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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/009

Judgment No.: UNDT/2023/112

Date: 9 October 2023

Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

## **Introduction**

1. The Applicant, a former staff member of the Office of the High Commissioner for Human Rights ( OHCHR ), filed an application on 14 February 2022 contesting the decision not to select him for a fixed-term position, at the P-5 level, of Senior Human Rights Officer and Coordinator of the Secretariat of -Finding Mission ( FFM ) on Venezuela, based in Panama City



potential consideration for future similar job openings. He understood this to mean he had not been selected for the Post, and on 15 September 2021, he sought management evaluation of the non-selection decision. He subsequently learnt that on 16 July 2021, the Spanish national who was also the second-ranked candidate



**The parties' submissions**

*The Applicant*

17. The Applicant contends that the Administration denied him full and fair consideration for the Post by basing its non-selection decision on improper factors. He asserts that he did not enjoy the presumption of innocence and that the Administration breached its obligation to treat him justly, fairly and transparently, the Applicant a pretextual justification for his non-

18. The Applicant also maintains that although the interview panel ranked him as













9.3 When recommending the selection of candidates for posts up to and including at the D-1 level, the hiring manager shall support such recommendation by a documented record. The head of department/office shall select the candidate he or she considers to be best suited for the functions. Prior to selection of an external candidate, that decision must be justified in writing to, and approved by, OHRM.

38. The Applicant submits that the Selected Candidate, who was ranked second by the assessment panel, namely experience in a fact-finding mission, a commission of inquiry or an international criminal court; and experience working in or on Venezuela. Consequently, the Applicant concludes that the Selected C have been

Additionally, the Applicant states that although neither the Selected Candidate nor the third-ranked candidate had ever previously held an appointment at the P-5 level (other than on Special Post Allowance), one of them is presented in the recommendation memorandum as a fully-fledged P-5 staff member while the professional grades of the other are omitted. This argument must be rejected since

40. Based on the evidence before it, the Tribunal finds that the High Commissioner followed the correct procedures laid out in the applicable legal framework for selection.

*Whether the staff member was given full and fair consideration*

41. The Applicant submits that he was denied full and fair consideration for the Post because the selection decision was based on improper factors. He asserts that he did not enjoy the presumption of innocence and that the Administration breached

breach by giving the Applicant a pretextual justification for his non- This assertion relies primarily on the claim that certain officials of OHCHR had advised the High Commissioner that it would be a mistake to recruit the Applicant to the Post because allegations of misconduct could soon be brought against him.

42. The evidence before the Tribunal contradicts this claim. According to the Applicant, the Chief of Human Resources at OHCHR confirmed that in October 2020, a former FFM staff member had raised concerns of possible misconduct by the Applicant

evaluated as ds performance , his temporary appointment as FFM Coordinator was renewed. He was then allowed to compete for the fixed-term appointment as FFM Coordinator and was ranked in first place among the recommended candidates following both competency-based interviews. The recommendation memorandum identifying the Applicant as the first-ranked candidate was also submitted to the central review body for clearance. In addition, on 21 July 2021, the Applicant was notified of his selection as a Senior Human Rights Officer and Country Representative, at the P-5 level, in La Paz, Bolivia.

43. The Tribunal finds that it is unlikely that some or all of this would have happened had there been serious concerns among OHCHR senior officials

only after the High Commissioner had made the selection decision that OIOS notified OHCHR and the Applicant that it had opened an investigation against him.

44. Accordingly, the Tribunal finds no evidence to support the claim that the [redacted] in any way influenced by extraneous considerations such as the allegations of misconduct against the Applicant. The Tribunal also finds that [redacted] consideration.

*Whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner*

45. [redacted] the second-ranked candidate rather than the Applicant, who was ranked first by both assessment panels, was her desire to promote a qualified, experienced and long-serving OHCHR staff member who was an internal candidate. The Respondent avers that the decision was also motivated by [redacted].

46. With respect to this last justification, the Applicant points out that he (a national of the United Kingdom) and the Selected Candidate (a Spanish national) both belong to countries that are members of the Western European and Other [redacted]. Therefore, selecting either of them would have exactly the same result in terms of improving geographical diversity within OHCHR. However, the Respondent explains that since the Selected Candidate held a permanent appointment, he was considered as an internal candidate for the recruitment and was already included in [redacted] list of WEOG staff members. On the other hand, since the Applicant held a temporary appointment [redacted].



