



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

OLUBOWALE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Louis-Philippe Lapicerella, UNHCR

Introduction

1. By application filed on 31 July 2017, the Applicant, a P-4, Senior Administrative and Finance Officer at the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision not to select him for the position of Head of Sub-Office (P-5), Jam Jang in South Sudan.

2. On 8 September 2017, the Responded submitted his reply and argued that the application is irreceivable, since the Applicant failed to contest his non-selection, by way of management evaluation within the prescribed time limits.

Facts

3. On 24 August 2002, the Applicant joined UNHCR as an Administrative Officer in Kigali, Rwanda, at the P-3 level on an indefinite appointment.

4. The Applicant is currently assigned and serving in Yangon, Myanmar, as Senior Administrative and Finance Officer at the P-4 level.

5. UNHCR advertised job opening No. 12807 for the position of Head of Sub-Office, Jam Jang, South Sudan, at the P-5 level, position No. 10020845, in the September 2016 Compendium. The Applicant applied for the position.

6. The Division of Human Resources Management (“DHRM”), UNHCR, identified and short-listed eleven eligible candidates, including the Applicant, for the P-5 post. The Applicant had a telephone conversation with the Hiring Manager about the post to assess his interest therein. On 8 November 2016, DHRM held a meeting in which it recommended another candidate.

7. On 16 and 17 November 2016, the Joint Review Board (“JRB”) scrutinized the selection procedure and concluded that it had complied with all procedural and fairness requirements.

8. On 7 December 2016, the Director, DHRM, released the Summary of Decisions of the High-Commissioner in an email communicated to all staff members, including the Applicant. The Summary of Decisions contained the

selection decision of another candidate to the above-referenced P-5 position and did not list the Applicant's name.

9. On 9 December 2016, the Applicant requested the documentation associated with the three recruitment processes for the posts to which he had applied, including for the above-referenced P-5 post.

10. On 24 February 2017, DHRM provided the Applicant with documentation from the recruitment process for the contested position.

11. On 11 April 2017, the Applicant submitted a management evaluation request contesting the non-selection decision for the above referenced P-5 post.

12. On 10 July 2017, the Deputy High Commissioner replied to the Applicant's request for management evaluation and upheld the non-selection decision. In her answer, the Deputy High Commissioner informed the Applicant that his challenge was time-barred.

Procedure before the Tribunal

13. By Order No. 48 (GVA/ 2018), the Tribunal invited the parties to attend a case management discussion ("CMD"), which took place on 14 March 2018, in order to address, inter alia, the issue of receivability.

14. On 26 March 2018, the Applicant filed additional comments on the Respondent's submissions and adduced new evidence.

15. On 27 March 2018, the Respondent—replying to Order No. 61 (GVA/2018)—filed written submissions on the issue of receivability and provided the Tribunal with new documentary evidence.

Parties' contentions

16. The Applicant's main contentions may be summarized as follows:

a. His application is receivable, the Respondent had issued a generic announcement concerning the decisions for other staff and he was never advised in writing that his candidacy was unsuccessful;

b. This only became clear to him in February 2017, when he availed himself of the provisions of para. 119 of UNHCR/HCP/2015/Rev.1 in order to obtain the relevant documentation used to assess his candidacy and the JRB minutes;

c. He requested timely management evaluation after he received relevant information from DHRM on 24 February 2017, upon his request, including excerpts from the shortlisting matrix and recommendation of the JRB on the post;

d. On the basis of the information provided, the Applicant addressed a request for management evaluation on 11 April 2017, contesting the decision and arguing that his candidacy had not received full and fair consideration;

e. The Respondent should not be permitted to benefit from his own procrastination in providing the privileged material;

f. It was only when he received the information relative to his candidacy for this post in Sudan that he became aware that the process was flawed;

g. The burden is on the Respondent to demonstrate that the Applicant's candidacy was given full and fair consideration.

