

UNDT/2020/216, Farhadi

UNAT Held or UNDT Pronouncements

Fixed-term post The record showed that the hiring manager for the fixed-term post found the Applicant not eligible as he did not meet one of the required criteria for it, namely “[p]ractical experience in working in the area of sustainability standards”. Consequently, he was not invited to participate in the subsequent steps of the selection process. The Applicant’s lack of experience in sustainability standards was properly recorded in the respective electronic selection system and, moreover, was communicated to the Applicant by email of 16 July 2018 in response to his query about the status of the selection process. Therefore, the Tribunal did not find grounds therein to question the hiring manager’s evaluation of the Applicant’s qualifications against the vacancy announcement. The Tribunal also found that the Applicant’s claim for bias against him was unfounded. In view of the foregoing, the Tribunal was satisfied that it is minimally shown that the Applicant’s candidature for the fixed-term post was fully and fairly considered. Consequently, the Tribunal found that the contested decision was lawful.

Temporary post Allegations of bias: the Applicant put forward that one assessment panel member, the hiring manager, and the Director of the ITC Division where the advertised post was located (“the Director”) were biased against him. The Tribunal considered the Applicant’s arguments and found that his allegation of bias was not supported.

Absence of genuine competitive basis: the Applicant argued that only two out of 29 candidates, namely him and the selected candidate, moved from the evaluation phase to the written test plus interview phase. He claimed that such a small number of candidates gives the appearance of an intention to “pit” him against the selected candidate and to simplify the candidates’ comparison process to favour the selected candidate. The Tribunal noted that there is no provision in ITC/AI/2015/07 requiring having a specific number of candidates tested in writing and interviewed. The Tribunal found that the number of candidates alone does not support the Applicant’s claim. On the contrary, the record of the case showed that there was a competitive process where the Applicant had the lowest score in the written test and did not pass the interview.

Procedural shortcomings The Applicant sought to raise doubts

about the lawfulness of the selection process by pointing out the lack of an automated system to time the written test, the non-participation of Human Resources in the evaluation of the candidates, and the inclusion of only staff members of the concerned ITC Division in the assessment panel. However, the Tribunal noted that there is no legal anchor in ITC/AI/2015/07 for the Applicant's claims and found no evidence of lack of transparency of or procedural irregularities in the selection process. Furthermore, the Tribunal found that the Applicant's claim in relation to the subject matter of the test was not supported.

Decision Contested or Judgment/Order Appealed

The Applicant contested his non-selection for a fixed-term position (P-4) and a temporary position (P-4).

Legal Principle(s)

The Secretary-General has broad discretion in matters of staff selection. 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) The role of the Tribunals is "to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and nondiscriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration" (Ljungdell 2012-UNAT-265). The starting point for judicial review is a presumption that official acts have been regularly performed (Lemonnier 2017-UNAT-762) If the management is able to minimally show that an applicant's candidature was given a full and fair consideration, the burden of proof shifts to the applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection (Rolland 2011-UNAT-122).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Farhadi

Entity

ITC

Case Number(s)

UNDT/GVA/2019/002

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Dec 2020

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Staff selection (non-selection/non-promotion)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ITC/EDB/2014/06
- ITC/EDB/2015/07

Related Judgments and Orders

2011-UNAT-110

2012-UNAT-265

2017-UNAT-762

2011-UNAT-122

UNDT/2012/200

2014-UNAT-397