



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/001

Order No.: 4 (GVA/2011)

Date: 18 January 2011

Original: English

**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

BOFILL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Shelly Pitterman, UNHCR

## **Introduction**

1. On 10 January 2010, the Applicant filed an application with the United Nations Dispute Tribunal requesting it to suspend, during the pendency of the management evaluation, the implementation of the decision not to select her for the expert post of Deputy Controller at level D-1, in the Division of Financial and Administrative Management (“DFAM”), United Nations High Commissioner for Refugees (“UNHCR”), for which she had applied.

## **Facts**

2. The Applicant, a staff member of UNHCR, works as Chief, General Service Section, DFAM, at level P-5, in Geneva, under an indefinite appointment.

3. The expert post of Deputy Controller, DFAM, at level D-1, at UNHCR Headquarters in Geneva was advertised internally and externally as part of the 2010 September Compendium. The vacancy announcement stated the essential minimum qualifications and professional experience required to perform the duties of the post. It provided as follows:

Academic: Advanced university degree (Master’s degree or equivalent) in finance, business administration, accounting or a closely related field.

Professional qualification in accounting (CPA [Certified Public Accountant] or CA [Chartered Accountant] or equivalent) is a must.

Experience: Minimum of 20 years in supervisory position in accounting and/or in financial management in an international, decentralized and/or multinational environment ...

Skills: Ability for analytical and creative thinking and to achieve rapid solution(s) ...

Languages: Excellent knowledge of English ...

4. The Applicant applied for the vacant post. According to her fact sheet, her academic background is the following:

1968 1969 Lycée St Sernin, France  
Préparation au Concours d’Entrée HEC  
Obtention du Concours d’Entrée à l’Ecole  
HEC/Paris

1969 1972 Ecole des Hautes Etudes Commerciales (HEC),  
France  
Commerce International & Finances  
Diplôme de fin d'Etudes

5. The Applicant was one of the four internal candidates who applied for the vacant post. After having reviewed the candidates, the Controller and Director, DFAM, considered that none of the internal candidates met the essential academic requirements of holding both an advanced university degree and a professional accounting qualification. The selection process thus continued with only external candidates. One of them was selected for the post.

6. By all-staff email dated 5 January 2011, the Applicant was informed of the outcome of the selection process.

7. On 10 January 2011, the Applicant filed with the Tribunal an application for suspension of action of the decision not to select her for the post of Deputy Controller, DFAM, at level D-1.

8. By letter dated 11 January 2011, the Tribunal requested the Applicant to provide a copy of her request for management evaluation. On the same date, the Applicant submitted her request for management evaluation to the Deputy High Commissioner and complied with the Tribunal's request. On 13 January 2011, the Respondent submitted his reply.

### **Parties' contentions**

9. The Applicant's principal contentions are:

a. The contested decision is unlawful because:

i. The selection process is not in line with the Policy and Procedures on Assignments and Promotions dated 14 June 2010. In particular, the Division of Human Resources Management excluded itself at the onset from the responsibilities of determining the suitability of candidates. Furthermore, her Career Management Officer, who had assessed her application as highly suitable, was not involved in the selection process;

- ii. The selection process is flawed because suitable internal candidates like the Applicant were not fully and fairly considered. Her degree is equivalent to a Master's degree (Master of Science in Business Management) and she has a large experience in accounting. She worked in the banking industry for more than 20 years and as Chief, Finance Section, UNHCR, for seven years;
    - iii. The outcome of the selection process may be against the UN policy on achieving gender balance at senior levels;
  - b. The case is of particular urgency because the appointment of an external candidate, whose selection is unlawful, may be initiated or is already in progress;
  - c. Irreparable damage will be caused because:
    - i. The Applicant will be deprived of a long-expected career progression at level D-1 and her non-selection to the vacant post deprives other UNHCR staff of the possibility to apply to the post she encumbers;
    - ii. The selection of an external candidate is to the detriment of UNHCR efforts to reduce the number of staff members in between assignments;
    - iii. If it is confirmed that the selection process was flawed, the appointment offer to the external candidate would raise expectations that UNHCR may not be able to meet.
- 10. The Respondent's principal contentions are:
  - a. The Applicant has failed to establish that the decision is unlawful. The selection process was conducted in accordance with the Policy and Procedures on Assignments and Promotions. The Division of Human Resources Management was replaced in certain of its responsibilities by the Senior Assignments Committee because it did not have the necessary technical knowledge to make a final selection for this vacant expert post.

The participation of Career Management Officers in a selection process is not compulsory but remains at the discretion of the Senior Assignment Committee. Furthermore, the Applicant's Career Management Officer is not a technical expert and may have judged other internal applicants to be equally suitable;

b. The Applicant did not meet at least one of the two minimum academic requirements pursuant to the vacancy announcement, namely a professional qualification in accounting (CPA or CA or equivalent);

c. The Applicant's claim that the recruitment was against the UN policy on achieving gender balance is not substantiated. The mere fact that a male candidate was selected does not lead to the conclusion that there was a breach of any of UNHCR policies on achieving gender balance;

d. The recruitment of the selected candidate has been initiated after it was considered that there were no suitable internal candidates;

e. The Applicant would not suffer any irreparable harm which could not be compensated by a monetary award;

f. The Applicant has failed to provide sufficient evidence to conclude that there is prima facie unlawfulness, urgency or irreparable damage.

### **Considerations**

11. The Applicant requests the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision not to select her for the post of Deputy Controller, DFAM, at level D-1.

12. At the time the application was filed, the Applicant had not yet requested a management evaluation of the contested decision. However, she subsequently submitted a request for management evaluation to the Deputy High Commissioner. At the date of issuance of this order, the time limit for the Deputy High Commissioner's response to the request for management evaluation was still running and no such response had been given to the Applicant. Thus, the

application for suspension of action must be examined in the light of article 2, paragraph 2, of the Tribunal's Statute, which provides that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

13. The Tribunal will examine first whether the decision appears prima facie to be unlawful.

14. According to the vacancy announcement, the minimum academic requirements to perform the duties of the position are the following:

Advanced university degree (Master's degree or equivalent) in finance, business administration, accounting or a closely related field.

Professional qualification in accounting (CPA or CA or equivalent) is a must.

15. The CPA is a licensed qualification in accounting. It is the statutory title of qualified accountants in the United States who meet certain requirements set by each state board of accountancy. In accordance with the American Institute of Certified Public Accountants, to become a CPA it is necessary to complete a program of study in accounting at a college or university, to pass the Uniform Certified Public Accountant Examination and to obtain a specific amount of professional work experience in public accounting. The CA is an accounting qualification recognised in the Commonwealth of Nations and several other states. To obtain a CA, a person must be member of one of the qualification bodies in the United Kingdom such as the Institute of Chartered Accountants in England and Wales. In accordance with this Institute, to obtain a CA, it is necessary to complete a certain period of work experience and pass a series of examinations at an accredited institution. As a result, it has to be noted that both qualifications require having a certain level of education, passing a formal examination and obtaining a specific amount of professional experience.

16. The Applicant does not deny that she does not have the required professional qualification in accounting. Instead, she alleges that her previous experience in the private sector and in UNHCR as Chief, Finance Section, demonstrates her professional qualification in accounting. In this regard, it is noted that the vacancy announcement listed four cumulative and essential minimum requirements for the position, namely academic background, experience, skills and languages. Hence, while the Applicant's experience may be very valuable, she cannot claim that it is sufficient to replace a professional qualification in accounting such as the CPA or CA or equivalent, especially since relevant experience is a totally different requirement from education as per the vacancy announcement.

17. Since the Applicant did not fulfil at least one of the mandatory academic requirements specified in the vacancy announcement, the Respondent could lawfully decide to exclude her from the selection process. Hence, the Tribunal will not deal with the alleged procedural flaws indicated by the Applicant.

18. In light of the above, the Tribunal finds that the decision not to select the Applicant for the post of Deputy Controller, DFAM, at level D-1, does not appear *prima facie* to be unlawful.

19. The Tribunal has already stated that a request for suspension of action can only be granted where all the requirements of article 2, paragraph 2, of the Tribunal's Statute have been satisfied. It results from the wording of the above-mentioned article that the three conditions for suspension—*prima facie* unlawfulness, urgency and irreparable damage—are cumulative. Therefore, an application has to be rejected whenever at least one of the conditions is not met (see for example *Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Bernard* UNDT/2009/94, *Al-Mulla* Order No. 1 (GVA/2010)). Given that one of the conditions is not fulfilled in the present case, the Tribunal must reject the application without its being necessary to examine whether the other two conditions are fulfilled.

**Conclusion**

20. In view of the foregoing, the application to suspend the implementation of the contested decision during the pendency of the management evaluation is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 18<sup>th</sup> day of January 2011

Entered in the Register on this 18<sup>th</sup> day of January 2011

*(Signed)*

Víctor Rodríguez, Registrar, UNDT, Geneva