



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/015

Judgment No.: UNDT/2013/119

Date: 30 September 2013

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko, Acting Registrar

WESTBERG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Duke Danquah, OSLA

Counsel for the Respondent:

Stephen Margetts, ALS/OHRM

Introduction

1. The Applicant is a retired staff member of the United Nations Mission in the Republic of South Sudan (“UNMISS”). At the time of filing his Application on 20 March 2012, he held the functional title of Security Officer at the P-3 level with UNMISS in Juba.

2. In his Application dated 20 March 2012, he contested the decision of Angela Kane, the then Under-Secretary-General, Department of Management (USG/DM), not to designate him as an Administrative Officer at the P-4 level.

3. The Respondent filed a Reply to the Application on 2 June 2012 in which it was submitted *inter alia* that the Applicant did not possess the qualifications and experience required for designation and that therefore the decision taken by the then USG/DM was proper and lawful.

Facts

4. The Applicant trained in the Swedish Military Academy and the Swedish National Police Academy in 1976 where he qualified and was conferred certificates in the areas of Security Services, Police Work and Law enforcement.

5. Between June 1988 and March 1996, he owned a retail franchise called SWEDPHIL Incorporated based in New Jersey, United States of America which operated a Shell gasoline and food mart distributorship.

6. From June 1992 to November 1993, the Applicant served as a military observer in peacekeeping operations with SWEDINT- Swedish International, a civil service position under the Swedish Government.

7. Between March 1994 and September 1995, the Applicant served as Area Security Coordinator at the P-3 level with the United Nations Operations Mission in Somalia. Also, between July 1997 and May 1998, he worked as a Construction Supervisor with a company called Meridian Staffing People in Florida.

8. Subsequently, the Applicant worked with various Missions and Organizations within the United Nations System as a Security Advisor, Deputy Chief Security Officer, Field Safety and Security Operations Officer and Security Consultant.

9. In May 2006, he was appointed a Security Officer at the P-3 level in the United Nations Mission in Sudan (UNMIS).

10. On 12 July 2007, Vacancy Announcement (VA) No. 414778 for the position of Administrative Officer, P-4, at UNMIS was posted. The requirements for the post as set out in the VA included a first level university degree as well as at least seven years of progressively responsible experience in the areas of administration and human resources or finance and budget operations among others.

11. The Applicant applied for this post and was selected on 10 February 2009. He was, however, informed by the UNMIS recruitment team on 22 March 2009 that his selection was provisional pending approval of his designation and Movement to the Higher Level (“MTHL”) post.

12. Citing operational requirements, on 22 April 2009, the UNMIS acting Director of Mission Support (“DMS”) requested the Applicant’s release from his duties as a security officer in order to have him reassigned as acting Sector Administrative Officer in Abyei on a temporary and lateral basis until his pending recruitment was finalized.

13. In the course of the verification of the Applicant’s academic credentials pending his MTHL, on 19 May 2009 the Högskoleverkett (the Swedish National Agency for Higher Education) advised the Field Personnel Division, Department of Field Support (FPD/DFS), that the Swedish Academy of Police and the Swedish Military Academy are not entitled to award university degrees. The Högskoleverket further advised the FPD that the certificates awarded to the Applicant in 1976 “are not formally equivalent to Bachelor’s degrees” in the Swedish education system.

14. Between 2009 and 2011, the Applicant made numerous attempts at following up on his selection and designation in a bid to have his credentials accepted as meeting the minimum requirements for the P-4 post that he had applied for.

15. About a year later, on 16 June 2010, FPD received a letter from the Head of the Reserve Officer Department of the Swedish Armed forces, Colonel Matts Geijer stating that:

Considering [the Applicant's] overall military studies, coupled with his training experiences as a staff officer during his lengthy career in the Swedish Military peace-keeping operations world-wide, we consider that he appears to be standing above the minimum requirement of an internationally recognized degree. ...the overall education of [the Applicant] may be validated to that of a University degree.

16. On 22 December 2010 the Personnel Directorate of the Swedish Armed Forces provided another letter to FPD/DFS stating that the Applicant's military education and experience stands in parity with the equivalent of a Bachelor's degree.

17. On 22 January 2011, the Applicant wrote to Mr. Nicolas von Ruben, the Director of Mission Support, UNMIS, inquiring about the lack of progress and the status of his pending MTHL. He was informed on 23 January 2011 that UNMIS had no influence over whether or not his qualifications would be accepted or on whether the then USG/DM would designate him.

18. On 10 March 2011, the Applicant received an email from Paul McNeil, Senior Administrative Officer, UNMIS, which was a confirmation of a telephone conversation that the two had had informing the Applicant that UNMIS would like him to move to Juba to become the designated Administrative Officer.

19. On 6 July 2011, a request for designation of the Applicant was sent to the USG/DM.

20. On the same date, Mr. Maha El-Bahrawi, Chief, Headquarters Staffing Section, Office of Human Resources Management (OHRM) wrote to Ms. Martha

Helena Lopez, Director, Strategic Planning and Staffing Section, OHRM, stating that the Applicant did not have a university degree as required by the vacancy announcement and that most of his experience had been in the area of Security. On the basis of these, Mr. El Baharawi indicated that OHRM considered that Mr. Westberg did not meet the requirements for approval of his designation as proposed by the UNMIS Abyei Office and that he therefore should not be recommended.

21. On 4 October 2011, Ms. Angela Kane, then USG/DM, wrote to Ms. Susana Malcorra, then USG/DFS, indicating that after reviewing the supporting documentation provided in relation to the request for the Applicant's designation, it appeared that he did not possess the relevant educational qualifications and had limited experience in the area of finance. She concluded that in light of this, she was not in the position to clear the Applicant to perform the function of Administrative Officer at the P-4 level.

22. On 6 October 2011 the decision of the then USG/DM not to clear the Applicant for designation based on the reasons that he did not possess the relevant educational qualifications and that he had insufficient work experience in the area of finance was communicated to the Applicant.

23. The Applicant requested a management evaluation of the decision not to designate him on 1 November 2011. The Management Evaluation Unit (MEU) responded on 22 December 2011 and upheld the contested decision. The Applicant became aware of the MEU response on 2 January 2012 as he had been on leave.

24. On 20 March 2012, the Applicant filed the present Application with the dispute Tribunal.

Applicant's case

25. A summary of the Applicant's case as deduced from his pleadings and documentary evidence is summarized below.

26. The Applicant possessed both the level of education and the relevant experience required in Vacancy Announcement (VA) No. 414778 for the position of Administrative Officer, P-4.

27. The initial dispute about the validity and equivalence of his Bachelor's qualification was settled when the Swedish Armed Forces, through Col. Matts Geijer provided a statement certifying that the Applicant's military education stands in parity to a Bachelor's degree.

28. He had the necessary level of experience in finance contrary to the finding made by the USG/DM. For instance, in operating his privately owned retail business (SWEDPHIL Inc) from 1988 to 1996, he gained relevant experience in administration, human resources, budgetary and financial matters.

29. The Administration, in assessing his Personal History Profile (PHP) inadvertently ignored portions that showed his experience dating back to 1988 in finance and human resource matters. These portions, evidencing his past experience in the area of finance and budget would have bolstered his qualification for designation to the position.

30. His special trainings and certifications such as the Human Resources Professional Training in staff hiring offered by Sloan International and budget and finance training facilitated by Africa Management Development Institute (AMADI) further show that he possessed all the pre-requisites for designation.

31. The Applicant could have been promoted even without designation as other staff members were promoted without designation for a variety of reasons and as such the Applicant also deserves promotion in the same vein. Denial of promotion to the Applicant in these circumstances is tantamount to discrimination.

32. He urges the Tribunal to find that his total output and qualifications in the field of business and budgetary matters entitled him to be accorded designation and promotion to the P-4 level.

33. He prays for the following remedies:

- a. To be permitted to pursue the career change accorded to him in 2009.
- b. To be promoted to P-4 effective March 2009.
- c. To receive cross-over step level from P-3 to P-4 step 10 and to have his emoluments recalculated/adjusted *ex post facto* in response to the new cross-over salary grade and step level.
- d. To be paid the unilaterally withheld salary in accordance with the decision of FPD/DFS as the then pending reference check by the Administration had been completed and was therefore moot.
- e. To release the accrued SPA benefits from 2009 to the date of the Application totaling roughly \$35,000 as approved by management under exceptional circumstance as compensation for managements violations of administrative procedures.
- f. To have the Applicant's pension remunerations recalculated or adjusted effective March 2009 to reflect the provisional selection date for promotion to P-4.
- g. To be financially compensated for the harsh, unfair and arbitrary treatment that he received during his ordeal, which caused him severe physical and mental pain as well as emotional distress and anguish.
- h. To have all the aforementioned overdue balance released to the Applicant as soon as practicable.

Respondent's case

34. In summary, the Respondent's case is as follows:

35. The decision of Ms. Angela Kane, the then USG/DM not to designate the Applicant as an Administrative Officer at the P-4 level was proper and lawful and the Applicant has not shown that the contested decision was unlawful.

36. The Applicant does not have a recognized first level University degree as required by the VA.

37. The Högskoleverket (the Swedish National Agency for Higher education), confirmed on 19 May 2009 that the Applicant does not hold a bachelor's degree and advised that the Applicant had been awarded certificates, not degrees.

38. The subsequent statements provided to FPD/DFS by representatives of the Swedish Armed Forces were merely their opinions in regard to the Applicant's experience and qualifications and are insufficient as the Secretariat does not accept equivalence in place of a recognized first level degree.

39. The relevant authoritative statement in regard to the Applicant's qualifications is the Statement of the Högskoleverket and not that of the Swedish Armed Forces representative that wrote to FPD/DFS. In the absence of any information or documentation that could overcome the advice given from Högskoleverket the Applicant could not be appointed.

40. The Applicant's work experience in the areas listed in the VA is insufficient to match the requirements. His career in international organizations has been, almost exclusively, in security functions and his private sector experience is equally insufficient for the position.

41. His responsibilities as a private franchise owner were not of a similar nature and scale as the duties required for the post in UNMISS and does not demonstrate relevant progressively responsible experience in the management of financial resources.

42. In order to be designated, an individual must demonstrate that they have acquired intrinsic knowledge of the subject area and must demonstrate that they have performed substantively in the capacity for which they are being designated after receipt of an advanced university degree in the subject matter area or related field.

43. The Applicant did not meet the requirements for designation for the performance of functions at the P-4 level, and while he may hold a different view

to the USG/DM, he had not demonstrated that the then USG/DM acted improperly in arriving at her decision.

44. For these reasons, the Respondent requests the Tribunal to dismiss the Application.

Issues

45. Having examined all the facts of the case, both parties pleadings, submissions and documentary evidence on the record, the Tribunal finds that only two major legal issues arise for consideration in this case as follows:

- a. Whether the Applicant met the educational qualifications required in Vacancy Announcement No. 414778 for the position of Administrative officer, P-4.
- b. Whether the Applicant possessed the relevant experience required in Vacancy Announcement No. 414778 for the position of Administrative officer, P-4.

Consideration

Whether the Applicant met the educational qualifications required in Vacancy Announcement No. 414778 for the position of Administrative officer, P-4

46. It was the Applicant's case that he possessed the educational requirements for the position of Administrative Officer, P-4 and for designation and that the refusal by the then USG/DM to designate him and approve his selection was ill-advised. He pleaded that the question of whether or not he possessed a university degree was settled when the Swedish Armed Forces provided a statement certifying that his military education and training stood in parity to a university degree.

47. The Respondent's case on this issue is that the Applicant does not have a recognized first level university degree as required by the VA and that therefore

the decision of Ms. Angela Kane, the then USG/DM not to designate him was proper and lawful.

48. Section 3.2 of ST/SGB/2005/7 (“Designation of Staff members performing significant functions in the management of financial, human and physical resources”) provides:

In designating staff members performing functions in financial, human and physical resources management, the officials responsible for the designation must ensure that the staff members selected have the requisite qualifications and experience to carry out the functions assigned to them and to provide consistency in the application of the Organization’s regulations, rules, policies and procedures.

49. Section 4.1 of the same bulletin states that proposals for designation of chiefs of administration in offices away from Headquarters shall be addressed to the USG/DM who after conducting necessary consultations and reviews will make a decision.

50. It is clear therefore that before the USG/DM exercises the authority to designate staff members she bears a responsibility to conduct reviews aimed at ascertaining that selected staff members are adequately qualified for designation.

51. Vacancy Announcement (VA) No. 414778 for the position of Administrative Officer, P-4, at UNMISS which is at the center of the dispute in this case set out the following as the educational requirements for the advertised post:

Advanced University degree (Master’s degree or its equivalent) in business administration, finance, accounting or related fields. A first level University degree with a relevant combination of academic qualifications and experience may be accepted in lieu of the advanced University degree.

52. The Applicant does not claim to have an advanced university degree as required in the VA. He however claims that he had the equivalent of a first university degree and the relevant experience as advertised. The core question therefore is whether the certificates that the Applicant had acquired from trainings

with the Swedish Military and Police Academies are a “first level University degree”.

53. The Administrative Tribunal of the International Labour Organization stated in Judgment No. 3087 that the general term “University degree” refers to a degree given upon the completion of an accredited course of study at a university or an equivalent tertiary institution.

54. A university degree is generally awarded following a successful course of study at a university or College. Considering that United Nations Member States have different education systems, educational qualifications must be subject to equivalence and validation in order to ensure consistency since titles and contents of academic degrees differ between countries. Certification and clarification regarding the equivalence of qualifications to a university degree must however be undertaken by the relevant authorized institution in charge of Higher Education Programs or an accredited University or College.

55. From the facts of this case, it is clear that the Applicant had obtained certificates in Security Services and police work from the Swedish Military Academy and the Swedish National Police Academy respectively in 1976. He also claims to have acquired a certificate in human resources professional training in Staff Hiring from Sloan International although he did not offer proof of this claim. He also claims to have been awarded a certificate in Advanced Financial Management and Budget from AMADI and attached a copy of the certificate.

56. Are the certificates awarded to the Applicant by the Swedish Military and Police Academies equivalent to a first level University degree? Even if the Applicant had obtained certificates from Sloan International and AMADI, these are not the equivalent of a university degree.

57. In response to queries by FPD/DFS, on 19 May 2009, the Swedish National Agency for Higher Education replied that the Swedish Academy of Police and the Swedish Military Academy do not award university degrees. Part of the statement of the Higher Education Agency was that the certificates awarded to the Applicant

in 1976 “are not formally equivalent to Bachelor’s degrees” in the Swedish education system.

58. The Agency thus certified that the Applicant did not have a university degree and that his certificates from Sweden were not the equivalent of university degrees.

59. More than one year after this feedback from the Higher Education Agency, Colonel Mats Geijer, Head of the Reserve Officer Department of the Swedish Armed Forces wrote to FPD/DFS in June 2010 stating that considering the Applicant’s training and career in Swedish Peace-keeping operations, “he appears to be standing above the minimum requirement of an internationally recognized University Degree” and that his overall education “may be validated to that of a University Degree.”

60. About six months later, in December 2010, the same Colonel Mats Geijer again wrote to FPD/DFS stating that “to the best of our determination [the Applicant] possesses the equivalent of a first level University degree.” He went ahead in his letter to state that he found that “[the Applicant’s] Military education and experience stands in parity with the equivalent of a BA degree.”

61. Given that the Högskoleverket, the Swedish National Agency for Higher Education is the government body in Sweden tasked with the responsibility of overseeing institutions of Higher Learning, the Army Colonel has no authority to certify the equivalence of academic qualifications. The Tribunal accepts the Respondent’ submission that the Högskoleverket’s statement regarding the Applicant’s qualifications are authoritative and conclusive.

