



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

NOBERASCO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Mohamed Abdou, OSLA

Counsel for Respondent:
Cornelius Fischer, UNOG

Introduction

1. On 11 October 2017, the Applicant, a Senior Staff Assistant at the G-6 level, step 11, with the Library in the United Nations Office in Geneva, filed the application in which she contests the decisions (a) not to select her for the post of Personal Assistant to the High Commissioner of the Office of High Commissioner for Human Rights at the G-7 level with Job Opening no. 68685 (“the JO”) and (b) to exclude her from the recruitment process on the ground that she did not submit the written test within the specified time.
2. The case was registered with the Dispute Tribunal’s Registry in Geneva under Case No. UNDT/GVA/2017/076.
3. On 13 November 2017, the Respondent duly filed the reply in which he contends that the application is without merit.
4. By email of 16 November 2018, the Geneva Registry informed the parties that the case was transferred to the New York Registry to ensure judicial efficiency and the expeditious disposal of cases.
5. By email of 10 January 2019, the New York Registry informed the parties that the case had been registered in New York under Case No. UNDT/NY/2018/65.
6. On 4 November 2019, the case was reassigned to the undersigned Judge.
7. By Order No. 155 (NY/2019) dated 5 November 2019, the Tribunal, *inter alia*, ordered the parties to file their closing statements in the following sequence: 3 December 2019 (the Applicant), 10 December 2019 (the Respondent), and 13 December 2019 (the Applicant).

Facts

8. In response to Order No. 155 (NY/2019), the parties submitted the following consolidated list of agreed facts:

... On 8 November 2016, [the JO] was advertised in INSPIRA [the online United Nations jobsite] for the position of Personal Assistant to the High Commissioner, G-7, at the Office of the High Commissioner for Human Rights (“OHCHR”), Geneva, with a closing date of 7 December 2016.

... The Applicant applied for the post on 6 December 2016.

... A total of 33 candidates applied for the position and underwent a preliminary assessment by the Hiring Manager, [name redacted, Ms. MKS], Chief of Office, Executive Direction and Management, OHCHR. The preliminary assessment resulted in 19 applicants being long-listed and 14 applicants, including the Applicant, being short-listed and invited for further assessment.

... The Applicant’s invitation for further assessment came after an initial screening process conducted by the Hiring Manager. The screening matrix, prepared by the Hiring Manager on the basis of the information reflected in the Applicant’s [personal history profile], indicates that the Applicant was deemed to have met the minimum requirements for the post as she had 18 years and 4 months of administrative experience. Moreover, she was screened as meeting the highly desirable skills for the post as she had several years of front office experience (including 1 year and 6 months as Assistant to the Deputy Director-General, [United Nations Office in Geneva, (“UNOG”)]; 2 years and 6 months as Assistant to the Chef de Cabinet, UNOG). The initial screening also indicated that the Applicant fulfilled other conditions and desirables including over 10 years of UN experience, fluency in French and English and completion of the Administrative Support Assessment Test (ASAT).

... After the withdrawal of one candidate, the 13 remaining shortlisted candidates were invited to participate in a written test between 21 and 23 February 2017. The invitation to the written test stated that the candidate had 1.5 hours to prepare and submit an answer from the moment of reception of the invitation, and that “[f]ailure to return the completed written assessment by the deadline...[would] result in disqualification.” On the scheduled date, the written test was sent by email to the shortlisted candidates by [name redacted, Ms. AB], with [Ms. MKS] and [name redacted, Ms.

JS] in copy. Candidates were instructed to submit their answers to [Ms. AB].

... The written assessments were graded on the basis of preestablished scoring criteria. Cutoff/passing grades were to be decided by reviewers before revealing the identities of candidates. Accordingly, a first round cut off was set at 10 points out [of] 15 and, if need be, a second round cutoff score was set at 9 points. Ultimately, the assessment panel set the passing score at 10 points after grading the tests. All tests were graded by three members [Mr. AN (name redacted), Ms. JS and Ms. MKS].

... The Applicant submitted her test on 23 February 2017 at 16:59. Due to a technical issue with the Administration's e-mail servers, the Applicant's test was received 31 minutes after the deadline set at 17:00. Her test was thus not graded with the initial batch of assessments and she was disqualified due to a late submission.

