



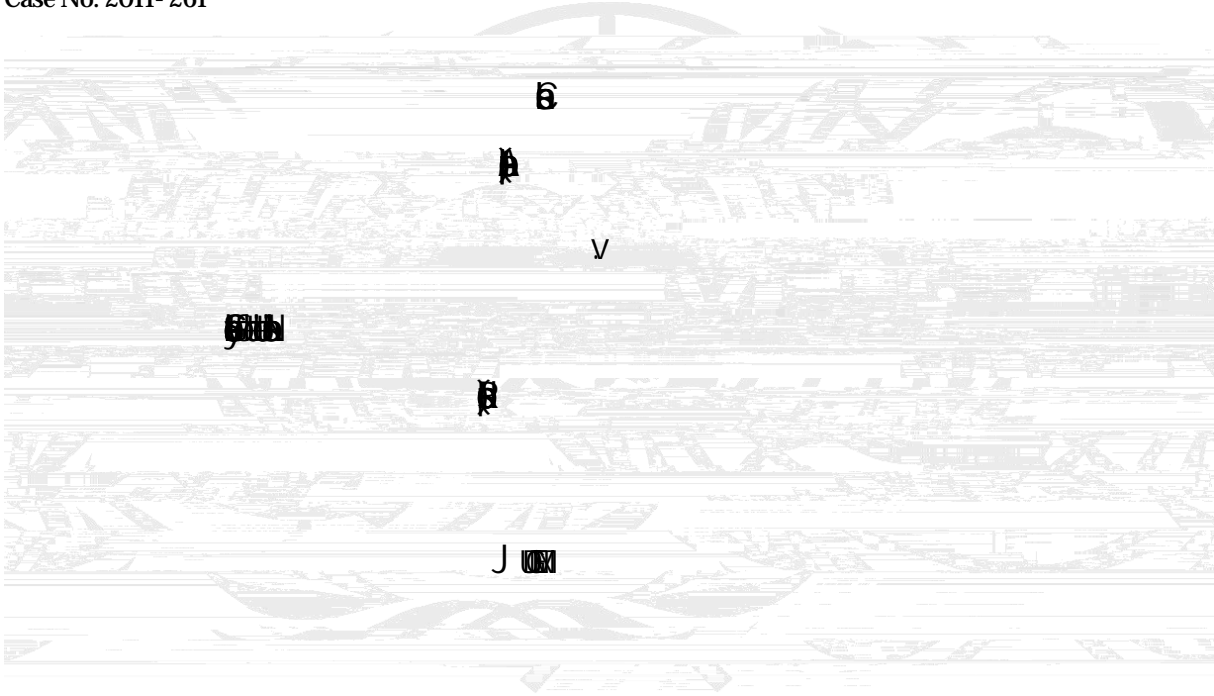
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Case No. 2011- 261



Before: Judge Sophia Adinyira, Presiding
Judge Kamaljit Singh Garewal
Judge Mary Faherty

Judgment No.:t NN330(202nh9.14t6eu)36.3d.30.1A.29 June 20 N1(39.16.)Tj 19m0 T82j.3nRegistrar: V

Counsel for Appellant: Self-represented

Counsel for Respondent: Amy Wood

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7. In 1994, Mr. Charles successfully passed the National Competitive Recruitment Examination (NCRE). At the time relevant to the appeal, Mr. Charles was serving as a P-3 Financial Management Officer.

8. On 18 February 2006, the Appellant applied for the post of a P-3 Legal Officer with the Secretariat of the former JAB and JDC.

9. On 8 December 2006, the selected candidate was notified of his appointment to the Legal Officer post. On 23 February 2007, the Appellant requested administrative review, inter alia, of the decision to fill the P-3 Legal Officer post without having given his application full and fair consideration.

10. On 2 May 2007, the Appellant appealed to the New York JAB. On 4 May 2007, the Secretary of the New York JAB informed the Appellant that, given the involvement in this case, the Secretariat of the New York JAB would not be in a position to provide effective assistance to a JAB panel. The appeal was subsequently transferred to the JAB in Geneva. In its report dated 6 June 2008, the Geneva JAB dismissed the Appellant's appeal and, on 22 August 2008, the Appellant was informed of the Secretary-General's decision to accept the JAB's findings.

11. On 28 October 2008, the Appellant filed an application with the former Administrative Tribunal. His application was not considered before the abolition of the former Administrative Tribunal on 31 December 2009, and was subsequently transferred to the UNDT in New York.

12. On 8 September 2011, the UNDT rendered Judgment No. UNDT/2011/159. The UNDT found that the selection process was conducted in a proper manner. The requirement of relevant experience was appropriate and necessary for the P-3 Legal Officer vacancy; and, in light of the duties of the Legal Officer, the Administration was entitled to insist on such experience as a mandatory requirement. The Appellant did not have the requisite minimum years of professional legal experience. The UNDT further noted that the JAB report reflected that the successful

The JAB considered that the Appellant did not have the required experience; and that his volunteer experience at the JAB and JDC was insufficient to satisfy the requirement of a minimum of five years of legal professional experience. It concluded that the Secretary-General had given full and fair consideration to Mr. Charles' application, had properly exercised his discretion, and that the decision not to select the Applicant for the post in question was not tainted by any procedural flaw.

14. The UNDT also rejected the Appellant's allegation of an actual or perceived conflict of interest. It noted that, contrary to the Appellant's assertion, the legal officer who advised the Under-Secretary-General for Management on the JAB recommendations had not been involved in the recruitment process. In fact, that legal officer was deliberately assigned to the case, because he had not been involved in the selection process. Accordingly, the UNDT rejected the application.

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15. Mr. Charles contends that the UNDT failed to give timely consideration to his application.

16. Mr. Charles alleges that the UNDT violated his due process rights by failing to inform the parties of the reassignment of the case to another judge or the withdrawal or recusal of the assigned judge.

17. Mr. Charles alleges that the UNDT erred in law and fact causing him "grave injustice and injury", in not finding that the JAB Secretariat:

- f* failed to act in accordance with the letter and spirit of the Staff Rules and guidelines for the proper conduct of the staff selection process;
- f* undertook an unfair and incomplete evaluation of his candidature, and its evaluation report omitted information and contained errors;
- f* failed to give priority consideration to his application and engaged in an unreasonable delay in evaluating his candidature;
- f* failed to timely notify him of the outcome of the recruitment process; and
- f* failed to notify him that it granted the Secretary-General an extension of time to submit his reply.

18. Mr. Charles alleges that the UNDT erred in law and fact in finding that there was no appearance or actual bias of the legal officers who were involved in the recruitment process and who also advised the Deputy Secretary-General on the JAB recommendations.

19.

established that a staff member has no right to be appointed, only to full and fair consideration of his or her application. The Secretary-General submits that the Appellant was fully and fairly considered; but he did not meet the minimum qualifications for the post.

25. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

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26. Pursuant to Article 2(1) of the Statute of the Appeals Tribunal, Mr. Charles appealed the UNDT Judgment on the grounds that the UNDT (i) committed errors in procedure such as to affect the decision of the case; (ii) erred on a question of law; (iii) erred on question of facts, resulting in a manifestly unreasonable decision; and (iv) erred on several issues in both law and fact.

(i) Errors in Procedure

27. Mr. Charles submits that the UNDT committed errors in procedure such as to cause him injury and to adversely affect the fair and expeditious resolution of the case by failing to give timely consideration to his application, and by failing to notify the parties of the recusal,

30. We recall that the new system of administration of justice was to replace the former which was considered to be slow, cumbersome and costly. We expect the General Assembly to well resource the UNDT and the Appeals Tribunal to enable them to administer justice effectively and in a timely manner, as justice delayed is justice denied.

31. On the issue of notification, we consider it is best practice if parties are notified of the re-assignment of cases at the Tribunals. In any event, Mr. Charles has not shown how these lapses are errors in procedure and how they affected the outcome of the UNDT Judgment. This ground of appeal is therefore dismissed.

(ii) Errors on questions of law

32. The vacancy announcement for the Legal Officer Post stated that priority consideration would be given to internal candidates and candidates who had passed the NCRE. Mr. Charles submits that he fulfilled those criteria and that, as an internal candidate seeking a lateral move, the UNDT erred in not making a finding that the New York JAB Secretariat failed to give priority consideration to his candidacy in accordance with the letter and spirit of the Staff Rules and guidelines for the proper conduct of the staff selection process.

33. In Megerditchian ,² this Court ruled:

It should be emphasized that “priority consideration” cannot be interpreted as a promise or guarantee to be appointed or receive what one is considered in priority for. To hold otherwise would compromise the highest standards of efficiency, competency and integrity required in selecting the best candidate for staff positions under Article 101 of the Charter.

34. Further, in reviewing the Secretary-General’s exercise of his discretionary authority in matters of staff selection and promotion, the UNDT is to consider, whether the staff member’s candidacy was given full and fair consideration and whether the procedure set forth in the Staff Regulations and Rules was followed.³ Mr. Charles merely repeats arguments he raised before the UNDT and does not show how the UNDT erred.

35. The UNDT in its Judgment set as its task to see whether the stipulated criteria were or were not job-related or whether they were deliberately manipulated in order to disadvantage the

² Megerditchian v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-088.

³ See Abbassi v. Secretary-General of the United Nations , Judgment No. 2011-UNAT-110.

applicant or to favour a preferred candidate.

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Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Faherty

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar