



Judgment No. 2017-UNAT-792



Counsel for Mr. Chhikara: Self-represented

Counsel for Secretary-General: John Stompor

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeal

for the written assessment, did not participate in the written assessment/test as they did not submit any test results.

... [...] [T]he written assessment was administered through an online testing platform called Verint/Vovici. It consisted of two parts: 1. Situational [J]udgements [STJ], and 2. constructive response, and it was taken for 2 hours and 30 minutes without interruption in one seating, at a time convenient for applicants, in an open online written assessment window of two days. According to the Recruitment Strategy for the JO, it was determined that only the candidates that would pass Part 1, would then be further assessed for Part 2. Part 1: The results of 25 [STJ] Items were assessed against the predefined key responses, provi 0 T6v6c(ul453.6 Exain)aTD.000te

competencies, including the competency of professionalism, and were recommended for the position. Three (3) candidates (one employee, one candidate from [the United Nations] Common System, and one external) were concluded not to meet the competencies and therefore, they were not recommended for the position.

... [F]ollowing the interviews and the recommendations by the Interview Panel, as per the DFS departmental procedure, on 20 November 2015 Director LSD [unknown abbreviation] submitted a recommendation for the selection for the position of Chief, ATS for the [Under Secretary-General (USG)]/DFS's approval pending the review and endorsement of the Central Review Body (CRB) [...]. USG/DFS granted the conditional approval on 30 November 201[5] [...]. Subsequently, on 1 December 2015 the case was submitted to OHRM for review and transmission to the CRB for review and endorsement [...].

... The USG/DFS pre-approved conditional selection decision was implemented the same day on 27 January 2016. Upon recording the selection decision in [Inspira], the Inspira system then sent automated notifications to all the applicants that the recruitment process for this JO was completed, and the result of their application [...].

... On 26 March 2016, the Applicant filed a request for management evaluation of the contested decision. On 26 April 2016, the Applicant received a response from the Management Evaluation Unit ("MEU") which upheld the decision.

... On 25 July 2016, the Applicant filed the present application before the Dispute Tribunal (...), where it was registered under Case No. UNDT/2016/053.

...

... On 8 September 2016, the Applicant filed a request to order the Respondent to provide certain evidence.

...

... By Order No. 246 (NY/2016) of 20 October 2016, the [Dispute] Tribunal provided the following orders (emphasis omitted):

... The Applicant's request for evidence is granted.

... By 5:00 p.m. on Friday, 4 November 2016, the Respondent is to file:

a. A copy of the comments and accompanying documents submitted to the [MEU] by the Executive Office of the Department of Peacekeeping Operations and [DFS] in relation to the Applicant's management evaluation request;

b. The total number of the applicants (internal and external) for the [JO];

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2017-UNAT-792

failed to comply with the UNDT's Order No. 246 (NY/2016) and ha[d] (...) not presented any justification for its lack of compliance".⁶ It rejected Mr. Chhikara's other requests.

9. On 21 July 2017, the Secretary-General filed his response to Order No. 286 (2017), submitting the 25 STJ questions and the response key. The Secretary-General stated that "the methodology used in selecting the key responses (i.e., most correct answers) (...) was based on the Vroom-Yetton decision model" and provided a link where additional information regarding the model could be obtained.⁷

10. On 13 September 2017, Mr. Chhikara filed a second motion, along with his comments regarding the evidence produced in response to Order No. 286 (2017). On 25 September 2017, the Secretary-General filed his response thereto.

Submissions

Case No. 2017-1076

The Secretary-General's Appeal

11. The Secretary-General submits that the UNDT erred in fact and law when it concluded that Mr. Chhikara had not been fully and fairly considered for the Post. Mr. Chhikara was shortlisted and invited to participate in the two-part written test. There was no evidence that his test was incorrectly graded or that he was treated differently than any of the other candidates. The UNDT also erred in law when it found that the staff selection manuals were binding; they do not impose any obligations on the Organization beyond those established in the Staff Regulations and Rules and relevant administrative issuances.

12. Its erroneous holding that the manuals were binding led the UNDT to further err in its findings regarding the 25 STJ questions, the scoring/rating methods and the assessment panel. Contrary to the UNDT's findings, the 25 STJ questions were not pre-screening questions; rather, they comprised part 1 of the written test assessing the shortlisted candidates' relevant competencies to serve in the Post and, as such,

17. The Administration's decision to disregard part 2 constituted a significant change in its Recruitment Strategy that nullified a merit-based se

23. Mr. Chhikara requests that the Appeals Tribunal order rescission of the selection process and that it be conducted anew.

The Secretary-General's Answer

24. Mr. Chhikara has failed to demonstrate that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision against him. His assertions that the impugned Judgment and the Judgment on Revision contained errors of fact are unsubstantiated and each of the alleged errors is contradicted by a proper reading of both Judgments and the record.

25. Mr. Chhikara has failed to identify, let alone demonstrate, any error by the UNDT in the remedy awarded to him, much less establish that the selection decision should be rescinded and conducted anew. It is established jurisprudence that it is not sufficient for an appellant to simply disagree with the outcome of the case. As advanced in the Secretary-General's appeal, there is no evidence that Mr. Chhikara's test was incorrectly graded or that he was treated differently.

26. Mr. Chhikara's requests for production of evidence and leave to file additional pleadings fail to satisfy the requirements of the Appeals Tribunal Statute (Statute) and its Rules of Procedure (Rules). He has failed to address whether there are any exceptional circumstances or why granting his requests would be in the interests of justice.

27. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Chhikara's appeal.

Considerations

28. As noted previously by this Tribunal in Order No. 286 (2017), issued on 13 July 2017, the UNDT by Order No. 246 (NY/2016) had ordered the Secretary-General to provide evidence on details of the selection process, including:⁸

The answers and the corresponding results/marks of each candidate (internal and external), including: (i) for the 25 situational judgment questions, including a list of all these questions; (ii) the correct answers and the method of evaluation for each question.

⁸ *Chhikara v. Secretary-General of the United Nations*, Order No. 286 (2017), para. 1.

and whether they were related to the responsibilities of the position advertised, in accordance with Section 4.7 of ST/AI/2010/3.¹²

34. The Dispute Tribunal also found that the candidates should have received information about the eliminatory nature and the passing mark of 60 per cent of part 1 of the written test, in order to better manage their participation in the exercise.

35. As noted above, both parties appealed the impugned Judgment, and Mr. Chhikara filed a motion requesting the production of evidence which this Tribunal partially granted in Order No. 286 (2017), dated 13 July 2017. In that Order, this Tribunal found that the Secretary-General had failed to fully comply with the UNDT's Order No. 246 (NY/2016) and had, as of that date, "not presented any justification for its lack of compliance" and ordered that the Secretary-General file the evidence that it had failed to file before the UNDT, namely, "a list of the 25 [STJ] questions including those that were eliminated from the evaluation as well as the methodology used in selecting the 'correct' answers to these questions".

36. In issuing its Order, the Appeals Tribunal found that "[g]iven that the UNDT explicitly dealt with the question as to whether these questions were related to the responsibilities of and experience required for the position, and Mr. Chhikara's appeal refers to the issue (...) the evidence (...) may be relevant"¹³ to its review and ordered its production. The Secretary-General presented this evidence on 21 July 2017.

37. As also noted above, after receiving from the Registry a copy of the Secretary-General's submission as per standard procedure, Mr. Chhikara filed a second, pending, motion, requesting the Tribunal to "consider (...) when deciding the case" his comments on the "important evidence finally produced" in response to the Appeals Tribunal's Order No. 286 (2017). He asserts, *inter alia*, that the evidence demonstrates that the 25 STJ questions were related to a competency that was not one of the competencies of the JO, that there was no rationale for the elimination of five questions and that the methodology was faulty.

¹² *Ibid.*, paras. 59-63.

¹³ *Chhikara v. Secretary-General of the United Nations*, Order No. 286 (2017), para. 7.

THE UNITED NATIONS APPEALS T

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Judgment

46. The appeals are partially granted. The consolidated case is remanded to the UNDT, for additional findings of fact and to be judged anew by the same Judge, after affording the parties an opportunity to comment on the new evidence. Judgment No. UNDT/2017/012 is hereby vacated by operation of remand.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar