



THE UNITED NATIONS APPEALS TRIBUNAL

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Resources Policy Division of the ICSC, the Chief of the Salaries and Allowances Division of the ICSC, and the Director of Human Resources of the United Nations Population Fund.

4. On 22 June 2016, the Chairman of the ICSC recommended the selected candidate. The selection was thereafter approved by the Secretary-General. On 11 August 2016, Ms. Mohamed was informed of her non-selection and on 2 September 2016 she filed a request for management evaluation with the Management Evaluation Unit (MEU). Ms. Mohamed thereafter filed an application with the UNDT on 12 January 2017.

5. On 23 October 2017 and 15 March 2018, the UNDT held hearings. On 26 March 2019, the UNDT issued Judgment No. UNDT/2019/047 on receivability, wherein it held that Ms. Mohamed's claim that the selection process was tainted by ulterior motives since she had rejected sexual advances from the Chairman of the ICSC was not receivable because she had not previously set forth this claim in connection with her non-selection in her request for management evaluation as required by Staff Rule 11.2.

6. On 20 May 2019, the UNDT addressed the remaining issues relating to her non-selection in Judgment No. UNDT/NY/2019/088 (the Impugned Judgment). The UNDT dismissed Ms. Mohamed's application holding that the selected candidate held a first-level university degree and that the Administration's determination of what constituted "extensive experience" in various fields of human resources was a reasonable determination. Thus, the UNDT held that the selected candidate met the requirements of the Job Opening. The UNDT also held that Ms. Mohamed had failed to establish that she was substantively more qualified for the position than the selected candidate. The UNDT found that Ms. Mohamed did not establish convincing evidence to support her claim that the ICSC Chairman inappropriately favoured the selected candidate. Ms. Mohamed scored the same on the assessment as the selected candidate but scored less than the selected candidate on the interview. The UNDT noted that there was a lack of written record for the written assessment and the interview, but this had not impacted Ms. Mohamed's chances of selection as the interview panellists had not appeared

8. On 4 November 2019, Ms. Mohamed filed a motion for leave to file a second appeal. The motion was filed in violation of the Tribunal's Rules of Procedure, which require that a motion for leave to file a second appeal be filed within 30 days of the date of the final judgment. The Tribunal finds that the motion is out of time and therefore dismisses it.

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Judgment No. 2020-

Appellant] has not demonstrated any exceptional circumstances justifying the need to file a reply to the Secretary-General's answer. Accordingly, the Appeals Tribunal decides to strike [Appellant's] additional submission and not to take it into consideration.

19. Our jurisprudence has established that there are no exceptional circumstances where an additional pleading would merely intend to express disagreement with the statements made by a party in its answer or reiterate the arguments already contained in the appeal.²

20. In the present case, the Appellant does not identify -39.4(t)-1.3.36 TDU0.8 ()-5.3 [-3.1 (f)s1e

29. The Appellant alleges that for a candidate who

resources management functions in an international setting”. It is undisputed that the selected candidate started working, as a professional, in the Human Resources (HR) field in May 2005, and that his professional experience in the HR field exceeded ten years at the beginning of the selection process. He therefore also had the required ten years of professional and managerial experience.

34. Consequently, the Appellant did not demonstrate that the UNDT Judgment was defective, or that the UNDT erred in considering that the selected candidate met the “minimum educational requirements” and the “work experience” required for the post.

Did the UNDT err in considering that it was not proven that Ms . Mohamed was substantively more qualified than the selected candidate?

35. The App

Was the selection process flawed and did the UNDT make factual errors, justifying the overturning of the Judgment?

38. Regarding the regularity of the selection process, our jurisprudence has established that:⁷

Judicial review of a staff selection decision is not for the purpose of substituting the Dispute Tribunal's selection decision for that of the Administration. Rather, as we stated in *Abassi*, the Dispute Tribunal's role in reviewing an administrative decision regarding an appointment is to examine: "(1) whether the procedure laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration". The role of the UNDT is "to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner".

As the Appeals Tribunal has explained, the starting point for judicial review is a presumption that official acts have been regularly performed:

... But this presumption is a rebuttable one. If the management is able to even minimally show that the [staff member's] candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter, the burden of proof shifts to the [staff member] who must show through clear and convincing evidence that [h]e was denied a fair chance of promotion.

39. If the applicant's candidature was given full and fair consideration, the evidentiary burden of proof shifts to the applicant who must show through clear and convincing evidence that he or she was denied a fair chance of promotion.⁸

40. In this case, the Appellant questions the veracity of the assessment by the panel and states that "the members of the selection panel, who were all specialists of the field, knew that the selected candidate did not possess the minimum requirement for the post but went along with the request of the Chairman" whose "motivation to not select (the Appellant) to the

41. The Appellant's allegations are not based on evidence and we must confirm that there is no clear and convincing evidence that the selection process was flawed and a fair chance of promotion was denied. The complaint filed with the Office of Internal Oversight Services (OIOS) against the Chairmtt 19DiD3]0.2952eirm3B9002 Tw 0.24t heB aatev(n)4.2 T732 Td (ai)-2wae

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