

Case No.:

Introduction

1. In an application filed on 26 May 2011, the Applicant contests the decision by the Officer-in-Charge (“O-i-C”) of the Human Resources Management Section (“HRMS”), United Nations Conference on Trade and Development (“UNCTAD”), finding him ineligible for consideration for promotion to the P-5 level.

2. As remedy, the Applicant requests the rescission of the decision, as well as compensation for violation of his rights to full and fair consideration and to due process and for harm to his professional career and aspirations for promotion.

Facts

3. The Applicant joined the United Nations in 1993 at the L-2 level. He worked on the basis of successive 200-series contracts until 1 July 2009, when his appointment was converted to a fixed-term contract at the P-4 level limited to that grade and to UNCTAD. Under this appointment he continued serving as Project Manager in the Debt Management and Financial Analysis Systems (“DMFAS”) Programme, Division on Globalization and Development Strategies.

4. On 21 April 2010, a post of Project Coordinator, at the P-5 level, within the DMFAS Programme, UNCTAD, was published in Galaxy under vacancy

were not eligible to apply to positions at the P-5

integrity”, as well as staff regulation 4.4, according to which “the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations”. In fact, the VA was cancelled as no suitable candidate was identified, whereas the Applicant had been performing the functions of the post for years to the full satisfaction of his hierarchy, a result which seems contrary to the Organization’s interest;

f. The contested decision violates the Applicant’s right to be treated fairly, equally and without discrimination, for his lack of lateral moves while on 200-series appointments was beyond his control. His contractual status prevented him from benefiting from geographical exchange initiatives sponsored by UNCTAD. The DMFAS Programme did not have posts out of Geneva and this fact, together with the specialized functions of the Applicant, made it virtually impossible for him to meet the lateral moves requirement;

g. Notification of his alleged ineligibility over five months after the closing of the VA is a significant delay, which amounts to a violation of his due process rights and resulted in professional and moral prejudice.

13. The Respondent’s principal contentions are:

a. The VA advertising the post of Senior Project Coord

16. The key question put to the Tribunal is whether section 5.3 of the said instruction was applicable to the Applicant, given his specific employment status, and whether, as a result, he was subject to the requirement of having had two prior lateral moves in order to be eligible for consideration for promotion to the P-5 level. The Applicant argues that the mobility requirement laid down in section 5.3 applied only to internal candidates, whereas the Respondent holds that this provision had a broader scope.

17. Section 5 of ST/AI/2006/3/Rev.1 dealt with the “Eligibility requirements”. It started (section 5.1 to 5.3) by spelling out a series of conditions drafted in general terms; notably, section 5.3 prescribed:

Staff members in the Professional category shall have at least two prior lateral moves, which may take place at any level in that category, before being eligible to be considered for promotion to the P-5 level ...

the Organization cannot be blamed for setting demanding standards to accede to senior positions.

31. The Applicant also claims that over five months for the Administration to communicate the contested decision is an excessive delay, in violation of his due process rights. The Tribunal wishes to stress that, while section 9.5 of ST/AI/2006/3/Rev.1 imposed a duty on the programme managers to inform “[a]ll interviewed candidates who are not selected or placed on the roster”, the Applicant was not interviewed for the post of Senior Project Coordinator, and accordingly, there was no obligation under the said provision to advise him that his candidacy had been unsuccessful. This does not mean that the Administration is not bound to act in good faith and transparency with the Applicant, as part of its staff, and to respect his rights to due process and fair dealing. It does imply, however, that the time standards against which compliance with this obligation is measured cannot be the same as those used to declare a breach of section 9.5.

32. The Tribunal acknowledges that five months awaiting the outcome of a selection procedure which turned out to deceive his expectancies may well have been a source of frustration. Nonetheless, it is unavoidable that administrative procedures take time and in the present case the Administration cannot be seen as having lacked reasonable diligence in treating the Applicant’s application and subsequent queries. While the Applicant avers that the time elapsed since he submitted his candidacy until he was notified of his ineligibility resulted in moral prejudice and damage for his career and aspirations for promotion, this period was not such as to cause him harm that calls for reparation (see McKay UNDT/2012/018).

Conclusion

33.