17. The Respondent's main contentions can be summarized as follows:

a. The Applicant received a written notification of the contested decision through the Summary of Decisions of the High-Commissioner on 7 December 2016. Consequently, he was required to file his request for management evaluation within 60 days or by 5 February 2017; failure to do so renders the application irreceivable;

b. The Applicant took issue with his non-selection for the P-5 post for the first time on 11 April 2017, when he submitted his request for management

evaluation contesting his non-selection. Therefore, his grievance with regard to the selection process for the P-5 post is time-barred;

c. The Tribunal cannot remedy this jurisdictional flaw under article 8.3 of its Statute;

d. UNHCR's new policy on assignments and procedures does not impact the pre-established deadlines to submit a request for management evaluation;

e. For this reason, the Tribunal has no jurisdiction to entertain the Applicant's challenge of his non-selection.

Consideration

18. As a preliminary issue, the Tribunal has to determine whether the present application is receivable, *ratione materiae*, since it has jurisdiction to consider applications only against an administrative decision for which an applicant has timely requested management evaluation, when required (*Egglesfield* 2014-UNAT-402).

19. With respect to the deadline to request management evaluation, staff rule 11.2 (c) provides:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

20. According to the established jurisprudence of the Appeals Tribunal, statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308) and pursuant to art. 8.3 of its Statute, the Dispute Tribunal has no authority to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Egglesfield* 2014-UNAT-402).

21. Also, the Appeals Tribunal has consistently held that receipt of information concerning the rationale for an earlier notified administrative decision does not reset the statutory time-limits (*Rahman* 2012-UNAT-260; *Chahrour* 2014-UNAT-406).

22. On 7 December 2016, the Director, DHRM, circulated the Summary of Decisions of the High Commissioner, thereby informing the Applicant that another candidate had been chosen for the P-5 post of Head, Sub-Office Jam Jang, South Soudan. The Summary of Decisions of the High Commissioner is the normal communication of selection decisions within UNHCR; since the name of another candidate, and not that of the Applicant, was listed for the above P-5 post in the Summary of Decisions, the Tribunal cannot but conclude that he was notified of his non-selection on 7 December 2016. Yet, he requested management evaluation only on 11 April 2017.

23. The Tribunal has to address the Applicant's argument that pursuant to para. 119 of UNHCR's Revised Policy and Procedures on Assignments (UNHCR/HCP/2015/2/Rev.1) ("PPA")—in force at the time of the events—a staff member had to be provided with the documents from the selection process before deciding whether to submit his request for management evaluation, hence the deadline to request management evaluation counted only as of the receipt of that information. Since the Applicant requested documentation for the above recruitment exercise pursuant to the PPA, and was provided with such documentation by DHRM only on 24 February 2017, he submits that the time-limit for management evaluation started to count only from that date.

24. The Respondent maintains that the provision of documents from a selection procedure under the PPA does not waive or suspend the deadlines to request management evaluation.

25. Paragraph 119 of the PPA provides as follows:

Staff members who have reasons to believe that they have not been given full and fair consideration for a particular decision, have the right to be provided, upon request, with information on the process which led to that particular decision. The information provided shall include relevant documents submitted by DHRM or the SAC to the JRB or to the High Commissioner, as applicable, as well as any JRB Minutes. The names of other staff members shall be concealed in all such documentation provided.

26. The wording of para. 119 of the PPA is unambiguous and does not allow concluding that the provision of information and documentation pursuant to the policy leads to a suspension or waiver of the statutory deadline enshrined in staff rule 11.2(c). Its purpose is merely to establish a duty for the Administration to provide non-successful candidates, upon their request, with documents with respect to a particular selection process. The mechanism of management evaluation, on the other hand, was created to provide the Organization with an opportunity to review an administrative decision and, if appropriate, amend or correct it.

27. The Tribunal sees no legal basis to sustain that para. 119 of the PPA created a legal waiver or suspension of the statutory deadline contained in staff rule 11.2(c). Rather, the two procedures are independent of each other in that while the Applicant could and did avail himself of the possibility to request information pursuant to para. 119 of the PPA, applicable at the time, such request did not in any way impact the statutory time-limit contained in Staff rule 11.2(c).

28. Finally, the impact, if any, of a policy issued after the events of the dispute—which was not in force at the material time—is immaterial for the determination of the present application and any argument in that respect will not be entertained by this Tribunal.

29. It results from the foregoing, that the present application is irreceivable *ratione materiae*.

Conclusion

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

The application is rejected.

(Signed)

Judge Teresa Bravo

Dated this 3rd day of December 2018

Entered in the Register on this 3rd day of December 2018

(Signed)

René M. Vargas M., Registrar, Geneva