



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

RAO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Nusrat Chagtai, ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant contests her non-selection for a post in the Business Transformation and Accountability Division (“BTA”) of the Department of Management Strategy, Policy and Compliance (“DMSPC”) (“the post”).

2. For the reasons below, the Tribunal finds that the Applicant’s candidacy for the post received full and fair consideration and rejects the application.

## **Facts and procedure**

3. The Applicant applied for the post on 13 November 2018 and attached her Personal History Profile (“PHP”).

4. 250 candidates, including the Applicant, were shortlisted and released to the Hiring Manager who evaluated whether they met the education, work experience and language criteria requirements listed in the vacancy announcement. Out of the 250 initially shortlisted candidates, 209 were excluded as not meeting these criteria and seven candidates withdrew their application.

5. The Hiring Manager decided that the candidates who possessed all three desirable work experience criteria listed in the job opening, namely: experience in data mining in enterprise systems and business analytics; experience in the development of analytical and data visualization products and tools; and experience in the UN system or comparable international organizations, would be shortlisted further. The Hiring Manager decided that six out of the 34 remaining candidates possessed all three desirable criteria and moved forward in the selection process, while the other 28, including the Applicant, were excluded.

6. The Central Review Board reviewed the proposal for filling the post under sec. 8.1 of ST/AI/2010/3 (Staff selection system) and endorsed the proposal. One of the six endorsed candidates was eventually selected for the post.

7. The Applicant filed her application on 8 August 2019 and the Respondent filed his reply on 9 September 2019.

8. On 14 September 2020, after the Tribunal had informed the parties that it would determine the case on the papers before it, the Applicant filed a motion for leave to respond to the reply and attached some additional documents.

### **Consideration**

#### *Preliminary matter*

9. At the outset, the Tribunal reviewed the Applicant's motion for leave to respond to the reply and decided that it is in the interest of justice to grant it.

#### *Applicable law*

10. It is well established that the Secretary-General has broad discretion in matters of staff selection. When reviewing such decisions, the Tribunal shall examine “(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” (*Abbassi* 2011-UNAT-110, para. 23). The Appeals Tribunal has further held that the role of the Tribunals is “to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration” (*Ljungdell* 2012-UNAT-265, para. 30).

11. As the Appeals Tribunal reiterated in *Lemonnier* 2017-UNAT-762, citing *Rolland* 2011-UNAT-122, “the starting point for judicial review is a presumption that official acts have been regularly performed” (see para. 32). The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that the applicant's candidature was given a full and fair consideration, the burden of proof shifts to the applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection (*Rolland*, para. 26).

*Did the Applicant's candidature receive fair and full consideration?*

12. The Respondent states that the reason why the Applicant was excluded from the recruitment process is that she did not show in her PHP that she had experience in two of the three desirable criteria: “data mining in enterprise systems and business analysis” and “development of analytical and data visualization products and tools”.

13. With respect to the first criterion, the Respondent states that the Applicant indicated in her cover letter that she had data mining experience through developing an evidence-based risk assessment model for the Regular Budget programmes and entities of the Secretariat using available metrics and performance indicators from a variety of sources using the “Crimson-Hexagon tool for social media listening as part of evaluation of ‘DPI’ [unknown abbreviation]”. The Respondent contends that the experience in using “available metrics and performance indicators from a variety of sources” indicated by the Applicant in her PHP was not deemed relevant. Moreover, the Respondent explains that the Hiring Manager could not find the link between data mining and the usage of Crimson-Hexagon tool, nor did she find any evidence of data mining experience in the Applicant’s description of her duties and achievements for any of the positions listed in her PHP.

14. In her 14 September 2020 motion, the Applicant argues that in her job description she states that she “[o]versees the mining and analysis of data from enterprise systems and other sources, using innovative approaches (...)”. And that she “[d]eveloped an evidence-based risk assessment model for the Regular Budget programmes and entities of the UN Secretariat using available metrics and performance indicators from a variety of sources”. In addition, she explained that she provided “Crimson-Hexagon tool for social media listening as part of evaluation of DPI”. She further submits that in her PHP she mentioned that she “[i]nitiat[ed] research projects on the use of “big data” generated by the Safeguards IT system, MOSAIC”. She claims that these statements showing that she met the desirable requirement were disregarded.

15. With respect to the second desirable requirement, “development of analytical and visualization products and tools”, the Respondent avers that the Applicant’s cover

letter attached to her PHP stated that she “[p]ioneered the use of data visualization within [the Office of Internal Oversight Services (“OIOS”)] to depict the Biennial report results on the OIOS website” and referred to the “[o]perational aspects of nuclear verification activities in the [International Atomic Energy Agency (“IAEA”)]”. However, the Respondent states that after reviewing the description of the Applicant’s duties and achievements listed in the PHP, the Hiring Manager found no evidence that the Applicant had experience in the development of analytical and data visualization products or tools.

16. The Applicant argues that there was no rational justification for the Hiring Manager to determine that she did not meet two of the three desirable criteria. The Applicant claims that “even if this was a valid interpretation of the criteria in the [vacancy announcement], then how did some of the candidates get short-listed even though they did not meet of the basic criteria (...)?”

17. In her 14 September 2020 submission, the Applicant adds that she provided “very clear examples in [her] PHP of (i) the use of data visualization within OIOS-IED [unknown abbreviation] to depict the Biennial report results on the OIOS website; and (ii) Operational aspects of nuclear verification activities in the IAEA”. The Applicant provides further information about her experience that does not appear to feature in the PHP that she submitted in her job application.

18. The Tribunal notes that the two desirable criteria that the Applicant was deemed not to have met were indeed listed in the vacancy announcement for the post. It was therefore legitimate for the Respondent under sec. 7.4 of ST/AI/2020/3 to review the candidates against such criteria and use them to determine which of the candidates were more suitable for the post.

19. The Tribunal recalls that in *Al Mussader* 2017-UNAT-771, the Appeals Tribunal stated that it is incumbent on a job applicant to show in his or her job application that he or she meets the requirements of the job.

20. Having reviewed the PHP submitted by the Applicant, the Tribunal is further satisfied that the Applicant did not show in her PHP that she possessed the experience required in the two desirable criteria in question. The Tribunal further notes that in her application, the Applicant does not challenge the Administration's evaluation of her experience. She provides further explanations in her 14 September 2020 submission. However, the Tribunal notes that what the Applicant provides is her own interpretation of her own PHP. She does not show, however, that the description of her duties and responsibilities in her PHP demonstrated to the Hiring Manager that she had the required experience. The Tribunal is therefore not persuaded that the Respondent abused his discretion in evaluating the Applicant's candidacy for the post.

21. The Tribunal is therefore satisfied that the Respondent has shown that the procedure was properly followed while the Applicant brought no evidence that she did not receive full and fair consideration.

22. The Applicant contends that some of the candidates who were finally shortlisted did not meet the basic criteria. She reiterates this argument in her 14 September 2020 submission. However, given that the Applicant's candidature received fair and full consideration, the evaluation of other candidacies is irrelevant as it does not directly impact the Applicant's rights.

23. The Applicant further claims, both in her application and in her 14 September submission, that because the response to her request for management evaluation was signed by the Under-Secretary-General of DMSPC, there appears to be a "conflict of interest and/or conflict of function as there does not seem to be a separation between the decision-maker in this instance, and the person responsible for objectively evaluation the management action".

24. The Tribunal recalls that the Management Evaluation Unit is not an independent entity but an advisory mechanism for the Secretary-General who is ultimately responsible for all administrative decisions within the Organization. There is therefore no possible conflict of interest as claimed by the Applicant.

**Conclusion**

25. In light of the foregoing, the application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 17<sup>th</sup> day of September 2020

Entered in the Register on this 17<sup>th</sup> day of September 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York