



1. The Applicant contests his non-selection for the post of Chief Counsel and Translation Unit (TU) (P4), with the United Nations Office at Nairobi. (UN-N) advised under Jo. - en'ng (J-\*) 11\$0AN\$UN - N\$11526\$ \$ NA2' - 32.

2.

6. On 18 June 2011, the author of the report, as advised, that on 11 June 2011, the death of a detainee. The author stated on 91 July 2011.

B. On 22 June 2011, the dates for the J- , were released to the Chief PC :

1. The author and another detainee, sent a common statement. On 5 June 2011, although due to technical problems, the author's statement, had to be resumed on 28 June 2011.

2. On 20 June 2011, the author submitted a signed copy of the Detainee's Panel's recommendation to the other detainee, the 'e/' of the 'TU' UN - N , who had been appointed as - '\$C' T ; : D for the position as the one detainee, who met with the 'te' 'a' 'd do , in a most satisfactory manner. On 17 June, at an undetermined date, as a )Com a'at' /e Ana's's 'e o't\* f' led in 2ns 'a' 'ef'ing the different common statements.

10. Upon retirement of the then Chief ' TU the same 'e/'se' ' TU , who , as a head of the 'fo' as - '\$C' T ; : .e#ame - '\$C' ' TU UN - N' from 1 November 2011 until 20 December 2011.

11. 37 memorandum dated 20 December 2011, the :e#eta' Cent' 'e/'e , Committee (C' C'+ UN - N' for , added to the Chief DC : the minutes of the meeting on the dates for the J- at station requesting him to proceed , with the selection of the detainee and subsequent to for , a , 'tten 'onf'omat'ion to the 'o#a' human resources office to assess the administration /e details of the selection.

12. On 22 December 2011, the Chief DC : selected the 'e/'se' ' TU D then a meeting simultaneous as - '\$C' ' TU and - '\$C' T ; : UN - N D for the post of Chief ' TU UN - N.

19. More than a year later, as of the signing of 2014, 2ns 'a' continued to show , that the post , as under consideration. On 28 January 2014, the author requested an update on the /a#a#7 to the D'e#to' 3 us'ness 'e'seng'nee'ng G'ou & UmoEa (United Nations ; ' P P'o'e#t+ , who for , added his message to the



Case No. UNDT/GVA/2014/064

Judgment No. UNDT/2016/052

22. Pursuant to -%de% Nos. 122 (GVA/2015+ of 11 June 2015%  
1B6 (GVA/2015+ of 21 :e tem.e% 2015 and 20@ (GVA/2015+ of

.. At the time of the decision on the selected and date, as discharging the duties of the posts

" 'uss'an 'e/'se% (P\$4+& , "th ' TU& UN - N&#

"" - ff"#e"\$n\$Cha%ge () - \$"\$C\*+& ' TU& UN - N&# afte% %et"%ement of the fo%me% "n#um.ent "n m"d\$2011&#

"".

the post. The panel did not inform an appropriate forum and ordered the revocation of the most important documents.

h. The successful candidate had an unfair advantage due to the fact that he had acted as a member of the Commission until the end of the continuous health problems of the staff member.

i. Against the motion for annulment of the General Assembly's resolution 59/221 of 19 December 2004 and paragraph 9 and 4 of the 'USS' translation, the Commission found that the same services at the United Nations, the 'USS' translation services.

E. The Applicant has over 90 years of professional experience as a 'USS' translator (24 years in the UN system), the experience of the Applicant and has been promoted to the P4 level since 2001. However, he has no experience of promotion. He has been unsuccessful in applying for various National language posts for some ten years. He is a former United Nations based diplomat. During his career, he has been a 'USS' language Unit under the Translation Services Unit in Geneva, Nationalities, Jobs and Venues not a part of the Department for General Assembly and Conference Management. He has held the above-mentioned position of 'USS' translator since 1970, the same services at the United Nations. This disadvantage is linked to the United Nations, as noted in his then successful application on 29 April 2011.

<. The Commission of Administrative Justice (T/A/2010/9) (staff selection system) found that the Applicant's chances of a late application to another United Nations post as a result of the 2.5 years of debarment/offices to transfer staff members at the same level, the debarment of offices in the United Nations, the advertisement, the advertisement of the applicant of an employee, a result of the employee, the employee then applied for a 'USS' translator post, the employee, the employee.

!. Paragraph 2.5 of T/A/2010/9 concluded that the system, the employee of 'USS' to P9 and P4 posts staff, the employee until the employee.

Case No.

UNDT/GVA/2014/064



d. The selected and date issued no role in the conduct of the selection process. The Chief of the Tribunal is not a member of the Tribunal.



90. In the Tribunal's view, it is undisputed that the successful candidate headed the functions of the "temporary post as - \$Ck ' TUk %"o to h's selet'onk "t s fu!7 laus". It is to be assumed that he continued to head the selet'onk & es e#a!7 s"n#e the ema!s e=#hanged d'd not ment'on h's fun#t"ona! t"tle. In the absence of a notification of the decision, however, the Applicant, as entitled to be heard and since in the meantime 2ns "a , %ong!7 %ef!e#ted that the %e#%u"tment %o#ess , as st"!! o en& the A !"#ant had no %e!"a. It means to <no , that a final selet'on had been made.

91. Since no date earlier than 1B A %! 2014 has to be considered as the date, when the Applicant came to <no , about his nonselection and counting from this date he has elected a! statuto%7 t"me !"m"ts.

92. It is, nevertheless, noted that under art. 2.1(a) of the Tribunal's Statute the Tribunal is competent to hear appeals against administrative decisions affecting the appointed staff members of the Department. The matter is also one of a general nature as defined in the statute of the Department, which is not a matter of internal management. In this case, since the Applicant's nonselection for the post of Chief of the UN - Nk ad/e"t"sed unde% the J - %efe%en#ed "n a#a. 1 a. o/e.

99. Although the Applicant's submissions regarding other %e#%u"tments are not sufficient to establish that in these %o#eed"ngs. The Tribunal understands that the Applicant is entitled to be heard, and it is to be noted that some of the grounds put forward by the Applicant, which are not examined here.

94. : "m"!a!7& the Tribunal's view is not the %o e% "nst3.66653(%)2.5788(%)0.879.1872 0 T dD(469849(e) - 14



), "th the ass"stan#e of the e=e#ut"/e o% !o#a! human %esou%#es off"#e\*. An ema"! e=#hange , "th the %e#%u"te%#s sho , that the Ch"ef& T ; :& a %o/ed the #heat"on of the J- . ? hen "t , as t"me& u%suant to se#. B.2 of the "nst%u#t"on& to %e!ease the %e\$s#%eened #and"da#"es to the 8"%ng >anage&& the Ch"ef& PC :& too< o/e% as the %"ma%7 8"%ng >anage%. 2ns "%a sho ,s the Ch"ef& PC :& as the %"ma%7 %es ons" .!e among the !"st of )%e#%u"te%#s\* fo% the sele#t"on %o#ess & , ho "s <no , n to usua!!7 .e the 8"%ng >anage&& although "t "s "m oss".!e to <no , , "th an7 #e%ta"nt7 , hen th"s #hange , as "nt%odu#ed "n the s7stem.

40. ? h"!e :T/A2/2010/9 does not #ate% fo% a sha%ed e=e#"#se of the 8"%ng >anage%Cs autho%"t7& "t does not fo%.d "t and the >anua! %o/"des fo% the e="sten#e of a mu!t" !e 8"%ng Team& , "th a %"ma%7 8"%ng >anage% as the ma"n off"#e% %es ons" .!e fo% the %o#edu%e.

41. 2n sum& "f the #ho"#es made "n ass"gn"ng and d"s#ha%g"ng the 8"%ng >anage%Cs fun#"ons m"ght seem e#u!"a& the7 do not %e/ea! an7 fla , "n the %o#edu%e. The %e#o%d "nd"#ates that e"the% the Ch"ef& T ; :& o% the Ch"ef& PC :& fu!"!!ed the dut"es fa!!"ng , "th"n the 8"%ng >anage%Cs %em"t sa/e fo% the t%ansm"tta! of a %e#ommendat"on to the Ch"ef& DC :& fo% f"na! de#"s"on (see a%as. B4 to B6 .e!o , +.

