



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

THOMAS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PENDING  
MANAGEMENT EVALUATION**

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**Counsel for Applicant:**

Robbie Leighton, OSLA

**Counsel for Respondent:**

Jérôme Blanchard, LPAS, UNOG

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## **Introduction**

1. By application filed on 3 June 2021, the Applicant, a staff member of the United Nations Joint Staff Pension Fund (“UNJSPF”), requests suspension of action, pending management evaluation, of the decision to exclude him from the recruitment process concerning the position of Benefits Officer (P-3) in the UNJSPF Office in Geneva, advertised under Job Opening (“JO”) No. 151511 (“the contested decision”).

2. On 4 June 2021, the application for suspension of action was served on the Respondent instructing him *inter alia* to refrain, as of then and for as long as the suspension of action procedure before the Tribunal was ongoing, from taking any further decision or action relating to the recruitment process under JO No. 151511. The Respondent filed his reply to the application on 8 June 2021. Along with his reply, the Respondent filed *ex parte* Annex 2, which contains information about the selection exercise. The Tribunal has reviewed this document and decides that it should remain *ex parte*.

## **Facts**

3. Between 1992 and 1996, the Applicant worked as a Programme/Administrative Assistant (G-4) in the United Nations Volunteers programme. In 1996, he joined UNJSPF as an Accounting Clerk/Accounting Assistant (G-4). As of April 2000, the Applicant served as a Computer Information System Assistant, initially at the G-5 level and since October 2008, at the G-6 level. The Applicant indicates in his PHP that he also served as Benefits Assistant (Calculator/Auditor) from June 2014 to December 2019.

4. On 10 March 2021, the JO No. 151511 for the post of Benefits Officer (P-3), UNJSPF, was published in Inspira with a closing date of 23 April 2021. The vacancy announcement indicates in the Special Notice *inter alia* that “it was decided that General Services staff members at the GS-6 and GS-7 levels shall be eligible to apply to the positions in this job opening, provided they meet the requirements of the positions as set forth in this job opening”.

5. On 14 April 2021, the Applicant applied for the post.
6. A total of 67 candidates, including the Applicant, were screened as being eligible and were released to the Hiring Manager for the preliminary evaluation of their Personal History Profile (“PHP”) against the requirements of the JO.
7. The Applicant was considered not suitable and was therefore not shortlisted to continue in the recruitment process. Nine candidates were shortlisted and were invited to take a written test.
8. According to the Applicant, on 18 May 2021, he became aware that other candidates were being invited to sit a written test to take place on 21 May 2021. The Applicant had a conversation with the Hiring Manager that day and was informed that he had not been shortlisted as he did not meet the requirement of seven years’ relevant experience. According to the Applicant, the Hiring Manger indicated that only service at the G-6 level or above was considered relevant for purposes of calculating the minimum work experience requirement.
9. On 24 May 2021, the Applicant contacted Human Resources in UNJSPF explaining why he considered that he met the minimum work experience requirement and requesting an explanation as to why he had been excluded from the recruitment process. He did not receive a response.
10. Five candidates were successful in the written test and were invited to an interview which is scheduled to take place in the second week of June.
11. On 3 June 2021, the Applicant requested management evaluation of the contested decision.

**Parties’ contentions**

12. The Applicant’s primary contentions may be summarized as follows:

*Receivability*

- a. The exclusion of a candidate from a recruitment process prior to its completion constitutes a reviewable administrative decision;

*Prima facie unlawfulness*

- b. The Applicant's candidacy was reviewed against a requirement absent from the vacancy announcement, namely that only experience at the G-6 level and above would be considered relevant for the purposes of minimum requirements;
- c. Reliance on any practice of considering only G-6 and G-7 experience for professional roles is unlawful;
- d. The decision to disregard his work experience below the G-6 level represents unequal treatment;

*Urgency*

- e. Absent an order suspending the implementation of the contested decision, the recruitment process may be finalized prior to the management evaluation review being completed as interviews are scheduled for 10 June 2021;

*Irreparable damage*

- f. Harm is irreparable if it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed. Harm to career opportunity is not purely financial in nature and causes irreparable harm.

