



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1406

Case No. 1476

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Mr. Goh Joon Seng; Mr. Agustín Gordillo;

Whereas, on 22 March 2006, a staff member of the United Nations Children's Fund (hereinafter referred to as UNICEF), filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 26 April 2006, after making the necessary corrections, the Applicant filed an Application, requesting the Tribunal, inter alia:

- “2. ... [T]o find on the facts and merits:
- (i) That there are ... two mis-statements in the report of the [Joint Appeals Board (JAB)] ...
  - (ii) That the Respondent did not demonstrate his discreet judgment [and] miserably failed to demonstrate impartiality, fairness, honesty and truthfulness in arriving at the decision on the suitability or otherwise of the Applicant while assessing in *strict sensu* the education and experience essentials as given in the [Vacancy Bulletin (VB)] ...

...

[And] ...

- (i) To rescind the decision of the Respondent to appoint an outsider whose essential educational requirements are less appropriate and not matching with those given in the two VBs;
- (ii) To consider the Applicant for appointment as [Assistant Human Resources (HR)] Officer with waiver of qualification as was done by the Respondent in favour of an external candidate and ultimate appointee; and,
- (iii) To grant such other relief as may be appropriate (financial or otherwise) for the injuries sustained.”

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 11 October 2006, and once thereafter until 10 November;

Whereas the Respondent filed his Answer on 7 November 2006;

Whereas the Applicant filed Written Observations on 20 December 2006 and the Respondent commented thereon on 22 February 2007;

Whereas on 14 March 2007, the Applicant filed an additional communication;

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] joined UNICEF on 7 February 1983 as a Secretary at the GS-5 level in the Education Section, Islamabad Office, Pakistan. In September 1999, his title was changed to Senior Secretary with his functions remaining the same. ...

***Summary of Facts***

... On 12 September 2003, the post of Assistant [HR] Officer at the NO-B level in Islamabad was advertised internally ... with a closing date of 26 September ... Seven internal candidates, including [the Applicant], applied. The post was advertised externally[, according to the Respondent,] on 1 October ..., with a closing date of 8 October ... Ten external applicants applied, one of [whom] ultimately was the successful candidate.

... According to [the] Respondent, on 5 April 2004, [the Applicant] was informed that he was not [the] successful candidate.

... By ... email dated 30 April 2004 ..., [the Applicant] was informed, regarding [his] request for a record of ‘relevant parts of the [Selection Advisory Panel (SAP)] and [Appointment and Promotion Committee (APC)] proceedings’, that, as he was not short-listed for the post, ... [it would not be possible to provide him with] the minutes of those meetings.

... By a letter dated 18 May 2004, [the Applicant] wrote to the Representative, UNICEF ..., Islamabad, and requested a review of the recruitment process for the post ‘in order to protect rights of the staff member(s) already in service.’

... [On 31 May 2004, the Applicant was advised, inter alia, that only ‘one internal candidate met the minimum requirements of the post’ and that, as he did not have ‘practical professional

work experience in the field of human resources administration’, he did not ‘meet the minimum requirements of the Assistant HR Officer post’.]

... By a letter dated 20 June 2004, [the Applicant] submitted a request for a review of the administrative decision to the Secretary-General.

...”

On 20 November 2004, the Applicant lodged an appeal with the JAB in New York. The JAB adopted its report on 1 December 2005. Its considerations, conclusions and recommendation read, in part, as follows:

*“Considerations*

...

22. In the instant case, the Panel finds no evidence that [the] Respondent’s assessment of the Appellant’s academic and professional background fell short of establishing an objective basis on which to deny him a place on the short-list. For example, ... the Panel considers it reasonable for an HR Officer to determine that the Appellant’s experience was not equivalent to the three years of practical professional work experience in the HR administrative field called for in the [VB], particularly given the ‘hands-on’ nature of that field. Likewise, because the Appellant did not possess the requisite degree in business administration with specialization in HR management, the Panel considers that [the] Respondent could have reasonably disagreed that the Appellant’s bachelor degrees (law, economics and English) and Master’s degree in English literature constituted the equivalent relevant degree. Given that, as mentioned above, it fell to Respondent’s discretion as to how ultimately assess and decide these issues, the Panel finds that the decision not to short-list the Appellant constituted a valid exercise of [the] Respondent’s authority.

23. The Appellant also challenges [the] Respondent’s observance of its procedure in the UNICEF HR Manual. He contends that short-listing phase fell within the competency of the SAP, not the HR Officer. However, the Panel notes that section 4.4.14 (e) of the UNICEF HR Manual places the responsibility of screening applications and generating a short list on the local HR Officer. SAP action is required only after the short-list has been generated and forwarded to the supervisor, and after the supervisor formulates a detailed recommendation endorsed by the Head of Section. The Panel therefore finds that the decision not to short-list the Appellant fell within the authority of the HR Officer.

24. Likewise, the Appellant challenges the failure of UNICEF to ... submit a rationale, as required under section 4.4.7, justifying the necessity of re-advertising the post for external candidates on 1 October 2003, as evidence that due consideration was hindered by a pre-determination for an external candidate. With regard to the latter, the Panel considers it unnecessary to delve into the failure to submit such a rationale, if there was one. Section 4.4.7 requires written justification of the rationale to prefer an external candidate over the internal candidates. Had the Appellant produced stronger evidence that [the] Respondent failed in the obligation to give full and fair consideration, the absence of such a justification in the recommendation may have gone a longer way towards proving his case. ... For this same reason, the Panel considers that the Appellant’s claim regarding staff rule 104.14 also falls short. While that rule emphasizes priority consideration for internal candidates, it nevertheless emphasizes the utmost importance of qualifications of all applicants in deciding on the appropriate candidate. Here, the issue is not whether the Administration abused its discretion in choosing an external candidate, but whether it acted within its discretion in not short-listing the Appellant. Having found in the negative on the latter issue, the Panel finds no need to examine the former one; irrespective of whether the chosen external candidate had the requisite qualifications ...

...

26. With regard to the Appellant's claim of improper motive, ... the Panel finds that the Appellant failed to adduce any evidence beyond the fact of his staff union activity itself to show that this activity adversely prejudiced his candidature.

27. In light of the foregoing, the Panel finds that [the] Respondent produced a reasoned basis for the decision not to short-list him, that that decision was taken by the competent authority under the UNICEF HR Manual, and that there was no evidence of bias or prejudice in taking that decision. Therefore, it concludes that the Appellant was given full and fair consideration for the post. ...

***Conclusions and recommendation***

28. In light of the foregoing, the Panel *unanimously finds* that [the] Respondent put forth a reasoned basis on which not to place the Appellant on the short-list, and thus *unanimously concluded* that the Appellant's due process rights were not violated in the 2003 selection exercise. It therefore *unanimously decided* to make no recommendation in the present case. ..."

On 4 January 2006, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General accepted the JAB's findings and conclusions and, in accordance with its unanimous recommendation, had decided to take no further action on his case.

On 26 April 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Respondent did not apply uniform/standard criteria in his assessment of the candidates and applied different criteria to the "external candidate" who was later appointed against the post.
2. The Respondent has transgressed his discretionary authority, thereby infringing the statutory rights of the Applicant.
3. The JAB, while expressing concern over the lack of mobility to expand the Applicant's knowledge and capacities over 22 years of service, failed to make an explicit recommendation to remedy the situation and provide relief to the Applicant.

Whereas the Respondent's principal contention is:

The decision not to short-list the Applicant for the post of Assistant HR Officer was a valid exercise of the Secretary-General's discretion concerning staff appointments, and the Applicant was given full and fair consideration.

The Tribunal, having deliberated from 2 to 25 July 2008, now pronounces the following Judgement:

I. The Applicant comes before the Tribunal with a challenge to the decision to promote an external candidate, and not him, to the post of Assistant HR Officer at his duty station in Islamabad, Pakistan. In essence, the Applicant challenges the promotion exercise, including the fact that he was improperly kept off the short-list, which culminated in the appointment of an external candidate for the position, asserting that the entire promotion process was flawed in numerous respects, and that, as a result, he was not given full and fair consideration for the post. Specifically, the Applicant claims that the post was never actually advertised externally as the Respondent asserts, but that all the external candidates were hand-picked, including the ultimate appointee against the post. In addition, the Applicant asserts that the successful candidate did not meet the minimum educational qualifications set out in the VB but that the Respondent waived those requirements for the successful candidate in order to appoint her. Finally, the Applicant alleges various violations of the Staff Regulations and Rules by the Respondent, including that the Respondent failed to provide his written justification for choosing an external, rather than an internal, candidate, as required by section 4.4.7 of the UNICEF HR Manual.

The Respondent denies each of the Applicant's allegations, asserting that the promotion process was done, in both spirit and letter, in accordance with proper procedure and that the Applicant received full and fair consideration for the post, but that the external candidate was the more qualified candidate. The Tribunal will address the allegations in turn.

II. At the start, the Tribunal notes a long-standing principle of its jurisprudence, that the Secretary-General has wide discretion to make personnel decisions. As stated in Judgement No. 834, *Kumar* para. IV (1997): "[T]he Tribunal may not substitute its judgment for that of the Secretary-General, in the absence of evidence showing bias, prejudice, improper motivation or extraneous factors". Thus, the Tribunal's role is to ensure that this discretion was exercised properly.

III. In the instant case, the Tribunal first turns to consideration of the Applicant's threshold allegation - that "the essential requirements of education and experience given in the VB were evaded in order to favour an external candidate". The Applicant asserted his belief that

"a uniform standard on educational and experience requirements was not universally adopted in assessment of candidature of each of the applicant[s] while drawing a short-list and that a soft different standard granting waiver in educational requirement of Degree in Business Administration or equivalent and experience was applied in the case of only one external candidate who later was appointed against the post".

In his opinion, this action by the Respondent "was not based on equity and justice, constituted infringement of the rights of the internal candidates and cannot be considered as a valid exercise of [the] Respondent's authority". Hence, the question that arises here is whether the successful candidate met the minimum requirements of the VB. The Applicant possesses, inter alia, a degree in Economics, not a degree in Business Administration. The successful candidate possesses a degree in Economics and Statistics but not

a degree in Business Administration. The VB required a “[u]niversity degree in Business Administration or equivalent relevant degree, with specialization in Human Resources Management”.

IV. In substance, the Applicant asserts that, while neither he nor the successful candidate possessed a degree in “Business Administration or equivalent relevant degree”, the Respondent waived that requirement for the successful candidate, but not for him, and that is why he was not shortlisted. In this, however, the Tribunal finds the Applicant’s contention erroneous. Although the JAB focused on the Applicant’s lack of degree in Business Administration, the lack of the degree was not the reason he was not shortlisted. It is clear to the Tribunal that the Applicant’s candidature was not rejected on the basis of his educational experience, but, instead, because he lacked the requisite work experience of three years in the field of human resources. The successful candidate, on the other hand, possessed eight years of such experience.

The Applicant had received an email from the HR Office dated 30 April 2004. In that email, the Respondent expressly and unequivocally informed the Applicant of his failure to meet the work experience requirements of the post, making no mention of any educational shortcomings. Thus, it is clear that the Applicant’s educational experience was not at issue and that he failed to qualify for the position because of his limited work experience. The Tribunal finds that it was reasonable and within the bounds of the Secretary-General’s discretion not to shortlist the Applicant. In this regard, the Tribunal further notes that the Applicant himself does not claim to have satisfied the work experience requirement; instead, he only takes issue with the educational requirement. As discussed above, that was, in fact, a non-issue and irrelevant to his not being shortlisted for the post.

V. The Tribunal next turns to the Applicant’s allegations that the promotion exercise was flawed procedurally, such that it prevented him from receiving full and fair consideration for the post. First, the Applicant challenges the choice of an external candidate, alleging that, pursuant to staff regulation 4.4 and section 4.4.5 of the UNICEF HR Manual, the Secretary-General was required to give preference to internal candidates in the promotion exercise. As the Applicant himself admits, however, “preference shall be given to internal candidates *as long as the internal candidates meet the required qualifications*”. (Emphasis added by the Tribunal.). Second, the Applicant alleges that the Respondent failed to submit a written justification for selecting an external candidate, as required by section 4.4.7 of the UNICEF HR Manual, thus further denying him full and fair consideration. In regard to both allegations, the Tribunal recalls article 2 of its Statute, which states that the Tribunal is “competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members or of the terms of appointment of such staff members”. Thus, a staff member may bring claims against the Organization only with respect to his or her own contract, not to redress a theoretical wrong or a wrong that is someone else’s to challenge. In the instant case, the Applicant did not meet the minimum work experience requirements, and once that was determined, he was not entitled to be given any further consideration, preferential or not.

As that is the case, any claims he brings for any alleged violations of procedure are brought only in the abstract; they do not apply to him, as he lacks legal standing to seek redress on these matters.

VI. Moreover, the Tribunal here notes its surprise as to the JAB's view on this issue when it states that, "Had the Appellant produced stronger evidence that [the] Respondent failed in the obligation to give full and fair consideration, the absence of such a justification in the recommendation may have gone a longer way towards proving his case". The duty of the Respondent to follow his own procedures is unquestionable regardless of whether the Applicant produces evidence, strong or otherwise. However, where, as here, the Applicant has no standing to challenge the Administration's conduct on his behalf, the Tribunal need not consider whether the Respondent did follow his own procedures in this regard.

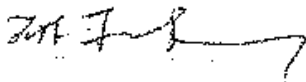
VII. In regard to the Applicant's allegations that the Respondent failed to establish a special Appointment and Promotion Committee (APC), in accordance with an alleged staff-management agreement to do so, again, the Tribunal finds the Applicant misled. As the Applicant himself concedes, the staff-management agreement was never signed, and, therefore, can have no legal effect. Even if it had been signed, the agreement addressed the establishment of a special APC in the case of abolition of post. As the Applicant's post was not abolished, the putative agreement is irrelevant.

VIII. In view of the foregoing, the Tribunal rejects the Application in its entirety.

*(Signatures)*



Jacqueline R. **Scott**  
Vice-President



**Goh Joon Seng**  
Member



Agustín **Gordillo**  
Member

Geneva, 25 July 2008



Maritza **Struyvenberg**  
Executive Secretary