



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** Geneva

**Registrar:** René M. Vargas M.

REHMAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Miles Hastie, UNICEF

## **Introduction**

1. By application filed on 27 March 2016, the Applicant, a former staff member of the United Nations International Children’s Emergency Fund (“UNICEF”) Islamabad, Pakistan Country Office (“PCO”), contests the decision not to select her for the post of Programme Assistant, GS-5, fixed-term, Polio Section, Peshawar, Pakistan, and not to inform her of not being selected.

2. The Respondent filed his reply to the application on 18 April 2016.

## **Procedural history**

3. On 30 April 2016, the Applicant filed a motion for production of documents. By Order No. 87 (GVA/2016) of 2 May 2016, the Tribunal ordered the Respondent to file a response to the Applicant’s motion, which he did on 9 May 2016.

4. By Order No. 95 (GVA/2016) of 10 May 2016, the Tribunal ordered the Respondent to file additional documents, namely the handwritten notes of the members of the selection panel who were present during the interview and the minutes of the Central Review Board (“CRB”) recommendations, only insofar as they related to the Applicant. The Respondent complied with that Order on 13 May 2016.

5. On 20 May 2016, the Applicant filed a “motion for production of additional/remaining documents from Respondent”. On 23 May 2016, the Respondent filed a response to the Applicant’s motion, stressing that he had complied with Order No. 95 (GVA/2016) and that all of the requested documents had been submitted pursuant to said Order.

6. On 25 May 2016, the Applicant filed a response to the Respondent’s reply of 23 May 2016, requesting the Tribunal to order the production of additional documents. By Order No. 103 (GVA/2016) of 25 May 2016, the Tribunal found that the Respondent had complied with Order No. 95 (GVA/2016) and rejected the Applicant’s motion for production of additional documents.

7. In September 2017, the Applicant's case was reassigned to the undersigned Judge and by Order No. 173 (GVA/2017) of 11 September 2017, the Respondent was ordered to file additional documents and the parties were called to attend a case management discussion on 18 September 2017.

8. On 22 September 2017, the Respondent filed a motion for extension of time to comply with Order No. 173 (GVA/2017). The Tribunal, by Order No. 184 (GVA/2017) of 25 September 2017, ordered that the documents to be filed by 26 September 2017, for which the Respondent complied.

9. By Order No. 187 (GVA/2017) of 3 October 2017, the Tribunal set the date for a hearing on the merits in relation to the Applicant's non-selection case, which was held on 5 and 11 October 2017. The parties filed their closing submissions on 27 October 2017.

10. The Applicant has two other cases before this Tribunal:

a. In the first case (registered under Case No. UNDT/GVA/2016/007), she is challenging the decision not to renew her fixed-term appointment as Programme Assistant in the Education Section in the PCO, Islamabad; and

b. In the second case (registered under Case No. UNDT/GVA/2016/094), the Applicant is challenging the decision of the Office of Internal Audit and Investigation ("OIAI") to close the investigation into complaints of harassment, discrimination and abuse of authority, lodged by the Applicant against other staff members.

11. While the Applicant joins issues of all cases in her three applications, the Tribunal will adjudicate each application and contested decision by way of a separate judgment. Therefore, this Judgment will only address the decision not to select the Applicant and not to inform her of her non-selection for the post of Programme Assistant, GS-5, Polio Section, UNICEF, PCO, Peshawar.

## **Facts**

12. The Applicant is a former employee of the UNICEF Pakistan Country office in the Education Section, where she worked as a Programme Assistant at the GS-6 level and her contract was not renewed on 31 December 2015 due to alleged lack of funds.

13. The Applicant applied for the position of Programme Assistant, GS-5 in the Polio Section, UNICEF, PCO, Peshawar, in October 2015. On 23 November 2015, she was notified that she had been shortlisted to undertake a written test, which was to be administered on 25 November 2015. On 5 January 2016, the Applicant was invited to a competency-based interview, which was held on 7 January 2016.

14. After the interview, the Applicant did not receive any further communication from UNICEF, PCO. Consequently, on 22 January 2016, she wrote to the then-Chief of Human Resources (“CHR”) of UNICEF, PCO, inquiring about the status of the recruitment process. The CHR replied to her on the same day that the recruitment process was still underway and that she could not give the Applicant a “specific update” at that moment.

15. On 25 January 2016, the Applicant wrote again to the CHR indicating that she hoped to be notified as soon as the selection process was completed. On 28 January 2016, the Applicant once again wrote to the CHR inquiring about the status of the selection process and, on the same date, she received a response that the recruitment was still in progress.

16. Meanwhile, on 27 January 2016, UNICEF sent the selected candidate an offer of appointment, which he accepted on 28 January 2016 indicating that he would take on his duties on 15 February 2016.

17. The Applicant did not receive any communication pertaining to her non-selection to the post of Programme Assistant, GS-5, Polio Section, UNICEF, PCO, Peshawar, from either the CHR or the UNICEF PCO.

