



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

MIRELLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. The Applicant contests the decision not to shortlist and not to select him for the position of Deputy Director (Operations Drug Control and Crime Prevention), D-1 level at the United Nations Office for Drugs and Crime (“UNODC”), advertised under Job Opening No. 107776 (“JO 107776”).

Facts and procedural history

2. On 14 December 2018, the Applicant applied for JO 107776.

3. On 17 December 2018, the Hiring Manager proposed a selection from roster. By email of 9 January 2019, the Hiring Manager informed the Chief, Human Resources Management Section (“HRMS”), that a roster selection was not an option anymore because the recommended rostered candidate was no longer available following a lateral transfer. The former also informed the latter that, consequently, the decision-maker, namely the Executive Director (“ED”), UNODC, instructed to conduct a full selection exercise and requested the release of all eligible candidates for assessment.

4. Following her assessment of the released eligible candidates, the Hiring Manager did not shortlist the Applicant but placed him in the long list. Shortlisted candidates were subsequently invited to a written test. Three shortlisted candidates who successfully passed the written test were then invited to a competency-based interview.

5. On 15 February 2019, the Hiring Manager communicated his recommendation to HRMS. As the two candidates recommended for selection were pre-approved roster candidates, no submission to the Central Review Board was required.

6. On 18 February 2019, HRMS submitted the above-mentioned selection recommendation to the ED, UNODC.

7. On 4 March 2019, the Office of the ED, UNODC, requested clarifications on the assessment of the candidates.

8. On 6 March 2019, the Hiring Manager provided HRMS with extensive and detailed comments on her assessment method. She also confirmed that she had applied consistently to all candidates the objective criteria established in JO 107776.

9. On 20 March 2019, the ED, UNODC, met with the Hiring Manager and the Director, Division of Management, UNODC, to discuss the rationale behind the Hiring Manager's selection recommendation. A note to the file, on record, reflects the key issues discussed during that meeting.

10. On 21 March 2019, the ED, UNODC, selected a pre-approved roster candidate recommended by the Hiring Manager.

11. On 26 March 2019, the Applicant was informed of his non-selection for JO 107776.

12. On 22 May 2019, the Applicant requested management evaluation of his non-selection decision. He received a response on 5 July 2019, by which he was informed that the Secretary-General had decided to uphold the contested decision.

13. On 27 September 2019, the Applicant filed the application referred to in para. 1 above.

14. On 30 October 2019, the Respondent filed his reply with 10 annexes, all of which were filed *ex parte*. Pursuant to the Tribunal's instructions, the Respondent filed under seal redacted versions of these annexes, which were shared with the Applicant who, on 19 July 2021, filed a rejoinder.

Consideration

Receivability

15. In his reply, the Respondent challenges the receivability of the application in respect of the decision not to shortlist the Applicant. The Tribunal recalls that the Appeals Tribunal, in its Judgement *Abdellaoui* 2019-UNAT-928 (para. 17), found that not shortlisting a candidate is an internal step within a selection process and not an administrative decision.

16. Consequently, the only contested decision for this Tribunal to examine in the present case is the Applicant's non-selection under JO 107776. Only this decision is final and bears direct legal consequences, particularly in the case at hand given that the Applicant was longlisted. Nevertheless, the Applicant's non-shortlisting will be examined within this Tribunal's judicial review of the final non-selection decision.

Scope of review

17. Before reviewing the non-selection decision, the Tribunal underlines that in selection and appointment matters, the Administration enjoys broad discretion and the Tribunal's consideration is limited to whether the procedure laid down in the Staff Regulations and Rules was followed, and whether the staff member was afforded full and fair consideration (*Abbassi* 2011-UNAT-110).

18. The Tribunal also recalls that in selection and appointment matters, there is a presumption of regularity concerning the performance of official acts (see e.g., *Krioutchkov* 2021-UNAT-1103, para. 29 and *Rolland* 2011-UNAT-122, para. 26). It is incumbent on applicants to allege and provide evidence of the flaws identified, and the presumption of regularity can be rebutted by evidence of a failure to follow applicable procedures, bias in the decision-making process, and consideration of irrelevant material or extraneous factors in a recruitment process.

Merits of the application

19. The Applicant's case concerning unlawfulness of the recruitment process rests on his claims that:

- a. He met all the required and desirable criteria set out in JO 107776, which should have seen him shortlisted;

b. The Hiring Manager applied irrelevant considerations/criteria that were not in JO 107776 when short-listing candidates, namely “a reasonable interpretation of the criteria”, “the [candidates’] claimed vs. known experience and achievements” and a comparative analysis of the applications to determine if the Applicant’s experience was “progressively responsible; and

c. The Hiring Manager was biased as she shortlisted some of the candidates and recommended the successful candidate primarily based on her personal knowledge of them instead of the objective criteria stated in JO 107776.

20. Concerning the Applicant’s first claim, the Tribunal finds that whether candidates for a JO possess all required criteria is subjected to an assessment entrusted to each hiring manager based on an evaluation of each candidature.

21. Secs. 7.4 and 7.6 of ST/AI/2010/3 (Staff selection system) set forth a hiring manager’s duties in the context of recruitment exercises:

7.4 The [hiring manager] ... shall further evaluate all applicants released to him/her and shall prepare a shortlist of those who appear most qualified for the job opening based on a review of their documentation.

...

7.6 For each job opening, the hiring manager ... shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and a selection decision by the head of the department/office.

22. With respect to the Applicant’s second claim, it is uncontested that the hiring manager exercised her discretion when assessing the candidates released to her. Her longlisting the Applicant was scrutinized internally and she provided a detailed account of the evaluation process she followed.

23. In the present case, the hiring manager evaluated the information relating to the Applicant's work experience as stated in his PHP against the JO criteria with the objective in mind to only invite the most qualified candidates to the written assessment. She concluded that the requirement of a minimum of 15 years of "progressively responsible professional experience" was met quantitatively but not qualitatively. She indeed noted that the Applicant had been at the same level (P-5) for over 15 years (since 2003) and considered that "the amount and complexity of responsibility has not progressively increased".

24. The Tribunal examined with special attention the hiring manager's 6 March 2019 detailed email in response to specific questions from the decision-maker's office on her assessment of several candidates, and the Note to the file of a meeting that the ED, UNODC, held with *inter alia* the hiring manager.

25. The Tribunal took note, in particular, of the hiring manager's explanation of how she assessed professional experience based on objectively verifiable facts in the candidates' applications and performance records ("known experience", that is not only "claimed", but resulting directly and objectively from the records), and accounted for gender and geographical considerations.

26. Contrary to the Applicant's allegation, the hiring manager did not use new criteria but provided elements, that were taken into consideration in the assessment process, to come up with a reasoned and objectively justifiable decision aimed to select among a high number of applicants those to be shortlisted.

27. The Tribunal is satisfied that the hiring manager did assess candidates, the Applicant included, within the above framework and against the criteria set down in the respective job opening. Furthermore, the hiring manager provided a detailed reasoned account, both in writing and in person during a meeting with the decision-maker, of her assessment method. Consequently, the Tribunal finds that the Respondent has more than minimally shown that the Applicant was afforded full and fair consideration.

28. It follows from the above, that the presumption of regularity of the challenged decision stands.

29. In the recalled situation, the fact that the Applicant was in this case longlisted has no influence on the application of the said criterion, which in any case impeded the invoked short-listing.

30. Similarly, it is irrelevant too, being a post factum, that the Applicant was later rostered for a similar position as a result of a different and subsequent job opening.

31. Finally, with respect to the Applicant's third claim, the Tribunal is persuaded by the Respondent's argument that knowledge of several internal candidates in a D-1 recruitment process involving several candidates who are senior managers is not tantamount to bias in the selection recommendation process. The Tribunal further recalls that the burden of proving bias rests on the Applicant and notes that there is no evidence on record in support of this allegation.

Conclusion

32. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Francesco Buffa

Dated this 30th day of November 2021

Entered in the Register on this 30th day of November 2021

(Signed)

René M. Vargas M., Registrar, Geneva