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Case No.: UNDT/NY/2011/019

Judgment No.: UNDT/2013/098

Date: 10 July 2013

## Introduction

1. The Applicant contests the decision ~~made~~ by the Office of Human Resources Management (“OHRM”), Department of Management in New York, that he was not eligible to be considered for a post at the G-7 grade.

## Facts

2. On 15 September 2010, the Applicant ~~Desktop~~ Desktop Editorial and Publishing Assistant at the G-4 level, grade 6, submitted ~~the~~ application in response to vacancy announcement VA10-ADM-UNJSPF-ECEO-15697r-New York(O) for the post of Investment Assistant (the “Post”) at the G-7 level, located in the United Nations Joint Staff Pension Fund (“UNJSPF” or the “Fund”).

3. On 23 November 2010, the Applicant ~~contacted~~ contacted OHRM to express why he considered that he was the most suitable candidate for the Post. Three days later OHRM informed the Applicant that he did not match the requirements for the Post.

4. On 6 December 2010, the Applicant requested management evaluation of the decision not to give his ~~application~~ application due consideration ~~by~~ concluding that he was ineligible for the Post.

5. On 31 January 2011, the Management ~~Evaluation~~ Evaluation Unit (“MEU”) informed the Applicant that they had “found no ~~basis~~ basis to conclude that the Administration abused its discretion in its determination ~~that~~ [he was] ineligible for consideration for the Post”.

6. On 10 March 2011, the Applicant filed ~~the~~ present application stating that OHRM had “failed to give the fullest regard to [his] application” for the Post. The supporting documents to the ~~application~~ application were contained within 64 annexes totaling close to 1,000 pages.

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b. The eligibility restrictions in ~~the~~ 6.1 of ST/AI/2010/3 (Staff selection system) invoked by the Administration do not apply ~~to~~ the Pension Fund as it is not bound by administrative instructions issued by the Secretariat. Seeing that the Secretary-General of the United Nations does not have any authority over staff rules at the UNJSPF, ~~the~~ Pension Fund is not precluded from employing a candidate that was rejected by OHRM;

c. Should these policies apply to the Pension Fund, they still violate the UN Charter, Staff Rules and Regulations, General Assembly resolutions and requirements of the International Civil Service Commission as the “United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs”;

d. The Applicant requests that he be appointed to the Post. Alternatively, he requests that he be awarded ~~two~~ years of salary in compensation for the harm suffered.

#### Respondent's submissions

19. The Respondent's principal contentions may be summarized as follows:

a. The Pension Fund recruits and ~~uses~~ ~~employs~~ its staff in accordance with the United Nations Staff Regulations and Rules. Furthermore, the authority to take actions related to selection, appointment, promotion and determinations of terms and conditions of service for staff of ~~the~~ Pension Fund has been delegated to OHRM via a Memorandum of Understanding (“MOU”);

b. Paragraph 6.1 of ST/AI/2010/3 specifically states that staff members on fixed-term appointments are not eligible to apply to positions which are more than one level above their ~~current~~ grade. Further, a review of

the Applicant's Personal History ~~Pile~~ indicated that "as a G-4 staff member [he] did not meet the level ~~requirement~~ and that he did not possess a minimum of 10 years work experience in financial markets";

c. The Applicant's right to full and fair consideration was respected. The application should be fully ~~discussed~~ and no compensation should be awarded.

## Consideration

### *Receivability*

20. The application meets all of the ~~receivability~~ criteria from art. 8 of the Dispute Tribunal's Statute.

### *Applicable law*

21. ST/SGB/2009/4 (Procedures for ~~eth~~ promulgation of administrative issuances) states:

#### Section 2

##### Entry into force and effect of administrative issuances

2.1 Administrative issuances shall ~~enter~~ enter into force upon the date specified therein and shall remain in force until superseded or amended by another administrative ~~issuance~~ issuance of the same or higher level and promulgated in accordance with the provisions of the present bulletin.

2.2 Staff members at all levels shall ~~be~~ be responsible for observing the provisions of administrative ~~issuances~~ issuances promulgated in accordance with the present bulletin.

2.3 Administrative issuances shall ~~not~~ not apply to the separately administered funds, organs and programmes of the United Nations, unless otherwise stated therein, or unless the separately administered funds, organs and programmes ~~have~~ have expressly accepted their applicability.

Section 3

Secretary-General's bulletins

3.1 The following matters shall require the issuance of

23. ST/SGB/2010/6 (Staff Rules), dated 2 September 2010, states:

Staff Regulations of the United Nations

Scope and Purpose



11 Staff of the Fund recruited promoted to the P-4, P-5 and D-1 levels (other than the post Deputy CEO – see paragraph 7) shall be selected through normal appointment and promotion procedures applicable to the UN Secretariat ... .

...

13 The formal contractual arrangements will be the same as those offered by the UN, i.e. short term, fixed term and eventually permanent appointments. No [appointments of limited duration] contracts are anticipated. The UN measures for the achievement of gender equality, as set out in /ST/1999/9 would be followed to the extent possible.

#### General Service Staff

14 The General Service staff of the Fund secretariat shall be appointed and promoted through the normal UN A&P procedures, according to the policies applicable at the duty stations in which the UNJSPF staff serve, presently New York and Geneva. The same conditions as those outlined above shall apply with regard to applicants for posts from member



29. Article 15 of the MOU between the Fund and the United Nations highlights the fact that the personnel selected by the Fund would be appointed under a contract limited to service in the Fund and that this would also limit the right for these staff

a permanent, continuing, temporary or ~~fixed~~ term appointment ~~will~~ be eligible to apply to posts that are more than one level higher than their current grade.

Per

Education: high school diploma or equivalent. Supplementary courses/training in finance or equivalent, preferably in economics, business administration, or related subjects are highly desirable.

Work experience: Ten years experience in the financial markets. Exposure to capital markets and international work experience is desirable. Prior experience in investment management also desirable. Prior experience in investment management also desirable.

39. On the date of his application for the Post, the Applicant was serving at a G-4 grade. He therefore applied for a post that was three grades higher than his grade. Unlike in *Hastings* UNDT/2010/071, at the time of his application for the Post, the Applicant did not formally request that, in accordance with staff rule 12.3, an exception be made to sec. 6.1 of S/D/10/3, which states that “[s]taff members holding a permanent, continuing, probationary or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade”.

40. As stated by the Tribunal in *Mulla* UNDT/2013/046, “since a P-5 position is obviously more than one level higher than P-3, it follows ... that a staff member at the grade of P-3, holding any of the listed types of contract, shall not be eligible to apply for a P-5 post”.

41. The Tribunal finds that OHRM correctly applied the legal provisions by considering that the Applicant was not eligible for the Post due to the fact that he held a post at a G-4 grade whereas the Post which he had applied was at the G-7 grade, three grades above his own.

42. Since, in the present case, one of the cumulative requirements that the Applicant was required to fulfill was not met, namely that a staff member can only apply for a post that is no more than one grade higher than his or her current post, or the fact that his post was not in the Field Service category thereby being an exception to this criteria, the specific eligibility requirements for the Post will not be analyzed further by the Tribunal.

43. The Applicant has failed to prove the illegality of the contested decision.

Conclusion

44. In the view of the foregoing, the Tribunal DECIDES:

45. The application is rejected.

*(Signed)*

Judge Alessandra Greceanu

Dated this 10<sup>th</sup> day of July 2013

Entered in the Register on this 10<sup>th</sup> day of July 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York