

Introduction

1. The Applicant contests that she was not selected for the post at the P-5 level as Senior Human Rights Officer (“the Post”) with the Office of the High Commissioner for Human Rights (“OHCHR”) in New York, which was advertised as Job Opening No. 110837 (“the Job Opening”).
2. The Respondent contends that the application is without merit.
3. For the reasons set out below, the application is granted on its merits **and the Applicant is compensated for her loss of chance.**

Facts

4. On 28 February 2019, the Applicant applied for the Post as advertised in the Job Opening.

5. By interoffice memorandum dated 22 January 2020, an OHCHR Director in New York wrote to the High Commissioner for Human Rights (“the High Commissioner”) that the Applicant had been recommended for the Post along with some other job candidates. The OHCHR Director further stated that the hiring manager endorsed the Applicant as the preferred candidate, explaining that the panel had given her the highest score among the recommended candidates in the written assessment.

6. On 10 March 2020, a recommended—male—job candidate was informed that the Head of Department had selected him for the position. The selected candidate immediately confirmed his acceptance of the Post.

7. By email of 11 March 2020, the Applicant was notified, with reference to the Job Opening, that she had been rostered

8. Upon the inquiry of the Applicant, by email of 20 March 2020, the Senior Gender Adviser in the Executive Office of the Secretary-General confirmed that her office had not received a request for an exception based on ST/AI/1999/9 (Special measures for the achievement of gender equality). The Tribunal notes that this administrative instruction establishes a system by which women are to be given preferential consideration in selection decisions in certain circumstances.

9. On 30 March 2020, the Tribunal issued Order No. 57 (NY/2020) rejecting the Applicant's application for suspension of action dated 23 March 2020, reasoning that the contested decision had already been implemented.

10. On 20 May 2020, it was announced to all OHCHR staff that the selected job candidate had been promoted to the Post in March 2020.

11. By interoffice memorandum dated 10 June 2020, the High Commissioner sought the "input" of the Under-Secretary-General and Senior Adviser on Policy (a person different from the aforementioned Senior Gender Adviser) concerning the recruitment of the selected male candidate for the Post. The High Commissioner explained that after the competency-based interview, three job candidates had been recommended for the Post, namely the selected male candidate, the Applicant and another male candidate, and that the Central Review Board had subsequently endorsed the recruitment of the selected candidate. Even though the Applicant was the hiring manager's preferred candidate, the High Commissioner found that "[a]fter a careful review and discussion of the candidates, and having fully given due consideration to female applicants, it [was] evident that the candidature of [the selected candidate stood]

with documentation, was, nevertheless, not submitted before but after the selection decision was taken.

22. It is clear from ST/AI/1999/9 and the 11 February 2019 interoffice memorandum: (a) that sending a note to the Executive Office of the Secretary-General when selecting a male candidate instead of a suitable female colleague is a mandatory requirement as the verb “shall” is used; (b) that for “review and discussion”, the relevant note to the Executive Office of the Secretary-General is to be submitted before—and not after—any selection decision is taken; and (c) that in this note, the hiring entity is to explain and document why the “recommended” male candidate is “clearly superior” to any otherwise suitable female candidates.

23. The Tribunal observes that—before any final selection decisions are made—as the Chief Administrative Officer of the Organization

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(*Leclercq* 2014-UNAT-429, para. 20). While the Dispute Tribunal is not obliged to “quantify” an applicant’s chance of being selected (*Gusarova* 2014-UNAT-439, para. 37), if it does so, this may be based on the number of suitable job candidates remaining in the selection process (*Asariotis* 2015-UNAT-496, para. 31, and *Chhikara* 2017-UNAT-723, para. 54) and also be expressed in percentages (*Hastings* 2011-UNAT-109).

39. In the present case, the Tribunal notes that three candidates were recommended for the Post and therefore eligible for selection by the decision-maker: the selected (male) candidate, the Applicant and another male candidate. Considering that (a) the Applicant was the candidate who did best in the written test and the competency-based interview among the three recommended candidates, (b) she was the hiring manager’s preferred candidate and (c) the system of preferential treatment of female job candidates in ST/AI/2009/9, the Tribunal finds that the other male candidate stood no chance of being selected. This leaves only the selected male candidate and the Applicant in the contest for the Post. Between these two candidates, it is not possible for the Tribunal to decide whether in the given circumstances, any of them were in a better position than the other, also taking into account the High Commissioner’s preference for the selected male candidate based on her perception of his unparalleled skills and experiences. The Tribunal therefore decides that the Applicant had 50% (50%) of the chance of being selected.

Conclusion

41. Based of the above, the Tribunal DECIDES that:
 - a. The application is granted on its merits; and
 - b. As compensation, the Respondent is to pay the Applicant 50 percent of