

2023-UNAT-1390, Srilata Rao

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT erred in holding that the Administration misinterpreted one of the requirements for the position advertised in JO 127555, namely “experience in leading large teams”, as requiring experience of direct supervision of 10 people or more. The UNAT further found that the vacancy announcement allowed for a such contextual interpretation as the literal meaning of “lead” is very general and does not, by itself, allow for an exact comprehension of the intended meaning. Therefore, the UNAT held that it was reasonable for the Administration to interpret the requirement of “leading large teams” as including direct supervision.

Applying this criterion to the case of Ms. Rao, the UNAT found that the Administration did not err when it concluded that the maximum number of staff under her supervision in her previous positions was nine, and accordingly, that she did not fulfil the requirement of having directly supervised 10 people or more.

Finally, without casting doubt on its conclusion about the discretion of the Administration in this case, the UNAT observed that in such appointment processes, in order to try to avoid litigation about similar issues in the future, the Administration should, to the extent possible, use clear and unequivocal terms in communications with potential applicants. This will ensure that there are no, or at least fewer, misunderstandings about what is required of applicants.

The UNAT granted the Secretary-General's appeal and reversed Judgment No. UNDT/2022/092.

Decision Contested or Judgment/Order Appealed

The Secretary-General appealed Judgment No. UNDT/2022/092 in which the UNDT rescinded the Administration’s decision not to consider Ms. Rao for the position of Chief of Service, Monitoring and Evaluation, Department of Management Strategy,

Policy and Compliance, Business Transformation and Accountability Division (DMSPC/BTAD) at the D-1 level advertised in Job Opening (JO) 127555 and set a lump sum equivalent to three month's net base salary at her current level and step, as compensation in lieu of rescission.

Legal Principle(s)

The Administration has broad discretion in making decisions regarding promotions and appointments. Its discretion varies depending on multiple factors, including the nature of the recruitment phase and the nature of the components within that same phase.

If the amount of discretion is broad in the shortlisting and selection phase, it can be similarly broad in some of the aspects of the pre-screening and longlisting phase. The amount of discretion in the latter phase depends on the nature of the requirement and the terms used in the vacancy announcement. When the requirement is set as numerical or quantitative, the discretion of the Administration becomes limited to verifying if the applicant fulfills the required threshold. However, when the requirement is qualitative, the Administration enjoys wide discretion in determining what exactly it is looking for and if the applicant fulfills this requirement. The determination shall be upheld by the Tribunal if the Administration did not go beyond what is reasonable in its interpretation and if the vacancy announcement did not create false expectations, nor give incorrect information. In other words, the choice of eligibility criteria and their application must be reasonable, or at least rationally based, in the sense, *inter alia*, of not being arbitrary, capricious, improperly motivated or based on irrelevant considerations.

When the language used is plain, common and causes no comprehension problems, the text must be interpreted upon its own reading, without further investigation. However, when the language used causes problems of comprehension as to its exact meaning and scope, it is wise to adopt a contextual interpretation that takes the entire surrounding context into consideration.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Srilata Rao

Entity

OIOS

Case Number(s)

2022-1756

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Nov 2023

President Judge

Judge Colgan

Judge Gao

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1
- Regulation 4.2

UN Charter

- Article 101.1

Related Judgments and Orders

UNDT/2022/092

2017-UNAT-762

2019-UNAT-947

2023-UNAT-1334

2012-UNAT-265

2022-UNAT-1197

2017-UNAT-785

2020-UNAT-985

2012-UNAT-225