

UNDT/2023/143, Tsiamitros

UNAT Held or UNDT Pronouncements

Receivability

The Tribunal reviewed the Applicant's request for management evaluation and found that only the decision not to consider him eligible for a temporary appointment through the Talent Pool, at the P-2 level, was receivable and subject to judicial review. Any other decision to which the Applicant referred in his submissions was consequently not receivable.

Merits

The Tribunal referred to the applicable legal framework as well as to the evidence on record and noted that the practice is to only consider experience at the G-6 level and above (or equivalent experience outside of the UN system) for positions at the P-2 level.

The Applicant argued that "no G-6 experience [was] required" in the Talent Pool to which he applied. However, the Tribunal noted that "two years of relevant experience" for candidates with a Graduate degree was required. The Tribunal found it reasonable for the Administration to only consider experience at the G-6 and above level as "relevant experience" for positions in the Professional category for candidates with prior working experience in the UN system. The Tribunal, therefore, found that the Applicant's argument had no merit.

The Tribunal reviewed all the evidence on record and found that the assessment of the Applicant's 13 months of relevant experience was correct. It added that even considering the Applicant's alleged three-month mission in Poland, he would have had 16 months of relevant experience. This fell short of the two years of experience required for functional clearance at the P-2 level.

The Tribunal thus found that the Applicant's candidacy was given full and fair consideration.

The Tribunal considered the arguments put forward by the Applicant and found that the contested decision was not tainted by any bias or extraneous factors.

Consequently, the Tribunal found no basis for awarding the Applicant the requested remedies. The application was rejected in its entirety.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision not to consider him eligible for a temporary appointment through the Administrative Officer Profile Talent Pool (“Talent Pool”), at the P-2 level, because he did not have the required years of experience.

Legal Principle(s)

The Appeals Tribunal has held that it is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties’ contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review.

It is well established that the Secretary-General has broad discretion in matters of appointment and promotions and that, in reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Administration.

The Tribunal’s role is limited to examine “(1) whether the procedures as laid down in the Staff Regulations and Rules were followed; and (2) whether the staff member was given fair and adequate consideration”.

The Tribunal recalls that in selection and appointment matters, there is a presumption of regularity concerning the performance of official acts. Accordingly, in a recruitment procedure, if the Administration is able to even minimally show that a staff member’s candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must then be able to show through clear and convincing evidence to have been denied a fair chance.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Tsiamitros

Entity

UNHCR

Case Number(s)

UNDT/GVA/2022/032

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Dec 2023

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Applicable Law

UNDT Statute

- Article 8.1(c)

Administrative Instructions

- UNHCR/AI/2019/16/Corrigendum ((Administrative Instruction on the Management of Temporary Appointments)

Other UN issuances (guidelines, policies etc.)

- DFAM Functional Assessment Standard Procedures

Related Judgments and Orders

2017-UNAT-765

2017-UNAT-762

2011-UNAT-110

2012-UNAT-200

2012-UNAT-265

2011-UNAT-122

2021-UNAT-1103