



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2025-UNAT-1523

**Mita Hosali
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Katharine Mary Savage Judge Kanwaldeep Sandhu
Case No.:	2024-1928
Date of Decision:	21 March 2025
Date of Publication:	23 April 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant: Robbie Leighton, OSLA

Counsel for Respondent: Francisca Lagos Pola

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Ms. Mita Hosali, a Deputy Director in the Department of Global Communications (DGC), has filed an appeal of Judgment No. UNDT/2024/017 (impugned Judgment)¹ with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
2. In the impugned Judgment, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed her application contesting her non-selection for the post of Director, News Media Division (NMD), DGC, at the D-2 level (contested decision).
3. For the reasons set forth herein, the Appeals Tribunal grants the appeal and reverses the impugned Judgment.

Facts and Procedure

4. Ms. Hosali, a national of India, joined the United Nations in 1982 and was promoted to be the Deputy Director for the News and Content Branch in DGC, at the D-1 level in 2014.
5. In April 2021, the post of Director, NMD was advertised and Ms. Hosali applied but was unsuccessful.²
6. On 12 January 2022, the post was readvertised and Ms. Hosali applied again.³ Outreach efforts were made to attract candidates from un- and under-represented Member States as well as female candidates.⁴
7. Among the 17 screened female applicants, only five met the experience criteria. These five female candidates sat for a video assessment, of which only two passed, including Ms. Hosali.⁵ Ms. Hosali received a 93 percent score on the video assessment.

¹ *Hosali v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/017 (1 April 2024).

² *Ibid.*, para. 5.

³ The job title in the vacancy announcement for Job Opening #172198, was “Director, Public Information, D2”.

⁴ 7 November 2022 Interoffice Memorandum from the Under-Secretary-General for the Department of Global Communications to The Chairperson, Senior Review Group (Recommendation Memorandum), p. 1.

⁵ *Ibid.*

8. Five individuals were shortlisted for competency-based interviews, including Ms. Hosali. One of the other individuals was a male from the United Kingdom, who was applying as an external candidate and would ultimately be selected (Selected Candidate).

9. A three-member interview panel (Panel) was established, comprised of the Under-Secretary-General for DGC (USG/DGC), who is a woman, and two senior staff from other departments in the Secretariat. The Panel composition was two women and one man, and all three members were from Member States that fall within the Western European and Other States Group (WEOG).

10. Ms. Hosali and the Selected Candidate were asked the same questions by the Panel. According to the Competency Based Interview Report (CBI Report) prepared by the Panel, both the Selected Candidate and Ms. Hosali met the five competencies of Professionalism, Communication, Leadership, Managing Performance, and Judgment/Decision Making. However, as regards the individual indicators for each competency, the Selected Candidate received a perfect score, whereas there were some indicators that Ms. Hosali was considered to only “partially” meet.⁶ The Selected Candidate also received a perfect score on the video assessment.⁷

11. The USG/DGC prepared a summary of the evaluation process and advised in the Recommendation Memorandum to the Senior Review Group (SRG), that only two candidates, Ms. Hosali and the Selected Candidate, met all the competencies for the post.

12. On 8 November 2022, the SRG convened virtually to review the Recommendation Memorandum regarding the filling of the post for Director, NMD.

13. The SRG endorsed the USG/DGC’s recommendation that the names of Ms. Hosali and the Selected Candidate be submitted to the Secretary-General for his consideration.⁸

14. On 29 December 2022, the Secretary-General approved the appointment of the Selected Candidate to the post.⁹ This decision was conveyed to Ms. Hosali by the USG/DGC on 9 January 2023.¹⁰

⁶ CBI Report, pp. 8-13.

⁷ Respondent’s UNDT reply, annex 2.

⁸ Interoffice Memorandum re: Meeting of the Senior Review Group – No. 400 (8 November 2022).

⁹ 29 December 2022 e-mail re: CONFIDENTIAL: SRG No. 400: (D-2), Director, News & Media Division, DGC.

¹⁰ Impugned Judgment, para. 7.

15. On 9 February 2023, Ms. Hosali requested management evaluation of the contested decision. Based on the management evaluation review, the Under-Secretary-General for Management Strategy, Policy and Compliance upheld the decision.

