

UNDT/2017/019, Rehman

UNAT Held or UNDT Pronouncements

Full and fair consideration: In the absence of concrete, convincing evidence, the mere fact that it is possible, theoretically, to alter/tamper a written test will not suffice for the Tribunal to conclude that an Applicant's candidature was not given full and fair consideration. Also, where no one of the people involved in the administration of the test had a motive to manipulate it, the Tribunal will not find that the decision had been influenced by extraneous factors. The burden of proof in these matters lies on the Applicant. Good management practice: The Administration should take measures to protect tests so that there is no risk for them to be modified while they are in the custody of the Organization. Further, such a delicate matter as the administration of a written test should not be entrusted to a Consultant, who is not subject to the Staff Rules and Regulations, and therefore to the standards of accountability and integrity that relate to them, but merely to UNICEF Administrative Instruction governing Consultants and individual contractors (CF/AI/2013-001 Amend 2). Moreover, by entrusting what appears to be staff functions to a consultant, the Administration may have contravened the above administrative instruction. However, when the evidence leaves no doubt that the test was not altered and its administration was not manipulated, any irregularity to entrust the administration of the test to the Human Resources Assistant will not impact on a staff member's right to full and fair consideration. Reassignment: Where the relevant administrative instruction foresees the possibility ("may") of lateral reassignment of a staff member, such reassignment may fall within the discretionary authority of the Organization, but it is not mandatory to consider the staff member for it. Mootness: Where a selection exercise is repeated, since in the first round, no candidate was found suitable, and the Applicant is invited, again, for the written test (and fails at the level of the interview), the Tribunal would not be in a position to grant the requested relief, namely, the repetition of the selection exercise. Thus, any rescission of the contested decision would not serve any purpose, as the relief sought cannot be granted due to the supervening events.

Decision Contested or Judgment/Order Appealed

The Applicant contests her non-selection to a GS-6 post, after she failed the written exam, arguing that her written test had been altered in order to eliminate her. The Tribunal after hearing evidence from several witnesses and on the basis of the available evidence was not satisfied that the Applicant's test had been altered or that her candidature was otherwise not given full and fair consideration, and rejected the application.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Rehman

Entity

UNICEF

Case Number(s)

UNDT/GVA/2016/2

Tribunal

UNDT

Registry

Geneva

Date of Judgement

15 Mar 2017

Duty Judge

Judge Downing

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Non-disciplinary

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

UNICEF Administrative Instructions

- CF/AI/2013-001/Amend 2

UNICEF Executive Directives

- CF/EXD/2013-004

Related Judgments and Orders

UNDT/2013/050

UNDT/2015/035

2011-UNAT-110

2012-UNAT-200

2012-UNAT-265

2011-UNAT-122