



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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**Dhanjee  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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**Before:** Judge Sophia Adinyira, Presiding  
Judge Inés Weinberg de Roca  
Judge Luis María Simón

**Case No:** 2014-604

**Date:** 26 February 2015

**Registrar:** Weicheng Lin

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**JUDGE SOPHIA ADINYIRA, P**

8. On the merits, the Dispute Tribunal upheld the non-selection decision noting that there was no evidence of procedural irregularities, unreasonableness or bad faith in the exercise of the HM's discretion in not shortlisting Mr. Dhanjee. Accordingly, the Dispute Tribunal considered it unnecessary to hear witnesses in this case, grant Mr. Dhanjee access to documents filed *ex parte* by the Secretary-General or to order production of further evidence. The Dispute Tribunal further considered that given Mr. Dhanjee's exclusion from the selection process at an early stage, he had no legally protected interest which would allow him to contest the selection of the successful candidate. The case was dismissed in its entirety.

### **Submissions**

#### **Mr. Dhanjee's Appeal**

9. The Dispute Tribunal erred on a question of law with respect to the breadth of the HM's discretionary power to conduct a preliminary assessment of applicants. Mr. Dhanjee avers that if a vacancy announcement (VA) does not list desirable qualifications, then the HM must consider all candidates meeting the required qualifications, and does not have the discretion to create a shortlist and exclude any qualified candidate from the interview. The Dispute Tribunal erred in overlooking this limitation on the HM's discretion and by limiting itself just to checking for simple formal errors with respect to the HM's assessment of his work experience.

10. The Dispute Tribunal erred on a question of fact resulting in a manifestly unreasonable decision in finding that the decision not to convoke him for an interview was not unreasonable, improperly motivated or procedurally flawed. The review by the HM was procedurally flawed as the HM did not provide a reasoned record of her decision in *Inspira*. The HM took into consideration irrelevant material and ignored relevant material. Mr. Dhanjee and the successful candidate were treated unequally given that Mr. Dhanjee had answered all pre-screening questions affirmatively, whereas the successful candidate's affirmative answers with respect to two of the questions were false.

11. The Dispute Tribunal erred in procedure in not calling witnesses or ordering production of further evidence given that such information would have affected the decision in the case.

12. The Dispute Tribunal erred on a question of law in finding that he had no legally protected interest in the subsequent steps of the selection exercise. Given that the HM erred in not including him for the interview, it was erroneous of the Dispute Tribunal to prejudge that the interview panel would have found that he did not meet the requirements and competencies of the post.

13. Mr. Dhanjee requests the reversal of the Judgment, moral damages resulting from the failure to receive full and fair consideration, or that the case be remanded for additional findings of fact.

**The Secretary-General's Answer**

14. The Dispute Tribunal correctly upheld the decision not to select Mr. Dhanjee for the post after review of the procedural steps in the selection exercise. The Administration more than minimally demonstrated that Mr. Dhanjee was given full and fair consideration, as seen in the reasoning provided by the HM in *Inspira* regarding Mr. Dhanjee's candidacy. Mr. Dhanjee, on the contrary, failed to show through clear and convincing evidence that he was denied a fair chance of promotion. He also had the burden of proving that any discrimination occurred.

15. Mr. Dhanjee has not demonstrated that the Dispute Tribunal erred on a question of law with respect to the discretion of hiring managers.

16. Mr. Dhanjee failed to demonstrate that the Dispute Tribunal erred on questions of fact resulting in a manifestly unreasonable decision. As noted above, the HM provided reasoning for her determination and based her review on Mr. Dhanjee's Personal History Profile which included his cover letter, employment history and responses to the pre-screening questions. Further, there was no inconsistency between the qualifications set out in the VA and the criteria used by the HM in assessing Mr. Dhanjee's work experience. Mr. Dhanjee's contentions regarding the selected candidate are irrelevant for the purposes of determining the lawfulness of the decision regarding his candidacy.

17. Mr. Dhanjee failed to establish that the Dispute Tribunal's exercise of discretion in denying his request for the testimony of two witnesses or the production of a letter relating to the successful candidate would have led to different findings of fact and outcome. Such evidence is not relevant to the issue of whether the HM's determination that

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30. In *Rolland*, we stated that there is always a presumption that official acts have been regularly performed, but it is a rebuttable presumption. “If the management is able to even minimally show that the appellant’s candidature was given a full and fair consideration, then the presumption of law is satisfied. Thereafter the burden of proof shifts to the appellant who must be able to show through clear and convincing evidence that she was denied a fair chance of promotion.”<sup>4</sup>

31. The Secretary-General responds that the HM more than minimally demonstrated that she gave Mr. Dhanjee’s candidature full and fair consideration. The Secretary-General points out that of the seven entries under the category of employment that were listed in Mr. Dhanjee’s application for the post, only one entry was determined by the HM as being relevant to the post. Mr. Dhanjee held that position for one year and 11 months, which obviously fell short of the requirement that applicants have at least 10 years of progressively responsible post graduate experience at the national/international level dealing with analytical work on trade and development issues and international trading system, and trade policy formulation and implementation.

32. We uphold this submission.

34. We do not find any reasons to reverse these findings. We note that Mr. Dhanjee merely repeats the arguments he made before the UNDT and expresses his disagreement



40. We consider the comparison of his experience with that of the successful candidate irrelevant. As correctly stated by the UNDT, “[Mr. Dhanjee]’s exclusion at such an early stage of the selection process confirms that he had no real chance for being promoted; he therefore has no legally protected interest in the subsequent steps of the selection procedure and his

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Dated this 26<sup>th</sup> day of February 2015 in New York, United States.