010/4/Rev. 2, the TJO for the Position was advertised for a minimum of one week from 9 May 2023 to 15 May 2023.

31. Following the Applicant's application for the Position, the Administration conducted a preliminary assessment of the job candidates. The Applicant was one of six candidates found to meet the required and desirable criteria and shortlisted. OHRLLS invited the candidates, including the Applicant, to participate in CBIs scheduled for 2 June 2023. The CBIs were conducted through MS Teams by a Panel comprising of: (i) a P-5 level Senior Programme Management Officer, Team Leader of Sub-Programme 3, SIDS Unit; (ii) a P-5 level Senior Economic Affairs Officer, Sub-Programme 1; and (iii) a P-4 level Programme Management Officer, Sub-Programme. All the panel members completed the training in conducting CBIs.

32. The Panel assessed the six shortlisted candidates, including the Applicant, in their respective CBIs against the three competencies set out in the TJO: (i) professionalism; (ii) planning and organizing; and (iii) communication. The Tribunal notes that it is within the Administration's discretion to choose the skills, and competencies required for a vacant position and the methods to determine if a candidate meets them.

33. According to the record, the Panel documented the Applicant's response to each competency and rated the Applicant as "partially satisfactory" for all the three competencies. The Panel concluded that the Applicant "did not meet the competency requirements for this post and is therefore not recommended".

34. The Tribunal notes that the Panel rated the selected candidate as "satisfactory" under two competencies (professionalism and planning and organizing) and as having "met the requirements" for those competencies. For the remaining competency (communication), the Panel rated the selected candidate as having "exceeded the requirements". The Panel therefore concluded that the

selected candidate met or exceeded the competency requirements. On this basis the Panel recommended the selected candidate for the Position.

35. It follows from the above that the selected candidate met the requirements for two competencies of the TJO and exceeded the third competency requirements. The Applicant, on the other hand, did not meet any of the three competency requirements for the Position. In the Tribunal's view, the selected candidate was appropriately ranked the strongest candidate by the Panel. Based on the findings of the Panel, the Under-Secretary-General and High Representative, OHRRLLS lawfully endorsed the Panel's recommendation to appoint the selected candidate.

36. Based on the above, the Tribunal finds that the Applicant's candidacy for the Position received full and fair consideration as he was shortlisted and interviewed for the Position.

Was the selection process tainted by extraneous considerations?

37. The Tribunal notes that in his application, the Applicant makes allegations of bias, discriminatory practices and irregularities in the recruitment process for the Position. The Tribunal will address each of these in turn below.

38. The Applicant contends that the Panel was biased and showed a "lack of impartiality and independence". The Tribunal notes that the Applicant bears the burden of proving these allegations by adducing clear and convincing evidence to rebut the general presumption of regularity.

39. Upon review of the record, the Tribunal finds that the Applicant has not met his burden of establishing that the recruitment process was tainted by extraneous considerations. First, the Applicant states that a Panel member, who was also his First Reporting Officer, was biased due to the Applicant rebutting his performance appraisal for the 2018-2019 performance cycle. The Tribunal finds that the fact that the Applicant successfully rebutted his electronic performance appraisal system ("e-PAS") overall rating of "partially meets expectations" for the 2018-2019 performance cycle does not establish that the Panel member was biased.

40. Second, the Applicant's claim that another Panel member "yielded to his senior, hiring manager" and did not have "the caliber of an interviewer" is unfounded. The Applicant merely makes allegations and engages in speculation. The Applicant's views are not evidence. It is clear to the Tribunal that the Applicant, a long-standing staff member of OHRLLS, was disappointed with the contested decision and that he disagrees with the Panel's assessment. However, the Applicant's disagreement with the Panel's assessment does not render the contested decision unlawful or erroneous.

41. Third, the Applicant appears to challenge the selected candidate's eligibility for the Position on the basis that he had previously served as a General Service staff member with OHRLLS. The Tribunal finds no merit in this argument. The Respondent correctly points out that there was no restriction in the selected candidate's eligibility to apply for a professional level position, including the position featured in this case, upon his cessation from service at the General Service level.

42. Fourth, the Applicant alleges racial discrimination. The Tribunal finds no legal or factual basis for the Applicant's allegation that he was discriminated against because of his African heritage and "non-SIDS descent". In fact, the Respondent points out that of the four staff members on regular positions in the SIDS Unit, two are nationals of SIDS (Bahamas and Samoa) and two, including the Applicant, are nationals of non-SIDS countries (Zambia and Eswatini). Before the filling of the Position, the most recent addition to the SIDS Unit was a female national of Zambia.

43. Fifth, the Applicant states that the TJO lasted for over one year, in violation of sec. 2.3 of ST/AI/2010/4/Rev.2 which provides that "[a] temporary appointment shall not be used to fill needs that are expected to last for one year or more". In this regard, the record establishes that the Position was temporarily created for nine months in 2023 to carry out the mandate of OHRLLS, in support of its preparatory process for the fourth International Conference on Small Island Developing States to be held in 2024. The Respondent submits that at the time of advertisement, the General Assembly had only approved funding for 2023 equivalent to nine months of a P-3 level position. Accordingly, the TJO specified that the Position was

temporarily available until 31 December 2023 with a possibility of extension. The Tribunal finds that the TJO of nine months was administered lawfully under sec. 2.3 of ST/AI/2010/4/Rev.2. The Respondent submitted that thereafter, on 22 December 2023, the General Assembly approved additional funding for nine months in 2024. This approval of additional funding and the consequent extension of the TJO does not render the TJO irregular. Under sec. 2.5 of ST/AI/2010/4/Rev.2 “[s]ubsequent to the initial temporary appointment, new and successive temporary appointments may be granted for service in the same office or in a different office any number of times, for any duration, provided that the length of service does not exceed the period of 364 calendar days”. Moreover, the Tribunal observes that under sec. 14 of ST/AI/2010/4/Rev.2, in exceptional circumstances a temporary appointment may be extended beyond 364 days.

44. Finally, the Tribunal notes that the application is not receivable to the extent that the Applicant seeks to challenge: (i) the cancellation of Job Opening (JO) #175580 for the position of P-3 Programme Management Officer; and (ii) the decision to laterally reassign another staff member to the P-3 Programme Management Officer position in Sub-Programme 3, SIDS Unit, OHRLLS following the cancellation of JO #175580. An application regarding such decisions is only receivable if the Applicant first sought management evaluation in accordance with staff rule 11.2(a). The records indicate that the Applicant did not request management evaluation of these decisions and as such, any claim challenging these decisions is not receivable.

45. 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. The Applicant has not met his burden of proof to establish that he was not treated fairly. He has not established that the contested decision was tainted by discrimination, lack of impartiality, or bias.

46. Accordingly, the Tribunal finds that the decision not to select the Applicant for this position was lawful.

Conclusion

47. The application is rejected.

(Signed)

Judge Francis Belle

Dated this 23rd day of June 2025

Entered in the Register on this 23rd day of June 2025

(Signed)

Isaac Endeley, Registrar, New York