
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/015

Judgment No.: UNDT/2024/017

Date: 1 April 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

HOSALI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Halil Goksan, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Deputy Director at the D-1 level in the News and Media Division (“NMD”) of the Department of Global Communications (“DGC”), is contesting her not being selected for the post of NMD Director at the D-2 level (“the Post”).
2. The Respondent contends that the application is without merit.
3. For the reason set out below, the application is rejected.

Facts

4. The Applicant, a woman from India, joined the United Nations in 1982 and was promoted to the D-1 level in 2014.
5. The Post was initially advertised in April 2021. The Applicant applied, undertook a written test test test test test test

Consideration

Legal framework

8.

ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him” (see, para. 40).

12. In staff selection cases, the Appeals Tribunal’s has further provided that “there is a ‘presumption of regularity’ that official acts have been regularly performed. This presumption arises if the management can minimally show that the staff member’s candidature was given a full and fair consideration. Thereafter the burden of proof shifts to the staff member who must show through ‘clear and convincing evidence’ they have been denied a fair chance of promotion or selection” (see *Toson*, para. 29, and similarly, the Appeals Tribunal in many other judgments following *Rolland* 2011-UNAT-122).

13. More specifically, the Appeals Tribunal has held that, “A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case” (see, *Verma*, para. 14, and similarly in *Kinyanjui* 2019-UNAT-932, para. 15, affirmed in *Toson*, para. 27).

*What were the applicable policies following)IT00mUf000mregUv68mregUv68mUf000eW*nB*

15. The Applicant therefore contests the “decision to select an external white, male, [British] national to lead a division where the senior leadership is now ... two other [British men at the D-1 level] and her”. That decision was “taken in circumstances where the Applicant had been assessed suitable for the position in question and was among the recommended candidates”. In the reply

c. By contrast, the Applicant's case that "the rules required to be applied, relies on the contents of the [United Nations] Charter, the [General Assembly] resolutions enacted by the administrative instruction, the stated reasons for

[Western European and Others Group, “WEOG”] candidates. At the time of the contested decision “this was a 100% record of recruiting WEOG candidates and 67% record of recruiting males”.

e. This evidence is “relevant because it demonstrates bias either conscious or unconscious”. This is “why statistics advanced by the Respondent relating to different hiring decisions by different hiring managers are not relevant to the matter at issue”;

f. The Respondent claims “clear and convincing evidence of such bias is required”, but “such evidence of racial bias will never be available”. For the Tribunal to be “capable of addressing issues of racial justice it will be necessary to consider where this can be established from reasonable inference from the facts”. In an international organisation “drawing its personnel from all corners of the globe the pattern of recruitment at the time of the contested decision is clear evidence of bias”.

24. The Respondent, in essence, contends that all relevant policies were lawfully applied in the contested decision.

25. The Tribunal genera

diversity in its staff. Female candidates are strongly encouraged to apply for this position. For this position, applicants from the following Member States, which are unrepresented or underrepresented in the [United Nations] Secretariat as of 31 October 2021, are strongly encouraged to apply”. According to the vacancy announcement and the interoffice memorandum of 7 November 2022 from the USG to the Chairperson of the Senior Review Group regarding “Recommendation for filling of post of Director, D-2, News and Media Division, DGC”, neither the United Kingdom nor India are currently underrepresented in the Secretariat. No mention was made of WEOG, which was therefore not a valid criterion for the decisionmaker.

27. Whereas the figures and statistics on the gender and geographical balance at the D-1 and D-2 levels of the Department of Global Communications speak for themselves, the Tribunal finds that, as relevant to the present case, no legal provisions exist that, in and by themselves, prohibited the USG from recruiting a male from the United Kingdom instead of the Applicant based on their respective gender, racial and geographical backgrounds. Rather, it follows from the 7 November 2022 interoffice memorandum that the gender, nationality and geographic and regional background of the selected candidate and the Applicant were indeed considered along with their performance at the competency-based interview.

Was the assessment of the Applicant against her or favoritism of the selected candidate?

28. The Applicant’s submissions may be summarized as follows (references to footnotes omitted):

- a. The “successful white [British] male candidate was marked as having 100% in the video presentation and a perfect score in interview by the exclusively WEOG panel”. This indicates “a complete absence of critical thinking regarding his inputs”. The fact that “the candidate was British and male was specifically referenced by the Panel as a positive for diversity”, despite “him taking over a division with two [British men at the D-1 level]

and the Applicant”. That the Applicant was “a female candidate from the Global South was not referenced”;

b. Assessment of the Applicant’s “answers contains unfair criticism by marking the Applicant down for using an example she was directed towards by the question”. However, “the all-WEOG Panel goes further by expressing suspicion regarding the Applicant’s motives which departs from an objective assessment of her response into demonstrating bias”. No positive comments were “made on her responses even as she was found to have met all the competencies and considered to be suitable for the post, a further indication of uneven treatment and bias in the interview process”;

c. The selected candidate’s “responses to various questions demonstrably did not respond to the specifics of what had been asked”. While the assessment of “an answer may be to an extent subjective the fact this did not disturb the assessment of his interview as perfect is evidence of a lack of critical assessment of his answers”. Notes from the panel “laud what the selected candidate ‘would’ do in the position something impossible to ascertain from an interview and well beyond the competency based framework”;

d. The “subjectivity of the assessment of the successful candidate’s interview is further underlined by the generalised value judgments made regarding his character throughout the interview notes, and even by valued judgments on his character made in notes on the Applicant’s interview”;

e. Contrastingly “the Panel chose to weaponise the Applicant’s [United Nations] experience against her even in circumstances [United Nations] experience was listed as a desirable component of the [vacancy announcement] and proceed to demeaning characterisations of her interview performance and blanket judgments about the appropriateness of hiring internally”. While United Nations experience was “listed as a desirable factor

written summaries of the candidates' answers and the interview panel's deliberations give credence to the Applicant's claim that the contested decision was, in any possible manner, tainted by ulterior motives such as discrimination, bias, or favoritism. Also, it follows from the "assessment report of the substantive video", which the Respondent appended to his reply, that the selected candidate scored 100 percent in the test as compared to the Applicant who only scored 93 percent.

