		Case No.:	UNDT/NY/2017/005
Mark -	UNITED NATIONS DISPUTE TRIBUNAL	Judgment No.:	UNDT/2019/088
		Date:	20 May 2019
		Original:	English

Before: Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

#### MOHAMED

v.

# SECRETARY-GENERAL OF THE UNITED NATIONS

## JUDGMENT

**Counsel for Applicant:** Joseph Grinblat

**Counsel for Respondent:** 

Christine Graham, ALD/OHR, UN Secretariat

Case No. UNDT/NY/

6. By Order No. 63 (NY/2019) dated 9 April 2019, the Tribunal instructed the parties to file their closing submissions in a sequential order during the period from 24 April to 10 May 2019. The parties duly filed these submissions.

#### Facts

7. -signed statement dated 8 April 2019, the agreed facts are presented as follows (emphasis omitted):

In September 2015, a vacancy announcement for Senior Human Resources Policies Officers, Human Resources Policies Division, ICSC, was advertised JO (for Job Opening)]. This announcement had the following requirements: Education: Advanced University degree in human resources management, public administration, social sciences or related field. A first level University degree in combination with extensive experience in a related field may be accepted in lieu of the advanced university degree. Work Experience: A minimum of ten years of varied professional and managerial experience across the broad spectrum of global human resources management functions in an international setting is required.

On 13 November 2015, the Applicant applied for the JO.

On 20 January 2016, an external consultancy firm conducted an assessment, including a written test, for the 22 job candidates who were considered to possess the relevant experience for the JO. Eleven job candidates were shortlisted for the next phase of the selection process, including the Applicant who received one of the highest grades, 17 out of 20.

On 29 February 2016 and 1 March 2016, seven job candidates, including the Applicant, participated in the competency-based interview organized by the Executive Secretary of the ICSC. The competencybased interviews were conducted by an interview panel composed of the Chairman of the ICSC, the Vice-Chairman of the ICSC, the Executive Secretary of the ICSC, the Chief of the Human Resources Policy Division of the ICSC, the Chief of the Salaries and Allowances Division of the ICSC, and the 000 1 7147.38 263ET 61il 09(the )-107(C)-2(hief)5( )-109(of )-106(

a degree in computer science would be qualified to do almost any other jobs as most occupations today use computer data, for instance, if working as an airline pilot, a lawyer or a banker.

11. The Applicant contends that t *curriculum vitae* shows that he was recruited as a general service staff member in 1992, then as a statistical assistant working on information technology matters, and only started working as a professional on human resources issues in May 2005.

12. The selected candidate had exactly 10 years of professional experience and therefore not the minimum of 12 years of professional experience in a relevant field as otherwise required by the ICSC guidelines for an applicant with only a b degree.

13. Contrary to standard practice, the JO did not specify that candidates with only a first-level university degree needed an additional two years of experience but referred to it as
Obviously, as the selected candidate did not even have in a relevant field, even if he had had 12 years professional experience, he would not have had the minimum requirements of the post.

14. Therefore, the selected candidate did not have the required educational degree or minimum professional work experience and should not have been included in the long-list of potential candidates for the post.

15. The Respondent contends that the Appeals Tribunal has recognized the wide discretion vested in the Secretary-General in reaching decisions on staff selection and that the Dispute Tribunal is not to substitute its judgment for that of the Secretary-General regarding the outcome of a selection process. This extends to all discretionary matters in a selection process, including the choice of evaluation criteria, assessment method, appraisal of candidates and the final selection decision.

16. Following a minimal showing that the job candidacy was given full and fair consideration, the burden of proof shifts to the applicant, who must show through clear

and convincing evidence that he or she was denied a fair chance of appointment. The Respondent submits that the ICSC is not part of the United Nations Secretariat and that its selection procedures are governed by the Statute of the ICSC and the personnel arrangements established by the Secretary-General after consultation with the Chairman of the ICSC. The selection process is conducted in accordance with art. 20 of the ICSC Statute, para. -General on Human

, and other relevant rules and procedures.

17. The Respondent contends that the JO re

in human resources management, public administration, social sciences or related -level university degree, in combination with extensive experience in a related field, could be

investigation (see the Appeals Tribunal in *Scott* 2012-UNAT-225 and also, for instance, *De Aguirre* 2016-UNAT-705, *Timothy* 2018-UNAT-847 and *Ozturk* 2018-UNAT-892).

25. The Tribunal observes that it follows from the case record that the selected r science and an advance certificate in strategic human resources management. Neither of these educational accreditations evidently equals an advanced university degree. is a first-level university degree and, from a plain reading of the JO, such first-level university degree did not have to be in human resources management, public administration or social sciences. Rather, it was the candidate

that had to be related to any such specified area. Unlike what the Applicant is contending, the subject of the first-level advanced university degree was therefore not important for this JO.

26. However, the JO did not specify what was meant by

experience for instance, it could both be professional and scholastic experience. The Respondent contends that

fields of human resources from 1992 and his advance certificate in strategic human resources management . In this context, the Tribunal finds that this determination does not appear to be manifestly unreasonable nor arbitrary (as for the relevant judicial test, see *Sanwidi* 2010-UNAT-084, para. 42, which has been affirmed in many subsequent Appeals Tribunal cases, including *Jibara* 2013-UNAT-326, *Balan* 2014-UNAT-462, *Said* 2015-UNAT-500, *Munir* 2015-UNAT-522, *Jaffa* 2015-UNAT-

Case No. UNDT/NY/

Was the Applicant substantively more qualified for the position than the selected candidate?

32. The Applicant submits that, while the selected candidate did not possess the minimum qualifications required for the post, neither in terms of education nor professional experience, the

competency-based interview. The Executive Secretary of the ICSC organized this interview and served as the head of the six-member interview panel. Each member of the panel independently graded each job candidate during the competency-based interview and passed their scores directly after the interviews to the Chief of the Human Resources Policy Division of the ICSC, who also served on the panel. The seven job

nal scores were the combination of their respective performance during the written assessment and the competency-based interview. The selected job candidate received the highest score and the Applicant received the second lowest score. Consequently, the Applicant was not recommended for selection.

38. The Tribunal notes that, with reference to the principle of presumption of regularity and *Lemonnier* and *Finniss* as cited above, if the Respondent is capable of minimally showing that the Applicant received full and fair consideration for the relevant position, it is for the Applicant to rebut with clear and convincing evidence that the selection process was flawed.

39. The Tribunal observes that, as part of the evidence, the Respondent has A BWS @ BWS a'N 'a' Bull & BWS BIT A BOD & BUD & B

## Did the Chairman of ICSC inappropriately favor the selected candidate?

46. The Applicant submits that the other members of the selection committee were all high-level professionals in the field of human resources management, who not only knew the rules but also that the selected candidate did not possess the minimum requirements of the mifavor

Case No. UNDT/NY/2017/005 Judgment No. UNDT/2019/088

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Case No. UNDT/NY/2017/005 Judgment No. UNDT/2019/088

just before the vacancy

announcement was posted, he was sent on a secret trip to London to get some certificate in job evaluation, which is one of the elements in the job description. He has not had training before. So it was known to us later on, we could anyone of us could have gone. If somebody should be going, that should be from our division. This person who got the job was in the other division, salaries and allowances. So job evaluation is done by our division, the human resources policy division. Then one of us, me or my other colleagues, could have gone for that training; that was never known to us there was a training or he was sent. When he came back, we heard that he went on so they were like kind of bolstering his credentials.

58. When the Applicant was asked whether she had done this training herself, she replied that she had, although some other training requests had been denied. The Applicant added that:

To have because that person only having a bachelor s degree in IT and all the people who applied had master s. I have two master s and also some other applicant had PhDs. So this person only had a bachelor's degree; so chairman wanted to make his resume better and better before giving the job or sending the resume to the Secretary-General.

59. The ICSC Chairman, who in his witness testimony before the Tribunal explained that he was not the chair of the interview panel but only participated as a panelist, responded negatively w Did you attempt to influence the process When asked about

t,

60. Consequently, the Tribunal is perplexed about the lack of the written documentation for the written test and the competency-based interviews and how the computing of the scores might have favored the selected candidate, at least compared to Candidate G. The Tribunal, nevertheless, finds that the Respondent has minimally shown that even if significant procedural flaws occurred, these did not affect the promotion (see also *Krioutchkov* 2016-UNAT-691, paras. 23

and 24), because the panel members did not appear to have colluded regarding the

scoring at the competency-based interviews and, even if the computing of the scores was subsequently fixed to favor the selected candidate, th total combined score would still have been lower than that of the selected candidate.

61. In conclusion, with reference to *Krioutchkov*, any irregularity in the selection process, therefore,