



Before: Judge Goolam Meeran

Registry: Geneva

Registrar: René M. Vargas M.

KRIOUTCHKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a Russian Translator (P-3) at the Economic and Social Commission for Asia and the Pacific. He contests the decision not to select him for the post of Reviser/Self-revising Translator (Russian) (P-4), Russian Translation and Text Processing Section (“RTTS”), Conference Management Service (“CMS”), Division for Management (“DM”), United Nations Office at Vienna (“UNOV”), advertised under Job Opening (“JO”) 14-LAN-UNOV-33223-R-VIENNA (L).

Facts

2. The JO was advertised in Inspira from 13 March 2014 to 12 May 2014. The Applicant applied and was shortlisted.

3. By email of 30 June 201, he was invited to take a written test. The fact that the test would be written was mentioned at three separate points in the email, which also warned candidates that answers could not be “copy-pasted” from writings of others.

4. In early July 2014, the test, comprising two questions, was emailed to all candidates, with clear instructions on how to submit the answers. On the same day, the Applicant wrote to the test administrator stating that, upon opening the test, he discovered that it was “a revision job requiring a Russian keyboard, a printer or a computer with two screens like the one [he has] in [his] office”. He said that he had no prior notice that the test would require any special equipment (Russian keyboard) and special skills (typing in Russian). He added that he was not able to take the test because he was at home, and did not have a computer with a Russian keyboard. He pointed out that typing in Russian was not a skill mentioned in the vacancy announcement. The Applicant did not submit his answer to either of the two questions.

5. The Applicant was notified of his non-selection for the post by email of 27 November 2014.

6. This application was filed on 20 May 2015. The proceedings were suspended in June 2015 to allow mediation efforts to proceed, but resumed on 2 November 2015, as the attempt to resolve this and other cases filed by the Applicant failed. The Respondent filed his reply on 11 December 2015.

7. The receivability of the claim is not in issue.

8. By Order No. 55 (GVA/2016) of 17 March 2016, the parties were informed that the case had been assigned to Judge Meeran, and they were invited to comment on the proposal that the case be determined on the basis of the documents.

9. On 22 March 2016, the Applicant filed a motion to retain the Judge to whom this case had been assigned previously, and to hold an oral hearing, calling the Hiring Manager as a witness.

10. On 29 March 2016, the Applicant moved for leave to file comments on the Respondent's reply. On 13 April 2016, he filed comments without having received leave.

11. The Respondent made no comments.

Parties' submissions

12. The Applicant's principal contentions are:

a. He was not fully and fairly considered, as the written test was based on a skill not required in the JO or the relevant Generic Job Profile, i.e., typing, particularly in Russian. The imposition of this requirement prevented him from taking the test;

b. The Manual on Translation and Revision of UN documents, the main reference document for translators and revisers, provides for translations to be dictated or handwritten. They do not involve typing and/or text processing. Such functions are carried out by professional typists;

c. The Organization does not provide Russian keyboards to Translators. While it is possible to change the language of the computer, writing the test answers would require being able to “blind type” in Russian. This is not a skill the Applicant, as a Translator, is supposed to have, and even if he did, the requirement that he should type his answers would have created additional stress during the test;

d. Self-typing Translators and Revisers do not exist in the UN. Should these two functions be combined, this might affect the quality, speed and accuracy of the output and possibly have long term health effects; and

e. He has been subjected to what he described as “[d]uty station based long-time discrimination”. Furthermore, the Administration’s practices are inconsistent with its mobility policy and the intention of the roster facility.

13. The Respondent’s principal contentions are:

a. The Applicant was given sufficient advance notice of the conduct of the written test. It was reasonable to expect that he would have known that it would most likely require Russian revision. The test required only minimal typing and could have been completed by changing the keyboard language;

b. The Applicant has participated in several written tests where typing in Russian was required. On at least one previous occasion he commenced a test without a Russian keyboard, and then argued he could not complete it. In light of his experience, he would have known that typing in Russian was required, and it was his responsibility to ensure that he was prepared for that. Candidates are required to follow the instructions given for a written test;

c. The claim that the use of word processors is precluded by the Manual of Translation and Revision, and that it was unfair to require him to type are without merit; and

d. Other claims, and notably that he was discriminated against because he is based in Bangkok, have no merit, as he was excluded from further consideration because he did not submit his answer to the test.

Consideration

Preliminary matters

14. Before addressing the merits of the case, the Tribunal will rule on a number of motions submitted by the Applicant.

15. The Applicant requests that this case should remain with the Judge to whom it had been initially assigned, and who has conduct of a number of other applications he has filed. The Tribunal rejects this motion, stressing that the assignment of cases to judges is an internal organizational matter and the parties have no entitlement to appear before a particular judge. Moreover, the fact that different judges may review various applications lodged by the same applicant does not affect the Tribunal's ability to consider, in each case, all the factual and legal issues that might be relevant to a determination of the issues in that particular case.

16. The motions that a hearing be held with a particular witness to be called and for leave to file additional written comments are rejected. The unsolicited filing of 13 April 2016 will not be taken into consideration. The Tribunal is of the view that, given the issues at stake and the evidence on file, neither the testimony of the proposed witness, nor an oral hearing or a new round of written submissions are likely to assist it in a just disposal of the case.

Merits of the application

17. The Applicant identified the contested decision as his non-selection for the post at issue. Accordingly, the Tribunal will deal with the primary claim regarding non-selection. However, in challenging the decision, the Applicant has expended considerable effort in criticising the manner in which the written test was administered. Since this particular criticism stems from a deeply held belief of the Applicant and is repeated in other cases before the Tribunal, it will be dealt with

in the interest of reaching finality in disposing of this particular bone of contention. However, and insofar as he might be deemed to be including a challenge to the intermediary or preparatory requirement that the written test answers be typed, the application would not be receivable in any event (see *Ishak* 2011-UNAT-152), in accordance with art. 2.1(a) of the Tribunal's Statute and the related jurisprudence on what constitutes an appealable administrative decision (*Tabari* 2010-UNAT-030, *Schook* 2010-UNAT-013, *Al-Surkhi et al.* 2013-UNAT-304, endorsing the definition adopted in the former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003)), namely

[a] unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order.

18. All shortlisted candidates were requested to take a written test that involved typing the answers to two questions designed to assess skills in Russian revision. The Applicant did not submit his answers because he considered that the Administration was not entitled to impose on him a requirement to type in Russian. In the circumstances, the Applicant could not progress to the next step in the selection process. He was not selected.

19. The administration of a written test is a lawful and a common means of assessing the technical skills of candidates in a selection process. It is consistent with sec. 7.5 of ST/AI/2010/3, which explicitly mentions written tests as an example of an acceptable assessment method. Given that this requirement was imposed on all shortlisted candidates, the core issue arising from the manner in which the applicant argues his case is whether it was lawful to require the Applicant to type in Russian as part of the competitive selection exercise.

20. The Applicant strongly argues that the normal working procedure for translations within the Organization is to dictate, or else handwrite, the translated texts, and not to type them. He adduced evidence to demonstrate that translators and revisers routinely record their work, which is referred to specialised staff with responsibility for typing. However, even if that were the case, the Applicant has

not referred to any rule prescribing that the methodology used for a test must necessarily replicate the internal workflows.

21. The Tribunal has ruled previously that candidates in a selection process must comply with the instructions given for a written test, and take personal responsibility for making the necessary arrangements to meet the requirements for such compliance. Failure to do so may properly lead to their exclusion from the recruitment process (*Charles* UNDT/2013/030). The only applicable requirement is that the methodology of the tests be fair and reasonable and not designed deliberately to confer an advantage on a preferred candidate or, alternatively, to disadvantage a particular candidate, who may then challenge the decision by filing a claim alleging that there has been a material irregularity in the selection process. Applying that principle to this case, the Tribunal finds that the Administration's decision requiring relatively senior specialists in the Russian language to be able to type in Russian is within the discretion allowed to the Administration and, absent irrationality or perversity, it is not for the Tribunal to interfere.

22. In addition, the Applicant's claim that he was prevented from sitting the exam as he did not have a Russian keyboard has no merit. Whether such equipment was needed or not, the Applicant had enough information in advance of the test to anticipate the possibility that typing in Russian would be required, especially in light of his previous experience with written tests for similar vacancies. The argument advanced by the Applicant that having to type the answers adds stress during the test, and affects the quality of the answers is misplaced, since the conditions were the same for all candidates.

23. In these circumstances, the decision to exclude the Applicant from further consideration, which resulted in his non-selection for the post, was not in violation of the Applicant's right to be fully and fairly considered for the post in question.

24. By not completing the written test the Applicant effectively deprived himself of the opportunity of further participation in the selection exercise. He has no grounds to challenge the decision to not to select him for the post in this case. Accordingly, it is not necessary to examine his allegations of discrimination.

Judgment

25. It is the Judgment of the Tribunal that there is no merit in the contentions advanced by the Applicant.

26. The application fails and is rejected.

(Signed)

Judge Goolam Meeran

Dated this 26th day of April 2016

Entered in the Register on this 26th day of April 2016

(Signed)

René M. Vargas M., Registrar, Geneva