... Of the 13 candidates invited to participate in the written test, 4 candidates received a passing score of 10 points or more (out of 15 points) and were invited for a competency-based interview. Six candidates did not receive a passing grade, and three candidates were disqualified due to a late submission.

... Three out of the four interviewed candidates were recommended for the post. The interview panel was composed of [names redacted, Ms. CC, Mr. AN and Mr. JR (*ex officio* member from HR) [assumedly, referring to human resources]]. On 27 March 2017 a recommendation memorandum was sent from the Hiring Manager to the Chief, PSMS [unknown abbreviation], OHCHR, recommending three candidates.

... On 4 April 2017 the final transmittal memo for [the JO] was submitted to the Central Review Panel ["CRP"] for approval.

... On 5 April 2017 an e-mail was sent out at the Hiring Manager's request to all candidates who had failed the written assessment, including the Applicant, to inform them that their application had not been successful. The email, sent by [Ms. AB and copied to Ms. MKS and Ms. JS], stipulated that the "recruitment process has now been completed and regrettably you were not selected for this position".

... By e-mail dated 6 April 2017 (sent at 10:07 AM) another candidate disqualified for late submission claimed that she had submitted her written test before the deadline. Following an exchange of emails on the same day with the Hiring Manager, the candidate sent a screenshot of her email containing the answers to the test with the time of submission being reflected as 16.29, i.e. within the prescribed

time limits. This led the Hiring Manager to request clarification from OHCHR Chief Information Technology Officer on a potential delay in the reception of the written tests due to a technical issue.

... On 10 April 2017 the CRP endorsed the final transmittal memo sent by the Hiring Manager.

... On 11 April 2017, the Hiring Manager requested that the matter be put on hold while awaiting further information on the technical issue.

... On 12 April 2017, [Ms. AB] sent an email to the Applicant asking her to send a screenshot of the time at which her written test was submitted. On the same day, the Applicant submitted the requested screenshot copying both [Ms. MKS and Ms. JS], and sought feedback on her candidacy. OHCHR [Information Technology (“IT”)] Services confirmed that two candidates had indeed submitted their tests on time, but the tests were only received 30 minutes later due to a technical issue. On the same day, the Hiring Manager requested that the written tests which had been deemed late be sent to the assessment panel for evaluation.

... The assessment panel graded the Applicant’s written test with an average score of 3 for Question 1, 3.5 for Question 2, and 3 for Question 3, and a total overall score of 9.5. Given that none of the additional candidates were deemed to have received a passing score on the written assessment, the Hiring Manager did not resubmit the case to the CRP and proceeded with the recommendation for selection. On 21 April 2017, the selection of the successful candidate was processed in Inspira. The Applicant, as well as all other candidates, were informed of the results of the selection exercise on 22 April 2017. Prior to processing the selection, the Hiring Manager informed [Ms. CC] on 21 April 2017 that she had responded to the candidate who had asked about her written assessment.

... On 17 May 2017 the Applicant reiterated her request for an update on her application to which the Hiring Manager responded on 18 May 2017 providing information about the IT related issue, the reevaluation of her written test, the result of the evaluation, and feedback on her test performance.

... On 2 June 2017 the Applicant requested management evaluation of the decision not to select her for the post. On 11 October 2017 the Applicant filed an Application to the [Dispute Tribunal].

Consideration

The issues of the present case

9. In Order. No. 155 (NY/2019), the Tribunal delineated the basic issues of the present case, and in the parties' subsequent submissions, no objections were made to these definitions. Based thereon, the issues of the present case are defined as follows:

- a. Was the written test properly administered or did any irregularities, procedural or substantive, occur?
- b. Were any of the alleged irregularities in the assessment process of "such a nature that, had [they] not occurred, [the Applicant] would have had a foreseeable and significant chance for promotion" (see para. 48 of *Ross* 2019-UNAT-926)?
- c. If the selection process was flawed, what remedies is the Applicant entitled to?

Applicable law

10. The Appeals Tribunal has consistently held that the Dispute Tribunal's judicial review is limited and often refers to *Sanwidi* 2010-UNAT-084 (para. 42) in which it defined the scope of review as that "the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate". The Appeals Tribunal further held that "the Dispute Tribunal is not conducting a "merit-based review, but a judicial review" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision".

11. Specifically regarding promotion (and selection) cases, the Appeals Tribunal has adopted the principle of regularity by which if the Respondent is able "to even

minimally show that [an applicant's] candidature was given a full and fair consideration, then the presumption of law stands satisfied" where after the applicant "must show through clear and convincing evidence that [s/he] was denied a fair chance of promotion" in order to win the case (*Lemonnier* 2017-UNAT-762, para. 32).

Was the written test properly administered or did any irregularities, procedural or substantive, occur?

Did the Administration properly rectify all shortcoming following from the technical IT issue, which caused the Applicant's written test to be submitted too late and initially disqualified?

12. The Tribunal notes that the parties agree that the technical IT issue with OHCHR's email server erroneously initially caused the Applicant's application to be disqualified from the selection process. From the agreed facts also follows that the CRP's endorsement of this process was given before the mistake was discovered and that the Applicant's test was only thereafter corrected by the assessment panel. Consequently, the CRP was never provided an opportunity to assess the part of the process involving the evaluation of the Applicant's written test, including that the rating of her score was deemed to fall below the minimum passing score.

13. The Applicant, in essence, submits that it was inappropriate for the Administration not to take action on the erroneous disqualification of two candidates until the CRP had already endorsed the selection recommendation on 11 April 2017 and that it also failed to notify the CRP of this mistake.

14. The Respondent contends that when the hiring manager discovered that the Applicant's late submission was due to the technical IT error, she immediately took action to ensure the continued compliance of the selection process with the rules and best practices. In an effort to make sure that all candidates were treated equally and fully and fairly considered, the hiring manager put the selection process on hold and

contacted all other disqualified candidates, including the Applicant, to receive confirmation that they had submitted their answers. The written test of the candidates initially disqualified due to the technical IT error was finally assessed under the same conditions as all other candidates' tests. Only once it was established that the Applicant had not received the required passing grade, did the hiring manager give the approval to proceed with the selection exercise. The Administration had no control over the technical error in the computer servers, and once known, the error was corrected in good faith which prevented any impact on selection process.

15. The Respondent further submits that since the technical error was discovered after the transmission of the final memorandum to the CRP, which constitutes a Central Review Body ("CRB") and the subsequent grading of the Applicant's test revealing that she had failed, it was not considered necessary to update or resubmit the transmittal memorandum. The transmittal memorandum submitted to the CRP accurately described the assessment method used to evaluate the candidates, as well as provided a comprehensive record of the result of the assessment conducted during the competency-based interview. The Administration's reaction at that time concentrated its efforts on ensuring full and fair consideration of the candidates despite the technical error. The hiring manager therefore put the recruitment process on hold and made sure that the Applicant's written test would be assessed as the other candidates' tests. The Administration then did not consider necessary to revise the transmittal memo which would have only changed the Applicant's status from "disqualified" to "failed the assessment". Even if one considers that a resubmission of an updated transmittal memo to the CRP would have been the rightful procedure, it would not have affected the outcome of the selection exercise for the Applicant.

16. The Tribunal notes that the parties agree that the impugned selection process was regulated by ST/AI/2010/3 (Staff selection system). In sec. 1, the purpose of a CRB is defined as a joint body "established under staff rule 4.15 which [is] to ensure that candidates have been evaluated on the basis of approved evaluation criteria and that the applicable procedures have been followed in the process of appointing,

selecting and promoting staff up to and including the D-1 level”. In sec. 8.1, it is further stated that the CRB “shall review proposals for filling a position-specific job opening or for placing candidates on the roster following a generic job opening, made by the department/office or mission concerned, to ensure that applicants were evaluated on the basis of the corresponding evaluation criteria and that the applicable procedures were followed in accordance with sections 5.2 to 5.6 of ST/SGB/2002/6 [which has been replaced with ST/SGB/2011/7 (Central review bodies)]”. Should the CRB find that “the evaluation criteria have not been properly applied and/or the applicable procedures have not been followed” then the “[a]uthority to make a selection decision with respect to a particular job opening shall be withdrawn” as per sec. 8.2.

17. ST/SGB/2011/7 provides some more details on the functions of the CRBs and, pursuant to sec. 4.6, a CRB shall consider whether:

- a. “The recommendation of candidates is reasoned and objectively justifiable based on evidence that the pre-approved evaluation criteria set out in the job opening were properly applied”;
- b. “The record indicates that there was no mistake of fact or mistake of procedure, prejudice or improper motive that could have prevented a full and fair consideration of the candidates’ requisite qualifications”;
- c. “The record contains a fully justified analysis of each of the competencies listed in the job opening, which must be evaluated during the competency-based interview and/or other assessment methodologies for all short-listed candidates”.

18. It therefore follows that the CRP was not given a chance to ensure that the Applicant’s candidature was evaluated on the basis of the corresponding evaluation criteria and that the applicable procedures were not followed in accordance with secs. 1 and 8.1 of ST/AI/2010/3 and sec. 4.6(a) of ST/SGB/2011/7. Also, contrary to 4.6(b)

and (c) of ST/SGB/2011/7, the record provided to CRP was incomplete as it did *not* (a) contain any information about the mistake of procedure that did indeed incur, namely the technical IT error, or (b) include any analysis or information whatsoever on the Applicant and another job candidate's responses that were deemed to have failed the written test. In principle, as the CRB process was not complete, OHCHR would not have had the authority to make a selection decision with respect to a particular job opening pursuant to sec. 8.2 of ST/AI/2010/3.

19. The Tribunal therefore finds that the Respondent has failed to demonstrate with a minimal showing that the Applicant's job candidature was properly assessed by a CRB.

Did the assessment panel misrepresent the status of the recruitment process to the unsuccessful candidates?

20. The Applicant contends that the evidence shows that the assessment panel misrepresented the status of the recruitment process to the unsuccessful candidates. The Applicant was notified on 5 April 2017 that the "recruitment process has now been completed", but the recruitment process was actually still pending the CRP's approval.

21. The Respondent submits that while the Administration is obliged to notify job candidates in a timely manner of the results of a selection exercise, there is no indication regarding when it should be done (see, for instance, *Rolland* 2011-UNAT-122, para. 33). Accordingly, the early notification that the Applicant did not pass a written test did not prejudice her rights and did not make the selection exercise unlawful. Moreover, due to this early communication to candidates, it was possible to spot and rectify the technical issue.

22. The Tribunal notes that sec. 10.1 of ST/AI/2010/3 provides that "candidates convoked for assessments but not selected or placed on a roster shall be so informed by the hiring manager or the occupational group manager within 14 days *after* the

selection decision is made in writing” (emphasis added). Unlike what the Respondent submits, ST/AI/2010/3 does give a very clear indication as to when an unsuccessful job candidate, like the Applicant in the present case, is to be notified. The Tribunal further notes that the parties agree that the Applicant received notification of her unsuccessful application before—and not after—the selection decision.

23. The Tribunal therefore finds that the Respondent has failed to demonstrate with a minimal showing that the Applicant received a timely notification of her application being unsuccessful.

Was the Applicant’s written test not graded anonymously?

24. The Applicant submits that her test was not graded anonymously. As two of the assessment panel members, Ms. MKS (the hiring manager) and Ms. JS, were copied on the email invitation to the written test, some job candidates, but not the Applicant, mistakenly submitted their responses to the written test directly to them. The Administration failed to take adequate measures to ensure the integrity of the process and, as the hiring manager had already direct access to the other candidate’s test, she was in a position to identify the Applicant’s test response. Having directly received the answers of the other disqualified candidate, the two panel members could also easily identify the Applicant and her test response as this was the only one to which they did not have direct access and, as from 27 March 2017, the panel members were fully aware of the identities of the disqualified candidates.

