



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/024
Judgment No.: UNDT/2020/108
Date: 30 June 2020
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

HANSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Ibrahima Faye

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 12 April 2019, the Applicant, a benefits assistant at the G-5 level, in the United Nations Joint Pension Fund (“UNJSPF”), filed an application contesting the decision not to select her for the position of Benefits Assistant, at the G-6 level, Job Opening 90625 (the “Post”).

2. On 13 May 2019, the Respondent filed his reply submitting that the application was without merit as the Applicant was fully and fairly considered for the position.

3. On 1 April 2020, the case was assigned to the undersigned Judge.

4. On 21 April 2020, by Order No. 77 (NY/2020), the Tribunal ordered that, upon review of the parties’ submissions, the case can be dealt with on the papers before it once the parties have filed their closing submissions.

5. Pursuant to Order No. 77 (NY/2020), on 4 May 2020, the Applicant filed her closing submission; on 11 May 2020, the Respondent filed his closing statement and on 15 May 2020, the Applicant filed her final submission responding to the Respondent’s closing submission.

6. The application is denied as the Tribunal finds that the Applicant was fully and fairly considered for the Post.

Facts

7. The Post was advertised from 23 January to 21 February 2018. The Applicant submitted her application for the position on 6 February 2018.

8. Following a preliminary screening, 94 eligible job applicants were released to the hiring manager for review. The hiring manger created a long list of 23 job applicants, who met the minimum requirements for the job opening.

9. Following further evaluation, the hiring manager shortlisted the job applicants who met the desirable requirements for the position. The Applicant was one of the three shortlisted job applicants.

10. On 3 May 2018, the shortlisted job applicants participated in a written assessment. The minimum passing score for the assessment was set in advance at 70/100.

11. The Applicant's test was graded with an overall final score of 52/100. The Applicant was not considered further as her test results did not meet the minimum passing criteria for the written assessment.

12. On 20 October 2018, the Applicant received a notification that the selection process for the position had been completed and that her application was unsuccessful.

Consideration

The issue in the present case

13. The issue is to determine whether the decision to not select the Applicant for the position of Benefits Assistant, at the G-6 level, was lawful.

Legal framework

14. The Secretary-General has broad discretion in the selection and appointment of staff (see *Abbassi* 2011-UNAT-110; *Frohler* 2011-UNAT-141; *Charles* 2013-UNAT-286; Article 101(1) of the Charter of the United Nations and staff regulations 1.2(c) and 4.1).

15. In matters of staff selection, it is the role of the Dispute Tribunal to review the challenged selection process to determine whether the applicable regulations and rules have been applied and whether a candidate has received full and fair consideration,

discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration (see for instance, *Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540; *Verma* 2018-UNAT-829; *Kinyanjui* 2019-UNAT-932). The Tribunal's role is not to substitute its decision for that of the Administration.

16. The official acts of the Respondent enjoy a presumption of regularity (*Rolland* 2011-UNAT-122). If the management 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 (*Finniss* UNDT/2012/200 [affirmed by 2014-UNAT-397]).

17. To rebut this minimal showing, the applicant "must [then] 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).

18. Even if the Tribunal finds that the procedure was not properly followed, such irregularity will only result in the rescission of a non-selection decision if the candidate would have had a significant chance of selection (*Vangelova* 2011-UNAT-172; *Bofill* 2011-UNAT-174).

Was the Applicant given full and fair consideration?

19. The Applicant claims that she was not given full and fair consideration for the Post. The Applicant further claims that the recruitment process was tainted by procedural irregularities and extraneous factors.

20. The Applicant states that her Senior Reporting Officer ("SRO") (who was the hiring manager in the contested selection process) and the Chief of Client Services (who was on the assessment panelist), unduly influenced the selection process for the Post by manipulating the Applicant's test scores. The Applicant states that members of the interview panel were influenced in their assessment by the Hiring Manager's direct interference in the grading of the Applicant's paper. The Applicant doubts the integrity

and accuracy of the grading assessment as she alleges that her responses appear to be altered on two out of the three responses. The Applicant adds that questions 4 and 5 of the written assessment were not relevant to the technical functions of the Post and therefore a further indication of manipulation of the selection exercise existed.

21. The Applicant further submits that her SRO and the Chief of Client Services were prejudiced towards her and used intimation tactics against her such as not completing her performance evaluations on time and not providing adequate levels of staff training, support or direction. The Applicant states that she was not provided with any opportunity of training for essential parts of the assessment questions in the selection process of the Post. In particular, she was not trained nor given opportunities for exposure on the function of manually calculating benefits along with the calculation of reduction factors on benefits or the calculation of the standard rate of accumulations which constituted a great part of the assessment for the Post. The Applicant believes that this was done with the intention to stagnate the Applicant's career by holding her back from promotions within UNJSPF and that it has impacted her mental, physical and psychological wellbeing.

22. The Respondent states, on the other hand, that the Applicant was fully and fairly considered for the position. The Respondent submits that the Applicant was shortlisted for the position but failed the written assessment. As a result, the Applicant was not considered further for the position.

23. Upon review of the record, the Tribunal finds that the Respondent has minimally shown that the Applicant received a full and fair consideration pursuant to the above mentioned jurisprudence of the Tribunals.

24. In this regard, the Tribunal notes that the record establishes that the Applicant was short-listed for the Post and invited to a written assessment. The written assessment was open-book and contained seven questions. During the assessment, the job applicants were permitted to access internet and the UNJSPF regulations and rules. The

participants were allowed 90 minutes to complete the assessment. The assessment panel blind graded the tests. The identities of the three candidates whose exams were being marked were only revealed to the panel members after the grading had been completed. The minimum passing score for the assessment was set in advance at 70/100. The Applicant's test was graded with an overall final score of 52/100. As the Applicant did not meet the minimum passing criteria for the written assessment, she was not considered further.

25. Based on the above, the Tribunal finds that the Applicant received a full and fair consideration for the Post. She was lawfully not selected for the Post, as her test result was below the passing score.

26. Having determined that the Respondent has minimally shown that the Applicant received a full and fair consideration, the Tribunal will next address the Applicant's claims of procedural errors and extraneous factors.

The questions in the written test

27. The Applicant states that questions 4 and 5 of the written assessment were not relevant to the technical functions of the Post and therefore a further indication of manipulation the selection exercise existed. The Respondent submits that contrary to the Applicant's claims, questions 4 and 5 of the written assessment were relevant to the technical functions of the position. Question 4 and 5 of the written assessment requires the job candidates to "calculate the rate of the accumulation" and to "calculate the reduction percentage".

28. The Tribunal recalls that absent any improper motives, it is within the discretion of the Administration to decide what assessment method is best suited to evaluate candidates. The Appeals Tribunal has established that an applicant cannot substitute his or her own evaluation method for that of the Administration (*Wang* 2014-UNAT-454).

29. In any case, the Tribunal finds that the requirements in questions 4 and 5 are directly related to the responsibilities of the contested position, noting that the job opening states that responsibilities of the incumbent would include, “[r]unning and auditing estimates of future benefit options and entitlements and all types of pension benefits, computer generated or manually processed, including with regard to the application of the Pension Adjustment System”.

Alleged alterations of the test results

30. The Applicant’s claims that her test results were altered by her FRO. The Respondent responds that the claim is unfounded as the Applicant does not specify which of her seven responses were altered and how they were altered. The Respondent further states that the handwriting on the written assessments is not an alteration but the grading notes of the assessment panel members.

31. Having reviewed the marked tests, the Tribunal finds no indication of any alterations or discrepancies with the marking methodology.

Lack of access to appropriate training

32. The Applicant’s claims that she was denied access to appropriate training. The Respondent states that the claims are without merit as prior to the written assessments, the Applicant had the opportunity to attend technical trainings that were organized on 12 January and 6 September 2017.

33. In respect of this matter, the Tribunal notes that the Organization does not have a promotion system where managers are obligated to develop and train supervisees for promotion opportunities and assist them in career growth and, therefore, job applicants have no right to be trained for recruitment exercises. It is not within the jurisdiction of the Tribunal to pronounce on the merits or deficiencies of such a system.

34. However, the Tribunal notes that managers and supervisors are obligated “to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct” pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

35. In the present case, it is evident that there existed an on-going hostile relationship between the Applicant, her FRO (who was also the hiring manger in the contested selection exercise) and the Chief of Client Services. The Applicant claims that the hostile relationship dynamics have had a significant impact on her mental, physical and psychological wellbeing. Such relationship dynamics do not assist with maintaining a harmonious work-place environment and the Tribunal considers that it is incumbent on managers to resolve escalation of disharmonious relationships through constructive dialogue and a humane management approach. In the instance case, if such a dynamic existed between the Applicant and her supervisors, the Tribunal would recommend that the Applicant’s FRO and the Chief of Client Services take steps to address the on-going relationship issues between them and the Applicant.

Other matters

36. The Applicant raises a series of matters unrelated to the contested decision, including delays in the completion of her performance appraisals and the alleged reassignment, against her will, out of her Section in Client Services to perform duties of Accounting Assistant in the Fund Account Section.

37. In respect to the delays in completion of her performance appraisals, the Tribunal notes that the Management Evaluation Unit informed Applicant that the Administration had recently completed her performance documents for the 2016/2017 and 2017/2018 cycles and that the Administration is continuing its efforts to complete all outstanding documents and has strongly encouraged the Administration in such endeavors.

38. As such, the Tribunal recommends that the Applicant's managers finalize any outstanding performance appraisals for the Applicant and avoid such delays in the future as such mismanagement does not contribute to a harmonious workplace.

39. In respect of the reassignment decision, the Tribunal notes that the decision is not receivable *ratione materiae* as the Applicant did not seek management evaluation of that decision in accordance with staff rule 11.2(a).

Conclusion

40. The application is dismissed.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 30th day of June 2020

Entered in the Register on this 30th day of June 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York