62. The subsequent attempts at equating his experience and training to a Bachelor’s degree by Colonel Mats Geijer of the Swedish Armed Forces cannot overrule the confirmation by the National Agency for Higher education that the Applicant did not possess a university degree.

63. Section 3.2 of ST/SGB/2005/7 obliges the USG/DM to ensure that a staff member selected for a position within the Organization fully meets the requisite experience and qualifications to carry out the functions of the advertised post.

64. Ms, Angela Kane, the then USG/DM wrote on 4 October 2011 that:

After careful review of the support documentation provided from [the Applicant], it appears that he does not possess the relevant educational qualifications and has limited work experience in the area of finance. In light of [this], I am not in a position to clear [the Applicant] to perform the function of Administrative Officer at the P-4 level.

65. In making this finding, the then USG/DM discharged her obligation under section 3.2 of ST/SGB/2005/7 and her decision cannot be said to be unlawful as indeed the Applicant did not possess a university degree.

66. The importance of strict adherence to job requirements in a vacancy announcement during selection exercises cannot be gainsaid and the Organization cannot accept opinions about academic qualifications from institutions that have no capacity or authority to rate such qualifications.

67. The Tribunal finds that the Applicant was awarded certificates and not a university degree by the Swedish Military and Police Academies which had no authority to award such degrees. The Tribunal accordingly holds that it was lawful for the then USG/DM not to appoint the Applicant or clear him for designation at the P-4 level.

Whether the Applicant possessed the relevant level of experience required in Vacancy Announcement No. 414778 for the position of Administrative officer, P-4

68. The Applicant submitted that he satisfied the level of experience required for the post and for designation while the Respondent maintains that his work experience in the areas listed in the VA was insufficient to meet the stipulated requirements.

69. The experience required for the VA was:

At least seven years of progressively responsible experience in administration and human resources or financial/budget operations. Relevant professional experience in international, governmental or non-governmental organizations.

70. Section 3.2 of ST/SGB/2005/7 still applies to experience requirements for designation and stipulates that candidates selected should be ascertained as meeting the requisite experience to carry out the functions that will be assigned to them.

71. The relevant experience, as required by the VA, were in areas of administration and human resources or financial or budget operations. Having keenly examined the Applicant's PHP, it is evident that most of his career has been in Security operations and not in the listed areas.

72. The Tribunal, after examination of the Applicant's PHP cannot but accept the Respondent's submission that most of the Applicant's career with the Swedish Military and the United Nations had been in the area of security and that his experience in the private sector is insufficient for the position. The position would require him to be the designated Administrative Officer of UNMISS in Juba which was to operate on a budget of up to USD 722,129,600¹ and his submission that his operation of SWEDPHIL-the shell gasoline and food mart and his other private sector experience gave him enough experience to discharge this task is not acceptable. SWEDHPIL for instance cannot be said to be a comparatively sized operation as to vouch for his finance and budgetary experience.

73. Indeed as the Respondent submitted, a small franchise operation cannot be compared to the resource responsibility required of a designated Administrative Officer at the P-4 level in UNMISS. His responsibilities as a franchise owner were neither of a similar nature nor scale as the duties that would be required of him at UNMISS and do not demonstrate "relevant progressively responsible experience" as required by the VA in the listed areas.

¹ A/C.5/66/14: Approved resources for peacekeeping operations for the period from 1 July 2011 to 30 June 2012.

74. The then USG/DM was therefore correct in her determination that the Applicant had insufficient experience in the areas listed for the post and her decision not to designate him for the post was lawful and proper.

Conclusion

75. The Applicant did not meet either the education or experience requirements set out in the VA for promotion to the P-4 level or for designation. Flowing from this, the decision of the then USG/DM not to designate him as Administrative Officer, P-4 for UNMISS in Juba was proper and lawful.

76. In light of this finding that the Applicant was not qualified for a promotion at the P-4 level or for designation all his other prayers are rendered nugatory.

77. The Application is dismissed in its entirety.

(Signed)

Judge Nkemdilim Izuako

Dated this 30th day of September 2013

Entered in the Register on this 30th day of September 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi