
**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1014



Virendra Singh Chhikara
(Appellant)

v.

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4. The first UNDT Judgment (No. UNDT/2017/012) acknowledged the illegality of the decision, but did not order rescission of the non-selection decision on the grounds that this would have been disproportionate. It awarded Mr. Chhikara compensation in the amount of USD 4,000 for procedural violations.

5. Both parties appealed Judgment No. UNDT/2017/012. The Secretary-General produced new evidence, whose production had been ordered before. As a consequence, by means of Judgment 2017-UNAT-792, the Appeals Tribunal remanded the case for additional findings of fact. This Tribunal stated:²

... This evidence was considered relevant by the Dispute Tribunal, such that it compelled its production, and as potentially relevant by the Appeals Tribunal when it also ordered its production. It is relevant evidence and should have been presented to the UNDT, in accordance with the two-tier system of administration of justice. The UNDT erred when it considered that it did not need this missing evidence to decide the case; indeed, the UNDT might have decided the case differently had it had access to this evidence which was at the core of the dispute as it related to the specific part of the test which Mr. Chhikara failed. (...)

.... Now that this evidence has been finally produced, we consider that, in light of the Organization's

considered that the hiring manager's actions were only grossly negligent, rather than were taken in bad faith.

12. Mr. Chhikara then claims that the UNDT failed to exercise jurisdiction when it did not order rescission of the selection decision, arguing that the case had been pending since 2016 only because of the Administration's reprehensible attitude during the procedure and that this cannot be allowed to result in denying him justice under the pretext of "fait accompli".

13. He further argues that the UNDT failed to exercise jurisdiction when it did not refer the case to the Secretary-General for accountability.

The Secretary-General's Answer

14. The Secretary-General submits that the UNDT did not err when it did not rescind the decision not to select Mr. Chhikara for the Post and, instead, ordered the payment of compensation, citing the Appeals Tribunal's decision in Ross as a precedent.³ The Secretary-General maintains that the previous UNDT Judgment in Chhikara does not support the Applicant's claim and Bofill⁴ does not apply to the present case, since Mr. Chhikara is considered to have had

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d. Records of the grading must be developed that clearly describe how each job candidate was assessed, which would allow a third party, such as the [Dispute] Tribunal, to review and verify that the entire process was handled in a proper manner.

19. To avoid the process being perceived as biased, the assessment of the written tests must be conducted on a confidential and anonymous manner where no person with influence over the selection process has access to the names of the job candidates while the grading is pending. In his new appeal now under consideration, Mr. Chhikara sets out a number of factual arguments about the manner in which the selection exercise was organised and the way in which the Administration acted

22. Having said that, the main issues for consideration and determination are whether the UNDT erred in fact or in law when it did not rescind the decision found to be illegal and did not refer the case for accountability. In addition, Mr. Chhikara questions the amount of the costs awarded.

Rescission of the decision and compensation in lieu thereof

23. The UNDT issued its new Judgment, acknowledging the illegality of the decision. The UNDT Judgment found that Mr. Chhikara had not been given full and fair consideration during the selection process and that the Administration had failed to comply with “even the most very basic standards to be expected from such exercise”, because the administration of the written test had been so irregular.⁷ However, the UNDT found that a rescission would not be feasible due to the time which had elapsed between the contested administrative decision and the date of the judgment.

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determine the in-lieu compensation in the amount equivalent to three-months' netbase salary at the D-1 level. This in-lieu compensation is without any prejudice to the amount of compensation for harm set by the UNDT.

Costs

30. In this matter, the UNDT observed that, if a party

provides the Tribunal with decisive information that is wrong and misleading, this amounts to a manifest abuse of process of very serious nature (...) Basically, such action puts the entire integrity of the judicial system at risk—it may not only lead to undue and costly delays, but also lead to straightforwardly incorrect decisions. However, the fact that the Respondent in this case, albeit extremely late in the process, admits to, at least some of, the irregularities, is a mitigating factor, which the Tribunal must take into account when determining a possible amount for the abuse.¹²

31. Mr. Chhikara claims that the false submissions misled the Tribunals and caused him harm and, therefore, the UNDT erred when it referred only to the “delays” caused by the Administration’s actions, when awarding costs for abuse of the process to be paid

38. The Appeals Tribunal is well aware of the sparingly used statutory power of referral for accountability by both Tribunals in the internal justice system. However, the findings of the UNDT were that, while there was no evidence that the decision-maker(s) had acted in bad faith,¹⁷ there was clear evidence “that someone intended to manipulate the test results and therefore also the selection process”, with regard to the lack of anonymity of candidates when grading the test responses.¹⁸ Furthermore, not all the results of the written test were taken into account when deciding which candidates were to be interviewed, and finally, the spreadsheets (records of the written test results) were “close to unreadable and made very little sense, if any, at all”.¹⁹ Negligence, to say the least, appears to have occurred in the manipulation of the selection exercise²⁰ and this alone may warrant some sort of accountability.

39. These findings are serious and troubling and warrant an investigation. Given their

Judgment

40. The appeal is partially upheld and Judgment No. UNDT/2019/150 is modified, insofar as the administrative decision not to select Mr. Chhikara is hereby rescinded. The Secretary-General may elect to pay compensation in lieu in the amount equivalent to three months' net-base salary at the D-1 level. The case is referred to the Secretary-General for possible action to enforce accountability. The costs and the compensation for harm awarded by the UNDT are maintained.

Dated this 26th day of June 2020.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Murphy