ADMINISTRATIVE TRIBUNAL

Judgement No. 1180

Case No. 1273: KAZEZE Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Brigitte Stern, Vice-President, presiding; Mr. Omer Yousif Bireedo; Mr. Dayendra Sena Wijewardane;

Whereas, on 23 September 2002, Zifa Kazeze, a staff member of the United Nations, filed an Application containing pleas which read as follows:

“II: PLEAS

…

8. On the merits, the Applicant respectfully requests the Tribunal to find that:

(a) the Joint Appeals Board (JAB) failed to take into account the massive data before it that demonstrated the Applicant’s analytical skills and experience in the areas of nexus issues of population, environment and food security and sustainable development;

…

(c) the recruitment practice at [the Economic Commission for Africa (ECA)] gives preference to external as opposed to internal candidates …; and

(d) the JAB in its review of the case did not consider most of the issues in the submission of the appeal presented to it. It has merely repeated in its presentation, the views and observation of the Respondent and ignored completely the Applicant’s observations and views made on the Respondent’s Reply.

9. Whereafter the Applicant most respectfully requests the Administrative Tribunal to order:
a. that the Applicant be compensated the sum equivalent to 2 (two) years net base salary at the P-5 level to partially offset the unfair treatment and injustices inflicted upon his person and career development; and

b. that he be recognized at the P-5 level as soon as a suitable vacancy occurs.”

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 31 March 2003 and thereafter until 30 April 2003;

Whereas the Respondent filed his Answer on 30 April 2003;

Whereas the Applicant filed Written Observations on 24 May and 9 June 2003;

Whereas the facts in the case are as follows:

The Applicant entered the service of ECA on 29 October 1978, on a one-year appointment as a Regional Demographic Advisor, Population Division, at the L-4 level. Following extension of his appointment, on 1 November 1981 he was appointed to the P-4 level post of Chief of Population Planning and Policy Section, Population Division. During his tenure, the P-4 post was reclassified to the P-5 level, but the Applicant was reassigned laterally within ECA on 1 March 1986, and another staff member promoted to the new P-5 position. At the time of the events that gave rise to this Application, the Applicant had a permanent contract and held the P-4 level post of Population Affairs Officer in the Subregional Development Centre for Southern Africa.

On 2 February 1999, the Applicant submitted his application for the P-5 level post of Senior Population Affairs Officer, Food Security and Sustainable Development Division (FSSDD), formerly the post of Chief of Population Planning and Policy Section, Population Division, encumbered by the Applicant between 1981 and 1986. On 13 May, the Applicant was advised that another candidate had been recommended for the post and invited to submit additional information in support of his application. Accordingly, the Applicant supplied the Appointment and Promotion Board (APB) with additional information about his education and professional experience. On 29 June, the APB informed the Applicant that he had not been selected for the post.

On 19 August 1999, the Applicant requested the Secretary-General to review the administrative decision not to select him for the P-5 post.

On 8 October 1999, upon its request, the Administrative Law Unit (ALU) was informed that the Chief, FSSDD, had ranked the Applicant third on the short-list of
four candidates, and that the Departmental Review Panel had determined that he did not have “the required experience at the analytical level even though his academic qualifications met the requirements of the post”. In addition, on 22 October the APB advised the ALU as follows:

“While finding that the recommended (external) candidate met all the requirements of the post, the [Departmental Review] Panel concluded that the two short-listed internal applicants, including [the Applicant], lacked ‘experience at the analytical level and [that] their experience [was] mainly at the statistical level’. The Panel also noted that the above internal applicants, including [the Applicant], have the relevant academic qualifications but do not have the experience to supplement the degrees obtained.”

On 7 December 1999, the Applicant lodged an appeal with the JAB in New York. The JAB adopted its report on 12 August 2002. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

…

17. The Panel noted that it appeared that ECA followed the criteria for evaluating candidates that was set forth in paragraph 13 of ST/Al/413[, “Placement and Promotion”, of 25 March 1996]. …

…

22. The Panel after reading the record considered that even though the Appellant was convinced that he was the most suitable candidate for the post in question, he was not able to demonstrate that it was erroneous for the ECA Departmental Review Panel and for the Appointment and Promotion Board not to recommend him for the post. The Panel found that the Appellant’s candidacy was given full and fair consideration throughout the course of the promotion exercise. There was, therefore, no violation of any of his rights as a staff member.

Conclusion and Recommendation

23. In light of the foregoing, the Panel concluded that the candidature of the Appellant to the post in question had been given full consideration. The Panel concluded that the Appellant has failed to prove that his non-selection for the post at issue violated any of his rights or that the promotion exercise was tainted by prejudice or other extraneous factors.

24. The Panel, therefore, unanimously decided to make no recommendation in support of this appeal.

…”
On 9 December 2002, 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 conclusions and had decided to accept the JAB’s unanimous recommendation and to take no further action on his appeal.

On 23 September 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The Applicant’s non-promotion amounted to injustice.
2. ECA gives preference to external candidates.
3. The JAB failed to recognize the deliberate and gross misrepresentation of facts by the Chief, FSSDD, in asserting that the Applicant lacked experience at the analytical level, and erred in failing to evaluate the Applicant’s analytical skills and experience.

Whereas the Respondent’s principal contentions are:

1. The Applicant had no right to promotion but only to consideration for promotion. The Applicant was properly considered for promotion, and his rights were not violated by the decision not to select and promote him to the P-5 post he sought.
2. There is no evidence of prejudice or other extraneous considerations in the Administration’s decision not to promote the Applicant.

The Tribunal, having deliberated from 24 June to 23 July 2004, now pronounces the following Judgement:

I. In 1999, the Applicant applied for the P-5 post of Senior Population Affairs Officer, FSSDD, ECA. His application was not successful. The Applicant now contends that he was treated unjustly and appeals the decision of the Respondent not to promote him to the P-5 level.

II. The Applicant alleges that the promotion process was flawed, and presents the Tribunal with extensive documentation as to his qualifications and experience. The
Tribunal is sensitive to the fact that the Applicant believes he was the best candidate for the post and that he should have been promoted thereto. It has taken note of the fact that, at the time he applied for the P-5 post, he had been at the P-4 level for eighteen years, and that for five of those years he encumbered the P-4 level post of Chief of Population Planning and Policy Section, Population Division, which post he was successful in having reclassified to the P-5 level in 1986 and which was the post, albeit with a different functional title, for which he applied in 1999, some thirteen years later. The Tribunal appreciates how disappointed the Applicant must have felt in 1986, when he was laterally reassigned away from the newly-upgraded P-5 post rather than being promoted, and again when he was unsuccessful in his bid for promotion in 1999.

However, it is not the role of the Tribunal to evaluate the qualifications of candidates. Nor may it substitute its judgement for that of the Secretary-General in the absence of evidence of bias, prejudice, improper motivation or other extraneous factors. (See Judgements No. 828, Shamapande (1997) and No. 834, Kumar (1997).)
Accordingly, in this case, the role of the Tribunal is to determine whether the decision not to appoint the Applicant to the above-referenced post was a proper exercise of the Respondent’s discretion.

III. The vacancy announcement for the post in question was issued on 19 January 1999, and the Applicant submitted his application shortly thereafter. According to a chronology of events prepared during the appeals process, the Chief, FSSDD, as Programme Manager, prepared a comparative evaluation worksheet in which he rated the Applicant as meeting some of the requirements of the position, and ranked him third of four short-listed candidates. The Departmental Review Panel then made its own assessment of the Applicant against the requirements of the post and the other candidates. It concurred with the short-list prepared by the Chief, FSSDD, in view of the fact that a programme shift of the Division entailed a focus on analytical work, which required experience the Applicant was deemed to lack. The APB then conducted its review of the applications and endorsed the recommendation of both the Chief, FSSDD, and the Departmental Review Panel. Before finalising its recommendation, it invited the Applicant to submit additional information in support of his candidature, which the Applicant did. Ultimately, the Secretary-General accepted the recommendation of the APB and appointed the successful candidate.
After a careful review of this procedure, the Tribunal is satisfied that the promotion exercise was conducted in accordance with the provisions of ST/AI/413, and that the discretion of the Secretary-General was not vitiated.

IV. The Applicant contends that the recruitment practice at ECA gave preference to external candidates and that the Chief, FSSDD, grossly misrepresented his experience. The Tribunal has reviewed each of these allegations, but finds that neither is adequately substantiated.

With respect to the first of these contentions, the Tribunal notes the personal arguments of the Applicant as well as his citation of the Report of the XXVth Session of the Staff-Management Coordination Committee. The latter document makes reference to a criticism raised by the representative of the ECA Staff Union Committee that external candidates were given preferential consideration, which criticism was strongly refuted by the management representative. The Tribunal takes such allegations seriously, as should the Respondent, but, in the absence of any further evidence, it is not persuaded that an institutional problem of this nature exists.

Insofar as the Applicant’s experience is concerned, the Tribunal is aware that the Departmental Review Panel and the APB were not solely reliant upon the evaluation of the Chief, FSSDD, but that each had the Applicant’s own application for the position, and that the APB also had the benefit of the additional information he was invited to submit. It is, therefore, satisfied that both bodies had the necessary information to make their own determination as to the qualifications, skills and experience of each candidate.

In view of the above, the Tribunal is satisfied that the promotion exercise was carried out correctly, and that the discretion of the Secretary-General was not vitiated by bias. It has consistently held that the onus probandi is on the Applicant where such allegations of bias or extraneous motivation are made. (See Judgements No. 639, Leung-Ki (1994); No. 784, Knowles (1996); No. 870, Choudhury et al (1998); and, No. 1069, Madarshahi (2002).) In the instant case, the Tribunal agrees with the JAB that the Applicant has not discharged his burden of proof.

V. Finally, the Applicant asserts that the JAB erred in its determination of the case by failing to adequately review his analytical skills and experience. The JAB, like the Tribunal, is an administrative review body. It is not charged with revisiting the
work of appointments and promotion bodies, and such action would be inappropriate and unlawful. Accordingly, this contention must also fail.

VI. For the foregoing reasons, the Application is rejected in its entirety.

(Signatures)

Brigitte Stern
Vice-President, presiding

Omer Yousif Bireedo
Member

Dayendra Sena Wijewardane
Member

Geneva, 23 July 2004

Maritza Struyvenberg
Executive Secretary