



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1423

Rajiv Kumar Chawla
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Nassib G. Ziadé Judge Kanwaldeep Sandhu
Case No.:	2023-1782
Date of Decision:	22 March 2024
Date of Publication:	30 April 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Patricia C. Aragonés

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Mr. Rajiv Kumar Chawla (Mr. Chawla), a former staff member of the United Nations Support Office in Somalia (UNSOS), contested the decision of the Administration to neither select nor roster him for the position of UNSOS Chief of Service, Supply Chain Management, at the D-1 level (contested decision).
2. By Judgment No. UNDT/2022/130 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that Mr. Chawla's candidature was given full and fair consideration and dismissed his application.
3. Mr. Chawla lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. At the relevant time of events, Mr. Chawla was a Chief of Section, Supply Services, at the P-5 level with UNSOS, since January 2018.
6. On 29 March 2021, UNSOS advertised the position of Chief of Service, Supply Chain Management (the position) at the D-1 level in Job Opening No. 152801 (JO).
7. On 31 March 2021, Mr. Chawla applied for the position. He was subsequently invited for a technical video-interview assessment. However, the interview panel concluded that his performance was not successful and consequently, he was not invited to the competency-based interview (CBI).
8. On 26 August 2021, Mr. Chawla requested management evaluation of the decision of the Administration not to invite him to the CBI. He alleged that he had previously challenged another UNSOS decision taken by his First Reporting Officer (FRO), Mr. C.T., who happened to be one of the evaluators of the technical video-interview assessment, and therefore he suspected bias as a

¹ *Chawla v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/130.

result. He requested “[s]uspension of the recruitment process in [the] position [and] (...) [a] fresh technical assessment through anonymous written test”.²

9. On 27 August 2021, Mr. Chawla filed an application for suspension of action (SOA) before the Dispute Tribunal, requesting to suspend the implementation of the decision not to invite him to the CBI pending management evaluation.

10. On 3 September 2021, the Dispute Tribunal issued Order No. 179 (NBI/2021) granting Mr. Chawla’s application for SOA and suspending the decision not to invite him to the CBI pending management evaluation. In its Order, the UNDT found, *inter alia*, that “a *possibility* of bias result[ed] from the fact [that Mr. Chawla] had challenged an administrative decision of UNSOS management, specifically, authored by one of the panel members”.³ Therefore, the UNDT concluded that Mr. Chawla had demonstrated the *prima facie* unlawfulness required for an application for SOA to be granted.

11. Subsequently, UNSOS informed the Management Evaluation Unit (MEU) that, following Order No. 179 (NBI/2021), it decided to cancel the technical video-interview assessment. As a result, UNSOS invited 28 screened candidates, including Mr. Chawla, to a CBI. Mr. Chawla was informed that Mr. C.T. would recuse himself from the interview panel for his CBI to prevent the appearance of bias.

12. On 8 September 2021, the MEU informed Mr. Chawla by letter that his request for management evaluation had been rendered moot.⁴

13. On 23 September 2021, Mr. Chawla was interviewed by only three panel members. The interview panel rated Mr. Chawla’s responses for two of the five assessed competencies as partially satisfactory and, therefore, did not recommend him for the position. A total of 16 candidates passed the CBI and three of them were recommended for selection.

14. On 15 October 2021, following review and endorsement by the Field Central Review Body (FCRB), the Head of UNSOS selected a female candidate (selected candidate) and the remaining

² Management evaluation request dated 26 August 2021.

³ *Chawla v. Secretary-General of the United Nations*, Order No. 179 (NBI/2021), para. 31 (emphasis added).

⁴ Management evaluation response dated 8 September 2021.

15 candidates were placed on a roster of pre-approved candidates for similar functions at the same level of the JO.⁵

15. On 18 October 2021, Mr. Chawla was notified by e-mail that he had not been selected for the position.⁶

16. On 20 October 2021, Mr. Chawla requested management evaluation of the contested decision.⁷

17. On the same date, Mr. Chawla also filed an application for SOA before the Dispute Tribunal, requesting to suspend the contested decision pending management evaluation.

18. On 28 October 2021, the Dispute Tribunal issued Order No. 241 (NBI/2021), granting Mr. Chawla's application for SOA. In its Order, the UNDT found, *inter alia*, that it was "not convinced that the absence of one panel member would have been adequately compensated by the other members". Therefore, the UNDT concluded that Mr. Chawla had demonstrated the *prima facie* unlawfulness required for an application for SOA to be granted.⁸

19. On 6 December 2021, the MEU informed Mr. Chawla by letter that he "did not establish that the selection exercise for the [position] was procedurally flawed, arbitrary or driven by inappropriate or biased motives", and consequently upheld the contested decision.⁹

20. The selected candidate assumed duties as of January 2022.

21. On 16 January 2022, Mr. Chawla filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

22. The UNDT held a hearing on 15 and 16 November 2022, during which it heard oral evidence of six witnesses, namely the three interview panel members – the Director of Mission Support and the Hiring Manager for this position (the Hiring Manager), the Chief, Operations and

⁵ Interoffice memorandum dated 15 October 2021. See also Final transmittal memo dated 6 October 2021 from UNSOS to the FCRB.

⁶ E-mail dated 18 October 2021 from UNSOS to Mr. Chawla.

⁷ Management evaluation request dated 20 October 2021.

⁸ *Chawla v. Secretary-General of the United Nations*, Order No. 241 (NBI/2021), para. 25.

⁹ Management evaluation response dated 6 December 2021.

Resource Management (ORM), the Principal Human Resources (HR) Officer, United Nations Assistance Mission in Somalia (UNSOM) – Mr. C.T., the *ex-officio* HR Officer and Mr. Chawla.¹⁰

23. On 8 December 2022, the Dispute Tribunal issued the impugned Judgment. It first examined the constitution of the interview panel. Regarding the Secretary-General’s reliance on Section 9 of the Staff Selection System Manual (Manual), which states that “[t]here may (...) be instances where for reasons of availability of panel members, or conflict of interest, panel membership must be adjusted”, the UNDT noted that pursuant to Section 2.6 of Administrative Instruction ST/AI/2010/3 (Staff selection system), “[s]hould there be any inconsistency between the manuals and the text of the present instruction, the provisions of the instruction shall prevail”.¹¹ In the present case, the UNDT determined that the panels for all CBIs conducted for the position complied with Section 1(c) of ST/AI/2010/3. The UNDT differentiated this case from *Sobier*,¹² highlighting Mr. Chawla’s challenge to Mr. C.T.’s impartiality, leading to his recusal from the interview panel. It also found no evidence that Mr. C.T. influenced the CBIs to favor the selected candidate. Additionally, it noted that all the candidates, including Mr. Chawla, were asked the same questions during the CBIs.

24. The UNDT concluded that Mr. Chawla failed to present evidence to support his claim that the selected and rostered candidates “were unjustifiably determined to have passed the CBI and that the said decision was based on the presence of the FRO on the panel of [the selected candidate’s] interview”.¹³ On the contrary, the UNDT highlighted that the Secretary-General’s presentation of comprehensive documentary evidence of all the candidates’ responses and the testimonies from the panel members regarding their performance in the CBIs demonstrated that all candidates, except Mr. Chawla, met or exceeded the five competencies being assessed.¹⁴

25. With regard to the selected candidate, the UNDT concluded that even if the interview panel “had remained constant and identical, with the inclusion of the FRO, the record before the [Dispute] Tribunal demonstrate[d] that the selected candidate was superior in her candidature”.¹⁵

¹⁰ The Secretary-General also filed witness statements for the four interview panel members and the *ex officio* HR Officer.

¹¹ In this regard, the UNDT also referred to the Final transmittal memo to the FCRB dated 6 October 2021 in which UNSOS stated that “Mr. [C.T.] recused himself from the interview process of [Mr. Chawla], as his [FRO] to avoid the appearance of bias”.

¹² *Hatim Mahmoud Sobier v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1208.

¹³ Impugned Judgment, para. 47.

¹⁴ *Ibid.*, paras. 47-48.

¹⁵ *Ibid.*, para. 53.

The UNDT further found that it had been demonstrated by clear and convincing evidence that the selected candidate's qualifications were at least substantially equal, if not superior, to Mr. Chawla's, and that she possessed more experience at the management level. The UNDT also noted that she passed the technical video-interview assessment and that there was no evidence that she would have failed a written test on the same subject. The UNDT emphasized that the administration of a written test or a technical video-interview assessment was discretionary and not mandatory. It further observed UNSOS's targets with respect to gender balance and noted the absence of women at the D-1 level when the selected candidate was chosen.¹⁶

26. The UNDT then examined Mr. Chawla's allegations of bias. Dismissing his argument that the interview panel had a pre-determined mindset to choose the selected candidate, the UNDT reiterated that Mr. C.T. was not instrumental in her selection. Additionally, the UNDT found that Mr. Chawla had failed to demonstrate that the selected candidate lacked qualification "either academically or by way of relevant managerial and supply chain experience" or that her high ratings at the CBI were "faulty in terms of the assessment of any of the managerial competencies being examined".¹⁷

27. The UNDT found that Mr. Chawla's submission that one of the members of the interview panel, the Chief, ORM, showed resentment against him by not responding to his e-mails around the time of his first application for SOA, was insufficient to prove bias. The UNDT also highlighted that during his testimony, the Chief, ORM, explained that he may have acknowledged the e-mails verbally.¹⁸

28. With regard to Mr. Chawla's allegations of bias stemming from his submission of a management evaluation request after his request to continue working remotely was denied by Mr. C.T., his FRO, in April 2021, the UNDT rejected his submission as unfounded. The UNDT concluded that although the position was advertised around the same time, Mr. Chawla applied and was shortlisted in August 2021.¹⁹

29. In respect of the allegations of bias against the CBI panel members, the UNDT further held that "[t]he sole instance (...) that provide[d] a possible indication of bias [was] in the evidence of the Chief ORM. It was clear from one of his answers under cross-examination, that he assessed

¹⁶ *Ibid.*, paras. 49-52.

¹⁷ *Ibid.*, para. 60 b), c) d) and f).

¹⁸ *Ibid.*, para. 60 e).

¹⁹ *Ibid.*, para. 62.

[Mr. Chawla] based on prior knowledge of his work and not on his actual answer during the CBI”.²⁰ However, the UNDT found that Mr. Chawla did not provide clear and convincing evidence of bias and further observed that the impact of that issue was minimal as it only affected one of the eight indicators in the leadership competency.

30. Therefore, the UNDT concluded that Mr. Chawla had not established by clear and convincing evidence that “bias [might] have had a material impact on his chances of being rostered” and that “[e]ven if [Mr. Chawla] had been included among the 15 candidates placed on the roster there is no certainty that he would have been selected for an opening before retirement”.²¹

Procedure before the Appeals Tribunal

31. On 26 January 2023, Mr. Chawla filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 3 April 2023.

Submissions

Mr. Chawla’s Appeal

32. Mr. Chawla requests that “the entire recruitment process be rescinded (...) and the new process be conducted by a fresh and consistent panel”. He also requests that he “be compensated for the violation of [his] rights and loss of opportunity in career advancement by payment of D-1 level salary from the date of implementation of contested decision until the fresh recruitment is concluded after rescinding of the contested decision”. Moreover, Mr. Chawla states that the judicial process “should be modified to the extent that in cases where [SOA] is granted by [the] UNDT, the evaluation of upholding the administrative decision by [the] MEU should be sent for review of [the] UNDT before its implementation”. Last, he requests that the Secretary-General “order thorough investigation into this irregularity and fix accountability”.²²

33. On appeal, Mr. Chawla presents two main grounds for consideration by this Tribunal. The first ground relates to the alleged unlawfulness of the recruitment process due to overlooking the

²⁰ *Ibid.*, para. 65.

²¹ *Ibid.*, paras. 70-71.

²² Appeal form.

criteria of education and work experience for some of the rostered candidates, including the selected one. The second is in relation to the alleged bias of the CBI panel members.

34. First, Mr. Chawla submits that the impugned Judgment “ignored the unlawfulness of the recruitment process in which the criteria of education and work experience as specified in the (...) JO were not complied with at the stage of pre-screening (...) which resulted in placement of [eight] non suitable candidates in the roster (out of 15) including the selected candidate”.

35. In this regard, Mr. Chawla reproduces his analysis report of the Personal History Profiles (PHPs) of the selected and seven rostered candidates. He submits that none of them met the education requirements of the JO. He argues that the selected candidate did not have “[15] years of progressively responsible experience in at least three supply chain management functions”. He observes that neither the Secretary-General nor the witnesses provided any response to his analysis report during the hearing before the UNDT or a satisfactory explanation as to how eight of the 15 rostered candidates met the education requirements or how the selected candidate met the experience requirements. On the contrary, he argues that during his testimony, the *ex-officio* HR Officer stated that: i) he used his own judgment and discretion in deciding if the candidates’ education could be considered in a related field; and ii) “he only referred to the criteria of work experience in pre-screening the candidates and did not check their education qualifications”. Mr. Chawla also submits that the Hiring Manager admitted during his cross-examination that “he did not go line by line through PHPs and referred only to summary of duties”. Therefore, Mr. Chawla argues that the selected candidate should have been eliminated at the pre-screening stage as she did not meet the minimal requirements for the position and contends that the UNDT failed to address and respond to his arguments and analysis in this regard in the impugned Judgment.

36. Mr. Chawla reiterates that the selected candidate would have failed a written test.

37. Mr. Chawla also reiterates that the interview panel had a pre-determined mindset to recruit the selected candidate. In this regard, he observes that the selected candidate had already been working at the same duty station for several years and knew at least one panel member, namely the Chief, ORM, whom she used as one of her references in her PHP. Furthermore, Mr. Chawla contends that the entire interview panel was biased against him from the beginning of the process. In this regard, he notes that Mr. C.T.’s written denial of his request to work remotely

in April 2021 was copied to two of the interview panel members.²³ Mr. Chawla submits that the existence of bias was acknowledged by the UNDT in its two Orders on his application for SOA.²⁴

38. Mr. Chawla contends that he had the most relevant experience compared to all the rostered candidates and the interview panel “knew that if [he] had been placed on roster, [he] would have challenged [his] non-selection for the [position] on this ground”.

The Secretary-General Answer

39. The Secretary-General requests the Appeals Tribunal to uphold the impugned Judgment and to dismiss the appeal. However, should the UNAT consider the contested decision unlawful, the Secretary-General requests that the case be remanded for a determination based on the parties’ submissions.

40. The Secretary-General submits that the Dispute Tribunal correctly found that the contested decision was lawful. He further argues that the contested decision was in accordance with Article 101 of the Charter of the United Nations, Staff Regulations 4.1 and 4.2, ST/AI/2010/3 as well as Section 3.6 of Administrative Instruction ST/AI/2020/5 (Temporary special measures for the achievement of gender parity).

41. The Secretary-General submits that Mr. Chawla failed to satisfy the requirements provided for in Article 2(1) of the Appeals Tribunal Statute as he did not identify any error in the impugned Judgment. On the contrary, the Secretary-General notes that Mr. Chawla seeks to relitigate his case as his arguments mostly reiterate the same ones that he unsuccessfully raised before the UNDT, and thus, the appeal should be denied on this basis alone.

42. However, even if the Appeals Tribunal were to consider Mr. Chawla’s arguments, the Secretary-General contends that he failed to establish any error warranting a reversal of the impugned Judgment.

43. First, the Secretary-General submits that there were no irregularities in the selection process such as to render the contested decision unlawful.

²³ Interoffice memorandum dated 17 April 2021 from Mr. C.T. to Mr. Chawla.

²⁴ *Chawla v. Secretary-General of the United Nations*, Order No. 179 (NBI/2021); *Chawla v. Secretary-General of the United Nations*, Order No. 241 (NBI/2021).

44. In this regard, the Secretary-General argues that the UNDT correctly rejected Mr. Chawla's claim that the inconsistent composition of the interview panel was unlawful. The Secretary-General argues that the interview panel was constituted in accordance with ST/AI/2010/3, which does not include a requirement for the interview panel to be comprised of the same members through the whole selection process. The Secretary-General highlights that the same core panel members was present for all the CBIs, that all the candidates were asked the same questions and assessed against the same competencies.

45. Moreover, the Secretary-General contends that Mr. Chawla failed to advance any argument demonstrating that the UNDT erred in rejecting his submission that the participation of Mr. C.T. in the CBIs of the other candidates constituted an error. The Secretary-General further observes that Mr. Chawla's reliance on the previous Orders on application for SOA is misplaced as these Orders are intended to be temporary and involved different criteria. Therefore, the UNDT was not bound by its findings in these Orders.

46. The Secretary-General submits that Mr. Chawla's claim that the selected candidate would have failed the written test is unsubstantiated and speculative. Furthermore, the Secretary-General argues that the UNDT correctly determined that the decision to administer a written test is discretionary and not mandatory pursuant to Section 7.5 of ST/AI/2010/3, which provides that "[s]hortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment *may* include a competency-based interview and/or other appropriate evaluation mechanisms, such as, *for example, written tests, work sample tests or assessment centres*".²⁵ In any event, the Secretary-General observes that the absence of a written test did not prejudice Mr. Chawla, since, even if he had passed it, he still failed to meet the requirements of the CBI.

47. The Secretary-General contends that Mr. Chawla's submissions regarding "the alleged non-suitability of other candidates or any errors during the pre-screening process fail for lack of relevance". Indeed, he contends that these arguments do not undermine the lawfulness of the contested decision. In particular, concerning Mr. Chawla's argument that both the UNDT and the Secretary-General failed to provide an explanation regarding "his analysis of the eligibility of the PHPs and the eight rostered candidates", the Secretary-General recalls that the UNDT does not have the obligation to address every submission made by a litigant and that his disagreement with

²⁵ Emphases added.

the UNDT's findings does not demonstrate any error in the impugned Judgment. Moreover, the Secretary-General highlights he did explain in his closing submissions why Mr. Chawla's claim that eight rostered candidates should not have been rostered had no merit. The Secretary-General also argues that the evidence upon which the UNDT relied demonstrated that the selected candidate was superior to Mr. Chawla.

48. Second, the Secretary-General submits that Mr. Chawla failed to demonstrate bias against him in the selection process impacting his chances of being recommended or rostered. In this regard, the Secretary-General notes that Mr. Chawla's disagreement with the selection process does not mean that the interview panel was biased against him. The Secretary-General observes that Mr. Chawla's claims in this regard do not address any of the UNDT's findings and should be disregarded on this basis alone. In any event, even if the Appeals Tribunal were to consider his generalized alleged errors from the UNDT, the Secretary-General contends that they have no merit.

49. With regard to Mr. Chawla's submission that the existence of bias was acknowledged by the UNDT in its two Orders on application for SOA, the Secretary-General notes that the UNDT made no such finding but only mentioned a "possibility of bias".²⁶ The Secretary-General also reiterates that the UNDT was not bound by its findings in these Orders and that Mr. Chawla's reliance on them is thus inapposite.

50. The Secretary-General also observes that the UNDT correctly found that although there was one instance of a possible indication of bias, it was insufficient to conclude that Mr. Chawla had established clear and convincing evidence of bias against him or that this bias may have had a material impact on his chances of selection. In any event, the Secretary-General notes that Mr. Chawla "does not challenge this conclusion on appeal or any of the other findings by the UNDT regarding his claim of alleged bias or pre-determined mindset".

51. Third, the Secretary-General contends that the additional claims submitted by Mr. Chawla, namely the fact that his analysis of the PHPs was not addressed or that the educational requirements in the JO should have been written differently, are irrelevant to the issues on appeal and should be disregarded.

²⁶ *Chawla v. Secretary-General of the United Nations*, Order No. 179 (NBI/2021), para. 31.

52. Last, the Secretary-General submits that Mr. Chawla's request for remedies should be rejected in its entirety.

Considerations

53. The appeals process under the formal system of administration of justice is of a corrective nature. The role of this Tribunal is not to conduct a *de novo* review of the case, but rather to examine the impugned judgment for any errors of fact, law, or procedure that might have affected the decision.²⁷ It is the appellant's burden to satisfy this Tribunal that such errors exist.²⁸ It follows that the scope of appeal is determined by the party initiating the appeals process and this Tribunal lacks the authority to raise other issues *sua sponte*, except for jurisdictional issues.

54. To define the scope of appeal, this Tribunal relies on the contentions introduced in the appeal brief, examining them through a fair and objective reading.

55. On appeal, Mr. Chawla, while recounting the full history of his case, does not challenge every point of fact and law contained in the impugned Judgment. Under Sections "Grounds of Appeal" and "Issues for consideration of UNAT", Mr. Chawla challenges the UNDT's finding regarding the lawfulness of the recruitment process, to wit:²⁹

i) the failure of the Administration to correctly apply the job requirements to all candidates, which would have resulted in the early disqualification of seven out of 15 rostered candidates, and the selected candidate herself; and

ii) the failure of the Administration to grant him full and fair consideration in the recruitment process due to the bias of the CBI panel members.

56. Although Mr. Chawla does not specify the nature of the errors invoked, we note that he is self-represented. Therefore, he deserves some degree of latitude from this Tribunal to properly review his appeal. Considering the elements introduced by Mr. Chawla, we deem that he submits

²⁷ *Likukela v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-737, para. 33.

²⁸ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-744, para. 36.

²⁹ Mr. Chawla raised two more issues before the UNDT that were not submitted on appeal: i) the issue of the different constitution of the CBI panels; and ii) the issue of abandonment of the technical assessment. As these substantive issues were not raised by Mr. Chawla on appeal, the Tribunal refrains from addressing them.

that the UNDT erred in fact, resulting in a manifestly unreasonable decision, and in law in the two points mentioned hereabove.

57. We shall now examine these two grounds of appeal.

Alleged failure of the Administration to correctly apply the job requirements to all candidates

58. The jurisprudence of this Tribunal in matters of staff appointments or promotions is well-established. As we ruled in *Abbasi*:³⁰

23 In reviewing administrative decisions regarding appointments and promotions, the UNDT examines the following: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration.

59. Procedural irregularities will only result in the rescission of the contested decision when the staff member had a significant chance of selection or promotion.³¹

60. In the present case, Mr. Chawla contends that the UNDT erred when it disregarded the failure of the Administration to correctly assess the qualifications and experience of candidates, that would have resulted in the early disqualification of seven out of 15 rostered candidates, and the selected candidate. His contention shall succeed if: i) the alleged procedural irregularity is proven; and ii) such irregularity had affected his chances of selection.

61. The UNDT found that Mr. Chawla did not substantiate his contention. We disagree. The case record shows that a procedural flaw occurred due to lack of appropriate screening. We recall that one of the eligibility criteria in the JO was to have an “advanced university degree (Master’s or equivalent) in supply chain management, business administration/management, or related field”. While the JO allows for the consideration of related fields, it could be questionable to admit candidates with degrees in Sociology, Defense Studies, or Geology.³² Indeed, the Hiring Manager has the discretion to consider such degrees as related fields. However, it is the Administration’s burden to minimally show that such consideration had been made.³³ We also recall that, regardless of the actual competencies of candidates, staff selection is rule-based, and the Administration has

³⁰ *Abbasi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 23.

³¹ *Bofill v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-174, para. 28.

³² UNDT case bundle, Annex R/4a, Comparative Analysis Report.

³³ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 26.

the duty to ensure that minimal eligibility requirements are met in accordance with Section 7.1 of ST/AI/2010/3.

62. In the present case, the Administration was incapable of showing that screening of educational requirements had been properly discharged. On the contrary, the record shows that the HR Officer referred applications of eligible candidates with advanced degrees other than supply chain management, business administration/management to the Hiring Manager for consideration.³⁴ The latter counted on the summary of duties of the candidates and did not go through their PHPs “line by line”.³⁵ Hence, the evidence suggests that the Hiring Manager, whose focus was on professional experience, did not verify whether these degrees were in “related fields” to supply chain management, business administration/management but rather considered all of them eligible, in respect of educational requirements. Therefore, we agree with Mr. Chawla that a procedural flaw indeed took place.

63. Nevertheless, that procedural flaw is not sufficient to warrant rescission. There is no nexus between the default in the screening process and Mr. Chawla’s chances of selection. As in *Bofill*,³⁶ the panels that conducted the CBIs, including Mr. Chawla’s, considered him unsuitable for the position. Consequently, Mr. Chawla, unlike 16 other candidates, was neither recommended for the position, nor rostered for future vacancies. Therefore, Mr. Chawla’s chances of selection were not impacted by the procedural flaw. In fact, if the procedural irregularity had not occurred, there is no reason to believe that Mr. Chawla would have passed his CBI. Rather, the logical outcome would have been the selection of one of the other eight rostered candidates whose candidature was not challenged by Mr. Chawla. Consequently, Mr. Chawla’s contention in this respect cannot succeed.

Alleged bias from the CBI panel members

64. As we ruled in *Staedtler*:³⁷

33 Allegations of bias and discrimination are very serious charges which should not be lightly made. They have to be established on the balance of probabilities by the person alleging same.

³⁴ Hearing transcript, 15 November 2022, p. 99: 20-25 and p. 118: 1-13.

³⁵ Hearing transcript, 15 November 2022, p. 154: 4-18.

³⁶ *Bofill* Judgment, *op. cit.*, paras. 26-28. See also *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-096, para. 23.

³⁷ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 33.

65. In *Abbassi*, we stated that:³⁸

26. (...) In order to overturn a finding of fact by the UNDT, the Appeals Tribunal must be satisfied that the finding is not supported by the evidence or that it is unreasonable. The Appeals Tribunal considers that some degree of deference should be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence is heard. The UNDT has the advantage of assessing the demeanour of witnesses while they are giving evidence and this is critical for assessing the credibility of the witnesses and the persuasiveness of their evidence.

66. Mr. Chawla takes issue with the UNDT's determination regarding the absence of bias on the part of the CBI panel members. He contends that the impugned Judgment was at variance with its previous SOA Orders that proved bias. He also submits that elements of proof of bias were disregarded by the UNDT, namely:

- i) Failure to apply the educational requirements to the selected candidate and some of the rostered candidates;
- ii) Failure to set an anonymous written test before conducting the CBI;
- iii) Failure to consider the fact that the selected candidate had been working at the same duty station for years and was known to CBI panel members, one of whom was identified in her PHP as a reference for purposes of the position;
- iv) Failure to consider the impact of multiple contentions raised by Mr. Chawla on the mindset of the CBI panel members, leading to bias and retaliation against him as well as denial of full and fair consideration for the position;
- v) Failure to consider the fact that his FRO, Mr. C.T., had previously copied a memo requesting him to return to work to the Hiring Manager and the Chief, ORM (CBI panel members), resulting in bias against him; and
- vi) Failure to consider the CBI panel members' decision not to roster him because they knew that he would challenge the non-selection decision.

³⁸ *Abbassi* Judgment, *op. cit.*, para. 26.

67. We first note that the SOA Orders previously issued have no bearing on the final findings of the UNDT. As we ruled in *Wathanafa*,³⁹ the process of SOA has its own rationale of providing a temporary protective measure for staff members against *prima facie* unlawful administrative decisions that produce irreversible harmful effects. As a cursory judicial review, SOA is not equivalent to full judicial review. Rather than seeking established unlawfulness, SOA depends merely on serious doubts. Therefore, although they are enforceable, SOA orders are not *res judicata* vis-à-vis the Tribunal that issued them. Hence, a Tribunal that ordered a SOA may dismiss the case on the merits. *Vice versa*, a Tribunal that dismissed a request for SOA for lack of apparent unlawfulness may find the contested decision unlawful on the merits. Thus, difference in outcome *per se*, between the previously issued SOA orders and an impugned judgment, is not a valid argument for illegality nor a censorable error of law. For those reasons, we do not find that the UNDT made an error of fact or of law in issuing a Judgment that was at variance with its previous SOA Orders in respect of the question of proof of bias.

68. As to the other arguments raised by Mr. Chawla, the case record shows that the UNDT thoroughly examined the facts and the parties' submissions through exhaustive hearings before concluding that he did not provide sufficient evidence that he was denied full and fair consideration for rostering or selection. We have reviewed the entire case record and have determined that Mr. Chawla's contentions resubmitted herein have been properly assessed by the UNDT, both explicitly⁴⁰ and implicitly,⁴¹ leading to a well-reasoned Judgment. Although we may differ from the UNDT in our appreciation of the failure to apply the educational requirements to the selected and some of the rostered candidates,⁴² such failure does not constitute a proof of bias *per se*. Therefore, we find no reason to depart from the UNDT's findings in this regard.

³⁹ *Maryam H. Wathanafa v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1389, paras. 42-49. See also *Wang v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-454, para. 49.

⁴⁰ Impugned Judgment, paras. 60 b), c), e) and 63-64.

⁴¹ See *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 35, citing *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47 (internal citation omitted).

⁴² Impugned Judgment, para. 60.

Request for compensation

69. As the request for rescission had been denied, the request for compensation must consequently be dismissed.⁴³

Request for remedy of modification of the judicial system

70. In his appeal brief, Mr. Chawla requested that the judicial system of the United Nations “be modified to the extent that in cases where [SOA] is granted by [the] UNDT, the evaluation of upholding the administrative decision by [the] MEU should be sent for review of [the] UNDT before its implementation”. This request entails amendments to the Dispute Tribunal Statute (UNDT Statute). We remind that the UNAT and the UNDT are independent judicial bodies entrusted by the United Nations General Assembly to resolve staff members’ disputes. In doing so, the Tribunals review individual administrative decisions only. They do not have the legal power to review or otherwise amend primary or secondary regulatory norms. The main legislative body of the Organization remains the United Nations General Assembly, which alone has the power to amend the UNDT Statute. Therefore, this request is denied.

71. In light of the foregoing, the appeal must fail.

⁴³ *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33.

Judgment

72. Mr. Chawla's appeal is dismissed, and Judgment No. UNDT/2022/130 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 30th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar