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9. On 12 May 2021, Ms. Rao requested management evaluation of the decision not to consider her for the position. On 16 June 2021, the Chef de Cabinet, Executive Office of the Secretary-General, issued a written decision upholding the contested decision. It further concluded that Ms. Rao's candidacy was given full and fair consideration and noted that since the description of her Personal History Profile (PHP) did not indicate that she had supervised a team of at least 10 employees, her candidacy was lawfully considered not suitable.

10. On 14 September 2021 Ms. Rao filed an application with the Dispute Tribunal challenging the contested decision.

*Impugned Judgment*

11. On 28 September 2022, the Dispute Tribunal issued the impugned Judgment. It began by recalling that the Secretary-General has broad discretion in staff selections and that it is "not the role of the Tribunal to substitute its own decision for that of the Administration" and that its role is rather to "assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner."

that it was “merely an office-based scenario”.<sup>8</sup> Therefore, the UNDT found that the Administration’s failure to specify that “the hiring manager intended to apply a definition of large teams as meaning supervising a group of 10 or more persons” demonstrated an unjust selection process that failed to provide Ms. Rao a fair chance of selection.<sup>9</sup>

14. Second, the UNDT also concluded that the Administration erred in fact in finding that Ms. Rao did not provide sufficient evidence of “experience in leading large teams” and in interpreting this requirement the way it did.

15. The Dispute Tribunal found that the Administration failed to make a clear requirement of experience of supervising at least 10 employees and instead wrongfully restricted the meaning of “leading” to “immediate supervision” . It found that this and 0767153.47604(i)879.7(t)(1)83(e)2-(77)(d)7646(4)

since the [Secretary-General] [did] not claim that [Ms. Rao] did not meet any other requirements in JO 127555". The Dispute Tribunal further concluded that Ms. Rao would have had a realistic chance of selection, especially as she was benefiting from the temporary special measures implemented by the Organization to achieve gender equality.<sup>15</sup>

19. The UNDT rescinded the contested decision and determined that the selection process should be repeated to permit Ms. Rao's candidacy to be fairly considered in light of the varied meaning that could be given to the term "leading large teams".<sup>16</sup> However, pursuant to Article 10(5) of the Dispute Tribunal Statute, the UNDT concluded that the Secretary-General could elect to compensate Ms. Rao for her loss of opportunity. In the present case, the Dispute Tribunal determined that a purely mathematical approach calculating the loss of opportunity of Ms. Rao simply by how many candidates applied to JO 127555 would not reflect her

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requirement of leading large teams must include that the candidate demonstrates experience in having supervised at least 10 employees.

27. Moreover, the Secretary-General submits that contrary to the Dispute Tribunal's finding, it would be impossible for the Administration to describe exactly what it is looking for in JOs and that it is for this reason that the Secretary-General is vested with broad discretion in matters of staff selection.<sup>23</sup>

28. Second, the Secretary-General contends that the UNDT erred in fact in analyzing the responsibilities and other requirements set out in JO 127555. More specifically, the Secretary-General contends that the UNDT erred when it found that "nothing in JO 127555 suggested to the job candidates that they needed to have had experience supervising large teams" and that there was "no reference either in JO 127555, in the [JFQ] open-ended question No. 3 or in any other open-ended question requiring the candidates to specify that they had experience supervising a number of employees, or that for the purpose of the vacancy, 'experience in leading large teams' should include experience in supervising".<sup>24</sup> On the contrary, the Secretary-General notes that there were multiple references to the terms "supervise", "supervision" as well as to the ability to supervise employees in JO 127555.

29. In addition, the Secretary-General observes that a position at the D1 level within the Organization is likely to involve supervision.

30. Third, the Secretary-General submits that the UNDT made further errors of fact when it took into account irrelevant matters. More specifically, the Secretary-General argues that the UNDT made an "irrelevant" and "factually erroneous" observation regarding JO 127555 when it held that "there [was] nothing in these words that restrict[ed] the number of persons with whom [Ms. Rao], if successful, would have to interact".<sup>25</sup> The Secretary-General contends that he never indicated any restriction with regard to the number of persons with whom the successful candidate would have to interact. He also argues that even if the UNDT was rather referring to the requirement of a large team consisting of at least 10 persons (instead of interactions), this element would still be irrelevant as Ms. Rao made no legal argument based on the hiring manager's interpretation of the word "large" to mean "10 or more".

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<sup>23</sup> Impugned Judgment, para. 42.

<sup>24</sup> *Ibid.*, paras. 27 and 39.

<sup>25</sup> *Ibid.*, para. 24.

31. Moreover, the Secretary-General submits that the UNDT also erred in observing that the reference to “large teams” in JO 127555 had been conceptually restricted to an “officebased” experience in an “office environment as the Administration argue[d]”.<sup>26</sup> The SecretaryGeneral notes that the Administration did not make such restriction and that, on the contrary, the hiring manager did not omit Ms. Rao from the longlist based on her lack of “office-based experience”. He also notes that this argument was never raised by Ms. Rao.

32. Fourth, the Secretary-General contends that the UNDT applied the wrong standard of judicial review in its analysis of the contested decision. The SecretaryGeneral submits that when the UNDT concluded that it was not fair to interpret the term “leading” as including “supervising”, it wrongfully applied a standard of “fair” consideration in the selection process.



compensation to Ms. Rao, the UNDT misapplied the standard that an irregularity in the selection process will only result “in the rescission of a non-selection decision, or (...) of a decision not to shortlist a candidate, if the candidate would have had significant chance of selection”.<sup>31</sup>

36. The Secretary-



46. Ms. Rao contends that the UNDT also correctly found that she had demonstrated experience in leading large teams<sup>37</sup>

47.





used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation".<sup>50</sup>

62. However, the plain meaning principle for interpretation is not exclusive or absolute, relying on the existence of a plain and common word. An *a contrario* understanding of this principle can also be inferred. When the language used causes problems of comprehension as to its exact meaning and scope, it is wise to adopt a

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her answer to the JFQ open-ended question No. 3, but also in light of the information provided in her PHP with regard to the various positions she previously held.<sup>59</sup>

78. The Administration found that Ms. Rao , in her answer to the JFQ open-ended question No. 3, did not specify her role “versus the other team members”. The Administration further explained that her PHP indicated zero staff under her supervision in her position of management consultant between 2002 and 2006. Moreover, the maximum number of staff under her supervision in her other positions was nine as the Chief of Section, Inspection and Evaluation Division of OIOS. Therefore, the Administration found that Ms. Rao did not meet the minimum requirement of having previous experience directly supervising 10 people or more.<sup>60</sup>

79. We uphold the finding of the Administration in this regard. We recall first that the presumption of regularity applies to the present case as it relates to a question of fact. We find that the Administration has minimally shown that a full and fair consideration was given to Ms. Rao. We agree with the Administration in its determination that Ms. Rao 's answer to the JFQ open-ended question No. 3 was not specific and did not allow for an understanding of her supervisory role vis-à-

81. Having vacated the impugned Judgment and upheld the contested decision, we find no need to examine the second contention of the Secretary General related to the in-lieu compensation that is consequently overruled.

Judgment

82. The appeal is granted, and Judgment No. UNDT/2022/092 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> day of October 2023 in New York, United States.

*(Signed)*

Judge Shehā, Presiding