16. On 12 June 2023, Ms. Hosali filed an application challenging the contested decision with the Dispute Tribunal.

Impugned Judgment

17. In reviewing Ms. Hosali's application, the UNDT recognized that the legal framework of the United Nations endows the Secretary-General with broad discretion in matters of staff selection, and this has been repeatedly affirmed by the UNAT.¹¹

18. With regard to the applicable policies regarding gender, racial and geographical representation in staff selection decisions, the UNDT held that Administrative Instruction ST/AI/2020/5 (Temporary special measures for the achievement of gender parity) did not apply to recruitment for posts at the D-2 level.¹²

19. The UNDT noted that Section 3.4 of ST/AI/2020/5 states that applying the temporary special measures to achieve gender parity is for "whenever the entity is selecting a candidate to fill a job opening from either a list of candidates endorsed by a central review body [CRB], a competitive examination roster or a list of rostered candidates who applied for a job opening".

20. The UNDT concluded that this provision did not apply because the contested decision was a selection of a candidate for appointment to the D-2 level, which is governed by Administrative Instruction ST/AI/2010/3/Rev.1 (Staff selection system). The relevant review body for appointments at the D-2 level is the SRG, not a CRB identified in ST/AI/2020/5. Moreover, the selection decision was not made from a competitive roster.¹³

21. The UNDT further considered whether the contested decision was lawful given general notions of equality and non-discrimination as pronounced in many international human rights

¹¹ *Ibid.*, para. 8.

¹² *Ibid.*, para. 19.

¹³ *Ibid.*

resolutions and various statements of the General Assembly on equal rights and the non-discrimination of women.¹⁴

22. The UNDT observed that there is no Administrative Instruction that speaks to preferential treatment for individuals from certain regional groups. To be sure, the United Nations Charter (Charter) provides that “[d]ue regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible”, and this was highlighted in the Job Opening (JO).¹⁵ Nonetheless, the UNDT concluded that there were no legal provisions that prevented the Secretary-General from recruiting the Selected Candidate, a male from the United Kingdom (in the WEOG).¹⁶ The UNDT also observed that neither India nor the United Kingdom are underrepresented countries in the Secretariat.

23. The UNDT found that the Recommendation Memorandum reflected that the gender, nationality, and geographic and regional background of the Selected Candidate and Ms. Hosali were properly considered, along with their performance at the competency-based interview.¹⁷

24. The UNDT next considered Ms. Hosali’s submission that the Panel’s assessment of her candidature was tainted by bias (unconscious or conscious) against her and/or favoritism towards the Selected Candidate. The UNDT observed that both candidates were asked the same questions, but that Ms. Hosali’s answers “fully satisfied” 25 of the 33 indicators, whereas the Selected Candidate fully satisfied all 33 indicators.¹⁸ According to the Panel, the Selected Candidate therefore performed better in the competency-based interview.

25. The UNDT also noted that although it was not for the Tribunal to review the substance of the answers, it nonetheless found nothing in the written summaries of the candidates’ answers and the Panel’s deliberations that gave credence to Ms. Hosali’s claim that the contested decision was tainted by bias or other ulterior motives.¹⁹

26. Overall, the UNDT concluded that Ms. Hosali’s candidature received full and fair consideration and that the relevant procedures were followed. Moreover, with regard to the presumption of regularity, the Secretary-General had minimally demonstrated the lawfulness of

¹⁴ *Ibid.*, paras. 21-22.

¹⁵ *Ibid.*, para. 25.

¹⁶ *Ibid.*, para. 27.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, para. 31.

¹⁹ *Ibid.*, para. 32.

the contested decision and Ms. Hosali had not rebutted it with clear and convincing evidence.²⁰ Accordingly, the UNDT dismissed the application.

27. On 30 May 2024, Ms. Hosali filed an appeal of the impugned Judgment with the Appeals Tribunal. The Secretary-General submitted the answer on 30 July 2024.

Submissions

Ms. Hosali's Appeal

28. Ms. Hosali requests that the impugned Judgment be reversed, and that she be awarded compensation for loss of opportunity. Given that there were only two candidates who met all of the competencies, she had a 50 per cent chance of being selected, and she thus requests 50 per cent of the salary differential between level D-1 and D-2 over a period of two years.

29. Ms. Hosali avers that at the time of the contested decision, DGC had three D-2 posts, one occupied by a male, and two were vacant. Of the 17 encumbered D-1 posts, 44 per cent were held by women and 56 per cent were held by men.

30. Ms. Hosali points out that under the leadership of the USG/DGC, she has recruited not only the Selected Candidate (a white male from the United Kingdom), but also a white Australian male (for a temporary post) and a white American male. In addition, the USG/DGC has presided over the recruitments of two P-5 positions that went to a WEOG female and a white male from the United Kingdom (for a temporary post), as well as a white American female for a senior advisor post.

31. Ms. Hosali claims that at the time of the contested decision, the USG/DGC had not selected a single non-white candidate to any post under her control. The USG/DGC had at that time a 67 per cent record for recruiting males into the department with a marked gender imbalance at the senior level.

32. Ms. Hosali submits that the UNDT erred in law when it found that ST/AI/2020/5 did not apply to recruitments at the D-2 level. In the impugned Judgment, the UNDT omitted the bolded portion of Section 3.4 of the Administrative Instruction below:

²⁰ *Ibid.*, para. 33.

Entities that have not reached gender parity [...] shall apply the temporary special measures **in subparagraphs (a) through (c) below to selection exercises within the scope of section 3.1** whenever the entity is selecting a candidate to fill a job opening from either a list of candidates endorsed by a central review body ...

33. Ms. Hosali submits that Section 3.4 is discussing specific temporary special measures that apply to the particular circumstances in that paragraph, but this does not mean that temporary special measures do not apply to D-2 level recruitments at all. Ms. Hosali contends that the special measures listed in sub-paragraphs (a) through (c) apply only to selection exercises requiring endorsement by a CRB.

34. Ms. Hosali characterizes Section 3.4 as a special “carve out”, wherein the listed measures in sub-paragraphs (a) through (c) are targeted at recruitments involving endorsement by a CRB. However, she argues that this does not mean that the entire Administrative Instruction does not apply to D-2 recruitments.

35. Ms. Hosali claims that if the entirety of the Administrative Instruction was applicable only to recruitments at the D-1 level and below, then this would have been stated in the “Scope” or “Goal” sections of the Instruction.

36. Ms. Hosali submits that the UNDT erred in law in finding that Section 3.5 of ST/AI/2020/5 did not apply to the contested recruitment.²¹ The UNAT has previously held that failure to comply with Section 3.5 constitutes reversible error.²²

37. Ms. Hosali argues that the UNDT erred in law and failed to exercise jurisdiction by not addressing her argument that given the Secretary-General’s task force on addressing racism, and the lack of geographical diversity in DGC at the senior levels, that insufficient weight was given to these factors in the contested decision.

38. Ms. Hosali submits that the UNDT erred in fact and law, and failed to exercise jurisdiction, by not adequately addressing her claims of bias. Ms. Hosali argues that an inference of bias can be drawn from the fact that white people account for 15.5 per cent of the global population, while the

²¹ Section 3.5 provides that when one or more women candidates meets the requirements of the job opening, and the head of the entity intends to select a male candidate, the head of entity needs to submit a written analysis setting out how the qualifications and experience of the male candidate are “clearly superior” to those of the women candidates who were considered suitable.

²² Appellant relies on *Zhao, Zhuang and Xie v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-536.

USG/DGC recruits exclusively white candidates for senior posts, at an organization that is supposed to draw its workforce from all corners of the globe.

39. Ms. Hosali finds “troubling” the UNDT Judge’s statement that “no further details were provided” with regard to the fact that the Selected Candidate was “white”.²³ Ms. Hosali submits that the UNDT “appear[ed] to consider it might make a difference what sub-category of ‘white’ the [S]elected [C]andidate hailed from”, rather than engage with racial bias in its simplest form.

40. Ms. Hosali submits that the UNDT Judge failed to apply the USG/DGC’s recruitment record as evidence of unconscious bias. The UNDT Judge failed to consider that the Panel was comprised entirely of United States citizens.²⁴

41. Ms. Hosali avers that the UNDT ignored her arguments about how the Selected Candidate, with his two perfect scores (in the video assessment and the interview), was not critically assessed and was adjudged to be perfect even when he did not demonstrably answer the questions or failed to give specific examples. The fact that all indicators in the interview were found to be “met” amounted to evidence of unconscious bias.

42. Ms. Hosali submits that the Panel made subjective and unfounded assessments of her, suggesting at one point that she was “sucking up” and at another that her answer was “boring”. The Panel was so focused on the Selected Candidate that they commented on him in their interview report on Ms. Hosali.

43. Ms. Hosali claims that she was not asking the UNDT Judge to assess the responses given during the interview, but rather to consider whether the Panel’s assessment showed evidence of unconscious bias.

44. Ms. Hosali submits that the UNDT Judge erred when she concluded that she found no evidence of “ulterior motives such as discrimination, bias or favoritism”. Ms. Hosali states that an “ulterior motive” is necessarily a conscious act, and Ms. Hosali was arguing that unconscious racial bias was at play. The UNAT has held that intentionality is not required for a finding of reversible bias.²⁵

²³ Impugned Judgment, para. 7.

²⁴ One member of the Panel was a dual French-U.S. citizen.

²⁵ The Appellant relies on *Sobier v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1208.

45. Ms. Hosali submits that the UNDT erred in failing to assess the various indices of unconscious bias that she outlined. She alleges that the UNDT erred in law and failed to exercise jurisdiction by deflecting her submissions on unconscious bias, by treating allegations of racial bias as exclusively a procedural issue regarding rules on geographical diversity and by claiming the evidence of bias demonstrated on the face of the assessment was beyond the scope of the Judge's review.

46. Ms. Hosali submits that the identified errors in law and failures to exercise jurisdiction mean that her principal case, that the contested decision was tainted by unconscious bias, was never addressed.

47. Ms. Hosali points out that the UNDT Judge's conclusion that the fact that the Panel gave the Selected Candidate better marks was sufficient to demonstrate that the decision was lawful, means that allegations of unconscious bias will only be upheld if the candidate marked the highest was *not* selected. The scope of review in the internal justice system cannot be so limited.

48. Ms. Hosali seeks the reversal of the impugned Judgment and an order of compensation in the amount of 50 per cent of the salary differential between D-1 and D-2 over a period of two years.

The Secretary-General's Answer

49. The Secretary-General submits that the Dispute Tribunal's finding that the contested decision was lawful is supported by the applicable legal framework, and the impugned Judgment should be upheld.

50. The Secretary-General submits that ST/AI/2010/3/Rev.1 is the applicable Administrative Instruction in this case. Specifically, Section 7.7 provides in part that:

For vacancies at the D-2 level, heads of entity shall submit to the Senior Review Group a shortlist normally containing three names of qualified and suitable candidates, including at least one woman candidate. The shortlist will be prepared following interviews by an interdepartmental assessment panel. ... The submission shall also include the personal history profile of the shortlisted candidates and statistics on staff at the D-1 and D-2 levels in the entity, including information on nationality and gender.

51. The Secretary-General also refers to the Secretary-General's bulletin ST/SGB/2016/10/Rev.1 (Senior review group), which explains that the SRG is "a standing advisory body constituted to review and provide advice on recommendations to the Secretary-General for the selection of staff

to all positions at the D-2 level”. The SRG reviews the recommendation to ensure that the integrity of the process was upheld and provides advice on the recommendation to the Secretary-General for a final decision.

52. The Secretary-General submits that all of the procedures outlined in the foregoing instruments were correctly followed by the Administration, and all relevant material was taken into account, including nationality and gender.

53. The Secretary-General avers that the UNDT’s finding that the contested decision was lawful was also in conformity with relevant UNAT jurisprudence that the Secretary-General enjoys wide discretion in such matters, and that the Tribunals should not substitute their own decision for that of the Secretary-General regarding the outcome of the selection process.²⁶

54. The Secretary-General submits that all proper procedures were followed throughout the selection exercise and Ms. Hosali was given full and fair consideration. The selection of the Selected Candidate was reasonable and fair because he scored higher than Ms. Hosali in both the video assessment and the competency-based interview. In addition, the Selected Candidate also had demonstrated experience in “leadership [in] the development of innovative and/or change management programmes”, as called for in the JO.

55. The Secretary-General concludes that the UNDT correctly found that the contested decision was lawful, that Ms. Hosali was given full and fair consideration, and that she did not rebut the presumption of regularity.

56. With regard to ST/AI/2020/5 on temporary special measures for gender parity, the Secretary-General submits that Sections 3.4 and 3.5 must be read together, as they both fall under the header “Selection”. Section 3.4 sets out the general principle that women candidates shall be primarily considered, while Section 3.5 sets out the process for justifying the selection of a male candidate if one or more women candidates meet the requirements for the job opening.

57. The Secretary-General submits that “central review bodies” are distinct from the SRG, and a CRB only reviews staff selection exercises up to the D-1 level. The Secretary-General submits that the reference to a CRB supports the interpretation by the UNDT that Section 3.4, as well as Section 3.5, applies only to staff selection exercises up to the D-1 level.

²⁶ The Respondent relies on *Mirella v. Secretary-General of the United Nations*, 2023-UNAT-1334.

58. The Secretary-General submits that the role of the UNDT in reviewing selection decisions is to verify whether the procedures set out in the legal framework were followed, whether the staff member challenging the selection decision was given full and fair consideration, and to verify whether the selection decision was fair and non-discriminatory. The UNDT did just that in the impugned Judgment.

59. The Secretary-General contends that the UNDT has no obligation to take into account gender and geographical considerations outside of what the legal framework for selection exercises for positions at the D-2 level requires.

60. The Secretary-General acknowledges that the attainment of gender parity at all levels, including at the senior levels, is contemplated by the General Assembly in numerous resolutions, and that the Charter anticipates recruitment “on as wide a geographical basis as possible”. However, the Secretary-General argues that this cannot be interpreted as a promise or guarantee to be appointed if there is gender disparity or geographical imbalance within a staff member’s entity.

61. The Secretary-General submits that the Selected Candidate was chosen because he was best suited for the position, including that he had leadership experience in the development of innovative and/or change management programmes, which was a responsibility in the JO and an area where Ms. Hosali had no such expertise.

62. The Secretary-General contends that past recruitment exercises conducted by the USG/DGC, including whether she had a history of recruiting a greater number of “white candidates”, are outside the scope of the selection exercise under review. Moreover, the decision-maker here is the Secretary-General, not the USG/DGC. The Secretary-General notes that by the time of the Respondent’s closing submission to the UNDT, female representation at the D-1 level in DGC was 56 per cent.²⁷

63. The Secretary-General submits that the UNDT addressed all relevant allegations of bias, expressly considered whether the Panel was biased in its assessment, and concluded it was not. Ms. Hosali merely disagrees with the UNDT’s conclusion.

²⁷ The Appellant relied on statistics on female representation in DGC at the time of the contested decision in December 2022; the Respondent’s closing submissions were made in March 2024.

64. The Secretary-General rejects the Appellant's reliance on the *Sobier* Judgment, pointing out that in *Sobier*, the UNAT identified a significant flaw in the process, namely that the Panel did not ask all candidates the same questions. In the present case, all candidates were asked the same questions, and the Panel recommended both Ms. Hosali and the Selected Candidate without prioritizing one over the other.

65. The Secretary-General submits that the Appellant has failed to establish any error by the UNDT and requests that the UNAT affirm the impugned Judgment.

Considerations

66. Before the UNDT, Ms. Hosali contested the administrative decision not to select her for the post of Director, NMD, at the D-2 level. For several reasons, as set forth in the impugned Judgment, the UNDT rejected her application.

67. Ms. Hosali submits that the UNDT erred in three respects: (i) when it found that ST/AI/2020/5 did not apply to D-2 selection decisions; (ii) when it did not address her argument regarding the exercise of discretion; and (iii) when it did not address her allegations of bias properly.

68. In respect of Ms. Hosali first ground of appeal, a plain reading of Section 3.4 of Administrative Instruction ST/AI/2020/5, to which Section 3.5 is associated, suggests that this is a carve out that only applies to selection exercises for positions where selections are made from a list of candidates *inter alia* endorsed by a CRB, i.e. positions up to the D-1 level. However, as Ms. Hosali's appeal succeeds on other grounds, the Appeals Tribunal finds no need to decide this issue in the present case. Instead, we recommend that the Secretary-General further clarify the applicability of ST/AI/2020/5. This is because the limited scope of Sections 3.4 and 3.5 does not seem to accord either with the General Assembly's intentions for the achievement of gender parity "at all levels" across the Organization, or with the letter of several other provisions of ST/AI/2020/5, in particular Section 2.1 ("Scope"), which seems to give expansive scope for the application of this Administrative Instruction.

69. We turn now to Ms. Hosali's second ground of appeal regarding the exercise of discretion in the selection exercise.

70. Article 101(3) of the Charter provides: “The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.” Staff Regulation 4.2 contains a similar provision.²⁸

71. The jurisprudence of the Appeals Tribunal in matters of staff selection or promotion is well-settled. In *Rolland*, we ruled that:²⁹

The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

72. As we held in *Savadogo*, the consistent jurisprudence of this Tribunal is that:³⁰

In reviewing administrative decisions regarding appointments and promotions, the factors to be considered are: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given fair and adequate consideration, and (3) whether the applicable Regulations and 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.

73. Along the same lines, we ruled in *Asr Ahmed Toson* that:³¹

[T]here is a “presumption of regularity” that official acts have been regularly performed. This presumption arises if the management can minimally show that staff member’s candidature was given a full and fair consideration. Thereafter the burden of proof shifts to the staff member who must show through “clear and convincing evidence” they have been denied a fair chance of promotion or selection.

74. Ms. Hosali contends in essence that the UNDT erred when it did not address her argument that the Administration failed to make appropriate regard to issues of gender and geographical representation in the exercise of its discretion. As a result, the Administration failed to properly

²⁸ ST/SGB/2018/1/Rev.2 (Staff Regulations and Rules of the United Nations).

²⁹ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 20.

³⁰ *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40.

³¹ *Asr Ahmed Toson v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1249, para. 29.

consider relevant factors such as gender and national origin. She submits that both the USG/DGC's alleged record of recruiting white males and the fact that she was not selected despite being found suitable for the post indicate that proper weight was not given in the exercise of discretion with respect to these factors in the selection process.

75. The Secretary-General maintains that the UNDT did not err in this regard absent a specific legal obligation on the part of the Administration to take gender and geographical representation factors into account when selecting the most suitable candidate. The recruitment on "as wide geographical basis as possible" is not a blanket guarantee for selection.

76. We agree with Ms. Hosali.

77. At the outset, this Tribunal expresses its serious concern about the lack of a sufficient record of the reasons supporting the choice of the Selected Candidate. We have ruled in many instances that, for the sake of reasonableness, fairness and transparency, it is expected that the Administration will give relevant and true reasons supporting its ultimate choice.³² There is a minimum threshold of establishing the material facts forming the basis of the Administration's exercise of discretion (*établissement matériel des faits*). Absent any specific reason underpinning the selection decision, the Administration cannot be considered as having fulfilled its burden to minimally show that the staff member had been given full and fair consideration in the selection exercise, and the presumption of regularity thus falls.

78. In the present case, the Panel considered that both the Selected Candidate and Ms. Hosali "met all the competencies of the post". Both candidates were therefore equally recommended for selection.³³ In its meeting No. 400 of 8 December 2022, the SRG reviewed the USG/DGC's submissions and endorsed the recommendation of both Ms. Hosali and the Selected Candidate, whose names were listed in alphabetic order, for consideration by the Secretary-General. On 29 December 2022, the Chief of Senior Leadership Appointments advised in a one-sentence e-mail that the Secretary-General had approved the appointment of the Selected Candidate. In doing so, no reasons were provided to support the Secretary-General's ultimate choice. The question thus arises on what exact criteria did the Secretary-General make his final choice for selection? The Administration submitted in its comments to the Management Evaluation Unit (MEU) that the

³² *Respondent v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1097, para. 44; *Islam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-115, para. 29.

³³ Answer, para. 34.

Selected Candidate “was ultimately selected because he clearly better demonstrated the competencies and evaluation criteria required in the JO”. The Administration further relied upon the summary of the Panel’s CBI Report to show that the Selected Candidate was the most suitable candidate.³⁴ However, none of these reasons appeared in the USG/DGC’s Recommendation Memorandum to the SRG, the Interoffice Memorandum from the SRG to the Secretary-General, or the aforementioned e-mail from the Chief of Senior Leadership Appointments. Accordingly, it is unclear whether the rationale presented by the Administration was the true and exact reason for the ultimate selection decision at the time the Secretary-General had taken it or *ex post facto* reasons that the Administration subsequently gave to the MEU in order to justify the choice of the Selected Candidate following Ms. Hosali’s request for management evaluation. This ambiguity arises because the reasons for the selection decision were not recorded in any detail at the time of the contested decision.

79. Although, as noted, we are not satisfied that the reasons for the ultimate selection decision were properly recorded, it may be reasonable to infer that the Secretary-General relied, as contended in the Administration’s comments to the MEU, on the overall assessment of candidates as detailed in the Panel CBI Report, and the Recommendation Memorandum and its annexes. However, the information provided in these documents is problematic, as it does not support the premise that the Administration has met its onus of minimally showing that Ms. Hosali was afforded full and fair consideration in the selection exercise. Although we give discretion to the Dispute Tribunal in matters of fact assessment, the errors of the UNDT in the present case are of such significance that we have no other option but to reverse the impugned Judgment.

80. It is a trite law that the Administration has wide discretion to select the most suitable candidate for a post.³⁵ This Tribunal does not interfere lightly with that discretion³⁶ or substitute itself for the Administration in the choice of its preferred criteria or their application.³⁷ However, for the sake of reasonableness and fairness, it is also expected from the Administration, in the exercise of that discretion, to use it legally and rationally, ensuring full and fair consideration for the candidates to the selection exercise. This requires that the Administration choose lawful

³⁴ In its answer before the UNAT, the Administration further maintained that the Selected Candidate’s better score in the video assessment was another element that supported his selection (para. 19).

³⁵ *Kinyanjui v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-932, para. 14.

³⁶ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40

³⁷ *Smith v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-785, para. 30.

criteria against which candidates are assessed, and apply those same criteria in a consistent manner.

81. In the present case, we find that the Administration erred in multiple respects resulting in unfair treatment of Ms. Hosali.

82. In respect of gender and geographical representation, we agree with the impugned Judgment that the Staff Selection System does not provide for preferential treatment for recruitment on such basis. The Administration, although not barred from taking such considerations into account as a matter of discretion,³⁸ is under no obligation to make these considerations authoritative criteria for selection. Nevertheless, when the Administration adopts such considerations as one of the criteria for selection, they must be applied in a fair and consistent manner.

83. In the present case, gender and geographical considerations were unevenly applied by the Administration. The record shows that the Panel appraised the selected candidate for being “Brit, male, Geo diversity, other D-2”.³⁹ It is questionable how the Selected Candidate’s gender as male was considered a positive element in a department where males were more represented than females at the time of selection. If such a criterion was used, it should have been used in favor of Ms. Hosali. The record should have reflected that Ms. Hosali’s gender was equally considered. As to geographical representation, we note that the record reflects that the Selected Candidate’s nationality was considered. Yet, Ms. Hosali is Indian, and like the Selected Candidate, her selection could have also supported geographical diversity within the department where (at the time of the contested decision) the one occupied D-2 post was held by a Palestinian male. The same arguments that were made to give the Selected Candidate an “edge” in the selection process, were completely ignored in Ms. Hosali’s assessment, albeit being valid *a fortiori* in her case.

84. We find that the whole assessment was somewhat arbitrary, giving the Selected Candidate more positive appraisals, while tending to disadvantage Ms. Hosali’s evaluations. We note, for example, that while the Selected Candidate was marked as “*fully* meeting the job requirements” in all the requirements in the “Evaluation of the Recommended Candidates” table,⁴⁰ Ms. Hosali was

³⁸ *Canova v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1252; *AAZ v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1502/Corr. 1.

³⁹ CBI Report.

⁴⁰ Recommendation Memorandum, Evaluation of the Recommended Candidates table (emphasis added).

marked as only “meeting the job requirements” in Education and Work Experience. We find no objective reason for this difference in the assessment. In any event, it stands that this slight change in the wording remains significant, giving advantage to the Selected Candidate over Ms. Hosali.

85. Besides these elements, we recall that Ms. Hosali made the argument that the Panel was biased against her as the Panel weaponized Ms. Hosali’s United Nations experience against her.⁴¹ Despite being recorded in the impugned Judgment,⁴² we find that the Dispute Tribunal failed to consider that argument.

86. Without need to examine whether there was actual or perceived bias based on that argument, we find that the Administration has failed to minimally show that Ms. Hosali received full and *fair* consideration.

87. In matters of the right to the fullest regard for internal candidates, we recall that Staff Regulation 4.4 provides:⁴³

Subject to the provisions of Article 101, paragraph 3, of the Charter, and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations.

88. In *Alan George Blythe*, this Tribunal has held that:⁴⁴

The reading of Staff Regulation 4.4 in line with Article 101(3) of the Charter means that internal candidates must be allowed to apply for vacancies without any disadvantage during the selection process. Their applications must be fully considered by the Administration to verify if they have the requisite qualifications and experience, and potentially to select and appoint them if they are found to be the most suitable for the position.

89. We also note that under the section “Work Experience” of the JO, in addition to the fullest regard that must be afforded to internal candidates under Staff Regulation 4.4, the Administration advertised that “[e]xperience in the UN Common System or similar international Organization” was desirable.

⁴¹ Impugned Judgment, para. 28.

⁴² *Ibid.*

⁴³ ST/SGB/2018/1/Rev.2.

⁴⁴ *Alan George Blythe v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1404, para. 60.

90. Despite that fact, we note that the Panel, instead of appraising Ms. Hosali's United Nations experience as positive, decided to use it to her disadvantage. The CBI Report assessing Ms. Hosali's performance during the interview recorded the Panel's comments on that point: "Recycling people in UN is problematic. Sometimes needs external".⁴⁵ In addition, the "Comparative Analysis of All Interviewed Candidates" table did not reflect Ms. Hosali's experience with the United Nations as a desirable that was met.⁴⁶ Further, in the "Evaluation of the Recommended Candidates" table, Ms. Hosali was marked for having "None" for elevated desirables.⁴⁷ However, not only did Ms. Hosali meet the desirable, she was also, at the relevant time, one of the "persons already in the service of the United Nations" for whom the "fullest regard" should be afforded. In making that statement, the Panel had in fact breached Staff Regulation 4.4 and failed to consider a desirable factor that the Administration itself had chosen to set in the JO. The Panel's own words tend to affirm the opposite. It appears clear to us that Ms. Hosali's extensive experience with the United Nations ultimately disadvantaged her, despite the applicable legal framework and the explicit wording of the JO.

91. Finally, as to Ms. Hosali's argument that the Panel made a subjective assessment of her performance, which she presented as a proof of bias, the Tribunal agrees insofar as the Panel made a subjective assessment based on personal opinions rather than objective factors and an equitable application of these factors. The case record shows that the Panel made problematic comments about Ms. Hosali. In particular, the Panel accused Ms. Hosali of "sucking up" for referencing the strategy of the USG/DGC as an example during her interview, when the USG/DGC was the head of the Panel. This negative comment was misplaced. Above all, the comment reflected the subjectivity of the Panel which speculated about Ms. Hosali's intentions and inner thoughts and not on objective factors. These comments contrast with the Panel's assessment of the Selected Candidate that he was objective and beyond reproach.

92. In sum, although the Panel had recommended both the Selected Candidate and Ms. Hosali equally to the SRG, as maintained by the Administration in its answer to the appeal,⁴⁸ it stands that both the positive comments on the Selected Candidate and the negative ones on Ms. Hosali had a significant impact on the final selection decision. We do not question the suitability of the Selected Candidate *per se*. The Administration has discretion to select the candidate that it concludes is the

⁴⁵ CBI Report (summary of Mita Hosali).

⁴⁶ Recommendation Memorandum, Comparative Analysis of All Interviewed Candidates table.

⁴⁷ Recommendation Memorandum, Evaluation of the Recommended Candidates table.

⁴⁸ Answer, para. 34.

best candidate for the position, however, the selection process must be fair and lawful for all candidates and there are strong grounds to believe that Ms. Hosali was not afforded such full and fair consideration in this selection exercise. On this basis, we conclude that the UNDT erred in law and in fact, resulting in a manifestly unreasonable decision, when it found that the Administration had minimally shown that Ms. Hosali was afforded full and fair consideration.

93. Since Ms. Hosali is successful on the aforementioned grounds, we find no need to address the remainder of her contentions.

Remedies

94. Article 9(1) of the Appeals Tribunal Statute provides:

The Appeals Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

95. As we held in *Ross*,⁴⁹ rescission is not a proportionate remedy in all cases, and such remedy will depend on the circumstances of each case and the possible consequences for third parties. We have also held in *Rhyan Ramsaroop* that:⁵⁰ “The passage of time and the lack of full information about the merits of the selection would give most judges pause about the feasibility of a rescission of the selection.”

96. In the circumstances of this case, we believe that rescission of the non-selection decision is not a practical remedy. The selection exercise was conducted and concluded in 2022. Our Judgment comes after more than two years have passed and an order for rescission would generate

⁴⁹ *Ross v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-926, para. 49.

⁵⁰ *Rhyan Ramsaroop v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1165, para. 39.

adverse consequences for a third party, i.e., the Selected Candidate. Further, having regard to the nature of this case, which turns on the non-selection of Ms. Hosali, the view we take is that rescission is not an appropriate remedy. Rather, we consider the appropriate remedy for non-selection to be the award of compensation for harm. Hence, despite having found the non-selection decision unlawful, we shall not order rescission. As rescission is not ordered, there would be no compensation in lieu.

97. However, we note that Ms. Hosali requested compensation for loss of opportunity, and we shall grant her that compensation for harm on the following grounds.⁵¹

98. In *Ross*,⁵² we have held that “any irregularity (procedural or substantive) in promotion (or selection) cases will only give rise to an entitlement to rescission or compensation if the staff member has a significant or foreseeable chance for promotion (or selection). The irregularity must be of such a nature that, had it not occurred, the staff member would have had a foreseeable and significant chance for promotion (or selection)”.

99. In order to calculate the economic loss suffered by the staff member as a result of the unlawful contested decision, the Tribunals will assess whether he or she would have had a significant chance of being selected absent the illegality. In this instance, there were only two suitable candidates who were recommended for the post, i.e. Ms. Hosali and the Selected Candidate. As such, we estimate that Ms. Hosali had a 50 per cent chance of selection had the unlawful contested decision not occurred.

100. Accordingly, we grant Ms. Hosali’s request for compensation for material harm as 50 per cent of the salary differential between the D-1 and D-2 grade levels over a period of two years.

101. For these reasons, the appeal succeeds.

⁵¹ Appeal form, Section IV.

⁵² *Ross* Judgment, *op. cit.*, para. 48.

Judgment

102. Ms. Hosali's appeal is granted, and Judgment No. UNDT/2024/017 is hereby reversed. Ms. Hosali is granted compensation for material harm representing 50 per cent of the salary differential between the D-1 and D-2 grade levels over a period of two years.

103. This compensation award shall be payable with interest at the US Prime Rate accruing from the date on which Ms. Hosali was notified of her non-selection to the date of payment. If the amount is not paid within the 60-day period counting from the date of issuance of this Judgment, interest at the US Prime Rate plus an additional five per cent shall accrue until the date of payment.

Original and Authoritative Version: English

Dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Savage

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 23rd day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar