





10. In January 2012, the then-UN. - Associate Administrator and the then-Assistant Administrator and Regional Director of (AS #) visited the UA; Country Office,

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1< August 2014. The UN. ! Ad#sor& ! rou4 u4held the rat\$ng of C4F \$nd\$at\$ng C4art\$all&  
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12. On 11 October 2014, Ms. Sarrouh applied for her positions at the UN. - Countries in (en, Tan>an, Jm/a/9e, ! hana and Saud\$ Ara/\$a.

17. On 22 March 2014, Ms. Sarrouh filed an application with the UN. T. "n res4onse to UN. T 3rder No. 201 5N: 7201B6 dated 28 August 201B, Ms. Sarrouh \$nformed the . \$4ute Tr\$/unal that she had /een se4arated from t



Contested decision unlawful. There could not be a sufficient causal link between the irregularity and the decision since other evidence on the record also established the serious concerns regarding Ms. Sarrouh's performance and the overall unsatisfactory performance rating in her 2012 -A was ultimately maintained.

22. Overall, the Secretary-General submits that the UN. T erred in law when awarding compensation for moral harm. As the contested decision was lawful, it was not illegal

as well as the documentation provided and the Appellate Tribunal hearing showed the evidence for its findings.

22. Ms. Sarrouh further asserts that the UN. Tribunal identified the scope of its review and limited it to the issues of fairness and procedural regularity and thus did not conduct a de novo review of Ms. Sarrouh's performance. The UN. Tribunal was strictly limited to UN. -'s own procedural guidelines and it, inter alia, examined whether the UN. - team met the obligation to review Ms. Sarrouh's three latest -As and it evaluated their status to that effect. It took into consideration the elements of cost-free feedback from a number of witnesses in order to call into question the unsubmitted conclusions of the ; at the time. The UN. Tribunal also correctly found that the 2012 -A was given disproportionate weight and the appeal has not demonstrated an mistake of law or fact in the UN. Tribunal's analysis which concluded that Ms. Sarrouh was not afforded full and fair consideration. The determination that her performance in the UA; had been unsatisfactory is not unjustified and the evidence on the record. Further, the Secretary-General's argument that only the best candidates should be selected to serve as ) C7) ) is not pertinent to the issue of whether a candidate was fairly treated.

27. With respect to the UN. Tribunal's findings of procedural irregularities, the Secretary-General essentially summarizes the arguments already made before the UN. Tribunal and engages in a cursory superficial analysis of the evidence as proof of what he is asserting. The Secretary-General without citing any authority and contra(r) 18. 6953 (\$ 21. 26151-18. 96 T dN[ (9) 19(u) 95. 1306(r) 18

28. Ms. Sarrouh requests that the Tribunal be directed to award her three months' pay for a period of three months in the amount of US\$ 10,000 for each of the three months of her absence from work as a result of her illness. She also requests that the Tribunal be directed to award her three months' pay for a period of three months in the amount of US\$ 10,000 for each of the three months of her absence from work as a result of her illness.

29. The Tribunal found that the UNCT had committed an error of law in deciding that the Tribunal should not nominate Ms. Sarrouh for the AA-3 further consideration for the JC posts for which she applied in August and November 2011. It was unlawful.

30. The Appeals Tribunal has consistently stated that in matters of staff selection, the Secretary-General has broad discretion. It has held that this discretion is not unfettered and is subject to judicial review.

31. In *Ljungdell*, it referred to the discretion which rests in the Administration in the following terms:<sup>2</sup>

Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.25 and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisdiction of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNCT or the Appeals Tribunal to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration.

32. In *Abbassi*, it emphasized that<sup>7</sup>

In reviewing administrative decisions regarding appointments and promotions, the UNCT examines the following: 516 whether the procedure as laid down in the Staff Regulations and Rules was followed; and 526 whether the staff member was given fair and adequate consideration.

<sup>B</sup> The UNCT found that Ms. Sarrouh's application was rejected in part, with regard to her claims regarding her non-selection for three months for which she had applied in August 2011 and three months for which she had applied in November 2011. It rejected as not relevant the fact that part of her application concerned other positions for which she did not request management evaluation.

<sup>2</sup> *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-22B, 4 para. 20, 21; *Schoon v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-212, 4 para. 24; *Autong Sanidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, 4 para. 40. See internal footnotes omitted.

<sup>7</sup> *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, 4 paras. 22-24.

H The Secretary-General has a broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of the UN. Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process.

4. In Holland, we stated <sup>8</sup>

H The Security Tribunal possesses a discretion to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Security Tribunal shall uphold the selection or promotion.

H All candidates before an Interim Panel have the right to full (s) 22.3609() - 445.258(/) 177

members of the Panel established, or relevant material was considered or relevant material ignored.

2. The UN. T's Judgment indicates that it was aware of the seriousness, and we find that it failed to correct the law when considering Ms. Sarrouh's challenge to the selection process.

7. For the reasons which follow, we agree with the Secretary-General's submission that the UN. T erred in conducting a de novo assessment of Ms. Sarrouh's performance and therefore exceeded its competence and intruded into the Administration's managerial discretion to assess the performance of staff. Our reasons demonstrate that the UN. T erred in law and exceeded its competence in substituting its own decision for that of the Administration regarding the outcome of the selection process. We held in Niolara that the same principles apply insofar as substituting the Tribunal's own

THE UNITED NATIONS APPEALS TRIBUNAL

7) The Tribunal found that the appellant's nomination to the "AA" for the relevant period was not among UN. -s nominees to the "AA" for the relevant period.

"In paragraph 9 of the grounds of the appeal, you are hereby instructed to undertake a mission to Ne9 : or+ in order to conduct consultations with relevant parts of Headquarters with the objective of arriving at a sustainable solution to the management issues in the UA; Country Office. 5H6

H

Finally, you are instructed to cease all deployments of personnel at the Ne9 in the Country Office until further notice. Should any personnel at the Ne9 be required to be taken, you must obtain the approval of the Regional Bureau. 5H6.

Thus, there was a report of her serious problems in the Country Office which fell within the responsibilities of Ms. Sarrouh as ) C for the UA; . The Secretariat General was entitled to take this into account when considering her assignments for her important posts in other countries. The UN. Tribunal was not competent to hold that the Secretariat General should have given preference to different criteria.

44. In the light of Ms. Sarrouh's performance in the UA

The UN. T \$nter4reted the mean\$ng of th\$ statement as /e\$ng that \$t Ca44ears to re%ogn\$e that  
DMs. Sarrouh?SE ent\$re 4erforman%e 9\$th UN. -, \$n%lu

B<. The appeal allowed and Judgment No. UN. T720127218 is affirmed.

Original and Authoritative Version ; English

. dated this 27<sup>th</sup> day of October 2017 in New York, United States.

&Signed'

Judge \*uss+, -resding

&Signed'

Judge Thomas-Oel

&Signed'

Judge ) asos

; entered in the register on this 8<sup>th</sup> day of November 2017 in New York, United States.

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