

# **UNDT/2022/130, Chawla**

## **UNAT Held or UNDT Pronouncements**

Following the recusal of his FRO from the Panel, there is no evidence to suggest that the Applicant would have had a better chance had his FRO been present, nor that his (the FRO's) presence in the other CBIs gave them a better chance. Even if the CBI panel had remained constant and identical, with the inclusion of the FRO, the record before the Tribunal demonstrates that the selected candidate was superior in her candidature. The administration of a written test is not mandatory pursuant to the Staff Selection AI. The onus was on the Applicant to prove the alleged bias. Ill-will is not a pre-requisite for a finding of bias. The Applicant did not prove that the panel had a pre-determined mindset to select the chosen candidate.

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

The Applicant challenged the Respondent's decision to neither select nor roster him for a D1 position in the Mission.

## **Legal Principle(s)**

When reviewing administrative decisions regarding appointments and promotions, the Tribunal considers: (a) whether the procedure in the Staff Regulations and Rules was followed; (b) whether the staff member was given fair and adequate consideration; and (c) whether the applicable rules were applied in a fair, transparent, and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration. While the initial burden of proof is on the Respondent to show that full and fair consideration was given to an applicant's candidature, the burden then shifts to the Applicant to prove unfairness in the selection process. Rebuttal of the presumption of regularity after the initial burden shifts from the Respondent occurs only where clear and convincing evidence establishes that an irregularity was highly probable. If any of the concerns raised by

the applicant is established as clearly and convincingly proving irregularity in the selection process, the Tribunal must consider whether the irregularity impacted on the applicant's chances of selection. The Staff Selection Manual is not part of the regulatory framework. Should there be any inconsistency between the manuals and the text of the Administrative Instruction ("AI") on Staff Selection, the provisions of the AI prevail.

## Outcome

Appeal dismissed on merits

## Outcome Extra Text

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Chawla

## Entity

UNSOS

## Case Number(s)

UNDT/NBI/2022/010

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

9 Dec 2022

## Duty Judge

Judge Honeywell

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Full and fair consideration

Interview

Selection decision

Written test

Staff selection (non-selection/non-promotion)

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

## Related Judgments and Orders

2016-UNAT-642

2017-UNAT-747

2011-UNAT-172

2011-UNAT-174

2015-UNAT-547

UNDT/2019/078

UNDT/2013/050

UNDT/2018/060