



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1296

Case No. 1378

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Mr. Kevin Haugh; Ms. Brigitte Stern;

Whereas, on 21 May 2003, a former staff member of the United Nations filed an Application requesting the Tribunal, *inter alia*, to find that the Secretary-General had failed to carry out a fair and correct selection process for the P-5 position of Chief, Copy Preparation and Proofreading Section, for which he had applied in 1998. On 24 November 2004, the Tribunal rendered Judgement No. 1209, finding that the Applicant had not been fully and fairly considered in the promotion process. Consequently, it ordered the Respondent to pay the Applicant compensation.

Whereas at the request of the Applicant, the President of the Tribunal granted an extension of the time limit for filing another application with the Tribunal until 30 April 2004 and twice thereafter until 30 November;

Whereas, on 30 November 2004, the Applicant filed an Application containing pleas which read as follows:

“II. PLEAS

...

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

(a) that the Secretary-General failed to carry out a fair and correct selection process for the position in question [(Chief, Copy Preparation and Proofreading Section, Interpretation, Meetings and Publishing Division (IMPD), Department for General Assembly and Conference Management (DGACM),)] since his representative provided inaccurate or incomplete information to the Appointment and Promotion Board (APB) with respect to the managerial qualifications of the staff member selected for the post;

(b) that the Secretary-General’s Representatives had repeatedly (...) excluded the Applicant from promotion to the post in question - with no evidence that he lacked requisite technical or managerial capacity (...).

...

8. Whereafter the Applicant respectfully requests the Tribunal to order:

(a) that he be given compensation equivalent to the difference between his emoluments at the P-4, [step] xiii and P-5 levels for a period of at least two years, and;

(b) that he be further awarded damages for the damage done to his professional reputation and career prospects.”

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 April 2005 and once thereafter until 31 May;

Whereas the Respondent filed his Answer on 31 May 2005;

Whereas the Applicant filed Written Observations on 27 December 2005;

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

“Employment history

... The [Applicant] was recruited on 16 July 1980 on a two-year fixed-term appointment as an Arabic Proofreader at the P-2 level with the Department of Conference Services (... now DGACM). He was granted a probationary appointment on 16 July 1982 and ... [e]ffective 1 April 1983, [he] was granted a permanent appointment and advanced to the P-3 level. Effective 1 October 1986, he was promoted to the P-4 level. The [Applicant] has retired from service.

Summary of the facts

.... On 13 October 1999, the vacant post at the P-5 level of Chief of Copy Preparation and Proofreading Section ... was issued, inviting applications from staff members and external candidates. The [Applicant] submitted his application.

... According to the [Applicant], on 19 January 2000, [the] Director, IMPD/DGACM, interviewed him. ...

.... ... [O]n 26 January 2000, [the Director, IMPD/DGACM,] signed off on ... comparative sheets for [four candidates, including the Applicant and a Ms. S.], considering them to 'meet [...] all the requirements of the post' ...

... On 28 January 2000, [the Director, IMPD/DGACM,] informed the four candidates ... that he had made a recommendation to the Departmental Panel. [The Applicant] was not the recommended candidate.

... On 2 February 2000, the DGACM Departmental Panel met. On 17 February ..., the [APB] Secretariat received the recommendation of the head of Department that [Ms. S.] be promoted to the P-5 post in question. The head of Department had ... recommended ... [the Applicant] as the second alternate. On 9 March ..., the APB convened to review the applications for the P-5 post and the recommendation of the Department. According to the notes prepared by the APB Secretariat,

'[t]he Board was of the view that [Ms. S.'s] managerial and supervisory skills were superior to those of the other candidates and agreed with the head of the Department that [she] was the best candidate for the post and that [the Applicant] was the third-ranked candidate (second alternate)'.

... On 14 March 2000, the Assistant Secretary-General for [Human Resources Management] endorsed the APB's recommendation. [Thereafter, the Under-Secretary-General for Management approved the recommendation to promote Ms. [S.] to the P-5 post."

On 20 March 2000, the Applicant requested the Secretary-General to review the administrative decision to promote another candidate to the post in question.

On 21 March 2000, the Applicant submitted an appeal to the JAB in New York requesting suspension of action. On 29 March, a summary hearing was held on this request and, on 5 April, the JAB produced its report. The JAB noted that the decision of the Secretary-General had been implemented on 29 March, when Ms. S. was informed in writing that she had been selected for promotion and, accordingly, made no recommendation in favour of the request. On 6 April, the Secretary-General approved the JAB's recommendation.

On 15 May 2000, the Applicant lodged an appeal on the merits of his case with the JAB. The JAB adopted its report on 6 October 2003. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

21. The Panel ... noted that the APB had before it all the necessary documentation to enable it to assess the Appellant's qualifications and experience. ...

22. The Panel considered the Appellant's contention that in evaluating his background the Administration had disregarded the fact that he had served as Officer-in-Charge on several occasions. This assertion was inaccurate since the Director, IMPD/DGACM, himself noted that the frequency and duration of the Appellant's assignment[s] as Officer-in-Charge were taken into account and this was documented in the comparative worksheet that he prepared when he evaluated the candidates.

...

24. The Panel also noted that gender was not a factor in deciding the ranking order of the candidates. ...

25. The Panel found no evidence ... that the Appellant was treated in a discriminatory manner.

26. The Panel found that the Appellant had been properly considered by the appointment and promotion bodies. The Panel also found that the selection process for the post in question had been properly handled. The Panel was not able to find any irregularity in the consideration of the Appellant by the appointment and promotion bodies.

Conclusion and recommendation

27. The Panel concluded that the candidature of the Appellant for the post in question had been given full and fair consideration.

28. The Panel also concluded that the decision not to select the Appellant for the post in question had not violated his rights including the right to due process. The appointment and promotion bodies had before them all necessary documentation to assess the Applicant's merits in respect of the vacancy, the selection process had been correctly handled and the Appellant had been properly considered.

29. Accordingly, the Panel unanimously decides to make no recommendation in support of this appeal."

On 14 October 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 its unanimous recommendation and to take no further action on his appeal.

On 30 November 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Secretary-General's discretion with regard to assignments and promotion of staff members must be exercised in conformity with the basic dictates of fair, objective and proper procedures and should not be motivated by extraneous considerations.
2. The Applicant is entitled to compensation for the anguish he suffered and the damage done to his personal reputation and professional standing.

Whereas the Respondent's principal contentions are:

1. Staff members have no right to promotion but only to consideration for promotion, regardless of good performance evaluation and length of service.
2. The Applicant's qualifications were evaluated and he was given due consideration for the post in question.
3. The contested decision was not tainted by prejudice, improper motive or other extraneous factors.

The Tribunal, having deliberated from 4 to 28 July 2006, now pronounces the following Judgement:

I. The Applicant entered the service of the Organization in July 1980 as an Arabic Proofreader, Department of Conference Services, at the P-2 level. At the time of the events which gave rise to his Application, he held the P-4 level position of Chief of the Arabic Group, Copy Preparation and Proofreading Section.

On 21 May 2003, the Applicant filed an Application requesting the Tribunal, inter alia, to find that the Secretary-General failed to carry out a fair and correct selection process for the P-5 position of Chief, Copy Preparation and Proofreading Section, for which he had applied in 1998. In its Judgement No. 1209 (2004), the Tribunal found that the Applicant was not fully and fairly considered in the promotion process and ordered that he be paid compensation as recommended by the JAB.

On 13 October 1999, the P-5 level post of Chief, Copy Preparation and Proofreading Section, was again advertised. The Applicant applied for the post and, on 19 January 2000, was interviewed. On 26 January, comparative sheets were completed for four candidates, including the Applicant, who were deemed to meet all the requirements of the post. The Departmental Panel met on 2 February and, on 17 February, the APB received the recommendation of the head of Department that Ms. S. be promoted to the post. The Applicant was named second

alternate. On 9 March, the APB convened and agreed with this ranking. Their recommendation that Ms. S. be promoted was endorsed by the Assistant Secretary-General, OHRM, on 14 March and approved on behalf of the Secretary-General on 22 March.

The Applicant lodged an appeal with the JAB in New York on 15 May 2000. In its report dated 6 October 2003, the JAB made no recommendation in favour of the appeal, concluding that the Applicant had been given full and fair consideration for the post and that his rights had not been violated by the selection process. On 14 October, the Applicant was advised that the Secretary-General agreed with the JAB.

The Applicant filed his Application with the Tribunal on 30 November 2004.

II. In reviewing decisions taken by the Administration, the Tribunal cannot substitute its judgement for that of the decision-making body, although it has the right and the duty to scrutinize the decision in order to determine whether it was tainted by extraneous factors such as prejudice, discrimination, lack of due process, breach of procedure, etcetera. In Judgement No. 1088, *Khader* (2002), the Tribunal delineated this responsibility as follows:

“the primary purpose and objective of an Administrative Tribunal in reviewing the propriety and efficacy of a challenged administrative decision, is to determine if it was supported by adequate credible evidence and establish that it was made *intra vires* and in accordance with such Rules or Regulations as might apply and that the due process rights of the challenger (the person who has been affected by that decision) and his rights to fair procedures were vindicated in relation to the entire process”.

Similarly, in Judgement No. 1110, *Sha'ban* (2003), the Tribunal

“stress[ed] that discretionary decisions ... are not made by the application of sterile formulae nor are they a mechanical or mathematical process. The discretion to be exercised is the discretion of the Respondent or those to whom he delegates same, and not that of a JAB, the Tribunal or other such body as may be asked to review the decision made. On such a review, the review body would review the contested decision and ask: was it reached on reasonable and rational grounds; was it within the scope of the authority of the person or the body which made it; and, was it fair and free from prejudice.”

Insofar as promotion exercises are concerned, the Tribunal recalls that it is well-established in its jurisprudence, as well as in United Nations' administrative law, that no staff member has a right to promotion, but that every staff member has the right to full and fair consideration for promotion. Thus, the role of the Tribunal is not to determine whom it would have appointed to the position but “merely to ascertain whether the Secretary-General's duty to give each candidate full and fair consideration has been reasonably fulfilled”. (Judgement No.

828, *Shamapande* (1997).) Promotion exercises must be conducted objectively and in accordance with the established rules, regulations and procedures of the Organization, and the Tribunal will evaluate an impugned exercise accordingly.

III. In the present case, the Tribunal concurs with the findings and the decision of the JAB, as well as with the decision of the Secretary-General based thereon. It finds that the Applicant's candidature was properly considered by the APB, which had before it all necessary documentation, and that the relevant procedures were complied with.

From his Application, it is apparent that the Applicant felt humiliated and slighted at not being selected for promotion. This is perhaps especially so in light of the Tribunal's Judgement No. 1209. The Tribunal wishes to take this opportunity to point out that while proving successful in a case on procedural grounds might lead to compensation for the denial of procedural rights (as in Judgement No. 1209), it can not, and should not, be presumed to provide a guarantee of future success.

In Judgement No. 834, *Kumar* (1997), the Tribunal stated as follows:

“the Tribunal is sympathetic to the fact that the Applicant sincerely believes himself deserving of this post. ... Nonetheless, the Tribunal may not substitute its judgement for that of the Secretary-General, in the absence of evidence showing bias, prejudice, improper motivation or extraneous factors, which the Tribunal has not found in this case.”

The Tribunal finds its statement equally applicable to the instant case.

IV. Finally, the Tribunal wishes to address the Applicant's contentions of *mala fides* and illegal, unprofessional or unethical practices in the course of the impugned exercise. The Tribunal notes that the JAB dismissed a number of such allegations, finding that there was no evidentiary basis to support same. Whilst every Applicant is entitled to present their best possible case, the Tribunal takes a very dim view of parties making false representations in pursuit of their claims. It recalls in this regard the penultimate paragraph of Judgement No. 1252 (2005), in which it found “[i]t does the Applicant no credit to behave in this fashion”.

IV. In view of the foregoing, the Application is rejected in its entirety.

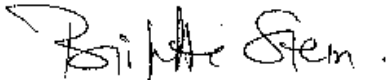
(Signatures)



Spyridon Flogaitis
President

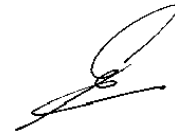


Kevin Haugh
Member



Brigitte Stern
Member

Geneva, 28 July 2006



Maritza Struyvenberg
Executive Secretary