



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

TEMSAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Edwin Nhliziyo

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR/UN Secretariat

Tamal Mandal, AS/ALD/OHR/UN Secretariat

Introduction

1. By application filed on 10 June 2024, the Applicant, a staff member of the United Nations Support Office in Somalia (“UNSOS”), requests suspension of action, pending management evaluation, of the decision “not to invite him for an interview” for a roster of Property management officers’ candidates at the P-4 level.
2. The application for suspension of action was served on the Respondent, who filed his reply on 13 June 2024.

Facts

3. On 6 April 2024, the Applicant applied through Inspira to Generic Job Opening No. 231100 (“GJO 231100”) advertised from 27 March 2024 to 25 April 2024.
4. The Applicant was among 183 candidates who met the minimum requirements of GJO 231100.
5. On 30 April 2024, with the eligible candidates, the Applicant was invited, via an online testing platform, to a written technical assessment to be completed between 7 May 2024 to 10 May 2024. The invitation also informed the candidates that only “successful candidates in the written assessment will be invited to the competency-based interview, which [was] the next stage in the process”.
6. The Applicant completed the written technical assessment on 10 May 2024.
7. By email dated 26 May 2024, the Applicant wrote to the Logistics Occupational Group complaining that he “did not receive any invitation related to the upcoming interview”.
8. On 28 May 2024, the Logistics Occupational Group replied to the Applicant that “the recruitment process [was] still ongoing” and that “candidates shall be informed of the final outcome once the recruitment process has concluded”.
9. On 8 June 2024, the Applicant requested a management evaluation of the contested decision.

Consideration

Receivability

10. In order to be receivable, the application must challenge a final administrative decision. “Preparatory or intermediate decisions are not reviewable”. *O’Brien* 2022-UNAT-1313, para. 24.

11. In this case, the Applicant challenges the decision not to invite him for an interview, which is just the next preparatory step to the final selection decision. The roster has not been finalised as the recruitment process under GJO 231100 is still ongoing.

12. Only a decision taken at the end of the selection or roster’s process with direct legal consequences for the Applicant would constitute an administrative decision subjected to review. *Avramoski* 2020-UNAT-987, para. 39; *Faye* 2016-UNAT-657, para.30; *Nguyen Kropp & Postica* 2015-UNAT-509, para. 33; *Lee* 2014-UNAT-481, paras. 48-49; *Ngokeng* 2014-UNAT-460, para. 27; *Ishak* 2011-UNAT-152, para. 29; *Andati-Amwayi* 2010-UNAT-058, para. 17.

13. Thus, the application is not receivable.

Prima facie unlawfulness

14. Even if the application were receivable, it would fail on the merits.

15. Applications for suspension of action are governed by arts. 2.2 and 10.2 of the Statute of the Dispute Tribunal, and arts. 13 and 14 of its Rules of Procedure. According to art. 2.2 of the Tribunal’s Statute, 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.

16. 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.

17. 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, *Nabisubi* Order No. 58 (NBI/2024), *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)).

18. The Applicant has failed to establish serious and reasonable doubts about the lawfulness of the decision not to invite him for an interview.

19. The application merely states that the Applicant “believes ... that he did very well on the test”, while the Respondent alleges the Applicant scored 60 out of 100, falling short of the required score of 67.5. It is noted that neither party provided documentary support for their factual allegations.

20. The Applicant also recounts his suspicion that “the decision who is to be interviewed is not based on strictly ranking from the written test”. He gives no specifics as to why he suspects this and certainly presents no evidence to support this suspicion.

21. The jurisprudence establishes a presumption that officials acts have been performed regularly. *Rolland* 2011-UNAT-122, para. 26. Mere suspicions do not rebut this presumption.

22. The Applicant also alleges that the recruitment process is not transparent because he has not been given “a ranked list based on the results of the written test”. As noted above, the recruitment is still ongoing, and providing such information mid-process would be inappropriate.

23. In sum, the Applicant has not presented a “fairly arguable case” that the decision is unlawful. *Minaeva* Order No. 56 (GVA/2020) para. 20; *Jaen* Order No. 29 (NY/2011), para. 24; *Villamorán* UNDT/2011/126, para. 28.

24. Thus, the application fails to meet one of the requirements for suspension of action. There is no need to address the other conditions of urgency or irreparable harm. The application fails on the merits.

Conclusion

25. In view of the foregoing, the application for suspension of action pending management evaluation is denied.

(Signed)

Judge Sean Wallace

Dated this 18th day of June 2024

Entered in the Register on this 18th day of June 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi