



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

CAYLAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Angela Arroyo, UNDP

Introduction

1. On 26 December 2019, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”), filed an application with the Tribunal contesting the decision not to select her for the position of Development Coordination Officer, Partnerships and Development Finance, at the National Officer (“NO”) C level (“the position”) in the United Nations Resident Coordinator’s Office (“RCO”) in Ankara, Turkey.
2. On 28 January 2020, the Respondent filed his reply.
3. On 26 January 2021, the present case was assigned to the undersigned Judge and was included in his docket for his current deployment.
4. By Order No. 43 (GVA/2021) of 16 February 2021, the Tribunal informed the parties of its intention to determine the case on the papers without holding a hearing. The parties were also instructed to file their closing submissions.
5. On 1 March 2021, the parties filed their respective closing submission.

Facts

6. On 1 August 2017, the Applicant joined UNDP Turkey on a fixed-term appointment as a United Nations Coordinator Analyst at the NO, B level. She separated from service on 30 September 2019, upon the expiration of her fixed-term appointment.
7. In 2018, the General Assembly adopted resolution 72/279 whereby it decided to reinvigorate the role of the Resident Coordinator’s Office. In accordance with that decision, the Deputy Secretary-General issued guidance on revising the composition of the RCOs, including the abolition of current positions and the creation of new positions in line with the revised functions of the office.
8. On 10 January 2019, UNDP issued guidance *inter alia*, on how the recruitment processes for NO positions in RCOs would be handled. It provided that all appointments for national staff positions were to be on UNDP Letters of

Appointment and that “all the positions [were to be] new and ... filled through new recruitments”. It indicated that such recruitments could not be considered as part of a UNDP change process and that existing UNDP administered personnel could compete and be selected for these newly established positions.

9. In this context, the RCO in Turkey created the position referred to above, which was advertised on 7 February 2019.

10. Prior to the commencement of the recruitment process, the United Nations Resident Coordinator created a recruitment strategy for the position, which provided that a written test would be administered, the candidates with the top five written test scores would be invited to participate in an interview, and that the selection for the position would be entirely based on the results of the interviews.

11. On 22 February 2019, the Applicant submitted her application for the position. Nine candidates, including the Applicant, were invited to take the written test. The Applicant completed her written test on 12 June 2019.

12. The Applicant’s score of 59.3 points out of a total of 100 points, ranked as the fourth highest score out of the nine candidates who took the written test. The Applicant, along with four other candidates, were invited to participate in the competency-based interview phase for the position.

13. On 25 July 2019, the Applicant was interviewed for the position. The interviewing Panel was composed of the United Nations Resident Coordinator in Turkey, the Representative of the United Nations Population Fund (“UNFPA”), the Representative of the United Nations High Commissioner for Refugees (“UNHCR”) and a Human Resources Service Support Associate, UNDP CO Turkey who attended in an *ex officio* capacity. The Applicant scored 55 points out of a total of 100 points at the interview and was ranked fifth out of the five candidates that were interviewed.

14. The Panel recommended the top three ranked candidates for the position. The Applicant was not recommended for the position.

15. On 6 August 2019, the United Nations Resident Coordinator in Turkey met with the Applicant in the presence of the HR Service Support Associate. The Applicant was personally informed that she had not been selected for the position.

16. By email of 7 August 2019, the Applicant was informed of the decision not to select her for the position.

17. On the same day, the Applicant was informed that her appointment with UNDP Turkey would reach completion upon the expiration of her fixed-term appointment on 30 September 2019.

18. On 16 August 2019, the Applicant requested management evaluation of the decision indicated in para. 1 above.

19. On 26 September 2019, the Assistant Administrator and Director, Bureau for Management Services, UNDP, replied to the Applicant's request for management evaluation. The contested decision was upheld.

Parties' submissions

20. The Applicant's principal contentions are:

- a. The recruitment and selection criteria were not transparent;
- b. Her interview was not properly assessed;
- c. She was not given priority consideration as a staff member on a position that was to be abolished;
- d. The selected candidate has limited work experience compared to her;
- e. As a result of her non-selection for the position, she lost her job with the United Nations; and
- f. The retainment rule was not applied.

21. The Respondent's principal contentions are:

- a. The Applicant did not contest the decision not to renew her fixed-term appointment in her request for management evaluation and, therefore, her application is not receivable *ratione materiae* in this respect;
- b. The decision not to select her for the position was proper;
- c. The Applicant was afforded full and fair consideration for the position;
- d. She has not met her burden of proof to show that she was not fairly considered for the position or that the selection process was otherwise flawed; and
- e. She is not entitled to any moral damages.

Consideration

22. The Applicant, whose fixed-term appointment was not renewed, claims that she lost her job in the Organization as a result of her non-selection for the position, and identifies the contested decision as her "non-selection for the post [of] Partnership and Development Finance" in the RCO in Ankara, Turkey.

23. The Tribunal finds that the Applicant does not contest the non-renewal of her fixed-term appointment, and that the application is admissible as the Applicant properly requested management evaluation of the decision related to her non-selection.

24. As to the merits, the Tribunal notes that the recruitment process was conducted in accordance with the UNDP's Recruitment and Selection Policy, which provides in para. 46 that:

Prior to the commencement of the recruitment and selection process, the hiring manager, in consultation with the HR professional and taking into account corporate diversity requirements, shall document the strategies, methodologies or techniques to be used for assessing candidates, based on the requirements of the post.

25. The evidence shows that the United Nations Resident Coordinator in Turkey, who was the hiring manager, prepared the recruitment strategy for the position. According to this strategy, the assessment of candidates would include two steps: a written test followed by an interview of the top five candidates. The strategy also provided that following the written test, the interview would entirely account for the final selection decision.

26. The written exam score card shows that nine candidates, including the Applicant, were invited to sit for the written test. The Applicant scored 59.3/100 points, which ranked her fourth. Accordingly, she was invited to the next stage of the assessment, an interview.

27. The interview score card shows that the Applicant was given an overall score of 55 out of 100 points, which resulted in her being the lowest scoring candidate out of the five candidates interviewed. The Applicant was consequently not recommended for the position.

28. The Applicant claims that she was subjected to an unlawful “second interview” with the United Nations Resident Coordinator in Turkey on 6 August 2019. However, the evidence shows that the selection panel had already decided on 2 August 2019 not to recommend the Applicant for the position. Therefore, the meeting with the United Nations Resident Coordinator in Turkey on 6 August 2019 was not a second interview but a meeting whereby the Applicant was personally informed of her non-selection for the position.

29. Concerning the merits of the candidates assessed for the position, the Tribunal recalls that it is for the selection panel to assess the candidates’ competencies and skills for the position; it further notes that the selected candidate scored significantly higher than the Applicant in the written test and in the interview, with a score of 86.7 on the written test and 79.3 on the interview.

30. In selection and appointment matters, the Administration enjoys broad discretion and it is not the role of the Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of a selection process (see *Fröhler* 2011-UNAT-141 and *Ljungdell* 2012-UNAT-265).

31. The Tribunal's examination is limited to whether the procedure laid down in the Staff Regulations and Rules was followed, and whether the staff member was given full and fair consideration (see *Abbassi* 2011 UNAT-110).

32. The Appeals Tribunal has adopted the principle of regularity by which if the Respondent is able to "even minimally show that [an applicant's] candidature was given a full and fair consideration, then the presumption of law stands satisfied". Thereafter, an applicant "must show through clear and convincing evidence that [s/he] was denied a fair change of promotion" to win the case (see *Lemonnier* 2017-UNAT-762).

33. In the case at hand, the record shows that the challenged decision was lawfully based on the outcome of a two-step assessment procedure, applied to all candidates, in which the Applicant's candidature was afforded full and fair consideration. The Tribunal also finds that the Applicant has not discharged her burden to show that the contested decision was tainted by any procedural irregularity.

34. The Applicant argues that her non-selection was inconsistent with her right to have priority consideration both as an internal candidate under staff regulation 4.4 and as a fixed-term appointment holder whose post had been abolished under staff rule 9.6(e).

35. Staff regulation 4.4 provides in its relevant part that "the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations".

36. The Tribunal finds that the Applicant was given full consideration in the selection process, and that her experience in the United Nations as well as her status as a staff member of the RCO in Turkey was properly recorded in the corporate panel report.

37. Staff rule 9.6(e) provides for an order of preference for retention of staff members whose appointments are terminated as a result of the abolition of posts or the reduction of staff.

38. In this respect, the Tribunal finds that staff rule 9.6(e) is not applicable to the Applicant's case as her contract was not terminated. In fact, she had a valid fixed-term appointment when the contested decision was taken, and she was separated on 30 September 2019 upon the expiration of her appointment.

39. In light of the above, the Tribunal finds that the contested decision was lawful. Consequently, the Applicant is not entitled to the remedies requested.

Conclusion

40. In view of the foregoing, the Tribunal REJECTS the application in its entirety.

(Signed)

Judge Francesco Buffa

Dated this 28th day of May 2021

Entered in the Register on this 28th day of May 2021

(Signed)

René M. Vargas M., Registrar, Geneva