18. On 3 February 2016, the Applicant requested management evaluation of her non-selection decision regarding the recruitment of Programme Assistant, GS-5, Polio Section, UNICEF, PCO. She also sought the suspension of the recruitment process during the consideration of her management evaluation request.

19. On 5 February 2016, the Applicant received a response to her request for suspension of action from UNICEF management rejecting it on the grounds that, the selected candidate had accepted the offer and the non-selection decision did not appear *prima facie* to be unlawful.

20. On 29 February 2016, the Applicant received the full outcome of her management evaluation request in writing, upholding the decision not to select her for the post of Programme Assistant, GS-5, Polio Section, UNICEF, PCO, Peshawar.

#### **Parties' submissions**

21. The Applicant's principal contentions are that:

- a. She was not given full, fair and transparent consideration in the recruitment process because of feelings of ill will harboured against her;
- b. She was the most relevant and competent candidate who fulfilled the requirements for the position based on her experience and her performance appraisals. Nevertheless, the offer was made to an external candidate;
- c. The UNICEF staff selection policy provision on consideration to be given to internal over external candidates was ignored, thus her nine years of familiarity with the UNICEF system was disregarded;
- d. The UNICEF staff selection policy provides that preference shall be given to competent female candidates in order to maintain gender balance for staff in the General Service category. This policy was equally ignored;

- e. The shortlisting of external candidates for the interview was not merit based, since they did not possess the relevant work experience;
- f. The former CHR, UNICEF, PCO, Islamabad, who was biased and discriminated against the Applicant, influenced the selection panel;
- g. The written test was not in a protected format thus questioning its credibility; and
- h. She was intentionally kept unaware of the non-selection decision by UNICEF, PCO, Islamabad in breach of the staff selection policy.

22. The Respondent's principal contentions are that:

- a. The Applicant has to prove through clear and convincing evidence that the procedure was violated, the members of the interview panel exhibited bias, and that irrelevant material was considered or relevant material was ignored;
- b. There was no requirement to consider her performance appraisals in place of a competency-based interview;
- c. The interview panel members were not influenced by the former CHR, UNICEF, PCO, Islamabad. Rather, the panel formed an independent opinion of the Applicant's candidature during her performance at the interview and found her not suitable for the post;
- d. The Applicant's assertions that she was deliberately kept unaware of her non-selection is incorrect. It is UNICEF policy and practice not to inform candidates about the status of the application prior to the selected candidate's acceptance of the offer of employment;
- e. The Applicant was not placed in a talent group because she was not recommended for selection;

- f. Priority for staff on abolished post, or facing non-renewal, permit the shortlisting of such staff but does not require the selection of candidates deemed unsuitable following a selection exercise; and
- g. The application of the gender parity requirement applies to candidates deemed suitable after a selection process.

### **Consideration**

23. It is trite law that the Tribunal's role in matters relating to appointment and promotion is to examine whether the selection process was carried out in an improper, irregular or otherwise flawed manner, to assess whether the resulting decision was tainted by extraneous factors, undue consideration or was manifestly unreasonable (see *Rolland* 2011-UNAT-122, *Charles* 2012-UNAT-242).

24. The Tribunal has the power to examine and to rescind a selection decision in appointment related matters, where there is evidence of bias (whether actual or apparent), discrimination, failure to give a party full and fair consideration and in the face of irrefutable procedural irregularities (*Majbri* 2012-UNAT-200).

25. It is well established that the Secretary-General has broad discretion in matters of appointment and promotions, and that it is not the role of the Dispute Tribunal or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of a selection process (*Abbassi* 2011-UNAT-110).

26. Consequently, when the Tribunal is reviewing a non-selection case, every stage of the selection procedure is subject to judicial review to ascertain (1) whether the procedure as laid down in the Staff Regulations and Rules was followed, and (2) whether the staff member was given fair and adequate consideration (*Ljungdell* 2012-UNAT-265).

27. In *Rolland*, the Appeals Tribunal held that all candidates before an interview panel have the right to full and fair consideration, and that a candidate challenging the denial of promotion must prove through clear and convincing evidence that the procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material was ignored.

*Assessment process*

28. The Tribunal has carefully read the Applicant's arguments. It notes that in her entire application, she did not provide any proof of the allegations of bias and the negative influence of the CHR in the recruitment process. The Applicant's further allegations of irregularity in the recruitment process have equally not been substantiated. The Tribunal recalls the ruling in *Rolland* that there is a presumption that official acts of the Organization have been regularly performed. Therefore, if the Organization is able to minimally show that an Applicant's candidature was given full and fair consideration, the burden of proof shifts to the Applicant who must show through clear and convincing evidence that she was denied a fair chance in a recruitment exercise.

29. The Chair of the interview panel, a health specialist, led the interview process. He had recently joined the Organization in January 2016 and did not know the Applicant. He testified at the hearing that no one influenced him. He also stressed that all candidates were asked the same questions and that after each interview, the interview panel discussed and unanimously agreed on its recommendation with respect to each candidate. Additionally, when the CHR sent him the candidates' comparison and recommendation document, he approved and endorsed the recommendations contained therein.

30. During cross-examination, the Chair was asked to explain the meaning of an abbreviation that he had included in his interview notes about the Applicant. Unfortunately, he did not remember. The Applicant did not show how that abbreviation, in particular, influenced the interview process to her detriment. It is worth noting that the overall rating for the Applicant's response to the particular question where the abbreviation appears was the same for each panel member. Therefore, and in light of the evidence heard from the Chair, the Tribunal is satisfied



that his mere inability to remember an abbreviation that he made as part of his notes does not in itself render the entire recruitment process irregular.

31. Generally, the Tribunal recalls that it is not its role to substitute its own assessment for that of the interview panel and that it is limited to examine whether the selection process was carried out in an improper, irregular or otherwise flawed manner and to assess whether the resulting decision was tainted by undue considerations or was manifestly unreasonable (*Wang* 2014-UNAT-454).

32. In applying the above principles, the Tribunal notes that since the Applicant was found not to be a suitable candidate and consequently not among the recommend candidates, her arguments on the lack of application of the gender parity considerations and the recruitment of an external candidate are not matters that arise with respect to her candidature.

33. The Tribunal finds that the recruitment process and the assessment methods applied by the interview panel did not violate the rules. The Applicant's candidature received full and fair consideration.

*Notification of non-selection*

34. The Applicant's main contention seems to be that she was not notified of her non-selection as per the then-applicable UNICEF policy on Staff Selection, (CF/EXD/2013-004), which provides:

*Communication of selection decision*

8.6 All interviewed candidates shall be informed by the HR unit of the selection decision and, where applicable, their placement in a talent group.

35. The Respondent submits that UNICEF's selection policy requires interviewed candidates to be notified of the selection decision but does not set a deadline for it and, therefore, what was required was notice within a reasonable period of time.

36. During her testimony, the Applicant testified that she only received notice about her non-selection during the management evaluation stage when she had asked for a suspension of the selection process. Further, during the cross-examination of the Applicant, she stated that she had heard rumours that someone else had been selected but she was not sure about the status of her candidature because she had not received an official notification of her non-selection.

37. The selected candidate was notified of his selection and accepted the offer on 27 and 28 January 2016, respectively. This notwithstanding, the Applicant was not formally informed of her non-selection as per the requirements of UNICEF policy on Staff Selection. Rather, she relied on rumours that she was not the selected candidate and on that basis requested management evaluation.

38. It should be noted that in October 2015, the Applicant had been informed of the non-renewal of her contract expiring in December 2015 and, thus, she was going to be unemployed and was therefore in a very precarious position. Her application to the post of Programme Assistant, GS-5, Polio Section, UNICEF, PCO, Peshawar was geared towards ensuring that she did not find herself unemployed.

39. Section 8.6 of the above-mentioned UNICEF policy on Staff Selection creates a clear obligation to inform unsuccessful shortlisted candidates about their non-selection. The Appeals Tribunal in *Rolland* 2011-UNAT-122 noted that failure of notification of non-selection may have a serious impact on the future career development of a staff member by delaying preparation for seeking other positions. It also delays the administrative review/management evaluation of the case.

40. The Tribunal considers that a delay in notifying a staff member of non-selection may have a different impact depending on the circumstances of the case. It finds that, in the case at hand, by not informing the Applicant of her non-selection, UNICEF, PCO, breached the then-applicable Staff Selection policy. This is especially so considering that she had been inquiring several times about the status of the recruitment process, she had been separated unlawfully from the Organization (see Judgment *Rehman* UNDT/2018/031) and that she was facing uncertainty of employment after nine years of service with UNICEF, PCO.

41. The foregoing notwithstanding, the Tribunal finds that the above cited irregularity did not have a direct effect on the Applicant's non-selection. Consequently, as noted by the Appeal's Tribunal, where an irregularity has no impact on the status of a staff member, the staff member is not entitled to rescission (*Onana* 2015-UNAT-533).

42. However, based on the evidence heard from the Applicant during the hearing, the Tribunal is satisfied that she suffered stress and anxiety because of that procedural violation, warranting the award of USD500 as nominal damages.

### **Conclusion**

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

- a. The application as far as it concerns the decision not to select the Applicant for the post of Programme Assistant, GS-5, fixed-term, Polio Section, Peshawar, Pakistan, is rejected;
- b. The Applicant is awarded USD500 for the damage suffered as a result of the failure by UNICEF PCO to officially notify her of her non-selection;
- c. The sum shall be paid within 60 days from the date this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional 5% shall be added to the US Prime Rate until the date of payment; and
- d. All other pleas are rejected.

*(Signed)*

Judge Alexander W. Hunter, Jr.  
Dated this 14<sup>th</sup> day of March 2018

Entered in the Register on this 14<sup>th</sup> day of March 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva