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Introduction

By application dated August 10, 2014, the Applicant contests the decision not to appoint him to the position of Senior Business Analyst (Budget Systems), Global Analysis and Reporting Unit, Programme Budget Service ("PBS"), Division of Financial and Administrative Management ("DFAM"), at the United Nations High Commissioner for Refugees ("UNHCR") Headquarters in Geneva, Switzerland, at the P-5 level, Job Opening # 1400000000, Position No. 0000000000, advertised in the March 2014 UNHCR Compendium ("the Position").

Facts

2. The Applicant entered service at UNHCR in December 2008. After multiple assignments in the field, he works, since January 2010, as a Registration Officer (Progress), at UNHCR Headquarters, at the P-5 level.

The Position, classified as a Standard-Specific post, was advertised internally and externally in the March 2014 UNHCR Compendium. The Applicant applied for it.

As part of a comprehensive matching exercise, the Department of Human Resources Management ("DHRM"), UNHCR, shortlisted five

. In its Final Recommendation Meeting (“FRM”), held between and July 8, DHRM concluded that it was unable to assess whether the internal applicants fulfilled all requirements for the Position and agreed to release the list of external candidates with the proviso that four internal candidates, including the Applicant, be reviewed together with the external candidates, “under the same conditions in a competency based interview .

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. On April 0, the Applicant requested management evaluation of the decision to select an external candidate against the Position.

. The Deputy High Commissioner, UNHCR, replied to the Applicant's request for management evaluation by memorandum dated July 0, upholding the contested decision.

. The Applicant filed the present application before the Tribunal on August 20.

1. The Respondent filed his reply on September 0, with eight of the annexes thereto submitted *ex parte*.

. By Order No. 0 (GVA/ 0) dated April 0, the Tribunal requested the Applicant to submit observations on the Respondent's contention that he did not meet the requirements for the Position, notably those regarding educational background and work experience. He was also requested to provide a translation into English of his university degree(s) title(s).

. The Applicant filed the requested observations and provided his own translation of his university degree title on May 0.

20. By Order No. (GVA/ 0) of May 0, the parties were instructed to file objections, if any, to a judgment being rendered without an oral hearing. The Respondent expressed no objection. The Applicant stated, by submission dated 0 May 0, that he did not oppose to a judgment being rendered without an oral hearing; however, he objected to any disposition of the case that took into consideration the content of any of the confidential documents filed by the Respondent, in the absence of their disclosure to him and the opportunity for him to address them.

Parties' submissions

2 . The Applicant's principal contentions are

- a. DHRM failed to conduct a comprehensive matching exercise, as required by paras. (b) and of the Policy and Procedures on Assignments (Inter-Office Memorandum No. 0 2/ 0 0/Field Office Memorandum No. 0 2/ 0 0) ("PPAP "). Instead of determining whether the Applicant was or was not a suitable candidate for the Position, DHRM gave an ambivalent answer, to wit, that "in view of the fact that this is a rather technical post DHRM is not able to assess whether the internal applicants fulfill all requirements necessary for this position. Although the Manager concluded, after initial review of the internal candidates, that the Applicant did not meet the education and experience required, the FRM made positive statements on his competence for the Position. Further, according to para. (g) of the PPAP, while DHRM is to take into account the manager's view, the final selection decision lies with DHRM;
- b. External candidates may only be assessed if no suitable internal candidates are identified, pursuant to the Aw

matching process . The Applicant qualifies as an internal candidate for this purpose;

c. The Applicant was a suitable candidate. Under para. of the PPAP, a post may be re-advertised internally and externally, following the matching process when no suitable internal applicants are identified “using the following criteria competency, performance and language requirements

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- h. The crux of this matter is not an “ineligibility determination that was never made, but rather the procedure followed concerning “suitability determinations;
- i. Concerning the damage resulting for the Applicant from the contested non-selection decision, since he was not selected for the Position, he must continue applying for positions and will likely be forced to accept a position in a non-family duty station. Separation from his family would cause harm to himself as well as to his family, especially since his wife has recently developed a medical condition requiring quality medical care. Moreover, the Applicant’s career has been harmed as a result of him not being appointed to a P- position, as this will have an impact on his seniority in grade for future potential promotion opportunities. Finally, the Applicant has incurred financial loss as he will not receive a Special Post Allowance;
- j. As remedies, he requests the rescission of the contested decision and an equivalent position at the P- level at UNHCR in Geneva.

22 . The Respondent’s principal contentions are

- a. In line with the Appeals Tribunal’s case law (*Abass* 0 -UNAT-0; *Ro and* 0 -UNAT22), the Tribunal will rescind a selection or promotion decision only in rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination or bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the selection/promotion shall be upheld. None of the above circumstances applies to the present case;
- b. The jurisprudence relied upon by the Applicant concerns lateral moves under former administrative instruction ST/A/ 00 / (Staff selection system), whereas the case at hand does not relate to a lateral move and, in any case, is governed by PPAP. Nonetheless, it is not disputed that internal candidates are given priority under the applicable legal framework. The selection of an external candidate would have amounted to a procedural

e. The test results do not only establish that the Applicant was less suitable than the candidates subsequently interviewed. He received % of the possible points and scored lower than the average points granted to all

Constraints Panel, to be taken into account in the selection procedure under the PPAP. Finally, should the Tribunal find the contested decision to be flawed, it is not in a position to order the Applicant's assignment to an equivalent P- in Geneva, as requested.

Consideration

2 . In selection cases, the Appeals Tribunal holds in a well-established jurisprudence

Under Article 101 (1) of the Charter of the United Nations and Staff Regulations 2. (c) and 1.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration (see *Lungde* 2013-UNA-1000).

2 . Concerning procedural irregularities in selection and/or promotion cases the Appeals Tribunal has constantly held that

The direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation (see *Bofi* 2010-UNAT-1000).

2 . In applying these standards, the Tribunal finds the Applicant's request to rescind the contested decision unfounded.

2 . The Job Description of the post of Senior Business Analyst (Budget Systems), advertised in the March 2013 UNHCR Compendium, sets forth under "Part B Position Requirements" the different qualifications, competences and other conditions deemed necessary to discharge the duties of the post. In particular, its section 1 spells out, under the self-explanatory title of "Essential

UNHCR, leading the establishment of a private IT services company operating in a local market. Nevertheless, even if such management and business analysis related components in his previous positions were to be taken into account, it is dubious, to say the least, that the Applicant’s cumulated experience in the said fields reached the required ten years, with five of them “in an international capacity .

0. Therefore, the Applicant does not possess the requisite educational qualifications and it is not established that he has the professional experience

required by the Job Description (Article 5, paragraph 3, of the Rules of Procedure and Evidence of the Tribunal) (F H, cpKc(T)FtHyKcp)c T0)yc(yy c(F H tedhe 0)yc(yy (F H,p0“KpFFend,HyKy0F Kp0)yc(F

. The Applicant's suggestion that, by not excluding him from the recruitment process at the stage of the FRM meeting, DHRM admitted that he was suitable for the post, is without merit. Not only such a determination was never made, but, on the contrary, DHRM was explicit in stating that it was unable to assess whether the internal candidates, including the Applicant, satisfied the requirements necessary for the Position, as the minutes of the FRM July

Conclusion

1. In view of the foregoing, the Tribunal DECIDES