



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ZEB

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

UNOG

Introduction

1. The Applicant challenges the decision not to consider his application for the post of Programme Officer (Expert Drug Demand Reduction), United Nations Office on Drugs and Crime (“UNODC”), in Afghanistan.

Facts

2. Over the last 25 years, the Applicant has worked on various posts in Afghanistan, including different positions with UNODC. He states that his past appointment with the Organization expired on 31 December 2015.

3. In August 2016, he applied for a temporary post as Programme Officer (Expert Drug Demand Reduction), at the P-3 level, advertised under Job Opening (“JO”) No. 64285. This JO was subsequently cancelled.

4. The same position was advertised in October 2016, under JO No. 69271. The Applicant applied in November 2016.

5. The Applicant avers that, upon querying on the status of his application, UNODC informed him on 22 January 2017 that the vacancy had already been filled, although Inspira indicated that the recruitment was “under consideration”.

6. On 23 January 2017, the Applicant sent an email on this matter to several senior managers of UNODC, which apparently remained unanswered.

7. On 18 February 2017, the Applicant made a submission to the Tribunal with a view to filing an application. At the Tribunal’s request, on 25 February 2017, he filed additional material to complete his application.

Parties' submissions

8. The Applicant's principal contentions are:
- a. Upon advertisement of the first JO, his candidacy was not taken into consideration by the Hiring Manager. It was only after he communicated with the Human Resources Office in charge of this recruitment that his application was included in the competitive process;
 - b. The Hiring Manager cancelled the first JO, because of personal bias against him;
 - c. Upon re-advertisement of the JO, the Hiring Manager decided not to short-list the Applicant, since he disliked him; and
 - d. All of the above amount to a gross violation of the Organization's recruitment policies, where transparency is a must.

Consideration

9. As a preliminary remark, the Tribunal recalls that a matter of law may be adjudicated even without serving the application to the Respondent for reply, and even if such matter has not been raised by the parties (*Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335; see also *Bofill* UNDT/2013/141, and *Lee* UNDT/2013/147). Receivability issues often represent examples of these purely legal matters that may be determined in such a manner (see, e.g., *Kostomarova* UNDT/2014/027, *Longone* UNDT/2015/001). Bearing this in mind, the Tribunal deems it appropriate to rule on this application by summary judgment, under art. 9 of its Rules of Procedure, without serving it to the Respondent and awaiting his reply.

10. With respect to the receivability of this application, the Tribunal has serious doubts about the Applicant's standing to institute proceedings before it. It appears from the available information that the Applicant is not currently employed by the Organization and, although he was one of its staff members in the past, the

grievance he is putting forward does not stem from his former conditions of service. Instead, it arises from a candidacy he presented as an external candidate well after he had left the United Nations that, by his own statement, occurred on 31 December 2015. Nevertheless, the Tribunal lacks complete and reliable information on this point, and will thus not make a firm pronouncement in this respect.

11. The Tribunal will therefore look into the receivability *ratione materiae* of the present application.

12. Staff rule 11.2 (Management Evaluation) provides that:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

13. In this connection, under art. 8.1(c) of the Tribunal's Statute, for an application to be receivable, the concerned applicant must have "previously submitted the contested administrative decision for management evaluation, where required".

14. The only exceptions to this obligation are those set out in staff rule 11.2(b), namely decisions taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, and decisions taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process. Since in this case, the contested decision is that not to consider/select the Applicant for a given post, it is

plain that the present case does not fall within any of the statutory exceptions. Therefore, a request for management evaluation is required.

15. In addition to the unambiguous terms of the aforesaid provisions, the requirement of requesting management evaluation prior to filing an application with the Tribunal has been invariably upheld by the Appeals Tribunal (e.g., *Rosana* 2012-UNAT-273, *Dzuverovic* 2013-UNAT-338, *Planas* 2010-UNAT-049, *Ajdini et al.* 2011-UNAT-108, *Christensen* 2013-UNAT-335).

16. The Applicant seems to consider that he fulfilled the requirement to file a management evaluation request by emailing several senior UNODC managers the day after he became aware that his candidacy was not—or no longer—being considered. This understanding is not correct.

17. Indeed, a request for management evaluation has a precise and specific meaning in the framework of the Organization's internal justice system. It is the first step in formal contestation of an administrative decision and, as such, a mere communication conveying discontent to "management" does not amount to a formal management evaluation request. Management evaluation is a formal process involving a request to the body specifically vested with the authority to look into a contested decision, to consider whether it conformed with the applicable rules of the Organization. In the present case, the competent body is the Management Evaluation Unit ("MEU").

18. Therefore, having determined that no management evaluation was submitted, the Tribunal cannot but reject this application as irreceivable *ratione materiae* (*Eggesfield* 2014-UNAT-402).

19. Having said that, it is important to emphasise that the fact that the instant application has been filed, and even rejected, in no manner precludes the Applicant from undertaking the formal management evaluation step to the MEU after the issuance of this Judgment, nor from filing a new application against the same decision once he has gone through the management evaluation process.

20. It is also important to underline that the Applicant, like any other staff member willing to impugn a decision, must be acutely mindful of the mandatory time limits that apply to each of the procedural stages, and which are strictly enforced. In particular, the management evaluation request has to be submitted within 60 calendar days from the day the concerned staff member came to know about the administrative decision at issue (see the above-cited staff rule 11.2(c)). Failure to respect this and any subsequent applicable time limits would have the effect of foreclosing any potential challenge.

Conclusion

21. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed as irreceivable.

(Signed)

Judge Teresa Bravo

Dated this 9th day of March 2017

Entered in the Register on this 9th day of March 2017

(Signed)

René M. Vargas M., Registrar, Geneva