13. The Respondent's primary contentions may be summarized as follows:

*Receivability*

- a. No final decision regarding the contested decision has been made. The selection exercise is currently ongoing, and only a final selection decision constitutes an administrative decision subject to review pursuant to the Tribunal's Statute;

*Prima facie unlawfulness*

- b. Given that the Applicant does not have a master's degree, he needed two additional years of qualifying experience in lieu of the advance university degree as required in the JO;
- c. According to the Staff Selection Manual and the correspondence from the former Assistant Secretary-General for Human Resources Management ("ASG/OHRM") dated 28 February 2014 on the consideration of work experience, for a JO in the Professional and higher categories, only professional relevant experience must be considered;
- d. In the UN system or related organizations applying the common system job classification standards, only work experience obtained in the GS-6 and above in the General Service category is considered professional;
- e. Based on the Applicant's PHP, he does not have the seven years of relevant professional experience as required in the JO; and
- f. The Applicant did not raise serious and reasonable doubts about the lawfulness of the contested decision.

**Consideration**

*Receivability*

- 14. The first question for the Tribunal is whether the present application is receivable.
- 15. The Respondent claims that the selection exercise is currently ongoing and that only a final selection decision constitutes an administrative decision subject to review pursuant to the Tribunal's Statute.
- 16. This Tribunal has already ruled on several occasions that declaring a candidate non-eligible or non-suitable may fall into the definition of an administrative decision, inasmuch as it results in his/her exclusion from the recruitment exercise before the final selection of a successful candidate (see

*Gusarova* UNDT/2013/072; *Willis* UNDT/2012/044; *Korotina* UNDT/2012/178 (not appealed); *Melpignano* UNDT/2015/075 (not appealed); *Mukui* Order No. 117 (NY/2019); *Kohler* Order No. 207 (GVA/2016); *Essis* Order No. 89 (NBI/2015); *Nunez* Order No. 17 (GVA/2013)).

17. The Tribunal does not call into question that the selection process entails a series of steps or findings, one of which is the assessment of the candidates' suitability by the Hiring Manager on the basis of their PHPs. There is no doubt, either, that the end of the process, strictly speaking, is the selection of the successful candidate. Having said that, even if the selection process continues its course until the selection of a successful candidate, the fact is that for any candidate who has, at a previous stage, been deemed to be ineligible or unsuitable, his/her chances to obtain the post at stake end at the time of such determination. As stated in *Korotina* UNDT/2012/178, such a decision "signifie[s] the end of the process as far as [the applicant] is concerned".

18. Most recently in *Hejamadi* 2021-UNAT-1083, the Appeals Tribunal, while not expressly stating so, also appears to share this view as it considered the merits of a challenge to the decision to exclude the applicant from the selection process for failing to confirm her availability to participate in a written exercise, within a 24-hour deadline imposed by the Administration, which the Appeals Tribunal found unlawful.

19. To challenge the receivability of the present application for suspension of action, the Respondent relies on *Ishak* 2011-UNAT-152 in which the applicant challenged the decision not to promote him during the annual promotion session. The applicant was subsequently promoted after filing a recourse application. No grievance remained. Nevertheless, he sought administrative review and challenged certain actions of the Administration which, according to him, denied him a fair consideration for promotion. In this context, the Appeals Tribunal held that "[a] selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the [Dispute Tribunal]".

20. However, in the present case, the Applicant is not challenging the preliminary steps pending the outcome of the selection process concerning his candidacy. As far as his job application is concerned, he was informed of the final decision which excluded him from further consideration. The decision to exclude the Applicant from further consideration has immediate effects in the Applicant's conditions of service. Therefore, the present application is distinguishable from *Ishak*.

21. Accordingly, the Tribunal finds the present application receivable. Having reached this conclusion, the Tribunal may now turn to the analysis of the conditions set out in art. 2.2 of its Statute and art. 13.2 of its Rules of Procedure.

