



Before: Judge Goolam Meeran

Registry: Geneva

Registrar: René M. Vargas M.

ABDELLAOUI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Brandon Gardner, OSLA

Counsel for Respondent:
Jérôme Blanchard, UNOG

Introduction

1. The Applicant seeks suspension of the implementation, pending management evaluation, of the decision to exclude her from further consideration in the process of recruitment for job vacancy 16-Language-62272-R-GENEVA (L).

Facts

2. The Applicant serves as an Arabic Reviser (P-4), Arabic Translation Section, with the United Nations Office at Geneva (“UNOG”) under a permanent appointment.

3. From 23 June to 21 August 2016, a post of Chief, Arabic Translation Section, UNOG (P-5), was advertised within the Trade Information Section, Trade Analysis Branch, UNCTAD. The vacancy announcement contained the following professional experience requirements:

A minimum of ten years of professional experience in translation, revision and/or in the provisions of language or language-related services, of which preferably four years within the United Nations. Significant language-related management experience in international, regional or national institutions is required.

4. The Applicant applied for the post on 17 August 2016.

5. Out of a total of 103 applications received, including the Applicant’s, 23 were released to the Hiring Manager,.

6. Following the Hiring Manager’s review, 17 candidates, including the Applicant, were deemed not suitable. The remaining candidates were short-listed for a written test, after which five candidates underwent an interview. At present, the interview evaluations are being prepared.

7. On 27 October 2016, the Applicant requested management evaluation of the decision to exclude her from further consideration. On the same day, she submitted her application for suspension of action.

8. On 31 October 2016, the Respondent submitted comments, which included a number of annexes, among which four were submitted *ex parte*. Given the Tribunal's considerations on the application for a suspension of action, these *ex parte* filings were not relied upon and the Tribunal decided to keep them *ex parte*.

Parties' contentions

9. The Applicant's primary contentions may be summarized as follows:

Receivability

a. Exclusion from the recruitment process before the written test represents a final administrative decision that impacts on the legal order, since it irrevocably curtailed the Applicant's right to reasonable consideration for selection;

Prima facie unlawfulness

b. The Applicant is already rostered for two P-5 Arabic linguist positions, which required almost identical responsibilities and work experience. As such, she should have been invited for the written assessment automatically. Failure to treat her as a rostered candidate contravened sec. 7.2 of ST/AI/2010/3 (Staff selection system);

c. In the alternative, the Applicant should have been short-listed for further assessment on the basis that she meets the basic evaluation criteria, as outlined in the Job Opening, and the desirable qualifications as well;

Urgency

d. In the context of selection procedures, once the selection decision has been implemented it is futile for a staff member to request a suspension of action. Accordingly, a request for an order for suspension of action prior to a selection decision satisfies the test of particular urgency;

Irreparable damage

e. Harm is considered irreparable when it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed. The Tribunal has ruled that the exclusion from a recruitment exercise may damage the Applicant's career prospects in a way that could not be compensated financially.

10. The Respondent's primary contentions may be summarized as follows:

Irreceivability

a. The Hiring Manager's determination that the Applicant was not suitable is not an administrative decision, but a preparatory step, not yet appealable under the Tribunal's Statute. The selection process has not been completed. No list of recommended candidates has been forwarded to the relevant Central Review Board ("CRB") for review. Since there is no final administrative decision, this application is premature;

b. A selection procedure ends with the selection of a successful candidate. This is the decision that may be contested, as opposed to any other decisions within the procedure which are merely preparatory to the final selection. The application against a preparatory decision, which as such carries no direct legal consequences, is irreceivable *ratione materiae*;

c. The lack of finality of the selection process is demonstrated by the fact that the mandatory review of the process by the CRB has not yet taken place. This review may indeed lead to the inclusion back into the selection process of a candidate who had not been invited for an interview or, conversely, to the exclusion of candidates from the recommended list;

Prima facie unlawfulness

d. The process is being carried out in accordance with the Staff selection system. The Applicant was not short-listed because the Hiring Manager determined, having screened the candidacies, that she did not possess the mandatory work experience specified in the Job Opening;

e. The Applicant's Personnel History Profile ("PHP") shows that she does not have significant language-related management experience in international, regional or national institutions, as required. Her only management experience, that appears from her PHP, is the guidance and supervision of two interns since 2012, which is not sufficient to qualify as *significant* language-related management experience;

f. The inclusion of the aforementioned experience requirement is a reasonable exercise of the Administration's discretion, which has been previously requested in the job openings of similar posts;

g. The fact that the Applicant was placed on the roster for two similar positions does not mean that she should have been automatically short-listed and/or considered as meeting the requirements for this particular post. Unlike this post, the two positions for which the Applicant has been rostered did not require language-related management experience.

Urgency

a. There is no particular urgency in this case. A suspension of action would pre-empt the review of the staff selection process by the CRB.

Consideration

Receivability

11. The Tribunal will first address the Respondent's argument that the Hiring Manager's determination that the Applicant is not suitable is not a final

administrative decision, but merely a preparatory step, and that this application is irreceivable *ratione materiae*.

12. This Tribunal has already adopted the approach that declaring a candidate non-eligible or not suitable may fall within the definition of “administrative decision” in that it results in his/her exclusion from the recruitment exercise before the final selection of a successful candidate is made (*Gusarova* UNDT/2013/072; *Willis* UNDT/2012/044, *Nunez* Order No. 17 (GVA/2013, *Essis* Order No. 89 (NBI/2015), *Korotina* UNDT/2012/178 (not appealed), *Melpignano* UNDT/2015/075 (not appealed), *Maystre* Order No. 206 (GVA/2016), *Kohler* Order No. 207 (GVA/2016)). As stated in *Korotina* UNDT/2012/178, such decision “signifie[s] the end of the process as far as [the applicant] is concerned”.

13. In *Melpignano* UNDT/2015/075, the Tribunal stated that a decision to eliminate a candidate at one of the “intermediate” stages of a selection process “produces direct legal consequences affecting the Applicant’s terms of appointment, in particular, that of excluding the Applicant from any possibility of being considered for selection for [a] particular vacancy”. The Tribunal found:

[T]he impugned decision has direct and very concrete repercussions on the Applicant’s right to be fully and fairly considered for the post though a competitive process (see *Liarski* UNDT/2010/134). From this perspective, it cannot be said to be merely a preparatory act, since the main characteristic of preparatory steps or decisions is precisely that they do not by themselves alter the legal position of those concerned (see *Ishak* 2011-UNAT-152, *Elasoud* 2011-UNAT-173).

14. The Tribunal sees no reason to depart from such a position in this case.

Prima facie unlawfulness

15. The first condition for the Tribunal to grant a suspension of action, according to art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, is that “the decision appears prima facie to be unlawful”.

16. The Tribunal notes the Respondent's comments as to the reasons why the Applicant's candidature did not progress to the next stage of the selection process. It is clear that the Job Opening required "[s]ignificant language-related management experience in international, regional or national institutions". After review of the candidacies released, pursuant to art 7.4 of ST/AI/2010/3, the Hiring Manager considered that the Applicant did not meet this requirement.

17. Having examined the Applicant's PHP, the Tribunal is in a position to confirm that the only relevant managerial experience reflected in the document was that of "guiding and closely supervising interns" in her current position as Arabic Reviser with the Arabic Translation Section, UNOG.

18. The Tribunal notes the vague wording of the Job Opening, which leaves room for subjective appreciation. However, the Tribunal is of the view that the Hiring Manager's interpretation of the work experience requirements appears to be in accordance with the Job Opening. The foregoing notwithstanding, the decision not to include the Applicant in the short-list for further assessment could be subjected to closer scrutiny should there be an application on the merits.

19. At this stage, the Tribunal is required simply to address the question whether the decision appears to be prima facie unlawful. The Tribunal is not required to make a final decision, but to consider the application to suspend the decision, based on the available information. There may be cases where what appears to be lawful at the stage of a suspension of action may no longer be so when the issues are fully explored if and when a substantive application is presented.

20. The Tribunal is satisfied that the exclusion of the Applicant's candidacy prior to the written test does not prima facie appear to be unlawful.

21. It is clear from art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure, that all three conditions set forth therein have to be satisfied for a suspension of action to be granted. The Tribunal is satisfied, on the available evidence, that the Respondent's answer appears to be credible. Having concluded that the decision to exclude the Applicant from further consideration does not

appear to be prima facie unlawful, it is not necessary for the Tribunal to consider the elements of particular urgency and irreparable damage.

22. The Applicant is reminded that this Order simply reflects a preliminary view on the legal merits of the impugned decision, not a concluded one. Whether there was in fact any material irregularity or error of procedure is a matter that may be fully explored should a substantive application be presented to the Tribunal.

Conclusion

23. The request for suspension of action is refused.

(Signed)

Judge Goolam Meeran

Dated this 2nd day of November 2016

Entered in the Register on this 2nd day of November 2016

(Signed)

René M. Vargas M., Registrar, Geneva