



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

IVANOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Joseph Grinblat, OSLA

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is contesting the selection of a staff member other than him on the grounds that the successful candidate did not meet the post eligibility requirements in connection with post vacancy announcement 09-POP-DESA-419116-R-New York (“the Post”) for the P-5 level post of Chief, Population Policy Section (“PPS”), Population Division (“PD”), Department of Economic and Social Affairs (“DESA”).

Facts

2. On 6 June 2009, the Post was listed on the United Nations job vacancy website. Seven candidates, including the Applicant, were interviewed for it between 27 May 2009 and 6 June 2009, with an additional candidate being interviewed on 17 July 2009. Upon the completion of the selection process, candidates AB and VM were recommended for the post by the Central Review Board (“CRB”).

3. On 15 September 2009, AB was selected by the Under-Secretary-General for Economic and Social Affairs (“USG/DESA”) for the Post and VM was added to the roster of candidates pre-approved for similar functions.

4. On 7 December 2009, AB entered into service as Chief, PPS/PD, but was soon thereafter, on 18 December 2009, laterally reassigned to the post of Chief, Fertility and Family Planning Section, due to critical operational needs arising from the dismissal of the former Chief of that Section.

5. On 22 December 2009, VM, who had been rostered, was selected to replace the now departed Chief, PPS/PD. VM was offered the appointment on 15 January 2010, which he accepted on 22 January 2010.

6. On 1 March 2010, VM entered into service as Chief, PPS/PD, and, on 4 March 2010, the Applicant became aware that VM had been selected as the new Chief, PPS/PD in place of AB.

7. On 11 March 2010, the Applicant submitted a request for management evaluation of the decision to select VM on the grounds that he had “the required experience and applied for the [P]ost, but was not selected, and therefore [his] rights for due process were violated because the selected person did not have the minimum required experience for the post”.

8. On 18 March 2010, the Applicant responded to an email from the Management Evaluation Unit (“MEU”) acknowledging receipt of his management evaluation request by stating that he sought to clarify that the purpose of his request for management evaluation was not to contest the decision not to select him but rather that of the breach of his due process rights that resulted from the selection of an unqualified candidate.

9. On 22 April 2010, the Applicant received a 19 April 2010 letter informing him that “the Secretary-General has decided to endorse the findings and recommendations of the MEU and uphold the decision taken by the Administration to select another candidate for the post of Chief, PPS”.

10. On 27 June 2010, the Applicant filed the present application with the Tribunal and, on 28 July 2010, the Respondent filed and served his reply in which he submits, as a preliminary matter, that the Applicant’s application is not receivable *ratione materiae* as “the Applicant has clarified that he is not challenging the decision not to select him”.

11. On 19 July 2012, the Tribunal issued Order No. 146 (NY/2012) in which it requested that each of the parties address questions of receivability both *ratione materiae* and *ratione temporis*.

12. On 30 July 2010, the Applicant filed comments on the Respondent’s reply.

having “a serious chance of getting it, especially if it is recognized meanwhile that he has been the victim of harassment [and discrimination] on the part of [the Director]”;

c. A review of VM’s curriculum vitae indicates that he did not have “the minimum five years experience of research on population policy required in the vacancy announcement, and thus was not eligible for selection on the post” while he himself met all the necessary requirements;

d. While the Secretary-General benefits from discretionary powers with regards to the selection of a given candidate for a post, these powers are not unfettered. When the selection of a candidate is being contested, it is for the Administration to show that no abuse occurred as part of the selection process;

e. The MEU did not describe how it had determined that VM met the qualification requirements for the Post other than by saying that this information was “confidential in nature”. If VM met the qualification requirements then the Administration should share that information barring which it is fair to state that the selection of VM resulted in a breach of the Applicant’s due process rights;

f. The MEU relied on the information provided by the Director, PD (“Director”), who is also the person who had previously, and arbitrarily, decided that the Applicant was not qualified for the post. The Director has victimized and harassed the Applicant since 2004 resulting in him filing a complaint for harassment and discrimination with the USG/DESA on 6 January 2010. The Applicant further notes that these actions fit a pattern whereby the Director has constantly denigrated her staff by, for example, selecting eight external candidates to fill ten of the recent senior staff posts;

General's discretionary powers with regard to the appointment and promotion of staff members. More importantly, the Dispute Tribunal has held that it would not engage in a process of analyzing and comparing the qualifications of a successful staff member with t

10.4 If the selected candidate fails to take up the functions within two months for personal reasons or vacates the post within one year, the head of department/office may select another candidate from the list endorsed by the central review body with respect to the particular

Selection for the Post

25. The Applicant applied and interviewed for the Post following which, on inteltTj115

30. Consequently, the Tribunal can only conclude that the Applicant, as stated in *Roig*, was informed of the administrative decision to select someone other than him by 7 December 2009 at the latest, at which point the 60-day time limit to potentially request management evaluation of any of the related administrative decisions would have started to run.

31. The Applicant submitted his request for management evaluation on 11 March 2010, which, even if the Tribunal was to consider 7 December 2009 as the date of the notification of the completion of the selection process for the Post, is more than a month after the 5 February 2010 expiry of the time limit to submit any request for management evaluation regarding the selection process for the Post.

32. Thus, the Tribunal can only conclude that any appeal of the initial administrative decisions is not receivable due to being out of time.

Selection from the roster

33. Following the 18 December 2009 lateral reassignment of AB, the P-5 level position of Chief, PPS/PD, was once again available to be filled by the Administration.

34. Under sec. 10.4 of ST/AI/2006/3 and ST/AI/2006/3/Rev.1, following the vacating of the Post by AB, the Administration could choose to (a) “select another candidate from the list endorsed by the central review body with respect to the particular vacancy” or (b) “[i]f no such candidate is available, the head of department/office may select another candidate from the roster or decide to advertise the post in the compendium if no roster candidate is found to be suitable”.

35. Should the Administration have decided to re-advertise the Post, it would have resulted in a new selection process with its own set of administrative decisions. Similarly, taking the decision to “select another candidate from the list endorsed by the central review body with respect to the particular vacancy” also consists of its own set of separate administrative decisions.

36. The Tribunal has already stated above that the Applicant was out of time to contest the findings of the initial selection process for the Post, which included the rostering of VM. However, the selection of VM, which was conducted according to sec. 10.4 of ST/AI/2006/3 and ST/AI/2006/3/Rev.1, became effective at the earliest upon his acceptance of the appointment which occurred on 22 January 2010. Therefore, by contesting that decision by 11 March 2010, the Applicant submitted his request for management evaluation within the 60-day time limit, irrespective of the fact that he only became aware of the decision when VM entered into service on 4 March 2010, and the application is therefore not time-barred.

37. The question for the Tribunal therefore becomes whether the selection of VM from the roster is an administrative decision which is contestable by the Applicant. More specifically, was the selection of VM, as the only candidate that had been rostered for this post, in non-compliance with the Applicant's terms of appointment. Namely, were any of his rights breached?

38. As expressed in the facts of the case, the Applicant was one of eight candidates interviewed as part of the initial post selection process. Two of the candidates, though not the Applicant, were recommended for the post resulting in the selection of AB and the adding of VM to a list of candidates pre-approved for similar functions. Neither the Applicant, nor any of the other five candidates for the Post, were added to the roster following the completion of the selection process.

39. As previously stated, the selection of VM was a new separate selection decision taken pursuant to sec. 10.4 of ST/AI/2006/3 and ST/AI/2006/3/Rev.1. Consequently, seeing that there was no actual direct link between VM's selection and the Applicant's candidacy for the Post, it cannot be said that any of his rights were breached by the new administrative decision that resulted in the selection of VM.

40. The Tribunal can only therefore conclude that the Applicant lacks standing to contest the second separate and individual administrative decision with regard to the Post.