25. The Respondent contends that the assessment panel applied the same level of anonymity to all test responses and none of its members was able to identify the names of the candidates. The other candidate, who along with the Applicant was initially also erroneously disqualified, did not properly follow the instruction to send the test response only to Ms. AB, who was solely identified as “Candidate #10”, but this did not compromise the anonymity of the Applicant’s test assessment. In any event, according to Manual on staff selection system of 2019 (“the Manual”), “Grading is normally anonymous, unless the panel lacks the means to do so or when

the nature of the specific assessment type entails revealing the identity of the applicants” (see point 9, Chapter 7). The email sent to the Applicant on 5 April 2017 informing her that her candidacy had not been successful did not reveal her identity to the panel members, including the hiring manager. The document referred to by the Applicant only shows an email from Ms. AB for the purpose of keeping record of the notification that she had sent at the same time to all candidates who had failed the test or had been disqualified. The email addresses of the unsuccessful candidates were inserted in a blind copy field so that the identity of each of them had not been disclosed to the other recipients, including the reviewers. The upper part of that document shows that Ms. AB forwarded this email, together with the list of all unsuccessful candidates as the recipients, to the hiring manager on 18 June 2017, i.e. after the completion of the recruitment process. Ms. AB forwarded her email dated 5 April 2017 to the hiring manager who was collecting information following the Applicant’s request for management evaluation submitted on 2 June 2017. The Applicant’s interpretation of this correspondence is misrepresenting the facts, and the anonymity of the Applicant was preserved during the entire recruitment process.

26. The Tribunal notes that the Manual to which the Respondent refers was issued in 2019 and therefore not in effect at the time of the written test. In addition, such type of manual is generally not legally binding (see, for instance, *Asariotis* 2015-UNAT-496). The Tribunal, however, agrees with the general principle that the responses to a written test should be graded on an anonymous basis to give full and fair consideration to the job candidatures. In this regard, the Tribunal finds that copying members of an assessment panel into an email invitation to a written test would generally appear to be unadvisable and serves no logical purpose because, as in the present case, it could easily lead job candidates to mistakenly forward their responses directly to these panel members contrary to instructions given in the actual email, in particular as candidates are typically under significant time pressure and stress when finalizing and submitting test responses. If the panel members then open the email and the written test response, there is then a risk that the identity of the job candidate could be revealed and that the anonymity of the assessment of the written

test is compromised. The fact that such irregularity occurred, however, is not by itself indicative that the process was irretrievably flawed as the administrator of the test could take various measures to ensure that the anonymity is not compromised. For instance, at minimum, the panel members could be instructed not to open the emails and confirm that they did not do so.

27. In the present case, the parties agree that Ms. AN (the assistant to the selection process) copied in two assessment panel members (Ms. MKS and Ms. JS) to the email sent to the relevant job candidates with the written test and that when submitting their responses to the written test, apparently some, but not the Applicant, emailed their test responses to Ms. MKS and Ms. JS. In this regard, the Respondent has not provided any evidence, or otherwise substantiated, that any measures whatsoever were taken to ensure that Ms. MKS and Ms. JS did not open the relevant emails and written test responses and/or that they did not do so. The Applicant, however, admits that she did not copy in any of the panel members when submitting her test response. The question is therefore whether Ms. MKS and Ms. JS were capable of singling out her test response as, due to the previous technical mistake, the other job candidate whose test was graded at the same time as hers indeed did send her test response directly to Ms. MKS and Ms. JS. The Tribunal notes that the parties disagree whether Ms. MKS and Ms. JS were aware of the identities of the two remaining candidates and that neither party has proffered any evidence to either prove or disprove this factual point. The Tribunal is therefore left with no documentation and/or explanation on how the potential breach of anonymity was resolved.

28. Accordingly, although the onus on the Respondent is only to prove with a minimal showing that the Applicant's test response was assessed on an anonymous basis, the Tribunal finds that the Respondent has failed to do so.

Was the Applicant's test not assessed in an objective and independent manner?

29. The Applicant submits that she ought to have been awarded a passing grade in her written assessment. The assessment panel awarded the Applicant an average score

of 3 points for Question 1, 3.5 points for Question 2, and 3 points for Question 3, with a total overall score of 9.5 points. The Applicant was deemed to have failed the test as she did not receive a score above the passing threshold of 10 points. A careful review of the disaggregated test scores reveals clear mathematical mistakes. In respect of Question 1, the assessment panel incorrectly marked an average score of 3 instead of 3.5. Having received 3 points from Ms. MKS, 4 points from Ms. JS, and 3 points from Mr. AN, the Applicant's exact average score would have been 3.33, which could only be reasonably rounded to 3.5 points and not down to 3 points. This mathematical error had a significant impact on the Applicant's candidacy as, had the average score for Question 1 been correctly marked, the Applicant's total overall score would have been 10 (instead of 9.5).

30. The Respondent submits that the Applicant's test results were correctly calculated and that no marking errors were made. Regarding the assessment panel's evaluation, the Dispute Tribunal has stressed that it "is not in a position to substitute any scores with that of the panel that tested and interviewed the candidates" (*Xu* 2010-UNDT-002, para. 52). The test was comprised of three questions worth 5 points each. The passing score for the entire written test was of 10 points. Final scores were calculated on the basis of the average score given by three different test markers. The Applicant scored an average of 9.5 points out of 15, the assessment panel members having awarded the Applicant 8.5 points, 9 points, and 11 points respectively, which means an average of 9.5 points. That the exact average score of 3.33 points was rounded to 3 and not to 3.5 points is incorrect, but for Question 3, the exact average score of 2.66 points was rounded up to 3 points and not to 2.5 points. Adding up the exact average scores obtained for each question ($3.33+3.5+2.66$), the result is the same as previously indicated, namely 9.5 points. The way the average scores were reflected and rounded up did therefore not impact the Applicant's overall results and final ranking. The Applicant therefore failed the test and was rightfully excluded from the next step of the recruitment process.

31. The Tribunal agrees with the Respondent that the various calculation errors in the points assigned to the Applicant's test response cancelled out each other, namely that whereas 3.33 points were incorrectly round down to 3 instead of up to 3.5, this error was redressed by mistakenly rounding 2.66 points up to 3 points and not down to 2.5 points.

32. Under this issue, the Applicant further contends that her test response was not corrected in an independent and objective manner because the panel members' assessment of this response only occurred at a very advanced stage of the recruitment process, namely after the interview phase had been completed and long after the transmission of the memorandum recommending candidates for selection on 27 March 2017. The CRP therefore endorsed the selection recommendation prior to any remedial action being taken, and the Applicant's test was graded just a few days prior to the processing of the selection and completion of the recruitment on 22 April 2017. The assessment panel therefore had a clear interest to stand by its previous decision not to invite the Applicant for an interview and in confirming the non-selection notice sent to the Applicant on 5 April 2017. The fact that the assessment panel was not interested in informing the CRP of the erroneous disqualification of candidates also provides a relevant context and indicates the existence of motives to deny the Applicant a passing grade. Failing the Applicant in her test did not require any update and/or resubmission to the CRP or any further disruption of the recruitment process. The assessment panel could not have engaged in an independent and objective assessment, and its multiple errors created, at the very least, a confrontational situation with the Applicant.

33. The Respondent makes no submissions on this point.

34. The Tribunal notes that what the Applicant essentially submits is that the assessment panel had ulterior motives when it failed her test, namely to maintain the initial test results, and that this is proven by the failure of submitting information on the full process to the CRP, including with regard to the circumstances surrounding the grading of the Applicant's test response. The Tribunal observes that under the

Appeals Tribunal's consistent jurisprudence, it is for the Applicant to prove any ill intentions and that circumstantial evidence may be relied on when proving a mental state of a decisionmaker (see, for instance, *El Sadek* 2019-UNAT-900, para. 54, and *He* 2016-UNAT-686, para. 39).

35. The Tribunal understands the Applicant's point of view that the Administration could be tempted to simply fail the two remaining job candidates—otherwise, the risk would be that the CRP would not accept the selection process and the selection authority would be withdrawn. However, it follows from the matrix displaying the scores of all the job candidates that only two out of three assessment panel members actually failed the Applicant's test (10 out of 15 points was the passing score), namely Ms. MKS (8.5 points) and Mr. AN (9 points), while Ms. JS gave Applicant's test response a passing score (11 points). Accordingly, out of the two assessment panel members who potentially could have known the Applicant's identity (Ms. MKS and Ms. JS), only one failed her test response. In this regard, the Tribunal further notes that when grading all the other job candidates, the general trend was that the scores provided by the three assessment panel members varied a lot, in particular those grades provided by Ms. MKS and Ms. JS. For instance, Ms. MKS gave 10.5 points to Candidate 1 but Ms. JS only gave this person 7 points (a point difference of 3.5 points), and Ms. MKS gave 8 points to Candidate 11 but Ms. JS gave this person 12.5 points (a point difference of 4.5 points)—in comparison, the point difference between Ms. MKS and Ms. JS when assessing the Applicant's written assessment was only 2.5 points.

36. The Tribunal therefore finds that while errors indeed occurred during the process, in particular the failure to provide CRP with full information of the assessment, none of these mistakes—by themselves or seen together—were of such nature to prove that any of the assessment panel members, including the hiring manager, were in bad faith. At most, the facts show that the hiring manager simply misjudged the situation when not resubmitting the selection process to the CRP and

that the panel members merely disagreed a great deal about the different job candidates' performances in the written test.

37. Consequently, after considering both the calculation mistakes in the grading of the Applicant's test response and the intentions of the assessment panel members, the Tribunal concludes that despite the different flaws which affected the selection process, the Applicant's test response did receive an objective and independent assessment.

Were any of the alleged irregularities of such a nature that had they not occurred, the Applicant would have had a foreseeable and significant chance for promotion?

38. The Applicant submits that she had a significant and foreseeable chance of selection as evidence shows that she was a serious contender for the post. Firstly, it is not disputed that she not only met all the requirements for the post but also all other desirable criteria. Secondly, the Applicant should have been invited for an interview. At that stage, she would have only been competing with four other candidates, one of whom did not possess the language requirement. Thirdly, the Applicant's ability to perform higher functions at the G-7 level was recognized in rather unequivocal terms by her second reporting officer in her 2015-2016 electronic performance assessment system report, which immediately preceded the impugned selection process. In the overall end-of-cycle comments, it was recognized that "she is ready to assume higher-level responsibilities and more independent managerial tasks. It is in the interest of the Organization to invest in her continued career development".

39. The Respondent submits that the technical IT error, which occurred during the submission of the Applicant's test response, did not affect the outcome of the selection exercise as the error was subsequently corrected, preserving the Applicant's rights to a full and fair consideration of her candidacy.

40. The Tribunal notes, with reference to its abovementioned findings, that various irregularities occurred during the selection process, namely that: (a) the CRP

was not provided will full information about the selection process, including with regard to the circumstances surrounding the assessment of the Applicant's test; (b) no relevant measures were taken to resolve the potential breach of anonymity when grading the Applicant's test response; and (c) the Applicant was prematurely informed about the outcome of the selection process.

41. Despite these regrettable flaws in the selection process, the Tribunal is, however, not persuaded that had they not occurred, the Applicant would have had a foreseeable and significant chance for promotion. Most importantly, it is not clear that the Applicant's test response was not assessed on an anonymous basis, or even if it was not, how then this adversely influenced the grading of her test response. Even though the Administration might have been interested in not overturning, and potentially redoing, the entire process, the Tribunal finds that, in the particular circumstances of the present case, including because Ms. JS actually gave the Applicant a passing score, it would be overly speculative to conclude that any potential or actual lack of anonymity negatively impacted the assessment of the Applicant without some, even circumstantial, evidence of personal bias either against the Applicant or in favor of the successful candidate (in line herewith, see the Appeals Tribunal in *Finniss* 2014-UNAT-397, para. 24). The fact that the CRP did not review the entire process is very unfortunate, but would not in itself have changed the outcome of the grading of the Applicant's test by which she failed the written test. That the Applicant was informed about her non-selection before the final selection decision was made would, in the circumstances, only seem to have given her an advantage as it allowed her to challenge the decision at an earlier state.

42. In conclusion, while the Tribunal fully understands the Applicant's frustration with a very poorly managed selection process, none of the irregularities were of such nature that they rendered the entire process, including the non-selection decision, unlawful. Pursuant to art. 10.5 of the Dispute Tribunal's Statute, it is therefore not necessary to examine the question of remedies.

Conclusion

43. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 10th day of January 2020

Entered in the Register on this 10th day of January 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York