



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1252

Case No. 1344

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Dayendra Sena Wijewardane; Mr. Goh Joon Seng;

Whereas at the request of a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 15 January 2004;

Whereas, on 15 January 2004, the Applicant filed an Application, which was received by the Tribunal on 26 March, containing pleas which read as follows:

### “II. Pleas

The Applicant respectfully requests the Tribunal:

[to order the production of a number of documents]

...

e) To find and rule that the Applicant was the victim of discrimination, fraud, abuse of authority, negligence and bad faith on the part of [United Nations] officials that tainted the procedure *ab initio* and prevented a full and fair consideration of his application to the position in question.

f) To find and rule that [the] Director of the Conference Services Division at [the United Nations Office at Geneva (UNOG)] acted in a discriminatory fashion against the Applicant ...

g) To find and rule that the Management of Conference Services at UNOG, and [the Office of Human Resources Management (OHRM)] conspired to mislead the [Appointments and Promotions Board (APB)]...

h) To find and rule that the ... ‘special measures for the achievement of gender equality’ violate the [United Nations] Charter and the ... Staff Rules ...

...

k) To find and rule that the extraordinary and deliberate lengthy delays in convening the [Joint Appeals Board (JAB)] ... violated the Applicant’s right to a timely and fair hearing and were tantamount to a gross miscarriage of justice.

l) The find and rule that the [JAB] and its ... Secretary failed to protect the Applicant’s right to due process ...

m) To find and rule that the [JAB] and its ... Secretary made serious errors of fact and law ...

...

p) To order the holding of hearings and oral argument ...

And consequently:

q) To order Respondent to rescind his decision to appoint [the female candidate] to Post number UNB50732EP-5008 (Senior Interpreter, Spanish), to promptly and without delay re-advertise the said position and to conduct another selection competition which guarantees the full and fair consideration of Applicant’s qualifications and skills with due regard to the requirements of the position.

r) To order the Respondent to pay the Applicant 36 months’ net base salary or US\$ 300,000, whichever is higher, as compensation ...

s) To order the Respondent to pay to the Applicant an additional amount not inferior to 36 months’ net base salary or US\$ 300,000, whichever is higher as exemplary or punitive damages ...

t) To find and rule that the Respondent has failed in his obligation to sanction ... managers who ... have already been condemned by the Tribunal ...

u) To resort in this connection to staff rule 112.3 on Financial Responsibility ...”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent’s answer until 30 July 2004 and twice thereafter until 30 September;

Whereas the Respondent filed his Answer on 24 September 2004;

Whereas the Applicant filed Written Observations on 23 December 2004;

Whereas the Applicant submitted “additional material” on 13 June 2005;

Whereas, on 29 June 2005, the Tribunal decided not to hold oral proceedings in the case;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

*“[Applicant’s] Professional Record*

... The [Applicant] entered service at [UNOG] as [a] Trainee Interpreter at the P-1 level, on a short-term contract, effective 2 April 1979, which was superseded by a fixed-term appointment, effective 1 April 1979, as Assistant Officer, for a period of one year. ...

... [After a break in service, the Applicant] was re-appointed on 16 September 1984, under a probationary appointment, as [an] Interpreter with the United Nations Headquarters, New York, Department of Conferences Services, at the P-3 level. [At the time of the events that gave rise to this Application, he had a permanent appointment and held the P-4 position of Interpreter with the Interpretation Service, UNOG.]

...

**Summary of Facts**

... A vacancy announcement ... was issued on 21 December 2000 for the post of Senior Interpreter (Spanish) at UNOG (post number UNB 50732EP-5008) and circulated internally with a deadline ... of 18 January 2001.

... The [Applicant] submitted his application to the post on 10 January 2001.

... On 23 January 2001, following a preliminary screening made by OHRM, a list of three internal candidates who appear[ed] to meet most or all [of] the requirements of the post was sent to the Chief, Personnel Service, UNOG, for review and evaluation.

... The three candidates, including the [Applicant], were evaluated by the Chief of Interpretation Service, who prepared [a] comparative worksheet for each of them on 14 March 2001.

... On 8 May 2001, the Departmental Review Panel held a meeting to examine the candidatures for the post ... The Panel unanimously decided to uphold the recommendation of the Chief of Service and to promote another candidate ...

... By memorandum dated 23 May 2001 addressed to the Chairperson of the [APB], the Director, Conference Services Division, endorsed the Departmental Review Panel’s view and recommended [the successful candidate] for the post ...

... The [APB] met on 10 July 2001 and unanimously endorsed the recommendation for the promotion of [the successful candidate]. ...

... The above recommendation was endorsed by the Assistant Secretary-General for Human Resources Management on 16 July 2001 and approved by

the Under-Secretary-General for Management (on behalf of the Secretary-General) on 17 July 2001.

... By information circular dated 17 August 2001 ..., the [Applicant] was informed that another candidate had been chosen for the post.”

On 27 August 2001, the Applicant requested administrative review of the decision not to promote him to the P-5 post of Senior Interpreter.

On 21 December 2001, the Applicant lodged an appeal with the JAB in Geneva.

Pursuant to a request made by the Chairperson of the panel, on 14 April 2003 the Chairperson of the APB provided the JAB with various documents relating to the promotion exercise, “on the understanding that they [would not] be communicated to the Applicant, his counsel, or anyone else”.

The JAB adopted its report on 21 July 2003. Its considerations, conclusions and recommendations read, in part, as follows:

#### **“Considerations**

...

42. At the outset, the Panel noted its limited scope of review since it cannot substitute its judgement for that of the Appellant’s department and the [APB] in making an evaluation or a comparison of the merits of the applicants for the post. ...

43. However, the Panel decided to look at the respective qualifications of the candidates, to ascertain whether, as sustained by the Appellant, there was evidence of discrimination. ...

...

50. Finally, the Panel noted that the Appellant was also contesting the integrity of the selected candidate, claiming that she had been under investigation by the [Office of Internal Oversight Services (OIOS)]. In this connection, the Panel obtained clarification from the Director, Investigations Division, OIOS, who advised the Panel that there were no substantiated allegations against [her].

...

53. With respect to the Appellant’s claim that ‘specific measures for the achievement of gender equality’ were wrongfully applied, the Panel considered that the gender question was not an issue in the case since the manager had clearly indicated that the selected candidate was considered to have an edge over the other candidates, and therefore her selection was not the result of the application of the ‘specific measures’.

#### **Conclusions and Recommendations**

54. In view of the above, the Panel **concludes** that the Appellant failed to submit sufficient evidence to substantiate his claim that his non-selection for

the post of Senior Interpreter was unjust and discriminatory. The Panel further concludes that the Administration has acted in accordance with relevant Staff Regulations and Rules and that the Appellant's candidature was given due consideration.

55. The Panel therefore makes no **recommendation** in support of the present appeal."

On 20 August 2003, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB's reasoning and findings and had decided to accept the JAB's unanimous recommendation and to take no further action on his appeal.

On 15 January 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant was denied full and fair consideration for the post.
2. The promotion exercise was flawed by discrimination and fraud.
3. The Applicant was the victim of discrimination on three counts: as the "clearly superior candidate"; as a male staff member; and, as a staff representative and union leader.
4. The JAB made serious errors of fact and law, and violated the Applicant's rights of due process.

Whereas the Respondent's principal contentions are:

1. The Applicant had no right to promotion but only to consideration for promotion, and he was properly considered.
2. There is no evidence of prejudice or other extraneous considerations in the Administration's decision not to promote the Applicant.
3. The JAB proceedings were not flawed.
4. The Applicant's pleas for monetary compensation are unfounded.

The Tribunal, having deliberated from 29 June to 22 July 2005, now pronounces the following Judgement:

- I. In his Application, the Applicant seeks to establish that he was wrongfully denied promotion to the P-5 level, and advances his claim on his assertion that he enjoyed irrefutable superiority of qualification when compared with the other

candidates, and that his non-appointment to the post establishes that his candidacy was not given fair or reasonable consideration due to a combination of favouritism, fraudulent manipulation, misrepresentation, general institutional bias or personal ill-will towards him on account of his staff representational activities or for the other reasons of which he complains.

II. Central to the Applicant's case is his assertion that he was, on any objective measurement, the most talented and best qualified candidate of the three persons who were shortlisted for promotion to the P-5 post of Senior Interpreter, and his extrapolation therefrom that his non-appointment must therefore have been as a result of the bias or prejudice of those involved in the selection process and the venality or corruption of those who did not share his views of his own merits and saw fit to recommend the promotion of one of the other two candidates instead. Unfortunately from the point of view of the Applicant, he failed to persuade the JAB to share his viewpoint or to persuade the panel that his non-promotion was the result of *mala fides* or prejudice or the result of a sinister conspiracy to deny him his rightful place. He thereupon accused the JAB panel and the Secretary of the JAB of venality and incompetence too. The Tribunal will, undoubtedly, be next in the line of fire as the Tribunal has concluded that there was ample evidence before the APB to justify it having concluded that the successful candidate was the best qualified candidate and to have justified the Respondent's decision to have promoted her to the said P-5 post. The Tribunal further considers that there was ample evidence before the JAB as entitled it to likewise consider that the APB's recommendation was reasonable and to have rejected the Applicant's allegations of corruption, bias and prejudice for want of evidence to support them.

III. It was not for the JAB to say which of the three candidates it considered to have been most qualified or most suitable, nor is it for this Tribunal to express any view on this particular issue. The United Nations has in place a comprehensive system for evaluating and assessing those very matters. It entrusts those duties to a body with appropriate experience in that particular field. It vests that body with some discretion as to what matters should be considered and taken into account. The views of the members of the JAB panel and also the views of the Tribunal panel as to who was the most suitable or the best candidate are irrelevant. All that can be required of those bodies is to review the process and to determine if the procedures do appear to have been complied with and that there was evidence that the Applicant's candidacy was

given due consideration and that the result appears to have been based on reason and that it was free from extraneous considerations and free from bias or prejudice. (See Judgements No. 828, *Shamapande* (1997) and No. 834, *Kumar* (1997).)

The JAB, having reviewed various documents, concluded that the relevant promotion process had been fairly and reasonably conducted and rejected the Applicant's many and various complaints. The Tribunal has reviewed those self-same documents and has reached similar conclusions. It does not propose to make those documents available to the Applicant as it considers that to do so would violate the confidentiality and integrity of the promotion process and would violate the privacy of the other two competing candidates in a fashion that is neither necessary nor justified. The Applicant has been informed of some of the matters considered by the APB and is aware of their essential findings from the contents of the report which was furnished by the JAB herein. The provision by the APB of various documents for the eyes of the JAB and the Tribunal only, on the condition that they not be disclosed to the Applicant, accords with the long-standing practise of the Tribunal. In this regard, the Tribunal recalls Judgement No. 1056, *Katz* (2002) wherein it stated

“As for the Applicant's request to gain access to the APB records, the Tribunal is sympathetic to this legitimate interest in obtaining information on how his candidacy was reviewed ...; at the same time, the Tribunal shares the Respondent's concern, that these documents should be kept beyond the reach of the parties in order to preserve the confidential nature of the APB proceedings and to enable it to function properly and efficiently. Having said this, the Tribunal finds that the JAB had before it all the necessary documents and information, enabling it to reach an informed conclusion.”

IV. The Tribunal will now deal with just a few of the Applicant's most central and principal contentions:

(a) The Tribunal, like the JAB and like virtually all of the persons or bodies who contributed to the promotion process and the decision ultimately made herein is not persuaded that the Applicant was necessarily or objectively the clearly superior candidate, so it must reject the Applicant's contention that the Departmental Review Panel was not entitled to conclude that “all [candidates] were excellent and deserving interpreters who were close in their ratings and past performances” and to concur with the recommendation of the Chief of Interpretation Service who had recommended that the candidate who ultimately enjoyed promotion to the vacancy in question should have been so promoted.

It follows therefrom that the Tribunal is further satisfied that the endorsement by the Director, Conference Services Division, of the Departmental Review Panel's recommendation was not indicative of irrationality, bias, prejudice or some other infirmity. Here again, the Tribunal is satisfied that the APB was similarly entitled to arrive at the same conclusion and to endorse the recommendations which had already been made and that, once more, this decision does not establish irrationality, bias, prejudice or some other infirmity on the part of the said Board. The very fact that the same candidate was endorsed or recommended by (i) the Chief of Interpretation Service; (ii) the Departmental Review Panel; (iii) the Director, Conference Services Division; (iv) the APB; and, finally, by (v) the Respondent, who confirmed the promotion of the said candidate, does not, in the opinion of the Tribunal, tend towards establishing that those persons or bodies were engaged in some sinister conspiracy to injure the Applicant by wrongfully denying him a promotion to which he was entitled, or to establish that they were irrational, biased or prejudiced or that anyone wished to punish the Applicant for his involvement in staff association affairs. The fact that the successful candidate enjoyed virtually universal approval from all of the persons and bodies concerned is likely to establish no more than that she was the preferred candidate because she was considered to be the most suitable for the said post.

(b) Since the Tribunal rejects the Applicant's assertion that he enjoyed irrefutable superiority of qualification, it is not persuaded that his non-appointment to the P-5 post establishes that his candidacy was not given fair or reasonable consideration due to a combination of favouritism, fraudulent manipulation, misrepresentation, general institutional bias or personal ill-will towards him on account of his staff representational activities or for any other reason of which he complains. Put simply, the Tribunal finds that those concerned with the exercise were entitled to conclude that the ultimately successful candidate was the best candidate and that she had indeed got an edge over the other two candidates, one of whom was the Applicant. Many of the activities and experiences relied upon by the Applicant in his attempt to demonstrate his claimed superiority were matters of peripheral rather than central significance or importance, and none of the parties concerned in the exercise under review were in any way bound to have considered them as matters of much importance or value let alone to have considered them as matters which were potentially decisive. The Tribunal likewise rejects the Applicant's assertions that his skills, competence or qualifications were suppressed, denigrated, disparaged, downplayed or misrepresented



so as to cause anyone to conclude that his candidacy was not properly evaluated or given reasonable consideration.

(c) Finally, the Tribunal is not persuaded that the vacancy announcement was unfairly tailored to the advantage of the successful candidate or to the disadvantage of the Applicant.

V. Having read and considered the entirety of the record, the Tribunal is satisfied that the said promotion exercise was carried out in a fair and reasonable manner, and it is satisfied that the Applicant's candidacy was given fair and reasonable consideration. It rejects the Applicant's allegations of conspiracy, fraud and misrepresentation as well as the various complaints of bias, *mala fides* and prejudice leveled by the Applicant against so many of the persons who were engaged in the process under review in these proceedings. It recalls its Judgement No. 1069, *Madarshahi* (2002), wherein it stated

“[t]he Tribunal has consistently held that the *onus probandi*, or burden of proof, is on the Applicant where allegations of extraneous motivation are made. (See Judgements No. 639, *Leung-Ki* (1994); No. 784, *Knowles* (1996); and, No. 870, *Choudhury et al.* (1998).)”,

and need hardly state that, in the instant case, the Applicant has not discharged his burden.

VI. Finally, whilst the Applicant is within his rights to make unrestrained criticism of so many of the persons who participated in the events giving rise to these proceedings, the Tribunal should observe that virtually all of his assertions of this nature are quite unsupported by any evidence. It does the Applicant no credit to behave in this fashion. The Tribunal in particular deplores his assertion that one of the candidates competing for the said post engaged in criminal misbehaviour, and finds that the document originally alleged to support this conclusion does not deal with the matter at all. His assertion was quite unsupported by any evidence whatsoever and appears to have been recklessly and irresponsibly made. The Applicant has, since then, filed other documents which, again, contain mere allegations and he has offered nothing to justify the substance of the very serious conclusion he has reached. The Applicant may feel that his reputation as a fearless member of the staff association is enhanced by such behaviour. If indeed that was his motivation, the Tribunal considers it to be an unworthy motive and a serious abuse of the process of the Tribunal and the

internal justice system of the United Nations. (See Judgement No. 1200, *Fayache* (2004).)

VII. In view of the foregoing, all of the Applicant's claims are rejected and dismissed.

*(Signatures)*

**Kevin Haugh**  
Vice-President, presiding

**Dayendra Sena Wijewardane**  
Member

**Goh Joon Seng**  
Member

Geneva, 22 July 2005

**Maritza Struyvenberg**  
Executive Secretary