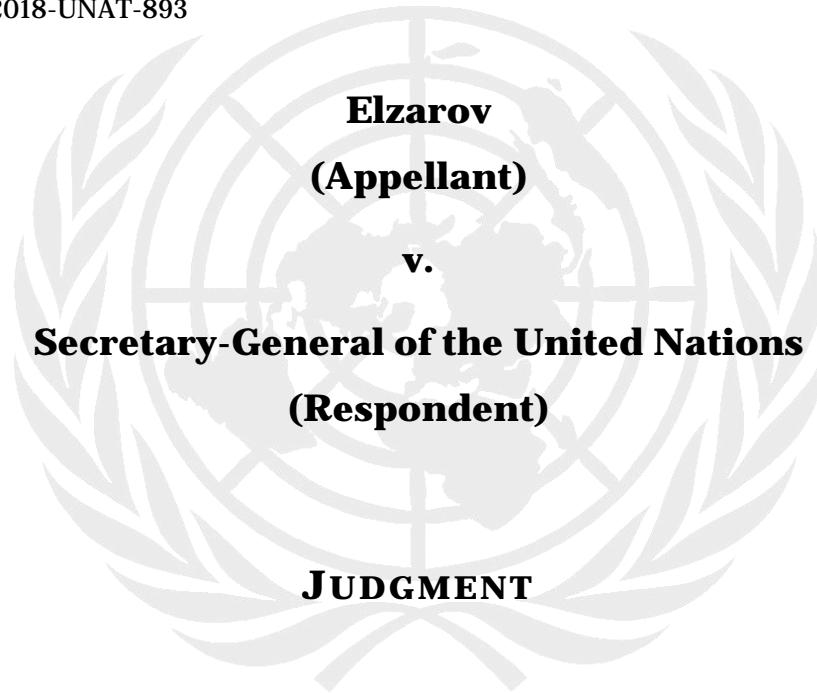




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-893



**Elzarov
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge John Murphy Judge Dimitrios Raikos
Case No.:	2018-1186
Date:	26 October 2018
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Wambui Mwangi

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/065, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 12 June 2018, in the case of *Elzarov v. Secretary-General of the United Nations*. Mr. Zurab Elzarov filed the appeal on 30 July 2018, and the Secretary-General filed his answer on 28 September 2018.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant joined the Organization on 21 April 2007. Since May 2015, he served as Acting Chief of Service, Humanitarian Affairs on a temporary assignment at the D-1 level. On 28 October 2016, his fixed-term appointment was converted to a continuing appointment.

... A job opening (JO) for the position of D-1 Chief of Service, Humanitarian Affairs in [the United Nations-African Union Mission in Darfur (UNAMID)] (JO Number: 17-HRA-UNAMID-74843-B-EL FASHER) was advertised on 21 February 2017. The JO specifically mentioned that “due regard will be paid to the importance of recruiting staff on as wide a geographical basis as possible” and that “[t]he United Nations places no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs”.

... On 9 March 2017, the Applicant submitted his application for the post in which he had been acting for over one year. The Applicant is continuing to occupy this post pending the successful candidate taking up the appointment.

... A total of 117 applications were received in response to the job opening. After the Network Staffing Team (NST) of the Office of Human Resources Management (OHRM) reviewed the eligibility of the candidates, 61 non-rostered and seven rostered candidates were found to be eligible.

... After reviewing the suitability of the 61 non-rostered candidates against the requirements in the job opening, only 17 were found to be suitable and were invited to take the test.

... Seven candidates, including the Applicant, passed the test. The passing score for the test was set at 40 out of 100 points. Ms. Bintou Keita, the Hiring Manager, clarified that the passing score was set by her in consultation with the [Political, Peace and

¹ Impugned Judgment, paras. 7-22 (internal citations omitted).

Humanitarian Job Network (POLNET)] team prior to the test being administered to the candidates. The Applicant scored 66.33 points in the test, the highest score among the candidates, while the candidate that was ultimately selected scored 42.57 points.

... The seven candidates that passed the test were subsequently interviewed between 22 and 24 May 2017. Only four candidates, including the Applicant, were rated as being successful. Ms. Yvette Blanco, a member of the interview panel confirmed that the panel was not provided with the scores of the written test and that the test was used to identify candidates to progress to the interview stage. Ms. Blanco stated that the interview panel evaluated the candidates based on their answers to the competency[-]based questions but did not rank them. Ms. Blanco further testified that the candidate who was ultimately selected provided the best answer in the professionalism competency and that she was particularly effective in conveying her experience in humanitarian affairs.

... Following the assessment, OHRM transmitted, for review by the Programme Manager, a list of 11 suitable candidates. The list included the four non-rostered candidates, including the Applicant, and the seven previously rostered candidates.

... The Programme Manager ranked the 11 candidates indicating her preference for selection. She ranked a female candidate from France in first place, a male candidate from France in second place and the Applicant in third place. Ms. Keita confirmed that, in the ranking of candidates, she took into consideration their [Personal History Profiles (PHPs)], the results of their interviews, their performance evaluations and their language skills. She noted that the candidate ranked first was fluent in Arabic which in the context of UNAMID was important. [The Chair of the Senior Review Board (SRB),] Ms. Alicia Barcena's evidence was that the ranking is also determined based on supplementary information such as organizational priorities, like gender parity and geographical diversity, where applicable.

... On 28 August 2017, the SRB convened to review and evaluate the list of suitable candidates. On 20 September 2017, the SRB sent a memorandum to the Secretary-General recommending for selection, the Applicant and two candidates from France. The SRB also recommended that two non-recommended candidates be placed on the relevant roster. Ms. Barcena [] confirmed that the evaluation criteria were properly applied in this selection process and clarified that while the SRB considered the ranking of the [H]iring [M]anager, in its recommendation to the Secretary-General the SRB placed candidates in alphabetical order.

... Within the Executive Office of the Secretary-General (EOSG), the Chef de Cabinet has delegated authority to make selection decisions on behalf of the Secretary-General for positions at the D-1 and D-2 level. Mr. [John] Kamea, Senior Officer of the Senior Leadership Appointments Team (SLAT), EOSG informed the [Dispute] Tribunal that following standard practice, an Officer of SLAT prepared a Note for the Chef de Cabinet containing all relevant background information for her consideration

including a summary of the SRB review of candidates and recommendations, the UNAMID's gender target score and the names, gender, nationalities and geographical representation of the candidates. Mr. Kamea also testified that SLAT/EOSG requested Mr. [Jean-Pierre] Lacroix, Under-Secretary-General for the Department of Peacekeeping Operations (USG/DPKO) to advise on the candidate considered most suitable among the three candidates. However, when questioned on the legal basis for such a request to the USG/DPKO, Mr. Kamea agreed that there was no such provision in ST/AI/2016/1. However, it was [allegedly] in accordance with standard operating practice within the EOSG and the wide discretion of the Secretary-General in selection decisions. Mr. Lacroix, USG/DPKO recommended the appointment of the female candidate from France simply by appending a signature next to her name but with no explanation as to why she was preferred amongst three equally appointable candidates.

... The Note to the [Chef] de Cabinet included the three top candidates recommended by the SRB, in alphabetical order, and a note mentioning the candidate recommended by the USG/DPKO. Mr. Kamea's evidence was that all three candidates were equally appointable and that any one of the three candidates could have been selected and the final selection decision was at the discretion of the Chef de Cabinet under delegated authority from the Secretary-General.

... The Chef de Cabinet selected the candidate recommended by the USG/DPKO, that is the female candidate from France.

... On 27 December 2017, Mr. Luke Mhlaba, UNAMID's Chief of Staff informed the Applicant by telephone that the Secretary-General had not selected him for the position probably because of the Secretary-General's policy on gender parity. Mr. Mhlaba clarified that he was not involved in the selection process but that he was requested by DPKO in Headquarters to communicate the outcome of the selection to the candidates. It was in this context that he contacted the Applicant. Mr. Mhlaba stated that he was only speculating about the reasons for the Applicant's non-selection when he referred to the Secretary-General's policy on gender parity.

... On 29 December 2017, the Applicant requested management evaluation of the contested decision.

... By letter dated 26 February 2018, Ms. Jan Beagle, Under-Secretary-General for Management [(USG/DM)] replied to the Applicant's request for management evaluation informing him that the Secretary-General had upheld the contested decision. In her letter, Ms. Beagle referred to the comments from the Administration noting that "[t]he decision to ultimately select a female candidate was made to ensure equal distribution of female representation at senior positions (P-5 and above) at UNAMID, given that the Mission has one of the lowest percentages of female representation at senior levels of 21 per cent". She further noted in her letter that the Management Evaluation Unit (MEU) considered that the Applicant's claim that "[he] [was] not selected for the post solely due to the Secretary-General's Strategy on

Gender Parity (Gender Strategy) [was] not supported by the facts. Indeed, the successful candidate met the required criteria for the Post, and also the desirable criterion of knowledge of Arabic”. Ms. Beagle confirmed that gender parity was one of the factors taken into consideration but was not a decisive factor in the selection process. She also testified that [...] there was nothing in the SRB memorandum to the EOSG indicating that gender parity was the main issue in the selection process.

3. On 29 December 2017, Mr. Elzarov filed an application with the UNDT contesting the decision not to select him for the position of D-1 Chief of Service, Humanitarian Affairs in UNAMID. An oral hearing was held from 21 to 25 May 2018.

4. On 12 June 2018, the UNDT issued Judgment No. UNDT/2018/065, dismissing Mr. Elzarov’s application. The UNDT considered that the evidence presented was clear and unequivocal in that all top three candidates were equally appointable and SLAT/EOSG, who were responsible for preparing the submission to the Chef de Cabinet, did not confer any advantage on the female candidate. The UNDT noted that prior to the SRB submitting its report to the EOSG, the Hiring Manager had ranked the candidates placing the successful candidate at the top of the recommended candidates list on the basis of her answers on the competency “professionalism” as well as her Arabic language skills which was a preferred criterion. The UNDT further noted that there was nothing to suggest that SLAT/EOSG had taken into account any impermissible consideration in preparing and submitting its Note for the Chef de Cabinet or that the Chef de Cabinet, who has the delegated authority to make selection decisions on behalf of the Secretary-General for positions at the D-1 level, had done so. In this regard, the UNDT concluded that the Secretary-General had made more than a minimal showing that the contested decision not to select Mr. Elzarov for the position of D-1 Chief of Service was not tainted by improper consideration and that Mr. Elzarov had failed to show that he was denied a fair chance of promotion.

5. Mr. Elzarov filed a Motion for Interim Measures on 2 July 2018 (First Motion), and the Secretary-General filed his response to the motion on 19 July 2018. By Order No. 327 (2018), the Appeals Tribunal denied Mr. Elzarov’s motion.

6. Mr. Elzarov filed a Motion for Submission of Additional Documents as Evidence on 12 September 2018, and the Secretary-General filed a response to the motion on 1 October 2018.

7. Mr. Elzarov filed a Motion for Comments on the Secretary-General’s Answer on 8 October 2018, and the Secretary-General filed his response to the motion on 15 October 2018.

Submissions

Mr. Elzarov's Appeal

8. Mr. Elzarov submits that the UNDT unjustifiably held that he had “failed to show that he was denied a fair chance of promotion”. In particular, the UNDT unlawfully ignored and/or failed to consider the following facts.

9. According to the principles of the United Nations Charter and Staff Regulation 4.3, selection of staff members shall be made “without distinction as to race, sex or religion” and, “[s]o far as practicable, selection shall be made on a competitive basis”. Whereas the Secretary-General claimed before the UNDT that gender was not considered over merit, the USG/DM's letter upholding the contested decision referred to the comments from the Administration, noting that “[t]he decision to ultimately select a female candidate was made to ensure equal distribution of female representation at senior positions (P-5 and above) at UNAMID”.

10. Mr. Elzarov scored the highest in both the written assessment and the competency-based interview. The Hiring Manager did not take the results of the written test and competency-based interviews into consideration in ranking the candidates, with the intention of downplaying the results of the selection process. Moreover, the Hiring Manager manipulated the selection process and violated section 7.4² of Administrative Instruction ST/AI/2016/1 (Staff selection and managed mobility system) by setting, without the involvement of the assessment panel members, a low passing score of 40 out of 100 for the written assessment, which allowed the unlawfully selected candidate to pass with the score of 42 out of 100.

11. The Secretary-General, in his response submitted to the UNDT, misrepresented the facts by stating that “[t]he selected candidate scored the highest in the competency of professionalism”. The selected candidate did score the highest in the “competency of professionalism”, but only as compared with her responses to questions on other competencies. As testified by a member of the interview panel, the panel did not compare the answers of the interviewed candidates and did not rank them.

² Section 7.4 provides that the assessment panels shall establish passing thresholds for the written assessments in order to determine which candidates may be invited for interviews.

12. The interview panel had assessed Mr. Elzarov as having “highly desirable experience on protection of civilians” and “desirable experience of giving policy advice to senior officials” as well as experience working on “protection issues in multiple jobs and with multiple actors”. None of the other candidates received such comments. The Hiring Manager deliberately dismissed and ignored Mr. Elzarov’s highly desirable skills to ensure the selection of her preferred candidate.

13. The selected candidate’s competency in Arabic was taken into consideration even though the knowledge of Arabic was only “desirable” for the position of D-1 Chief of Service. Moreover, the Hiring Manager was unable to substantiate the selected candidate’s knowledge of Arabic. In addition, the Hiring Manager violated the provisions of ST/AI/2016/1 by ranking the candidates based on their language proficiencies. According to section 6.1³ of ST/AI/2016/1, language proficiency is one of the criteria used at the initial application stage to pre-screen candidates. As such, eligible candidates should be ranked on the basis of the results of the written assessment and competency-based interviews following the completion of the eligibility screening.

14. The SRB deliberately and unlawfully placed the preferred candidate at the top of the document entitled “Manager Preference of Recommended Candidates” in a successful attempt to influence the Secretary-General’s selection decision. Moreover, the document did not contain any reference to Mr. Elzarov’s years of work experience. In fact, Mr. Elzarov was the only one, among all 11 recommended candidates, whose years of work experience was intentionally omitted. By omitting Mr. Elzarov’s years of work experience, the Hiring Manager misled the Secretary-General in an effort to justify the selection of her preferred candidate.

15. Section 4.7 of Secretary-General’s bulletin ST/SGB/2016/3 (Senior Review Board) requires the SRB to submit its selection recommendations for candidates to fill vacant positions at the D-1 and D-2 levels to the Secretary-General for his selection decision. In the present case, SLAT/EOSG requested the USG/DPKO to advise on the candidate considered most suitable among the top three candidates recommended by the SRB and the USG/DPKO recommended the selected candidate. However, there is no provision authorizing the

³ Section 6.1 provides that candidates are pre-screened on the basis of the information provided in their applications in order to determine whether they meet the eligibility requirements, including the minimum educational, work experience and language proficiencies required, as stipulated in the job opening.

USG/DPKO to provide his selection recommendation. In addition, the SRB proposed the ranking of the three recommended candidates, in violation of section 11.10 of ST/AI/2016/1, which requires the SRB to present to the Secretary-General, in no ranking order, selection recommendations of three candidates.

16. Mr. Elzarov was discriminated against on the basis of his nationality. Whereas his country of nationality was underrepresented at the United Nations Secretariat, the country of nationality of the other two preferred candidates was overrepresented. The Secretary-General, by not giving consideration to Mr. Elzarov's country of nationality, failed to meet his obligation to ensure the attainment of equitable geographic distribution of staff.

17. Mr. Elzarov asserts that the UNDT committed an error in procedure which affected the decision of the case by issuing its Judgment on 12 June 2018, despite having informed the parties at the hearing held on 24 May 2018 that it planned to issue the Judgment during the first week of July 2018. In fact, the UNDT had urged the parties to attempt to have the matter resolved informally through alternative dispute resolution and Mr. Elzarov, as directed by the UNDT, shared his settlement proposal with the Secretary-General. The UNDT disrupted the alternative dispute resolution process by issuing the Judgment earlier than expected and, as a consequence, the Secretary-General never responded to Mr. Elzarov's 24 May 2018 settlement proposal.

18. Mr. Elzarov contends that the UNDT ignored the misrepresentation of facts by the Secretary-General in paragraph 5 of the Judgment. Mr. Elzarov further submits that the UNDT erred in fact in paragraph 1 of the Judgment by implying that Mr. Elzarov is a "Senior Political Affairs Officer" with UNAMID, despite several clarifications made by him. In fact, Mr. Elzarov holds a P-5 "Head of Office, Humanitarian Affairs" post. Such error is significant in light of the fact that UNAMID is currently downsizing and D-1 posts have been proposed for downgrading by the UNAMID Joint Special Representative.

19. Mr. Elzarov requests that the Appeals Tribunal rescind the contested administrative decision.

The Secretary-General's Answer

20. The Secretary-General submits that the UNDT was correct in finding that the non-selection decision had been lawfully taken and in dismissing Mr. Elzarov's application. Mr. Elzarov's appeal fails to identify any error by the UNDT warranting a reversal of the Judgment.

21. The Secretary-General has broad discretion in matters of staff selection. The Appeals Tribunal has consistently ruled that it is not the function of the tribunals, in the absence of evidence of bias, discriminatory practices or *mala fides*, to substitute its judgment for that of the competent decision-maker. There is no evidence in the record to support Mr. Elzarov's allegations that the decision not to select him was discriminatory and improperly motivated. On the contrary, all applicable procedures for selecting an incumbent for the D-1 Chief of Service position were followed and it has been more than minimally demonstrated that Mr. Elzarov was given fair and adequate consideration.

22. The UNDT did not ignore the USG/DM's statement that a factor in the decision to select a female candidate for the position was "to ensure distribution of female representation at senior positions" at UNAMID. In fact, the UNDT quoted the statement in the Judgment and found that the USG/DM "confirmed that gender parity was one of the factors taken in consideration but was not a decisive factor in the selection process". There was no indication that gender parity was an exclusive consideration in the selection process. Even if gender parity had been a dispositive factor in the non-selection of Mr. Elzarov, the selection of an equally or more qualified woman from the recommended list is consistent with Administrative Instruction ST/AI/1999/9 (Special Measures for the Achievement of Gender Equality).

23. The Programme Manager did not establish the passing threshold for the written test independently. According to her testimony, it was set "in consultation with the POLNET team". Moreover, section 7.3 of ST/AI/2016/1 provides that the Programme Manager "may participate in the assessment panel". In addition, the candidates were not required to be ranked based on the results of the written test and the competency-based interview. Section 8.2 of ST/AI/2016/1 expressly provides that OHRM shall submit to programme managers information including the PHPs of the candidates on the list of suitable candidates.⁴

⁴ Similarly, section 11.7 provides that OHRM shall submit to the SRB information including the PHPs of the suitable candidates.

Accordingly, the Programme Manager was permitted to consider the candidates' PHPs in developing her ranking of the candidates and, following the assessment, she ranked 11 suitable candidates, listing Mr. Elzarov third; factors that weighed in favour of her ranking two candidates ahead of Mr. Elzarov included years of experience, mix and diversity of headquarters and field experience, and language proficiencies.

24. Contrary to Mr. Elzarov's assertion that his years of work experience were intentionally omitted, the Manager Preference of Recommended Candidates list stated that Mr. Elzarov met the "requirement of [15 years of] work experience". As for the selected candidate's knowledge of Arabic, the Programme Manager had considered her PHP, which stated that she was "fully fluent" in Arabic.

25. In making its recommendation to the Secretary-General, the SRB appropriately took into account the Programme Manager's ranking, UNAMID's scorecard with respect to gender targets and organizational priorities. While the SRB's memorandum to the Secretary-General did propose a ranking of candidates, it concluded by presenting the three recommended candidates in alphabetical order. Moreover, the Note to the Chef de Cabinet also presented the SRB's three recommended candidates in alphabetical order, without any ranking. The Chef de Cabinet, who had the delegated authority to make selection decisions on behalf of the Secretary-General for positions at the D-1 level, then lawfully selected one of the SRB's recommended candidates other than Mr. Elzarov.

26. The UNDT correctly concluded that it was permissible for SLAT to ask DPKO to indicate whom they would prefer for the D-1 Chief of Service position. The Secretary-General has a broad discretion in matters of promotion and, as found by the UNDT, there is a practical reason to seek such advice, i.e. "the Department concerned is best placed to know what is required on the ground."

27. With respect to Mr. Elzarov's claim that he was discriminated against on the basis of his nationality, considerations of geographical diversity were not omitted from the selection process. In fact, the Note to the Chef de Cabinet listed the nationality of the candidates as well as the nationality of the staff members in UNAMID at the D-1 level and above.

28. As to the timing of issuance of the Judgment, there is no provision in the UNDT Statute or the Rules of Procedure requiring the UNDT, once closing submissions have been filed, to obtain the parties' approval to issue its judgment. Moreover, there had been no response to Mr. Elzarov's settlement proposal for 19 days at the time of the issuance of the Judgment. There also had not been any request by the parties to suspend the UNDT proceedings. Thus, in any event, the settlement discussions appear to have arrived at an impasse prior to the issuance of the Judgment.

29. As for Mr. Elzarov's assertion that the UNDT erred by implying that he was a Senior Political Affairs Officer with UNAMID, any factual error by the UNDT regarding the functional title of Mr. Elzarov's position at the time of the Judgment did not render the outcome of the Judgment manifestly unreasonable.

30. Finally, Mr. Elzarov asserts several errors by the UNDT in relation to paragraph 5 of the Judgment. Paragraph 5, however, is the UNDT's summary of the Secretary-General's reply to Mr. Elzarov's application before the UNDT.

31. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

32. As a preliminary matter, Mr. Elzarov filed a Motion for Submission of Additional Documents as Evidence (Second Motion) and a Motion for Comments on the Secretary-General's Answer (Third Motion). There is no basis for receiving Mr. Elzarov's Second Motion and Third Motion.

33. Article 8 of the Appeals Tribunal's Rules of Procedure (Rules) provides for an appellant to submit an appeal form accompanied by a brief and copies of documents referred to in the appeal. Pursuant to Article 2(5) of the Appeals Tribunal's Statute (Statute), "[i]n exceptional circumstances (...) [the Appeals Tribunal] may receive (...) additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings". In the present case, we find that Mr. Elzarov has not demonstrated any exceptional circumstances which would justify this Tribunal exercising its discretion to allow him to file any additional documentary evidence. In the absence of any evidence of exceptional circumstances, Mr. Elzarov's Second Motion must be denied.

34. As noted above, Mr. Elzarov filed his Third Motion seeking leave to file comments on the Secretary-General's answer. However, neither the Rules nor the Statute provide for an appellant to file an additional pleading after the respondent has filed his or her answer. Nonetheless, Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party's motion to file additional pleadings if there are exceptional circumstances justifying the motion. Mr. Elzarov has not demonstrated any exceptional circumstances. Accordingly, the Third Motion must also be denied.

35. The primary issue for determination in this appeal is whether the UNDT erred in finding that, from the evidence, Mr. Elzarov had "failed to show that he was denied a fair chance of promotion".

36. The Staff Regulations and Rules (ST/SGB/2017/1) set out the rules related to transfer, promotion and appointment of staff, and also provide that "as stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General". Mr. Elzarov ranked third of a list of suitable candidates and a Note was sent forward for the final phase for the selection of a candidate. The UNDT, in its findings of fact, stated the following:

... The Note to the [Chef] de Cabinet included the three top candidates recommended by the SRB, in alphabetical order, and a note mentioning the candidate recommended by the USG/DPKO. Mr. Kamea's evidence was that all three candidates were equally appointable and that any one of the three candidates could have been selected and the final selection decision was at the discretion of the Chef de Cabinet under delegated authority from the Secretary-General.

The SRB also recommended that two non-recommended candidates be placed on the relevant roster.

37. As we examine this ground of appeal to determine whether Mr. Elzarov's application received full and fair consideration, we remind the parties that it is settled jurisprudence that the Secretary-General is vested with a wide discretion when making a decision on staff selection/promotion. In this case, the Secretary-General had the list of potential candidates for final selection and Mr. Elzarov was included in that list. The Secretary-General could have selected any one of the three candidates, when he exercised his discretion and made a selection.

38. The Secretary-General did not select Mr. Elzarov; instead, he selected another candidate, taking into account, *inter alia*, UNAMID's scorecard with respect to gender targets and the selected candidate's Arabic proficiency. Taking such factors into account did not in and of itself amount to discrimination, and it was within the Secretary-General's discretion to so do. There is no evidence that, in the exercise of his discretion, the Secretary-General was arbitrary, discriminatory or irregular.

39. The general principle, as it relates to whether fair consideration is given to an application, is that when the Secretary-General makes a decision on staff selection, that decision is presumed to be regular, a presumption which is rebuttable in certain circumstances.⁵ Thus, if there is evidence that a candidate's case has received full and fair consideration wherein the proper procedures have been followed and all relevant material has been taken into consideration, the UNDT is obliged to uphold the selection/promotion of the Secretary-General.

40. There is no doubt that the UNDT can rescind a selection/promotion decision if the very circumstances and the facts of the case warrant the rescission of that decision; these acts of rescission by the UNDT are indeed the exception and are not within the general rule mentioned earlier.

41. The main role of the UNDT is "to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner".⁶ From the evidence in this case, an assessment has been conducted by the UNDT in its determination of Mr. Elzarov's case. Indeed, it is not the role and/or function of the Appeals Tribunal or the UNDT, in the absence of evidence of bias, discriminatory practices or *mala fides*, to interfere with the decision of the Secretary-General and to substitute its judgment for that of the competent decision-maker.⁷

42. In the circumstance, we find that no evidence has been presented to the Appeals Tribunal by Mr. Elzarov to support the contention that his application was not given full and fair consideration and therefore the decision of the Secretary-General should be rescinded. Indeed,

⁵ *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 33.

⁶ *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-836, para. 14, citing *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40 (internal citations omitted).

⁷ *Bofill v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-383, para. 21.

we accept the Secretary-General's submission that Mr. Elzarov is unable to show through clear and convincing evidence that he was denied a fair chance of promotion.

43. For those reasons, we uphold the decision of the UNDT.
44. We have examined the other grounds of appeal and find them to be without merit.

Judgment

45. The appeal is dismissed and Judgment No. UNDT/2018/065 is hereby affirmed.

Original and Authoritative Version: English

Dated this 28th day of October 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar