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Case No.: UNDT/NY/2010/080

Order No.: 164 (NY/2010)

Date: 25 June 2010



## **Introduction**

1. On 21 June 2010, the applicant filed an application under art. 2.2 of the Statute (suspension of action pending management evaluation) for suspending the selection of another staff member to the position as Chief of Africa I, Coordination and Response Division (CRD), OCHA in New York. The applicant currently holds this post on a temporary basis. On 22 June 2010, the respondent filed and served its reply opposing the application. On 23 June 2010, a hearing was held at the premises of the Dispute Tribunal in New York.

## **Facts**

2. On 22 October 2008, Vacancy Announcement (VA) Number 08-HRA-OCHA-419268-R-NEW YORK (G) for the position in question was posted on Galaxy, the online UN jobsite. A total of 110 applications were received at the 60-day mark, of which fourteen were from internal 15-day and 30-day candidates. After reviewing these, six candidates (five from the 30-day list and one from the 60-day list) were found to meet the criteria in the VA, including the applicant.

3. Interviews with these candidates were held on 24 and 26 March, 8 and 9 April 2009, and the applicant was interviewed on 26 March. The interview panel consisted of three members (the Deputy Director of CRD, a Chief of Section/OCHA Geneva and a Chief of Section/OCHA New York) and a staff representative. According to the respondent, the applicant did not, at or around the time of her interview, express any concern in relation to the constitution of the interview panel, nor did she object to the presence of any of the interview panel members. At the hearing on the suspension of action, the applicant confirmed this stating that she was unaware she could challenge the constitution of the panel and feared retaliation. She also stated that she brought up her concerns informally with different OCHA officers in September, October and December 2009 and that she had also discussed her case with the Ombudsman and the Office of Human Resource Management.

4. Following the interview process, the interview panel recommended three candidates, but not the applicant since it unanimously found that she had not demonstrated all the necessary competencies for the position.

5. CRD then submitted its recommendation to the Central Review Board (CRB). The CRB Secretariat subsequently requested that, in order to ensure that female and under-represented candidates were duly evaluated, additional female candidates be 5.

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not appealable, and which requires consideration by a Judge within 5 days of the service of the application on the respondent (see art. 13.3 of the Rules of Procedure). It disrupts the normal work and day to day business of the Tribunal. Therefore parties approaching the Tribunal must do so urgently and with sufficient information for the Tribunal to preferably decide on the papers before it. The proceedings are not meant to turn into a full hearing. The application must not be frivolous or an abuse of process or else an applicant may well be mulcted in costs.

9. The applicant's case is set out in her application for suspension of action filed at the New York Registry on 21 June 2010. The application is in the required form for pleadings in such matters but is incomplete and lacks the essential facts and averments to sustain such an application. It does not even have the attachments that are referred to in the application. In other words it is incompetent as it stands. Nevertheless, I advised the applicant at the hearing that even if she were allowed to supplement the application by oral evidence and relevant documentation at the hearing with leave of the court, the three requirements for a successful suspension of action must be met. I then explained these three requirements to the applicant.

#### *Urgency*

10. The applicant alleges that the matter is urgent because of the pending "announcement of the conclusion of the selection process" following which, she claims, she will be unable to challenge her assessment by the interview panel. The applicant became aware of the decision that someone else was selected on 19 April 2010 and only moved her application on 21 June 2010. This is a delay of more than two months. As regards the applicant's challenge to the constitution of the Panel, it is common cause that her interview took place on 26 March 2009, yet the applicant failed to challenge the composition of the panel at the appropriate time or within a reasonable period thereafter. The urgency, if any, is ther

*Prima facie unlawfulness*

11. The applicant claims that her assessment was tainted by the bias of one of the panel members, as one of its members, had failed to recuse herself, despite the fact that she and the applicant had had a prior, work-related disagreement. The applicant further claims that there was a failure to give due consideration to her experience. The respondent contends that the assessment of the applicant by the interview panel (which included a staff representative) was unanimous, that the applicant has failed to show the decision was tainted by improper considerations and that, in light of the fact t ls5(s)Tde thestly sl

13. Having explained the difficulties regarding the statutory requirements for granting a suspension of action based on her application and submissions in court—above all since the decision concerning the selection of the other candidate had already been effectuated, the applicant, quite correctly in my view, decided to withdraw her application, reserving her rights to pursue her case by fdc1 1 Tfn