

Factual and procedural background

Case No. UNDT/NY/2016/016

Order No. 114

20. On 11 May 2016, the Applicant filed a submission in response to the Respondent's reply, *inter alia* objecting to the MEU's conclusion that her case was not receivable.

Applicant's submissions

21. The Applicant's submissions may be summarized as follows:

ompetence to order suspension of action

a. Contrary to the MEU response of 10 May 2016, the decision of the ICSC Chairman not to include the Applicant on the list of recommended candidates constitutes an administrative decision that may be appealed. Being excluded from the final list of three short-listed candidates constitutes a final decision resulting in a loss of opportunity for her to be considered for the post and has direct and final legal consequences on her appointment and career;

b. According to the ICSC recruitment procedure for senior staff at P-5 level and above, once the ICSC Chairman receives the response from the Secretary-General, the first choice candidate would receive the appointment letter for the post. Once the selection is confirmed, a suspension of action will not be possible;

Prima facie unlawfulness

c. The selection process in this case was pre-determined. The Applicant was deprived of fairness and justice and has been discriminated against. The Applicant is more qualified candidate than one of the recommended candidate and should have been recommended pursuant to ST/AI/1999/9 (Special measures for the achievement of gender equality);

Irreparable damage

d. The implementation of the contested decision would cause her “emotional and physical distress on account of discrimination and bias”; “financial loss [caused] by deprivation of career progression”; “loss of motivation and trust”; “potential loss of future opportunities and income”; “reputational harm”; and “humiliation”;

Urgency

e. The Applicant states that the contested decision was made on 31 March 2016 and she became aware of it on Friday, 29 April 2016, upon her return from home leave. She filed her request for management evaluation on Saturday, 7 May 2016;

f. Once the ICSC Chairman receives the response from the Secretary-General, the first choice candidate will receive a letter of appointment. Once the selection is confirmed, a suspension of action will not be possible.

Respondent’s submissions

the management evaluation” (see also *Igbinedion* 2011-UNAT-159).

As a result of the determination by the MEU, the Tribunal no longer

26.

28. The Appeals Tribunal stated in *Abbassi* 2011-UNAT-110:

23. In reviewing administrative decisions regarding appointments and promotions, the UNDT examines the following: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration.

29. In *Ishak* 2011-UNAT-152, the Appeals Tribunal stated:

29. ... A selection process involves a series of steps or

requested and is still ongoing (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

36. As results from the facts, the Applicant submitted her request for management evaluation on 7 May 2016, contesting the decision to recommend another candidate among three short-listed candidates, and not to include her among the recommended candidates. The MEU completed its review of the request for.96 216.05 17.52 reW*ñBT/F1 9129.8o94(lu3(e)4(-5n)-41(on) 1 38e(d)-27971TJETBT