

UNDT/2019/175, Mahmood

UNAT Held or UNDT Pronouncements

It resulted from the records that the Applicant only requested management evaluation of the decision concerning her non-selection, while no management evaluation request was filed with respect to the decision to abolish her former post. The Tribunal, therefore, found that the claim concerning the abolition of the Applicant's former post was not receivable and proceeded to only review the non-selection decision. The Tribunal found that the selection process was conducted in accordance with the Administrative Instruction on Staff Selection and the Recruitment Strategy. In accordance with these rules, the Applicant was given priority consideration due to her status as a staff member on an abolished post and was shortlisted, tested, and interviewed for the post as an internal candidate. However, following the written test and the interviews, the selection panel unanimously found that none of the two internal candidates were suitable for the position and recommended that the vacancy be advertised externally. The evidence on record showed that the Applicant's candidature was properly assessed based on the criteria in the vacancy announcement and that her advanced university degree, her experience, and her fluency in English were properly considered in the selection process. The fact that she was on an abolished post was also considered as indicated in the selection panel report. The Tribunal considered that for a lateral transfer to be possible, the candidate must be deemed suitable for the post. The Tribunal reviewed the selection panel report and found that since the Applicant was not suitable for the contested post, the Respondent was not obliged to offer her a lateral transfer to said post. The Tribunal further found that the Applicant's allegations of improper motivations were unsubstantiated and that she did not provide any evidence, apart from her own assertions, let alone facts or indices of bias, concerning her allegations of bias and discrimination by the selection panel. Also, there was no evidence that the Applicant's pregnancy was a factor in the selection process. The Tribunal, therefore, found that the contested decision was lawful and that the Applicant's candidature received fair and adequate consideration.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions 1) to abolish the post of Health Officer (National Professional Officer, NO-B level) that she encumbered and 2) Not to select her for a post as Health Officer with UNICEF in Islamabad ("the contested post").

Legal Principle(s)

The Secretary-General has broad discretion in matters of appointment and promotions. 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 Majbri 2012-UNAT-200 Ljungdell 2012-UNAT-265). Official acts are presumed to have been regularly performed. Accordingly, in a recruitment procedure, if the Administration minimally shows that a staff member's candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must then be able to show through clear and convincing evidence to have been denied a fair chance (Rolland 2011-UNAT-122). The burden of proving improper motivation lies with the staff member raising such claims (Asaad 2010-UNAT-021).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mahmood
Entity
UNICEF
Case Number(s)
UNDT/GVA/2018/018
Tribunal
UNDT
Registry
Geneva
Date of Judgement
12 Dec 2019
Duty Judge
Judge Buffa
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Management Evaluation
Staff selection (non-selection/non-promotion)
Applicable Law
Administrative Instructions
Other UN issuances (guidelines, policies etc.)

- UNICEF Recruitment Strategy

UNICEF Administrative Instructions

- CF/AI/2016-005

Related Judgments and Orders

2011-UNAT-110
2012-UNAT-200
2012-UNAT-265
2011-UNAT-122
2010-UNAT-021
2010-UNAT-084