

# UNDT/2021/009, Tajik

## UNAT Held or UNDT Pronouncements

The Tribunal finds that the Respondent has been able to minimally show that the Applicant's candidature was given full and fair consideration, including special consideration as an internal candidate on an abolished post but that the Applicant has failed to show that she was denied a fair chance during the selection process. Accordingly, the Tribunal DECIDES that the application is rejected in its entirety.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to select her for the post of Humanitarian Analyst at the National Officer B level at the UNFPA Pakistan Country Office.

## Legal Principle(s)

It is well-established that the Secretary-General enjoys broad discretion in reaching a decision on staff selection. Accordingly, when reviewing such decisions, the role of the Tribunal is limited to examining "(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" (see Abbassi 2011-UNAT-110, para. 23; Majbri 2012-UNAT-200, para. 35 and Ljungdell, 2012-UNAT-265, para. 30). In this respect, the Appeals Tribunal has adopted a presumption that official acts have been regularly performed (Lemonnier 2017-UNAT-762, para. 32; see also Rolland 2011-UNAT-122, para. 5). This means that "[i]f the management is able to even minimally show that [an applicant's] candidature was given a full and fair consideration, then the presumption of law stands satisfied" (see Lemonnier and Rolland). To rebut this minimal showing, an applicant "must show through clear and convincing evidence that [s/he] was denied a fair chance of [selection]" in order to win the case (see Lemonnier and Rolland). The Tribunal recalls that "the Administration's response to a request for management evaluation is not a reviewable decision" (see Nwuke 2016-UNAT-697, para. 20). As clarified by the Tribunal in Judgments Douaji UNDT/2011/160 and Survo UNDT/2014/144, a promise of priority consideration shall be understood as "giving priority only over other equally qualified candidates". The Tribunal considers that the Respondent could not have selected the Applicant over the other three candidates who better met the core and functional competencies solely because the Applicant was an internal candidate encumbering an abolished post. To maintain otherwise would compromise "the highest standards of efficiency, competence and integrity" required in selecting staff under art. 101(3) of the Charter and the UNFPA Staffing Policy. In this connection, the Tribunal also recalls that "'priority consideration' cannot be interpreted as a promise or guarantee to be appointed or receive what one is considered in priority for" (see Verma 2018-UNAT-829, para. 25 see also Onana 2015-UNAT-533, para. 46 and Megerditchian 2010-UNAT-088, para. 28). The Tribunal recalls that once management makes a minimal showing that an applicant was given full and fair consideration, the burden of proof shifts to him/her to prove that he/she was denied a fair chance of selection. In this respect, an applicant must show through "clear and convincing evidence" that the procedure was violated, the members of the panel exhibited bias, irrelevant material was considered, or relevant material was ignored (see Rolland 2011-UNAT-122, para. 21). Noting that the Applicant's argumentation is essentially grounded on alleged bias or discrimination against her, the Tribunal recalls that "[a]llegations of discrimination, improper motive and bias are very serious and ought to be substantiated with evidence" (see Ross 2019-UNAT-944, para. 25). The Tribunal further recalls that the presumption of regularity of non-selection decisions is not rebutted simply by casting doubt, and that it is incumbent on the Applicant to present clear and convincing evidence of any irregularity.

## Outcome

Dismissed on merits

## Outcome Extra Text

The Tribunal DECIDES that the application is rejected in its entirety.

Full judgment

[Full judgment](#)

Applicants/Appellants

Tajik

Entity

UNFPA

Case Number(s)

UNDT/GVA/2019/040

Tribunal

UNDT

Registry

Geneva

Date of Judgement

10 Feb 2021

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Related Judgments and Orders

2011-UNAT-110

2012-UNAT-200

2012-UNAT-265

2017-UNAT-762

2016-UNAT-697

2018-UNAT-829

2015-UNAT-533

2010-UNAT-088

2019-UNAT-944