

Case No.: UNDT/GVA/2010/108

Judgment No.: UNDT/2011/165

Date: 16 September 2011

English

## **Introduction**

1. By application registered on 12 November 2010, the Applicant contests the decision, of which he was informed on 31 May 2010, not to promote him to the post of Chief (D-1), Human Resources Management Service (“HRMS”) of the United Nations Office at Geneva (“UNOG”).

2. He requests that the Tribunal:

a. Refer the case to the Secretary-General so that the latter may take appropriate measures to prevent the Director-General of UNOG from abusing his authority in selection decisions;

b. Award him compensation equivalent to one year’s salary for material and moral damages.

## **Facts**

3. The Applicant entered into service at UNOG on 24 September 1990 at the P-3 level as a human resources officer. He was promoted within the same service

b. The Director of the Strategic Planning and Staffing Division, Office of Human Resources Management (“OHRM”), at Headquarters, appointed by the Assistant Secretary-General for Human Resources Management; and,

c. The Chief of the Central Planning and Coordination Service, Division of Conference Management, UNOG, appointed in coordination with the Director-General of UNOG.

6. By note dated 3 March 2010, the Director of Administration, whose retirement was set for 31 March of the same year, stated that she felt obliged to withdraw from the selection process for the post of Chief, HRMS, owing to a disagreement with the Director-General of UNOG. That same day, the latter had asked her to include two additional members in the interview and selection panel, which she had declined to do. According to the note, the Director-General wished thereby to comply with the practice followed by the Department for General Assembly and Conference Management, while the Director of Administration wanted to adhere to the Department of Management practice of having a three-member panel, including the programme manager and a representative of OHRM at Headquarters. A copy of the note was transmitted to the Director-General of UNOG, the Under-Secretary-General for Management, the Assistant Secretary-General for Human Resources Management and the two other members of the interview and selection panel.

7. On 8 March 2010, the Director-General appointed the Director of the Conference on Disarmament Secretariat as an alternate for the Director of Administration and Chair of the interview and selection panel. He also appointed two additional panel members: his Chef de Cabinet and the Chief of the Financial Resources Management Service at UNOG.

8. The Director of Administration retired on 31 March 2010.

9. There were no candidates eligible to be considered at the 15-day mark for the contested post. There were six candidates eligible at the 30-day mark, of whom four, including the Applicant and the candidate who was ultimately

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19. The Respondent's contentions are:
- a. The Applicant's candidacy was fully and fairly considered. The Secretary-General has broad discretionary powers in matters pertaining to staff appointments and promotions. The Tribunal's role is to examine whether staff members' applications were properly considered; it cannot substitute its evaluation of candidates for that of the Secretary-General;
  - b. There was no rule in effect at the time of the events prohibiting the head of department from appointing the members of the interview and selection panel;
  - c. There was no rule in effect at the time of the events prescribing the number of members which the panel must have or the required qualifications for the members. While, in practice, such panels usually have three members, there is nothing to prevent the establishment of a panel with more than three members. The appointment by the Director-General of UNOG of an alternate programme manager was warranted in light of the decision by the Director of Administration to withdraw from the process;
  - d. The Applicant's contention that his technical qualifications could not be properly assessed by the interview and selection panel is unfounded. The panel consisted of seasoned senior staff members, including a human resources management expert. What is more, the

f. The Applicant's contention that the Director-General of UNOG abused his authority and manipulated the selection process is vague and

24. Thus, for the purposes of the provisions cited above, the Director-General of UNOG should be thought of as the department head and the Director of the Conference on Disarmament Secretariat, in his capacity as alternate for the Director of Administration, as programme manager.

25. The provisions of the administrative instruction and the annexes thereto cited below set forth the respective responsibilities of the programme manager and the head of department in the candidate selection process:

**Section 4, Compendium of vacancies — preparation of evaluation criteria**

...

4.3 The programme manager shall be responsible for promptly requesting the inclusion of immediate or anticipated vacancies in the compendium ...

4.4 At the same time as he or she prepares the vacancy announcement, the programme manager shall prepare for subsequent review by the appropriate central review body the criteria to be used in evaluating candidates ...

**Section 7, Consideration and selection**

...

7.4 The programme manager shall evaluate new candidates and roster candidates transmitted by OHRM or the personnel office ... on the basis of criteria pre-approved by the central review body.

7.5 For candidates identified as meeting all or most of the requirements of the post, interviews and/or other appropriate evaluation mechanisms, such as written tests or other assessment techniques, are required. Competency-based interviews must be conducted in all cases of recruitment or promotion. Programme managers must prepare a reasoned and documented record of the evaluation of those candidates against the requirements and competencies set out in the vacancy announcement.

7.6 For each vacancy, the programme manager shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and/or decision by the head of the department/office.

7.7 For posts up to and including at the D-1 level, programme managers shall transmit their proposal for one candidate or, preferably, a list of qualified, unranked candidates to the appropriate central review body through the head of department/office ... The head of department/office shall ensure that, in making the proposal, he or she has taken into account the Organization's human resources planning objectives and targets ...



## **Section 9, Decision**

9.1 The selection decision for posts up to and including at the D-1 level shall be made by the head of department/office when the central review body finds that the evaluation criteria have been properly applied and/or that the applicable procedures have been followed ...

9.2 When recommending the selection of candidates for posts up to and including at the D-1 level to the head of department/office, the programme 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, having taken into account the Organization's human resources objectives and targets as reflected in the departmental human resources action plan ...

## **Annex I, Responsibilities of the head of department/office**

1. The head of department/office has the authority:

...

(c) To make decisions on the selection of staff when the central review bodies are satisfied that the evaluation criteria were properly applied and/or the applicable procedures followed ...

...

In exercising his or her authority to select staff, the head of department/office shall select the candidate he or she considers to be best suited for the functions, having take



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34. Lastly, at the hearing, the Respondent requested that costs be awarded against the Applicant for making allegations against the former Director-General, during the hearing, which he had not mentioned in his written submissions. Article 10.6 of the Statute stipulates that where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party. The Tribunal finds that in this case, there was no manifest abuse of the proceedings and it therefore rejects the Respondent's request.

### **Conclusion**

26. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(Signed)*

Judge Jean-François Cousin

Dated this 16<sup>th</sup> day of September 2011

Entered in the Register on this 16<sup>th</sup> day of September 2011

*(Signed)*

Anne Coutin, Officer-in-Charge, Geneva Registry