



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-723

**Chhikara  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Richard Lussick, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2016-961
Date:	31 March 2017
Registrar:	Weicheng Lin

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Counsel for Mr. Chhikara:	Self-represented
Counsel for Secretary-General:	Ernesto Bondikov

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/089, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 23 June 2016, in the case of *Chhikara v. Secretary-General of the United Nations*. Mr. Virendra Chhikara filed the appeal on 22 August 2016, and on 23 August 2016, he filed a “Motion to Adduce Additional Evidence”. The Secretary-General filed his response to the Motion on 6 September 2016 and filed his answer to the appeal on 24 October 2016. On 15 March 2017, Mr. Chhikara filed a second “Motion to Adduce Additional Evidence”.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... The following is taken from the statement of agreed facts and documents submitted by the parties [to the UNDT], supplemented by the oral evidence of [Mr. Chhikara], Mr. Mitchell Fox, one of the Panel members, and Ms. Catharina [V]an de[r] Berg, the Hiring Manager.

... Since 2003, [Mr. Chhikara], an Indian national, has been the Chief Aviation Safety Officer at the United Nations Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”) first at the P-4 level and then, following reclassification of the post in 2012, at the P-5 level. He holds a fixed-term appointment.

... [Mr. Chhikara] applied for the post of Senior Aviation Safety Officer in New York in mid-2013. He passed a written assessment in early January 2014.

... Subsequently another candidate was shortlisted and passed the written assessment. Due to the lapse of time and the inclusion of the additional candidate, the Hiring Manager decided to administer a new written technical test, which took place at the end of May 2014.

... [Mr. Chhikara], together with four other candidates, successfully passed the second test and was invited to participate in a competency-based interview.

... The competencies for the post prescribed in the Job Opening were Professionalism, Planning and Organizing, Communication, Leadership, Judgement/Decision Making.

... [Mr. Chhikara] was interviewed by phone on 24 July 2014. The members of the Panel were:

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<sup>1</sup> Impugned Judgment, paras. 8-51 (footnotes omitted).

- a. The Chief, Strategic Transport Service with the Logistics Support Division (“LSD”) of the Department of Field Support (“DFS”) at the D-1 level (Chief STS);
- b. The Chief, Flight Operations Section of the International Civil Aviation Organization (“ICAO”) at the P-5 level, Mr. Mitchell Fox; and
- c. The Chief, Recruitment Section of the Field Personnel Division (“FPD”) of DFS at the P-5 level who was female.

... [Mr. Chhikara] recorded his own answers to the interview using a mobile phone. The questions by the interviewers were not recorded. He made a transcript of that recording which the parties agreed was accurate.

... Mr. Fox from ICAO gave evidence about how the Panel conducted itself and reached its recommendations. He said he was the sole subject matter expert on the Panel. ... He said that the positive and negative indicators (the indicators) for each core competency, taken from the United Nations Competency Development - A Practical Guide (“Practical Guide”), are the objectively verifiable criteria used to assess the individual competencies.

... Mr. Fox stated that each Panel member was at a different geographical location and before the interviews they met by phone to prepare the questions. He said he made copious notes of the interview which he later destroyed. He did not have a check list of positive and negative indicators during the interview but had the agreed questions and referred to ICAO guidelines which used the same indicators. He asked the candidates questions relating to the competency of professionalism.

... Following the interview, the Panel had another teleconference in which they reflected on the interview performance of the candidates competency by competency. The FPD/DFS member of the Panel summarized the findings in an Interview Assessment Report and distributed these to the other Panel members. They reviewed them and agreed to the summary which they signed as a true reflection of the Panel’s findings.

... He said that the Panel members reached an easy consensus on each on [sic] of the competencies of [Mr. Chhikara] and all identified the same performance shortcomings.

... The Interview Assessment Report recorded that the assessment criteria for the post were: Professionalism; Planning and Organizing; Communication; Leadership; and Judgement/Decision Making.

... The Interview Assessment Report documented the Panels’ assessment procedure for each competency by recording the questions asked of [Mr. Chhikara], a summary of his answers, the Panel’s observations and evaluation, and the overall rating for each competency.

...

... The summary of the Panel's assessments of [Mr. Chhikara] at the end of the Interview Assessment Report stated that the Panel agreed that [Mr. Chhikara] did not demonstrate mastery in all five competencies. It was pleased with his coordinated answers to Planning and Organizing and Leadership, in which he was rated fully competent, his responses to Professionalism, Communication and Judgement/Decision Making provided little evidence on the key indicators required for the position. He was not recommended for the position.

... Ms. Van der Berg, the Director of ... LSD[/]DFS, was the Hiring Manager for this selection exercise. ...

... Her role was to ensure that the recruitment process was followed in accordance with the staffing policies and procedures to recruit a qualified candidate for the position. She was not involved with the evaluation of the candidates for the position but endorsed the two candidates recommended by the Panel and submitted them for further review and decision after being briefed verbally by one of the panelists and browsing through the Panel's observations and evaluation of each candidate "for a minute or two".

... Ms. Van der Berg described the process to be undertaken by an assessment panel. The competencies of the candidates were to be evaluated against the positive and negative indicators listed against each competency in the Practical Guide. She said that the Panel members have sheets where they make notes and note down positive or negative indicators as the case may be. The indicators however are not referred to in their observations and assessments in the Interview Assessment Report. Instead they put a summary of their findings.

...

... On 12 December 2014, [Mr. Chhikara] was informed that he had been neither selected for the post nor included in the roster of qualified candidates for future similar positions.

... [Mr. Chhikara] told the [Dispute] Tribunal that he only saw the Interview Assessment Report and the Comparative Analysis Report which was entered into Inspira after he filed his challenge to the decision with the [Dispute] Tribunal. At that stage he noted that the answers attributed to him in the Interview Assessment Report did not reflect the answers he provided during the course of the interview as recorded on his phone.

... For example, in response to a question related to the competency of Judgement/Decision Making the Interview Assessment Report stated that he had discussed an investigation that he had purportedly conducted in Afghanistan. He said that he had never set foot in Afghanistan and was not involved in the investigations described in the Interview Assessment Report.

... He also noticed that the evaluation of his competencies in both the Interview Assessment Report and the Comparative Analysis Report repeatedly applied the wrong key indicators to each of the three values/competencies for which he was graded “requires development”.

... He stated that the moral damage he has suffered was caused by the impact on his job security as the post in New York is more stable than the one he holds at MONUSCO, which is in the process of downsizing; damage to his professional reputation, and loss of opportunity to serve in a family duty station after 13 years at a non-family duty station; professional embarrassment; and disappointment at not being posted to a family duty station.

...

... As his primary concern in bringing this case was never about money he requested USD 1 for moral damages if his claim is supported.

3. On 23 June 2016, the UNDT issued its Judgment. The UNDT concluded, *inter alia*, that Mr. Chhikara’s application for the position of Senior Aviation Safety Officer had not received full and fair consideration, that the competency-based interview had not been conducted by a properly constituted panel or assessed lawfully, and that the decision not to appoint Mr. Chhikara to the position or to roster him for similar positions had been tainted by procedural irregularities. With respect to remedies, the UNDT declined to order that the impugned decision be rescinded on the grounds that it saw no basis upon which to conclude that Mr. Chhikara would have been recommended for the position but for the procedural irregularities. The UNDT ordered the nominal amount of one US Dollar be paid to Mr. Chhikara as moral damages.

### **Submissions**

#### **Motion to Adduce Additional Evidence filed on 23 August 2016**

##### *Mr. Chhikara’s Motion*

4. Mr. Chhikara seeks leave to submit additional evidence consisting of his written affidavit, which includes information regarding his credentials as well as those of the selected candidate. He submits that exceptional circumstances exist—namely, that its relevance was not known at the time of his application before the UNDT as he was unaware that the UNDT would undertake a merits-based review of his chances of selection. This additional evidence is necessary to establish the facts regarding his chances of selection.

*The Secretary-General's Response*

5. Mr. Chhikara's motion should be denied. He fails to establish any exceptional circumstances and his claim that he was "unaware" that the UNDT would consider his selection chances is without merit as it is established case law that the UNDT takes into account evidence of a staff member's chances when considering compensation. Also, Mr. Chhikara seeks to raise on appeal a new argument—his likelihood of selection—and to submit supporting evidence, which was not, but could have been, presented before the UNDT.

**Mr. Chhikara's Appeal**

6. The UNDT erred in fact and in law when it declined to order rescission of the selection decision. In rendering its decision, the UNDT erroneously relied on the Appeals Tribunal's Judgment in *Bofill*,<sup>2</sup> which is distinguishable in important respects. First, Ms. Bofill would not have been selected as 78 other candidates ranked higher than she did; in contrast, Mr. Chhikara had been short-listed for the written assessment and had been one of five candidates invited to the competency-based interview; and, thus, had significantly higher chances of being selected than was the case in *Bofill*, where it had been determined that Ms. Bofill had a zero per cent chance of being promoted. Further, unlike *Bofill* where only one irregularity was identified, the UNDT found numerous procedural irregularities in Mr. Chhikara's case — including, the composition of the interview panel and the panel's assessment method.

7. The UNDT held Mr. Chhikara to an impossible burden of proof to show "with certainty" that he would have eventually been selected for the post had the irregularities not occurred. The facts (that he was short-listed and one of five candidates invited to the interview) demonstrate that he had a high chance (calculated at 33 per cent, at least) of being recommended and eventually selected. Mr. Chhikara's credentials were significantly better than those of the selected candidate and he should have been selected for the position. The fact that the selected candidate had not passed Inspira's automatic screening indicates that his application had inherent weaknesses.

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<sup>2</sup> *Bofill v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-174.

8. The UNDT erred in fact when it determined that the presence of only one subject matter expert on the panel did not influence the findings of the other panel members. The other two panel members could not be expected to properly evaluate Mr. Chhikara's responses.

9. The UNDT failed to exercise its discretion when it did not order rescission of the contested decision and, thus, it failed to properly hold the Administration accountable. The consequences arising from his non-selection include damage to his professional reputation and loss of career prospects; in addition, had he been selected, he would have enjoyed greater job security, increased salary and pension benefits and an improved quality of life as he would have been posted to a family duty station.

10. Mr. Chhikara requests that the Appeals Tribunal rescind the selection decision or, alternatively, award such monetary compensation as it deems fit in light of the procedural irregularities identified by the UNDT.

#### **The Secretary-General's Answer**

11. The UNDT correctly determined that Mr. Chhikara was not entitled to either rescission or compensatory damages. There is also no error in the UNDT's award of moral damages in the nominal amount of one US Dollar requested by Mr. Chhikara. More importantly, the UNDT correctly concluded that there were no grounds upon which to find that Mr. Chhikara would have been recommended for the position but for the procedural irregularities it had identified. The UNDT correctly found that two other candidates were considered to have met all five competencies required for the position and, thus, had been recommended for selection. The UNDT found no causal link between the fact that Mr. Chhikara was not recommended for the position and any harm resulting from the procedural irregularities. As such, the UNDT's decision not to order rescission or compensatory damages was in accordance with applicable jurisprudence.

12. Mr. Chhikara has failed to show any reversible error by the UNDT. The UNDT correctly relied upon *Bofill* and Mr. Chhikara's submissions in this regard are without merit. Mr. Chhikara's argument that the UNDT placed upon him an impossible burden to disprove that there was "no certainty" that he would have been selected is without merit. His claim that he would have been rostered is also without merit.

13. Mr. Chhikara's argument that his qualifications were superior to the selected candidate is a new argument not previously raised before the UNDT and, thus, should be rejected. Even if accepted by the Appeals Tribunal, Mr. Chhikara's new argument should be rejected because it essentially asks the Appeals Tribunal to consider the merits of his candidacy,

14. The UNDT correctly found no evidence of undue influence by the only subject-matter expert. The record before the UNDT contains no such evidence and Mr. Chhikara has failed to substantiate his bare assertions in this regard. Mr. Chhikara has failed to demonstrate any reversible error.

15. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Chhikara's appeal in its entirety.

### **Considerations**

#### *Motion to Adduce Additional Evidence - filed on 23 August 2016*

16. Mr. Chhikara has brought a motion seeking leave to adduce additional evidence in the form of his affidavit setting out his credentials for the post at issue and the credentials of the selected candidate.

17. He claims that exceptional circumstances exist in that he "was unaware that the UNDT would undertake a merit's [sic] based review of his chances of selection (considering instead that it would focus on procedural irregularities)".

18. In claiming that this evidence was not known to him until after the UNDT decision, Mr. Chhikara states: "The relevance of the evidence sought to be produced was not known ... at the time that he made his submissions to the UNDT."

19. Article 2(5) of the Appeals Tribunal Statute (Statute) provides in part that:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. ... The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

20. We find that Mr. Chhikara has not demonstrated that there are exceptional circumstances warranting the filing of additional evidence. Being unaware that the UNDT would consider his chances of selection does not meet this criterion.

21. Further, the Appeals Tribunal has consistently held that it will not admit evidence which was known to the party and could have, with due diligence, been presented to the UNDT.<sup>3</sup> His explanation that he only realized the relevance of additional evidence after the UNDT decision does not escape the fact that it was known to him at that time.

22. The motion is accordingly refused.

*Motion to Adduce Additional Evidence – filed on 15 March 2017*

23. Mr. Chhikara filed a second motion on 15 March 2017, just five days before the commencement of the present session of the Appeals Tribunal. He was notified of the commencement of the current session by e-mail on 3 February 2017. He has not offered any explanation as to why he has waited so long to file the motion.

24. In this motion, he seeks to challenge the professionalism of Mr. Mitchell Fox, a matter which he did not put into issue during the UNDT proceedings. Mr. Fox was one of the panel members who interviewed him on 24 July 2014 for the post of Senior Aviation Officer in New York. The evidence Mr. Chhikara seeks to tender is an Interview Assessment Report of Mr. Mitchell Fox when he was interviewed for the position of Chief Air Transport Section (ATS), D-1, on 22 October 2015.

25. Mr. Chhikara explains that had he been aware of this document prior to the UNDT hearing, he would have produced it at the UNDT stage. He claims that he learned of the report “well after the UNDT had pronounced its verdict”.

26. The Appeals Tribunal has held that, save for the provisions of Article 2(5) of the Statute, all evidence is to be submitted to the first instance Tribunal and that “we will not admit evidence which was known to the party and could have, with due diligence, been presented to the UNDT”.<sup>4</sup>

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<sup>3</sup> *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580.

<sup>4</sup> *Ibid.*, para. 51.

27. The document he seeks to produce into evidence is dated 22 October 2015. The UNDT hearing took place from 19 to 21 April 2016, and the UNDT delivered its Judgment on 23 June 2016. Mr. Chhikara has offered no explanation as to why it was that he did not know of the existence of this document prior to the UNDT proceedings, or why it is only now, just five days before the commencement of the UNAT session, that he seeks to have it entered into evidence. In the absence of any reason to the contrary, we find that had he acted with due diligence, he should have been able to produce the document at the level of the Dispute Tribunal. Moreover, he has not established any exceptional circumstances and we are not persuaded that the facts are likely to be established by the document. We find that it would not be in the interest of justice and the efficient and expeditious resolution of the proceedings to receive such additional evidence.

28. The motion is refused.

*The Appeal*

29. Mr. Chhikara's application to the UNDT challenged the Administration's decision, dated on or before 12 December 2014, not to roster or select him for the post of Senior Aviation Safety Officer in New York (the impugned selection decision).

30. After applying for the post in 2013, he passed two written assessments and was then short-listed for the post along with four other candidates, all five of whom were invited to participate in a competency-based interview. The competencies for the post were Professionalism, Planning and Organizing, Communication, Leadership and Judgement/Decision Making.

31. He was interviewed by phone on 24 July 2014 by a panel consisting of the Chief, Strategic Transport Service, LSD/DFS at the D-1 level; the Chief, Flight Operations Section of the ICAO at the P-5 level, Mr. Mitchell Fox; and the Chief, Recruitment Section of the Field Personnel Division, DFS, at the P-5 level.

32. Mr. Fox was the sole subject matter expert on the panel.

33. In its Interview Assessment Report (IAR) prepared after the interview, the panel found that Mr. Chhikara had not demonstrated the required level of competency in three of the five competencies, whereas two of the candidates were found to have met all of the five competencies

and were recommended for selection. The Administration decided not to select him for the position nor to place him on the roster of approved candidates for similar positions.

34. The UNDT, in considering the legality of the impugned selection decision, correctly identified its function as reviewing the challenged selection process to determine whether Mr. Chhikara had received “fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration”.<sup>5</sup>

35. In its review of the challenged selection process, the UNDT found that Mr. Chhikara’s non-selection for the post in question was unlawful in light of numerous procedural irregularities. These included the following:

- a. The assessment panel was not properly constituted as it did not have two subject matter experts as required by ST/AI/2010/3 (Staff selection system) and, therefore, the IAR produced by the panel was null and void.
- b. There were serious issues undermining the substance of the IAR, for instance, in the assessment of Judgement/Decision Making, the factual error of the reference to Mr. Chhikara’s service in Afghanistan when he had never been there. This error went unnoticed by the three panel members who signed the IAR and was not drawn to the attention of the Hiring Manager.
- c. The IAR revealed two types of anomalies relating to the application of the relevant indicators: (i) assessment of competencies without reference to the specific indicators for that competency while referring to indicators of competencies that were not one of the four competencies for the post; and (ii) inconsistent assessments of the same indicators.
- d. For the competency of Professionalism, the panel did not specify which were the competency indicators that Mr. Chhikara had failed to meet; it stated that he had met indicators relating to the competency of Teamwork, which was not one of the competencies for the post. Similarly, the panel used these same indicators to evaluate his competency in Communication, but did not refer to any of the indicators for the competency in Communication which they said he had not demonstrated.

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<sup>5</sup> Impugned Judgment, para. 70, citing *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540.

- e. The panel stated that he did not demonstrate most of the key indicators for the competency of Judgement/Decision Making, but the indicators they identified were not indicators for that competency but for Planning and Organizing. In contrast, the panel found him to be fully competent in Planning and Organizing using the same indicators he had failed in Judgement/Decision Making.

36. The UNDT considered that “[t]he errors and anomalies in the Panel’s written assessments of the indicators of [Mr. Chhikara’s] competency in Judgement/Decision Making and Planning and Organizing were particularly egregious. It used the incorrect indicators for Judgement/Decision Making and its two assessments of [Mr. Chhikara] using the same indicators were completely different.”<sup>6</sup>

37. The UNDT found that the IAR showed that “the evaluation was marred by irrelevant considerations”,<sup>7</sup> which meant that the assessment of Mr. Chhikara’s competencies was not “objectively verifiable”.<sup>8</sup>

38. The UNDT rejected the evidence of the Secretary-General’s witnesses which, “in effect, invited the Tribunal to ignore much of the written record of the Panel in favour of verbal assurances that the errors did not affect the outcome of their assessment”.<sup>9</sup> The UNDT found instead, that “it was the written observations, evaluations and recommendations in the [IAR] that the Panel certified as a true reflection of its findings and which were relied on by the Hiring Manager as the basis for the ultimate decision not to recommend [Mr. Chhikara] for selection”.<sup>10</sup>

39. The UNDT decided that “[t]he [IAR] was so flawed that it cannot be taken as an objectively justifiable record of the assessment of [Mr. Chhikara] and was inherently unreliable”.<sup>11</sup>

40. The UNDT concluded that Mr. Chhikara “did not receive full and fair consideration of his candidacy during his competency-based interview and the Panel’s assessment of [Mr. Chhikara] was unlawful”.<sup>12</sup>

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<sup>6</sup> *Ibid.*, para. 95.

<sup>7</sup> *Ibid.*, para. 97.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, para. 98.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, para. 99.

<sup>12</sup> *Ibid.*, para. 100.

41. Consequently, the UNDT found that the impugned selection decision was based on an IAR that was “fundamentally flawed and unreliable”<sup>13</sup> and that such decision was “unlawful as it was tainted by procedural errors”.<sup>14</sup>

42. Up to this point in its Judgment, we are satisfied that the UNDT did not err in law or in fact.

43. However, we find that the UNDT erred in law and in fact when it declined to order that the impugned selection decision be rescinded, having found that Mr. Chhikara’s competency-based interview “was not conducted by a properly constituted assessment panel or assessed lawfully in accordance with ST/AI/2010/3 [and that] [t]he decision not to recommend him for selection was tainted by procedural defects”.<sup>15</sup>

44. Instead of ordering rescission, the UNDT concluded:<sup>16</sup>

In this case two of the candidates were found to have met all of the competencies and were recommended for selection. [Mr. Chhikara] was found to have met two of the five competencies. In spite of the procedural irregularities, the Tribunal has no basis to find that, but for the irregularities, he would have been recommended for the post.

45. This conclusion was not open to the UNDT in view of its previous findings and the facts of the case. It had found that the IAR was null and void and inherently unreliable and that the Panel’s assessment of Mr. Chhikara was unlawful. Therefore, there was no viable assessment in evidence which would entitle the UNDT to come to the conclusion that Mr. Chhikara had met only two of the five competencies.

46. The UNDT based its decision not to order rescission on the ratio in *Bofill*, in which the Appeals Tribunal held:<sup>17</sup>

The direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation.

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<sup>13</sup> *Ibid.*, para. 101.

<sup>14</sup> *Ibid.*, para. 102.

<sup>15</sup> *Ibid.*, para. 112.

<sup>16</sup> *Ibid.*, paras. 105 and 109.

<sup>17</sup> *Bofill v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-174, para. 28.

47. *Bofill* is distinguishable from the present case. Ms. Bofill was not promoted because at least 78 candidates had obtained a higher score than she had during the evaluation process. The procedural irregularity had no impact on her non-promotion. There was consequently no link between the irregularity in the procedure and her non-promotion.<sup>18</sup>

48. In the present case, Mr. Chhikara was not selected because of a recommendation made in a flawed and inherently unreliable IAR. The recommendation resulted in the impugned selection decision, which was tainted by procedural errors and was unlawful. There was thus a direct link between the irregularities and his non-selection.

49. As Mr. Chhikara was one of five short-listed candidates, it cannot be said that he had no foreseeable chance of selection. In our judgment, he would have had a significant chance for selection had it not been for the negative impact of the procedural irregularities.

50. In the circumstances, we find that the UNDT fell into error, both factually and legally, in disregarding Mr. Chhikara's chances of selection.

51. We find that the UNDT erred in not ordering rescission of the impugned selection decision nor in-lieu compensation as an alternative to the rescission, as prescribed by Article 10(5)(a) of the Dispute Tribunal Statute.

52. We accordingly rescind the impugned selection decision.

#### *Compensation*

53. Pursuant to Article 9(1)(a) of our Statute, the Appeals Tribunal shall set an amount of in-lieu compensation that the Administration may elect to pay as an alternative to the rescission of the contested administrative decision.

54. In determining the compensation amount, we have considered the nature of the procedural irregularities and the likelihood of Mr. Chhikara being selected for the post in question had the irregularities not been committed.<sup>19</sup> In regard to the latter consideration, we find that, in the circumstances of the case, his chances of being rostered or selected for the post can be fairly stated as one in five, bearing in mind that he was one of five short-listed candidates.

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<sup>18</sup> *Ibid.*, para. 24.

<sup>19</sup> *Appleton v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-347/Corr.1; *Muratore v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-245.

55. There is not much evidence on the point, but his claim that the post in question involved a three-year contract has not been contradicted, whereas he is currently on a year to year contract. Since the post in question is at the same level as his current position, we find that it is appropriate to calculate compensation based on the difference between the amount earned on a one-year contract and the amount he would have earned on a three-year contract. However, we must take into account the many possibilities that he may not have served out the full three-year contract (such as abolition of post, illness, resignation, private business, etc.).<sup>20</sup>

56. Doing the best we can in what is not an exact science, we set the alternative compensation as an amount equal to one-fifth of the net base salary he would have received for one year had he been appointed to the post.

57. We will not interfere with the moral damages award of one US Dollar, which has not been appealed.

### **Judgment**

58. The appeal is allowed and Judgment No. UNDT/2016/089 is vacated, with the exception of the order for payment of moral damages of one US Dollar. The decision not to roster or select Mr. Chhikara for the post of Senior Aviation Safety Officer in New York is rescinded. The Secretary-General may elect to pay in-lieu compensation of an amount equal to one-fifth of the yearly salary applicable to the post of Senior Aviation Safety Officer in New York as an alternative to the rescission.

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<sup>20</sup> *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-220.

Original and Authoritative Version: English

Dated this 31<sup>st</sup> day of March 2017 in Nairobi, Kenya.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Raikos

*(Signed)*

Judge Halfeld

Entered in the Register on this 26<sup>th</sup> day of May 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar