

UNDT/2015/021, Tiwathia

UNAT Held or UNDT Pronouncements

Did the involvement of a retiree from the Organization in the pre-screening and short-listing process, and the competency-based interview, affect the propriety of the selection exercise? The Tribunal found that, while retirees should generally not be hired by the Organization if other options are available, the involvement of a retiree in the selection process did not in any way prejudice the candidacy of the Applicant. The Applicant was found to have met all the requirements for the post, was short-listed and was invited to participate in a competency-based interview. Further, the Applicant was found by the Interview Panel to have met all of the competencies for the DD/MSD post and was recommended for further consideration. Were there a sufficient number of subject matter experts on the Interview Panel so as to comply with ST/AI/2010/3? The definition of “assessment panel” in sec. 1(c) of ST/AI/2010/3 (Staff selection system) states that a panel should normally have three members of which two are “subject matter experts”. The Tribunal noted that neither ST/AI/2010/3 nor the Manual for Hiring Managers explicitly define “subject matter experts”. The Tribunal accepted the Respondent’s submission that the chair of the Interview Panel, an OHRM director, was suitably qualified to act as a subject matter expert in the field of management, which is a crucial component of any director level post. Was there any evidence that geographical bias infected the assessment of the Interview Panel? The Tribunal noted that Dr. Pasquier-Castro was a member of the Interview Panel that recommended the Applicant as one of four candidates which Ms. Pollard considered equally appointable when she received the recommendations. The Tribunal held that the Applicant had not shown that the comments of Dr. Pasquier-Castro, made after the selection decision had been finalized, or any pre-conceived notions that she may have held about the practice of medicine in different countries, infected the selection process or influenced the decision of the Assistant Secretary-General, OHRM (“ASG/OHRM”) to recommend to the Under-Secretary-General, DM the appointment of the selected candidate. Was it lawful for the ASG/OHRM to hold a second interview after the competency-based interview? The ASG/OHRM explained in

evidence that she held short follow-up interviews with the recommended candidates in order to aid her in making a determination as to who was most suitable for the functions of DD/MSD. The Tribunal accepted this explanation and found that the decision to hold a second interview was a proper exercise of the discretion of a hiring manager faced with three equally appointable candidates. Did the Administration breach the Organization's policies on gender parity? Section 1.8 of ST/AI/1999/9 (Special measures for the achievement of gender parity) establishes a presumption in favour of filling vacancies in the Professional category by appointing women candidates where their qualifications are substantially equal or superior to those of competing male candidates. The Tribunal found that this provision is inconsistent with sec. 9.3 of ST/AI/2010/3 (Staff selection system), which clearly states that the head of department "shall select the candidate he or she considers to be best suited for the functions". Therefore, in accordance with sec. 13.3 of ST/AI/2010/3, which states that the provisions of ST/AI/2010/3 prevail over any inconsistent provisions contained in other administrative instructions in force at the time of issuance, the Tribunal found that a head of department has broad discretion to choose the candidate they consider best suited to the position.

Decision Contested or Judgment/Order Appealed

The Applicant, a Senior Medical Officer in the Medical Services Division ("MSD"), Office of Human Resources Management ("OHRM"), Department of Management ("DM"), contested her non-selection for the post of Deputy Director, MSD, at the D-1 level ("DD/MSD").

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Tiwathia

Entity

DM

Case Number(s)

UNDT/NY/2012/83

Tribunal

UNDT

Registry

New York

Date of Judgement

17 Mar 2015

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Burden of proof

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/1997/7
- ST/AI/1999/9
- ST/AI/2003/8
- ST/AI/2010/3

Staff Regulations

- Regulation 4.2

Related Judgments and Orders

2011-UNAT-110

2012-UNAT-242