

2024-UNAT-1473, Anand Anand

UNAT Held or UNDT Pronouncements

The Appeals Tribunal found that the UNDT did not err in holding that the Hiring Manager had correctly assessed that the certificates the selected candidate had listed in her Personal History Profile (PHP) were equivalent to a Lean Six Sigma (LSS) Certification. One of the educational requirements for the position was the LSS certification or an “equivalent certification”. In the present case, the UNDT correctly concluded that the Hiring Manager had properly assessed that the certificates the selected candidate had listed in her PHP were equivalent to an LSS certification, as required for the advertised position.

Furthermore, the Appeals Tribunal was satisfied that the UNDT did not err in finding that the Hiring Manager acted within his reasonable discretion in assessing the candidates. The Hiring Manager had to make a choice between two candidates. Considering that the selected candidate scored higher than Mr. Anand at every stage of the recruitment process, had 10 years of additional work experience compared to him, including significantly more supervisory experience and had more technical certifications which were both recommended for the position by the interview panel, the UNDT did not err in finding that the Hiring Manager had reasonably and correctly exercised his discretion not to select Mr. Anand.

Therefore, the Appeals Tribunal dismissed the appeal.

Decision Contested or Judgment/Order Appealed

Mr. Anand, a former Administrative Officer, contested before the UNDT the decision not to select him for a P-5 position with the Pension Fund.

In Judgment No. UNDT/2023/047, the UNDT dismissed the application. The UNDT held that Mr. Anand had been afforded full and fair consideration for the position,

and the Hiring Manager had acted within his reasonable discretion in assessing the candidates. The UNDT further held that Mr. Anand had failed to show by clear and convincing evidence that he was denied a fair chance of selection. Accordingly, the UNDT found that the non-selection decision was lawful.

Mr. Anand filed an appeal.

Legal Principle(s)

The Secretary-General has a broad discretion in matters of staff selection. In exercising this discretion, 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.

The Secretary-General is required to secure the highest standards of efficiency, competence, and integrity when appointing staff members to the service of the Organization.

In reviewing decisions of non-selection, it is the role of Tribunals to assess whether the applicable law was applied and whether it was applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.

In non-selection cases, the point of departure is the presumption that the acts of the Administration performed in the course of a selection process are regular. This rebuttable presumption stands satisfied, if the Administration is able to minimally show that full and fair consideration was given to the candidate. Thereafter, the burden of proof shifts to the staff member who must show through clear and convincing evidence that he or she was denied a fair chance of selection.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Anand Anand

Entity

UNJSPF

Case Number(s)

2023-1836

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Aug 2024

President Judge

Judge Forbang

Judge Gao

Judge Ziadé

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Full and fair consideration

Staff selection (non-selection/non-promotion)

Applicable Law

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

UN Charter

- Article 101.1

UNAT Statute

- Article 2.1

Administrative Instructions

- ST/AI/2010/3

Related Judgments and Orders

UNDT/2023/047

2012-UNAT-265

2011-UNAT-122

2022-UNAT-1199

2019-UNAT-944

2015-UNAT-603

2013-UNAT-383

2017-UNAT-802