#### *Merits*

22. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative; in other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

#### *Prima facie* unlawfulness

23. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

24. The Tribunal is well aware that its role is not to re-assess the merits of the candidates in a recruitment process. It is a settled principle that it is not for the Tribunal to substitute its own judgment to that of the Hiring Manager (*Ljungdell* 2012-UNAT-265, *Bofill* 2013-UNAT-383, *Niedermayr* 2015-UNAT-603, *Savadogo* 2016-UNAT-642), who is best placed to appreciate the relevance of professional experience and is expected to be an expert on whatever domain is the

focus of the job to be filled. This notwithstanding, the Administration's discretion is not unfettered. Although the Tribunal should not lightly interfere in the Administration's exercise of discretion, it is, nonetheless, competent to examine if the contested decision could be tainted by extraneous factors, erroneous or irrelevant information, procedural flaws or if it resulted in a manifestly unreasonable outcome.

25. The Applicant's case for *prima facie* unlawfulness rests on two grounds:

- a. He was not shortlisted for the vacant position advertised under JO No. 151511 because the Hiring Manager wrongly considered that he did not meet the requirement of seven years' relevant experience; and
- b. The Hiring Manger only considered service at the G-6 level or above as relevant for purposes of calculating the minimum work experience requirement, which was not indicated in the vacancy announcement.

26. The Tribunal notes that the JO No. 151511 provides in its relevant part as follows:

#### **Education**

Advanced university degree (Master's degree or equivalent degree) in management, business or public administration, finance, legal, or other relevant area. A first-level university degree in combination with **two additional years of qualifying experience** may be accepted in lieu of the advance university degree.

#### **Work experience**

A minimum of **five years of progressively responsible experience** in business or public administration, finance, human resources management, law or related field is required (emphasis added).

27. Para. 4 of Annex 1 on Education and Work Experience requirements of the Staff Selection Manual, provides that:

In the UN system or related organizations applying the common system job classification standards, only work experience obtained in the following levels and categories is considered professional:



- a. Professional and higher categories
- b. FS-4 and above in the Field Service category
- c. National Professional Officer category
- d. **GS-6 and above in the General Service category** [...] (emphasis added)

28. The Tribunal notes that the requirement to only consider work experience obtained in the GS-6 level and above in the General Service category as professional is also consistent with the guidance provided by the former ASG/OHRM on the staffing procedures to the hiring managers on 28 February 2014.

29. The Respondent argues that given that the Applicant does not have a Master's degree, he needs two additional years of qualifying experience in lieu of the advanced university degree.

30. Indeed, the Tribunal notes that according to the Applicant's PHP, he does not have a Master's degree and therefore he was required to have seven years of progressively responsible experience in business or public administration, finance, human resources management, law or a related field.

31. In relation to the Applicant's relevant work experience, the Tribunal notes that in his PHP, the Applicant indicated that he was promoted to the G-6 level in October 2008 as Computer Information Systems Assistant (his current position). He also indicated that "apart from his duties as Computer Information Systems Assistant", from June 2014 to December 2019, he collaborated as Benefits Assistant (Calculator/Auditor). Therefore, it seems that there was an overlap of duties during a certain time.

32. Even considering that the Applicant's work experience from June 2014 to December 2019 as Benefits Assistant (Calculator/Auditor) was on a full-time basis, it remains that this period only covers five years and a half, and that his main work experience at the G-6 level is in the area of IT help-desk services which was considered by the Hiring Manager as not relevant for the vacant position.

33. Therefore, the Tribunal finds that based on the information in the Applicant's PHP, the Hiring Manager was *prima facie* correct in considering that he does not have the seven years of relevant and qualifying professional experience.

34. Accordingly, the Tribunal finds that the requirement of *prima facie* unlawfulness is not met in the present case.

35. Since one of the three cumulative conditions to grant a suspension of action is not met, it is not necessary to address the two other conditions.

### **Conclusion**

36. In view of the foregoing, the application for suspension of action is rejected.

*(Signed)*

Judge Teresa Bravo

Dated this 11<sup>th</sup> day of June 2021

Entered in the Register on this 11<sup>th</sup> day of June 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva