



Case No. UNDT/NBI/2020/102

Judgment No.: UNDT/2021/115

Applicant applied for the post on 6 January 2018.<sup>5</sup>

7. Pending the completion of the rostering exercise in relation to GJO# 88622, UNMISS advertised a temporary job opening for the position of Requisitions Officer TJO# 95616.<sup>6</sup> The Applicant also applied for this position.<sup>7</sup> On 11 July 2018, another candidate HH was selected for the position.<sup>8</sup> HH was granted a temporary appointment initially until 3 November 2019 and it was subsequently extended until 2 November 2020.<sup>9</sup>

8. On 27 November 2019, the Applicant was invited for the interview of the GJO# 88622.<sup>10</sup> On 21 January 2020, the Applicant and HH were placed on a roster of pre-approved candidates for the FS-6 Requisitions Officer post.<sup>11</sup>

9. From 27 May 2020 to June 2020, Recruit from Roster JO# 136259 for the post of Requisitions Officer was issued in *Inspira*. The Applicant applied for the position on 3 June 2020.<sup>12</sup>

10. On 12 June 2020, the Human Resources Management Section (“HRMS”), UNMISS, released 16 applications to the hiring manager for review and further assessment. Out of the 16 candidates, the hiring manager recomg 0.9981 0.0 0.0 1.0 u.24 358.56 T

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Judgment



nationality and on the requirement to recruit staff on as wide a geographical basis as possible. Considering that Sri Lanka, his home country, is greatly underrepresented in the United Nations, is a troop and police-contributing country and in implementing the obligation to recruit staff on a “wide geographic basis”, he should have been selected. In addition, the Applicant maintains that as an internal candidate, with experience in field missions, he ought to have been selected for the post. HH who was selected has no field experience.

20. Finally, the Applicant avers that HH was not endorsed by a Central Review Body (“CRB”).

21. As remedies, the Applicant requests the Tribunal to:

- a. Rescind the contested decision;
- b. Award him compensation equal to the amount of money he would have earned had he been selected for the position;
- c. Award him compensation for the harm suffered as a consequence of his non-selection; and
- d. Refer the case to the Secretary-General for accountability against the Mission leadership.

*Respondent’s submissions*

22. The Respondent

24. The hiring manager proposed HH for selection as the most suitable candidate since she received a rating of “exceeds the requirements” for the competencies of Planning and Organizing and Client Orientation, while the Applicant received the rating of “successfully meets the requirements” for the same competencies. Furthermore, the hiring manager took into account HH’s successful implementation of the Mission Demand Acquisition Plans for both 2019 and 2020, which is one of the position’s responsibilities. The HM’s decision to select HH based on the hiring manager’s recommendation, his independent review of the personal history profile (“PHP”) of the three recommended candidates, and the comparative analysis report (“CAR”), was reasonable. The record shows that the Applicant received full and fair consideration for the position as he was shortlisted, invited for the informal interview and recommended for the position. The Applicant has not rebutted the presumption of regularity through clear and convincing evidence.

25. The Respondent further submits that the Applicant has produced no evidence of bias or any procedural breach in the selection process. The Applicant’s allegation that HH as a GS-5 staff member holding a continuing appointment was not eligible to apply for the JO is meritless. Section 6.1 of the ST/AI/2010/3 (Staff selection system), provides that staff members in the General Service (“GS”) category holding a permanent, continuing or fixed-term appointment may apply for positions in the Field Service category at any level, “irrespective of the grade held in the General Service”. Accordingly, HH was eligible to apply for the position.

26. The Respondent also avers that contrary to the Applicant’s claim, the CRB endorsed the placement of HH on the roster for FS-6 Requisitions Officer. Both she and the Applicant were placed on the roster after successfully applying for the same GJO.

the General Assembly has expressly rejected preferences for internal candidates and requested the Secretary-General to promote opportunities for external candidates. Furthermore, the Dispute Tribunal has held that “a mere availability of suitable internal candidates does not bar the Organization’s seeking the best candidates available internally and externally”.

28. The Applicant also did not have a right to be selected due to his nationality. Staff regulation 4.2 provides that “due regard shall be paid to the importance of recruiting the staff on as wide geographical basis as possible”. The hiring manager considered the geographic distribution of staff in his recommendation; he found that Canada, HH’s country of nationality, and Sri Lanka, the Applicant’s country of nationality, were equally represented.<sup>21</sup> Accordingly, due regard was given to geographic representation in the selection decision. Moreover, the recruitment for the position was not subject to geographic representation. The job opening did not include a special notice about recruitment from underrepresented countries.

29. The Respondent states further that unlike the Applicant’s allegation, the HM considered that the Applicant was a national of a troop and police-contributing country. In fact, all the three recommended candidates for the position were from troop and police-contributing countries, namely Canada and Sri Lanka. Accordingly, due consideration was given to candidates from troop and police-contributing countries in the selection decision.<sup>22</sup>

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to achieve gender parity.<sup>24</sup>

31. In view of the foregoing, the Respondent requests the Tribunal to dismiss the application.

## Considerations

### *Standard of review*

32. The paramount consideration in the employment of United Nations staff is the necessity of securing the highest standards of efficiency, competence and integrity<sup>25</sup>, and, for this purpose, competitive processes are to be applied.<sup>26</sup>

33. Jurisprudence developed based on these rules underlines that the Secretary-General has broad discretion in matters of staff selection. This includes the choice of the best evaluation method to assess the job candidates' qualifications.<sup>27</sup> In its review of such matters, the role of the Dispute Tribunal is to review the impugned selection process to determine whether a candidate has received fair consideration in accordance with the applicable legal framework, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration.<sup>28</sup> The Dispute Tribunal will not substitute its own judgment for that of the Secretary-General.<sup>29</sup>

34. The Appeals Tribunal further ruled in *Rolland*<sup>30</sup> that official acts are presumed to have been regularly performed. Accordingly, in a recruitment procedure, if the Administration is able to even minimally show that a staff member's candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must

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<sup>24</sup> Reply, annex R/10.

<sup>25</sup> Art. 101.3 of the Charter of the United Nations, staff regulation 4.2.

<sup>26</sup> Staff regulation 4.2.

<sup>27</sup> *Riecan* 2017-UNAT-802, para. 22.

<sup>28</sup> *Aliko* 2015-UNAT-540; *Rolland* 2011-UNAT-122; *Abassi* 2011-UNAT-110.

<sup>29</sup> *Toure* 2016-UNAT-660; *Riecan* 2017-UNAT-802. See also: *Kucherov* 2016-UNAT-669; *Nikolarakis* 2016-UNAT-652; *Nwuke* 2015-UNAT-508; *Ljungdell* 2012-UNAT-265.

<sup>30</sup> *Rolland* 2011-UNAT-122.



suitable than the Applicant, as evidenced by the comparative analysis report and the

selection criteria. 7(c)(4)(e)3(d)(i)(ii)19(t)--2 /F1 12.0 3(s)8(s)8(e)3 0.0 0.0 0.0 0.0 0.9981 0.0 0.0 1.0 99.36 675.6 Tm

38. The Tribunal notes that in making the selection decision, the HM had broad discretion to choose any one of the three candidates recommended by the hiring manager.<sup>37</sup> The Applicant did not have a right to be selected.

*Absence of bias or procedural breach*

39. In impugning the selection decision, the Applicant asserts that the administration failed to take the following into consideration: HH was a less qualified candidate because she did not meet the basic criteria on technical training, did not have the requisite experience, had not been CRB endorsed and as a G-5 level staff member, did not qualify under section 5.1 of ST/AI/2010/4/Rev.1 for an FS-6 level position; he is from Sri Lanka, an underrepresented troop and police-contributing country; and his internal candidacy and fieBT /F1 12.7gF.0 s9d9(b)19ieBT /F1 12.7gF.0 s9d9(b)19i

42. The Tribunal notes that both the Applicant and HH were placed on the roster on 21 January 2020 after successfully competing for GJO# 88622.<sup>38</sup> Hence, the Applicant's assertion that HH lacked CRB endorsement is without merit.

43. The Applicant was not entitled to preferred consideration for the position because he was not the only internal candidate. HH, as a GS-5 staff member holding a continuing appointment, was also an internal candidate.

44. Further, the Applicant did not have a right to be selected due to his nationality. The Tribunal is satisfied that due regard was given to geographic representation in the selection decision. In his consideration of geographic distribution, the hiring manager found that HH's country of nationality, and the Applicant's country of nationality, were equally represented.<sup>39</sup> Moreover, as pointed out by the Respondent, the recruitment for the position was not subject to geographic representation. Accordingly, the JO did not include a special notice about recruitment from underrepresented countries.<sup>40</sup>

45. The Tribunal is also satisfied that due consideration was given to candidates from troop and police-contributing countries in the selection decision. Both HH and the Applicant were from troop and police-contributing countries, i.e., Canada and Sri Lanka.<sup>41</sup>

46. Section 1.8 (a) of ST/AI/1999/9 (Special Measures for the Achievement of Gender Equality) provides that vacancies at the professional level are to be filled by a female candidate when: (i) she meets the requirements of the post; and (ii) her qualifications are substantially equal or superior to those of the competing male candidates. After applying section 1.8(a) of ST/AI/1999/9 to the facts of this case, this Tribunal finds no reason to question the decision of the HM to select a female candidate to fill the vacancy.

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<sup>38</sup> Ibid.

<sup>39</sup> Reply, annex R/8.

<sup>40</sup> Application, annex 11.

<sup>41</sup> Reply, annex R/9.

47. Absent illegality of the contested decision, the Tribunal need not entertain the compensation request. Equally, the Tribunal sees no basis for referring the mission leadership to the Secretary-General for accountability under art. 10 of the UNDT Statute as requested by the Applicant.

## **JUDGMENT**

48. The application is .36 634ssion