

2024-UNAT-1423, Rajiv Kumar Chawla

UNAT Held or UNDT Pronouncements

The UNAT held that a procedural flaw occurred during the recruitment process due to the inappropriate screening of educational requirements. Specifically, the UNAT highlighted that the Hiring Manager failed to verify if the candidates' degrees were in fields related to Supply Chain Management, business administration/management, instead considering all of them eligible in respect of educational requirements. Nevertheless, highlighting that the former staff member was, unlike 16 other candidates, neither recommended for the position, nor rostered for future similar vacancies, the UNAT held that this procedural flaw was not sufficient to warrant rescission of the contested decision as the former staff member's chances of selection were not impacted by the procedural irregularity. The UNAT also emphasized that there was no evidence to suggest that the former staff member would have passed the competency-based interview.

The UNAT concluded that the former staff member failed to demonstrate that he was denied full and fair consideration in the selection or the rostering process and that there was no proof of bias on the part of the interview panel members. The UNAT found that the UNDT did not err in issuing a Judgment that was at variance from its previous suspension of action (SOA) orders, as the outcome of a previously issued SOA had no bearing on the UNDT's final findings in its impugned Judgment.

Since the staff member's request for rescission had been denied, the UNAT also dismissed his request for compensation. The UNAT also dismissed his request for modification of the judicial system.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/130.

Decision Contested or Judgment/Order Appealed

The Appellant, a former staff member of the United Nations Support Office in Somalia (UNSOS), contested the decision of the Administration to neither select nor roster him for the position of UNSOS Chief of Service, Supply Chain Management, at the D-1 level.

In its Judgment No. UNDT/2022/130, the UNDT found that the former staff member's candidature was given full and fair consideration and dismissed his application.

Former staff member appealed.

Legal Principle(s)

The appeals process is of a corrective nature. The role of the UNAT is not to conduct a *de novo* review of the case, but rather to examine the impugned judgment for any errors that might have affected the decision. It is the appellant's burden to satisfy the UNAT that such errors exist. Therefore, the scope of appeal is determined by the party initiating the appeals process and the UNAT lacks the authority to raise other issues *sua sponte*, except for jurisdictional issues.

In reviewing decisions regarding appointments and promotions, the UNDT examines: (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. Procedural irregularities will only result in the rescission of the contested decision when the staff member had a significant chance of selection or promotion.

Allegations of bias must be established on the balance of probabilities by the person alleging them.

In order to overturn a finding of fact by the UNDT, the UNAT must be satisfied that the finding is not supported by the evidence or that it is unreasonable. Some degree of deference should be given to the factual findings by the UNDT, particularly where oral evidence is heard.

Suspension of action (SOA) orders previously issued have no bearing on the final findings of the UNDT and are not *res judicata* vis-à-vis the UNDT. The process of SOA has its own rationale of providing a temporary protective measure for staff members

against *prima facie* unlawful administrative decisions that produce irreversible harmful effects. Hence, a Tribunal that ordered a SOA may dismiss the case on the merits, and vice versa.

The UNAT and the UNDT do not have the legal power to review or otherwise amend regulatory norms.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Rajiv Kumar Chawla

Entity

UNSOS

Case Number(s)

2023-1782

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Apr 2024

President Judge

Judge Sheha
Judge Ziadé
Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Procedure (first instance and UNAT)
Case management
Staff selection (non-selection/non-promotion)
Full and fair consideration
Interview
Selection decision

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Related Judgments and Orders

UNDT/2022/130
2017-UNAT-737
2017-UNAT-744
2011-UNAT-110
2011-UNAT-174
2011-UNAT-122
2010-UNAT-096
2015-UNAT-547
2016-UNAT-669
2023-UNAT-1389

2014-UNAT-454

2015-UNAT-550