

UNDT/2015/040, Kyei-Asare

UNAT Held or UNDT Pronouncements

Selection process: The Tribunal accepted that in the absence of any incumbent of the D-2 post, the decision of the USG/DFS, as Head of Department, to assume direct responsibility for the recruitment process through the Chief of Staff, was not an improper exercise of discretion. Second set of interviews and composition of the Second Panel: The Tribunal found that the decision to hold a second round of interviews, and the composition of the Panel, did not amount to a procedural irregularity in the particular circumstances of this case. Lengthy delay in the selection procedure: The Tribunal considered that although unnecessarily excessive, the delay in the recruitment for the D-1 post was not in violation of the Staff Regulations, Staff Rules or administrative issuances applicable at the relevant time. Further, in the absence of hard evidence, the Tribunal considered that it would be speculative to infer that the fact of delay, in and of itself, was to the Applicant's detriment or designed to favour the actual incumbent of the D-1 post who was one of the candidates. Gender balance, geographical distribution and special consideration to candidates from troop contributing countries: The Tribunal found that all cumulative conditions set out in sec. 1.8(a) of ST/AI/1999/9 were not met. Therefore, there was no obligation to fill the vacant D-1 Post by appointing the Applicant. With regard to the issue of geographical distribution, the Tribunal noted that, pursuant to sec. 9.2 of ST/AI/2006/3/Rev. 1, the head of department/office is only required to have due regard to geography. However, she had a duty to appoint the person whom she considered best suited to the post. The evidence before the Tribunal supported the conclusion that the USG/DFS concluded, on the basis of performance at the second interview, that the successful candidate was best suited for the position. In the absence of affirmative evidence, or factual findings from which a legitimate inference could be drawn, that the USG/DFS had exercised her discretion inappropriately or had taken into account impermissible factors, any administrative error would, in any event, not have had an impact upon the final selection decision or upon the Applicant's right to be fully and fairly considered. The Tribunal further found that the Applicant's contention regarding the consideration at the stage of the final selection of the level of troop contributing countries was not well founded as there is no such requirement in ST/AI/2006/3/Rev.1, which was applicable at the relevant time.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to select her for the D-1 post of Chief in the Budget and Performance Reporting Service, in DFS.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kyei-Asare

Entity

DFS

Case Number(s)

UNDT/NY/2012/20

Tribunal

UNDT

Registry
New York
Date of Judgement
22 May 2015
Duty Judge
Judge Meeran
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Burden of proof
Staff selection (non-selection/non-promotion)
Interview
Selection decision
Applicable Law
Administrative Instructions

- ST/AI/1999/9
- ST/AI/2006/3
- ST/AI/2006/3/Rev.1
- ST/AI/2010/3
- ST/AI/2010/4
- ST/AI/2010/4/Rev.1

Secretary-General's bulletins

- ST/SGB/2010/6

Staff Rules

- Rule 4.12

Related Judgments and Orders

UNDT/2015/021
UNDT/2013/032
2011-UNAT-110
2012-UNAT-242
2013-UNAT-331
2013-UNAT-345