



JUDGE LESLIE F. FORBANG, PRESIDING.

1. Mr. Leonid Dolgopolov (Mr. Dolgopolov), a staff member with the Department of Operational Support (DOS), contested the decision not to select him for the position of Administrative Officer at the P-3 level with the United Nations Human Settlements Programme (UN-Habitat) in Nairobi, Kenya, advertised under Temporary Job Opening 161651 (TJO 161651) (contested decision).
2. On 14 August 2023, by Judgment No. UNDT/2023/086 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that the contested decision was lawful, as Mr. Dolgopolov's candidature was given full and fair consideration, and dismissed his application.
3. Mr. Dolgopolov lodged an appeal against

requirements are considered objective criteria for selection, which reduce the risk of subjective and unfair comparisons".¹⁰

13. The UNDT also found that the Administration appropriately considered the fact that the selected candidate was a woman, and that her selection contributed to the Organization's gender targets outlined in Section 4 of Administrative Instruction ST/AI/2020/5 (Temporary special measures for the achievement of gender parity), particularly since gender parity targets had not yet been achieved at the P-3 level at the time of the recruitment.¹¹

14. The UNDT rejected Mr. Dolgopolov's argument that, under Article 101(3) of the United Nations Charter and Staff Regulation 4.2, he should have been given priority consideration due to his Russian nationality, which is from an under-represented country. On the contrary, the UNDT observed that, as he was already a United Nations staff member, his selection for the position would not have affected the representation level of the Russian Federation within the Organization, which is evaluated across the Organization as a whole.¹²

15. Last, the UNDT found that, contrary to Mr. Dolgopolov's contention, the use of a grading methodology or the administration of a written assessment or a CBI, while helpful, was only optional for the recruitment of temporary positions pursuant to ST/AI/2010/4/Rev. 1.¹³ In this regard, the UNDT observed that Mr. Dolgopolov's reliance on *Virendra Singh Chhikara* was misplaced,¹⁴ as that case concerned

17. On 2 October 2023, Mr. Dolgoplov filed an appeal against the impugned Judgment

35. The Secretary-General argues that *Virendra Singh Chhikara* and ST/AI/2010/3 are not applicable to the present case as they concern the selection process related to permanent positions, which is different from temporary appointments that are “meant to expeditiously address the short-term staffing needs of the Organization”.

36. Last, the Secretary-General submits that the Administration had no obligation to consider Mr. Dolgoplov’s nationality when taking the contested decision and that, in any event, Mr. Dolgoplov failed to demonstrate how the UNDT’s alleged error in this regard impacted the impugned Judgment.

Considerations

37. We recall that the jurisdiction of the Appeals Tribunal is governed by Article 2(1) of the Appeals Tribunal Statute (Statute) which provides:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

38. We also remind ourselves that jurisdiction means the authority of a tribunal to decide matters that are litigated before it or take cognizance of matters that are presented in a formal way for its decision. Tribunals are therefore strictly bound by the terms of the law that confers jurisdiction on them.

39. We agree with the Secretary-General that as per our settled case law the “appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective”.²³ We have repeatedly ruled that an appeal is not “an opportunity is not “

40. In strict adherence to the principles above, an appeal that fails to identify any of the five

Administration to apply the principle of recruiting staff on a wide geographical basis are merely repetitions of arguments that did not succeed before the UNDT and cannot be re-litigated on appeal.

54. This Tribunal has consistently held that:³³

... (...) [T]he appeals procedure is of a corrective nature and is thus not an opportunity for a party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.

55. In *Ross*, we emphasized that:³⁴

... (...) [T]he Appeals Tribunal is not a forum for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. More is required. The appellant must demonstrate that the UNDT has committed an error of fact or law warranting intervention by this Tribunal.

56. Further, Mr. Dolgoplov asserts that the recruitment process was irregular because the overall recruitment process was not abbreviated. He claims that it took seven months from the publication of TJO 149241 to the actual completion of the recruitment process for TJO

However, the latter requires a more extensive assessment, as it concerns the selection process for permanent positions, whereas ST/AI/2010/4/Rev.1 is designed to expeditiously address short-term staffing needs. Further, we emphasize that Mr. Dolgoplov's view that TJO 161651 is a continuation of TJO 149241 is erroneous. The latter was canceled and has no bearing on TJO 161651, which was a new job opening.

59. Turning to the case at bar, we are satisfied that the Secretary-General discharged his minimal burden of demonstrating that Mr. Dolgoplov's candidature was given full and fair consideration by taking the following steps: informing him of the re-advertised TJO; shortlisting him and three other candidates from a pool of 60 applicants; applying a comparative analysis to score all four shortlisted candidates; recommending Mr. Dolgoplov as the second choice for the position, along with the selected candidate, based on their ranking scores; and selecting the

the exercise of his discretion, the Secretary-General acted in an arbitrary, discriminatory or irregular manner.³⁶

63. Accordingly, we find that the decision not to select Mr. Dolgoplov for TJO 161651 was lawful.

³⁶ *Ibid.*, para. 38.

