

# **2022-UNAT-1199, Nazma Banaras Khan**

## **UNAT Held or UNDT Pronouncements**

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT erred in law in finding that the Administration was not legally allowed to consider seniority or career advancement in the selection process. UNAT held that it was entirely proper to make a choice between two recommended candidates based partly on their respective seniority and time already served at a particular grade. UNAT held that UNDT also erred in essentially reversing the burden of proof by requiring the Secretary-General to show that the factors considered were explicitly provided for in the legal framework rather than considering whether the staff member had shown by clear and convincing evidence that the contested decision was unreasonable in its basis, motive or effect. UNAT held that the decision of UNDT was inconsistent with UNAT jurisprudence. UNAT held that UNDT erred in fact and law by failing to consider that other factors were considered when choosing the selected candidate, which were in fact the decisive relevant considerations in the selection exercise. UNAT held that UNDT erred by failing to appreciate that the contested decision rested on a careful consideration of a range of relevant factors. UNAT upheld the appeal and vacated the UNDT Judgment.

## **Decision Contested or Judgment/Order Appealed**

The Appellant contested the decision not to select her for a position. UNDT found that Ms. Khan did not receive full and fair consideration for the position and ordered rescission of the decision or compensation in lieu of rescission.

## **Legal Principle(s)**

In exercising its discretion to make a selection, the Administration is not restricted to factors or considerations explicitly listed in any governing legal instruments; it may consider all relevant factors, as long as such factors are not arbitrary, irrational or capricious. If the management is able to show, even minimally, that a candidate was given full and fair consideration, then the presumption of law that official acts have been regularly performed stands satisfied. The Secretary-General's broad discretion in matters of the appointment of staff members implies the duty to choose the best evaluation method to assess which candidates are most qualified for selection.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Nazma Banaras Khan

## Entity

UN Secretariat

## Case Number(s)

2021-1563

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

18 Mar 2022

## President Judge

Judge Murphy

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Selection decision

Staff selection (non-selection/non-promotion)

## Applicable Law

Staff Regulations

- Regulation 4.2

Other UN issuances (guidelines, policies etc.)

- Guidelines for the Selection of Locally Recurity Staff Members in the UN PKOs and SPMs

## Related Judgments and Orders

2011-UNAT-122

2017-UNAT-802

2019-UNAT-932