



Judgment No. 2023-



JUDGE MARTHA HALFELD , PRESIDING .

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) is seized of an appeal by Mr. Antonio Ponce-Gonzalez against Judgment No. UNDT/2022/029 , rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in the case of

entered the delegation in the portal on behalf of the Head of Mission, or the fact that a new Head of Mission subsequently issued a new delegation of authority, all bring into question the authenticity of the delegation of authority relevant to this case. Moreover, heads of entities cannot be hiring managers.

14. The UNDT erred in its review of the Administration's consideration of Mr. Ponce-Gonzalez's candidacy. The decision to select the successful candidate was made on the basis that "critical material in his profile was entirely ignored (including 13 years of relevant experience at the [United Nations])" and that the Administration misrepresented the date on which he had joined the United Nations. Mr. Ponce-Gonzalez also takes issue with the "limited and selective" description of his experience contained in a spreadsheet prepared by the hiring manager.

15. Mr. Ponce-Gonzalez maintains Administrativ2.104 (Staff.\$04 0

18. Mr. Ponce-Gonzalez submits that he had a foreseeable and significant chance of selection based on (a) a finding in another UNDT judgment that is currently under appeal, (b) his assessment of his own years of experience and superiority to the selected candidate, and (c) his understanding that he was entitled to be assessed against the selected candidate in a CAR.

19. Mr. Ponce-Gonzalez requests rescission of the contested decision and compensation for material and moral injury in the amount of two years' net base pay; promotion to P-5 or alternatively the difference in pay between P-4 and P-5 until retirement, including the difference in pension contributions. He also requests a referral for accountability for the responsible officials.

The Secretary -General's Answer

20. The UNDT correctly found that the contested decision had been lawfully taken. In reaching this conclusion, the UNDT correctly refrained from making its own promotion decision and properly considered whether the Administration's discretionary authority in matters of appointment and promotion had been lawfully exercised. The UNDT correctly identified the factual and legal issues before it, took the parties' submissions into account and issued a reasoned Judgment.

21. In any event, in the present case, the record shows that of the roster candidates that applied for the position, 15 candidates had been prescreened and had been determined to meet the minimum requirements of the position. These 15 candidates, including Mr. Ponce-Gonzalez, were released to the hiring manager who evaluated them. The selected candidate and two other candidates met both the required and desirable criteria in the job opening

22. The Secretary-General submits that Mr. Ponce-Gonzalez failed to establish that the UNDT erred in its consideration of the relevance of other selection decisions appealed by him. Contrary to Mr. Ponce-Gonzalez's claims, there was no evidence that supported a reasonable apprehension of partiality and the UNDT did not err when it decided to adjudicate the case before it based on the evidence submitted by the parties in the proceedings. Mr. Ponce-Gonzalez's reliance on his allegedly "unfair" disqualification in a prior selection exercise is also misleading and factually inaccurate as the lawfulness of that selection exercise is still pending determination by the UNAT. Likewise, his reliance on an extract from a UNDT Order rendered in a different case referring to the hypothetical possibility of future challenges resulting from the involvement of the same hiring manager in two different selection exercises does not support any reasonable apprehension of partiality. In this regard, the UNAT has already held that the participation of a hiring manager who had previously excluded a candidate from another selection exercise does not in itself give rise to any substantive allegation of bias or discrimination.

23. The Secretary-General contends that Mr. Ponce-Gonzalez has further failed to establish that the UNDT erred when it rejected his assertions that the Administration manipulated the evidence regarding the hiring manager's delegation of authority. In the present case, the Secretary-General provided the UNDT with evidence of the hiring manager's delegated authority to make selection decisions, including a copy of the 12 December 2019 delegation of authority letter addressed from the Head of Mission to the hiring manager, as well as a copy of the delegation details contained in the delegation portal. The UNDT correctly considered the evidence before it and concluded that the 12 December 2019 delegation letter bore "all indicia of authenticity".

24. The Secretary-General further submits that Mr. Ponce-Gonzalez failed to establish that the UNDT erred in its review of the Administration's consideration of his candidacy. First, only the published required and desirable criteria were applied to the evaluation of the candidates. Second, the Administration is best placed to make an assessment of candidates against the applicable evaluation criteria and the Administration legitimately found

experience” than the selected candidate, he would not have been entitled to be recommended or selected for the position. In making a final selection, the Administration has the discretion to take into account a variety of considerations, provided the exercise of this discretion is not abusive, sn5.2 (te)1.5 (r01

partiality of the hiring manager who conducted the selection exercises, claiming that there was an improper motive to unfairly eliminate him.

29. The Appeals Tribunal cannot agree with such an argument. The mere fact that the hiring manager was involved in two selection exercises in which Mr. PonceGonzalez was not successful does not indicate any partiality, but rather a regular exercise of the Administration's routine of selecting candidates for advertised positions. There is nothing on the record that supports the assumption of possible bias or apprehension of partiality on the part of the hiring manager. This ground of appeal should be dismissed.

30. Further, Mr. Ponce-Gonzalez maintains that the UNDT erred when it rejected his assertions that the Administration mismanaged the evidence regarding the hiring manager's

32. Moreover, according to the applicable legal framework, the restrictions on possible sub-delegations of authority should be explicitly included in the delegation of authority. This

Section 4 Management of authorities delegated to heads of entity

4.1 Heads of entity will receive notification of their delegations of authority from the Secretary-General and any actions relating to such delegations, such as amendment,

suspension or revocation of authority, shall be subject to the provisions of article 25 of the Charter of the United Nations, article 35 of the Statute of the International Court of Justice, article 8 of the Rules of Procedure of the Appeals Tribunal and article 43 of the Rules of Procedure of the Appeals Tribunal.

THE UNITED NATIONS APPEALS TRIBUNAL

T

applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.”⁶ The

spreadsheet showing the comparative review or other allegations against the record of the contested decision are

THE UNITED N