42. The A ea!s T%".una! %u!ed "n 2011\$UNAT\$122 that off"#"a! a#ts a%e %esumed to ha/e .een %egu!a%7 e%fo%medH a##o%d"ng!7& "n a %e#u"tment %o#edu%e& "f the management "s a!e to e/en m"n"ma!!7 sho , that the staff mem.e%Cs #and"datu%e , as g"/en a fu!! and fa"% #ons"de%at"on& the .u%den of %oof sh"fts to the #and"date& , ho must .e a !e to sho , th%ough #!ea% and #on/"n#"ng e/"den#e that she o% he , as den"ed a fa"% #han#e. The T%".una! #ons"de%#s that the do#uments made a/a"!a .!e to "t sat"sf7 th"s m"n"ma! sho , "ng.

49. The T%".una! also %e#a!s the , e!!\$<no , n %"n#" !e that an7 a !"#ant a!!eg"ng that "m %o e% mot"/es ha/e ta"nted a #e%ta"n de#"s"on .ea%#s the .u%den of %o/"ng "t (see& e.g.& 2014\$UNAT\$494+. The A !"#ant em has"ses that& as

Case No. UNDT/GVA/2014/064

Judgment No. UNDT/2016/052

... 'e/ant o##u at'ona! e= e"en#e/em !o7ment fo% the %e/"ous f"/e 7ea%\$ "s des"%a .!e.

41. 2n 2015\$UNAT\$540& the A eals T%".una! aff"%med the ho!d"ngs "n UNDT/2014/042 that&

The Adm"n"st%at"on d's oses of #ons"de%a .!e d"s#%et"on "n dete%#m"ng ,ho "s an )e= e%t\* fo% the u% ose of 5UN - P: 'e#%u"tment L 2nst%u#t"ons and P%o#edu%es& se#t"on 14.B.9(.+(2+6 and #ons"de%\$ that "t #an !eg"t"mate!7 .e a%gued that "n /"e , of the s"m"!a%"t7 of the management fun#t"ons of the D"%e#to%& 2A2G& and those of the d's uted ost& the D"%e#to%& 2A2G& , as an e= e%t unde% the K %u!e. >O%eo/e%& and ma7.e mo%e "m o%tant!7& the T%".una! f"nds that the% #an .e no dou.t that the P%og%amme >anage% K though he ,as s"tt"ng on the Pane! as a )#!"ent %e %esentat"/e\* L .e7ond ,hat ,as %e4u"%ed .7 the a !"#a .!e %ules L also fu!"!ed the #%"te%"a of a te#hn#a! e= e%t. K 2ndeed& K he #e%ta"n!7 had "n\$de th <no ,!edge , "th %es e#t to the s<"!s and e= e%t"se %e4u"%ed fo% the d's uted ost. Th"s "s su o%ted .7 the fa#t that "t , as "n fa#t h"m& togethe% , "th the D"%e#to%& : ? - C& , ho ma<ed the , %"tten test , h"#h 5>% . A!"<o6 K assed su##essfu!!7.

4@. 2n UNDT/2015/021& th"s T%".una! deemed that an e= e%t s"tt"ng "n a ane! set u to %e#%u"t the sen"o% head of a med"#a! un"t& d"d not ne#essa%"!7 need to .e a do#to%H an e= e%t on management #ou!d .e #ons"de%ed as a su .Ee#t matte% e= e%t fo% th"s ost& as "t %e4u"%ed manage%"a! s<"!s.

50. 3ased on th"s gu"dan#e& the T%".una! #ons"de%\$ that "t , as not mandato%7 that the ane! "n#!ude a 'uss"an t%ans!ato% and o% %e/"se%. Th"s ,ou!d .e an e=t%eme!7 na%%o , unde%stand"ng of the doma"n(s+ of e= e%t"se that ma7 .e %e!e/ant fo% a #e%ta"n ostH the te%ms of se#. 1(#+ of : T/A2/2010/9 !ea/e %oom fo% a , "de% "nte% %etat"on.

51. 3e7ond that& the Ch"ef& T ; : & , as #e%ta"n!7 a su .Ee#t matte% e= e%t as he , as h"gh!7 e= e%"en#ed "n the f"eld of t%ans!at"on and %e/"s"on. As to the othe% t , o mem.e%\$ "t "s o.se%/ed that the7 , e%e sen"o% staff manage%\$ , hose %es e#t"/e dut'es led them to .e "n #onstant "nte#a#t"on& at !east as #!"ents& , "th the t%ans!at"on un"ts. Ao!!o , "ng the standa%d out!"ned "n & "t "s not un%easona .!e to #on#!ude that at !east one of 6523( ) - 91.0791(o)9.69979(f) - 8.0786( ) - 3 dn t98 892(") - 9.78 874





56. The >anua!& ado ted "n a##o%dan#e , "th th's %o/"s'on& %eads "n "ts %e!e/ant a%t (se#t"on @.6+G

A !"#ants #on/o<ed fo% "nte%/"e , s a%e no%ma!7 not"f"ed at least f"/e , o%<"ng da7s "n ad/an#e. The "n/"tat"on "n#!udes the date& t"me and means of the "nte%/"e , K and a!so "nfo%ms the a !"#ant of the . (em has"s added+.

5B. 8o , e/e%& the A ea!s T%" .una! %u!ed "n 2015\$UNAT\$4@6 that the >anua! does not ha/e !ega! fo%#e& %e#a!!"ng that )5%6u!es& o!"#es o% %o#edue&es "ntended fo% gene#a! a !"#at"on ma7 on!7 .e esta!"shed .7 du!7 %omu!gated :e#%eta%7\$Gene%a!Cs .u!et"ns and adm"n"st%at"/e "ssuan#es.\* 2t u%su&edG

At most& the >anua! "n th"s a ea! %o/"des )gu"dan#e\* on the )%es ons" .!"t"es\* of the 8%"ng >anage&& as en/"saged .7 :e#t"on 2.6 of :T/A2/2010/9H "t does not u% o%t to /est a staff mem.e% , "th an ent"t!ement to .e a %"sed "n ad/an#e of an "nte%/"e , of the names of the ane! mem.e%s.

51. Not , "thstand"ng th"s f"nd"ng& the A ea!s T%" .una! #on#!uded that& "n the s e#f"# #%"#umstan#es of the #ase& the fa!U%e to "nfo%m the #on#e%ned staff mem.e% of the ane!Cs #om os"t"on had "m %o e%17 de %/"ed he% of the oss" .!"t7 to #ontest "t. 2n that #ase& the A !"#ant had f"!ed an a !"#at"on #ha!!eng"ng a %e/"ous sele#t"on %o#ess , "th the same h%"ng manage&& , h"#h the D"s ute T%" .una! had de#"ded "n he% fa/ou% a fe , da7s .efo%e the s#hedu!ed "nte%/"e , . 2n /"e , of "t& she had , %"tten to the Adm"n"st%at"on #on/e7"ng he% #on#e%ns on the !a#< of "m a%t"a!"t7 of the ane!& thus #!ea%17 sho , "ng the "m o%tan#e she atta#hed to "ts #om os"t"on.

5@. No s"m"!a% #%"#umstan#es , e%e %esent "n the "nstant #ase. 3ased on the Eu%"s %uden#e& the om"ss"on to "nfo%m the A !"#ant of the assesso%SC names "n ad/an#e of h"s "nte%/"e , d"d not .%ea#h an7 of the A !"#antCs %"ghts.

Pane!Cs assessment

60. The A !"#ant ta<es "ssue , "th the assessment of the #and"dates #ondu#ted .7 the ane!. 8e 4uest"ons the ane!Cs a .!"t7 to ade4uate!7 a %e#"ate the% #om eten#es& as , e!! as "ts o.Ee#t"/"t7 and "m a%t"a!"t7.

61. It must be recalled that it is not the role of the Tribunal to substitute its own assessment of the facts for that of the Panel (see *UNAT*, 2011/110+).

62. The issue of the Panel's competence has already been discussed (see paras. 48 to 52 above). Given its findings in this case, the Tribunal deems unfounded the claim that the Panel's lack of jurisdiction, independence and impartiality to evaluate the facts of the case.

69. Turning to the claim that the Tribunal has had the opportunity to

the first one, the Professionalism Odeash and Team, the Communication and Commitment to Continuous Organizational Change and Accountability and Compliance and - the :<!s, heas "n the second the7, the Planning and -ganizing Team, the Professionalism Judgment/Decisioning. :eond the sale of notation changed usng Audit Com etent Com etent Oeanng and Aa "n the first as o osed to )su##essfu!7 meets %e4u"ements\* and ) a"ta!7 meets %e4u"ements\* "n the second.

6B. 2n .oth %e o%ts the A !"#ant, as found not suff"#ent!7 stong at one #om eten#7. ut "n the first one "t, as Communication, h"st "n the second "t, as Planning and -ganizing, h"#h, as not e/en ment"oned "n the first %e o%t. The %atngs d"d not <ee an7 !og#a! e4u"/a/en#7H fo e=am !e the t, o se a%ate %atngs of )#om etent\* and )fu!7 #om etent\* "n the first %e o%t, %e )t%anslated\* "n the second %e o%t to one %atngk ".e.k )su##essfu!7 meets %e4u"ements\*. Also the %e#om mendat"on of the e/entua!7 sele#ted #and"date, as su.t!7 nuan#edk go"ng f%om asse%t"ng that he, as )the most #om etent #and"date and the one, ho met a! the #"te"a !a"d do, n "n a most sat'sfa#to%7 manne%\* to )the most #om etent #and"date and the one, ho met a! the #"te"a !a"d do, n "n a most sat'sfa#to%7 manne%\* (em has"s added+.

61. 8a/"ng sought add"t"ona! "nfo%mat"on f%om the 'es ondent on th's a"t"#u!a% o"ntk the T%.una!, as ad/"sed that the )'e o%t of the De a%tmenta! Panel\* , as ema!ed to the C' Ck, h"le the ane!Cs #on#us"ons, %e !ate% ente%ed "nto the %es e#t"/e modu!e fo 2ns "%ak %o!ed out "n 2011k and %e/"e, ed .7 the C' C "n the s7stem. No deta"ls, %e %o/"ded as to e=a#t!7, ho f"!!ed the 2ns "%a modu!e to %odu#e the se#ond %e o%tk and, hen.

6@. 2t standsk the%efo%ek that the e/a!uat"on of the assessment ane!k one of the #o%ne%stones of the sele#t"on %o#essk, as su.stant"a!7 mod"f"ed .et, een "ts ado t"on .7 a! thee ane! mem.e%sdauthent"#ated .7 the% %es e#t"/e s"gnatu%es D and "ts s#%ut"n7 .7 the #om etent C' C.

B0. 2t "s s #e#u!at"/e to as#e%ta"n to, hat e=tent th's alte%at"on %eEud"#ed the A !"#ant. The T%.una!, "!! #onf"ne "tse!f to f"nd"ng that the #and"datesC e/a!uat"on, as d"stokted to a non\$neg!g".!e deg%eek a a%ent!7k "n an attem t to



B6. The Tribunal concludes that the selection

es ons".!"t7 to ensu%e "ts good fun#t"on"ng o% a!"ate to "ts sho%t#om"ngs .7  
#om !7"ng , "th "ts not"f"#at"on dut7 th%ough othe% means. 2t "s a , e!!\$esta.!"shed  
%"n#" !e of !a , that no one #an .e a!!o , ed to "n/o<e h"s o , n tu% "tudeD

(& UNDT/2014/040

Case No. UNDT/GVA/2014/064

Judgment No. UNDT/2016/052

#. The Applicant shall also be awarded moral damages in the amount of USD 9,000.

d. The aforementioned sum shall bear interest at the United States prime rate, with effect from the date of this Judgment. The sum shall be paid in full to the Applicant within 60 days from the date of this Judgment. The sum shall be paid in full and

e. All other claims are rejected.

( +

Judge Thomas O'Connell

Dated this 4<sup>th</sup> day of May 2016

signed in the presence of the Applicant on this 4<sup>th</sup> day of May 2016

( +

Signature of the Applicant: Gene/a