

Case No.: UNDT/GVA/2017/055  
Judgment No.: UNDT/2018/120  
Date: 3 December 2018





- a. His application is receivable, the Respondent had issued a generic announcement concerning the decisions for other staff and he was never advised in writing that his candidacy was unsuccessful;
  - b. This only became clear to him in February 2017, when he availed himself of the provisions of para. 119 of UNHCR/HCP/2015/Rev.1 in order to obtain the relevant documentation used to assess his candidacy and the JRB minutes;
  - c. He requested timely management evaluation after he received relevant information from DHRM on 24 February 2017, upon his request, including excerpts from the shortlisting matrix and recommendation of the JRB on the post;
  - d. On the basis of the information provided, the Applicant addressed a request for management evaluation on 11 April 2017, contesting the decision and arguing that his candidacy had not received full and fair consideration;
  - e. The Respondent should not be permitted to benefit from his own procrastination in providing the privileged material;
  - f. It was only when he received the information relative to his candidacy for this post in Sudan that he became aware that the process was flawed;
  - g. The burden is on the Respondent to demonstrate that the Applicant's candidacy was given full and fair consideration.
17. The Respondent's main contentions can be summarized as follows:
- a. The Applicant received a written notification of the contested decision through the Summary of Decisions of the High-Commissioner on 7 December 2016. Consequently, he was required to file his request for management evaluation within 60 days or by 5 February 2017; failure to do so renders the application irreceivable;
  - b. The Applicant took issue with his non-selection for the P-5 position on 11

evaluation contesting his non-selection. Therefore, his grievance with regard to the selection process for the P-5 post is time-barred;

c. The Tribunal cannot remedy this jurisdictional flaw under article 8.3 of its Statute;

d. UNHCR's new policy on assignments and procedures does not impact the pre-established deadlines to submit a request for management evaluation;

e. For this reason, the Tribunal has no jurisdiction to entertain the Applicant's challenge of his non-selection.

### **Consideration**

18. As a preliminary issue, the Tribunal has to determine whether the present application is receivable, *ratione materiae*, since it has jurisdiction to consider applications only against an administrative decision for which an applicant has timely requested management evaluation, when required (*Egglefield* 2014-UNAT-402).

19. With respect to the deadline to request management evaluation, staff rule 11.2 (c) provides:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

20. According to the established jurisprudence of the Appeals Tribunal, statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308) and pursuant to art. 8.3 of its Statute, the Dispute Tribunal has no authority to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Egglefield* 2014-UNAT-402).

21. Also, the Appeals Tribunal has consistently held that receipt of information concerning the rationale for an earlier notified administrative decision does not reset the statutory time-limits (*Rahman* 2012-UNAT-260; *Chahrour* 2014-UNAT-406).

22. On 7 December 2016, the Director, DHRM, circulated the Summary of Decisions of the High Commissioner, thereby informing the Applicant that another candidate had been chosen for the P-5 post of Head, Sub-Office Jam Jang, South Soudan. The Summary of Decisions of the High Commissioner is the normal communication of selection decisions within UNHCR; since the name of another candidate, and not that of the Applicant, was listed for the above P-5 post in the Summary of Decisions, the Tribunal cannot but conclude that he was notified of hTj 13.755982.6080017

25. Paragraph 119 of the PPA provides as follows:

Staff members who have reasons to believe that they have not been given full and fair consideration for a particular decision, have the right to be provided, upon request, with information on the process which led to that particular decision. The information provided shall include relevant documents submitted by DHRM or the SAC to the JRB or to the High Commissioner, as applicable, as well as any JRB Minutes. The names of other staff members shall be concealed in all such documentation provided.

26. The wording of para. 119 of the PPA is unambiguous and does not allow concluding that the provision of information and documentation pursuant to the policy leads to a suspension or waiver of the statutory deadline enshrined in staff rule 11.2(c). Its purpose is merely to establish a duty for the Administration to provide non-successful candidates, upon their request, with documents with respect to a particular selection process. The mechanism of management evaluation, on the other hand, was created to provide the Organization with the opportunity to

**Conclusion**

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

The application is rejected.

*(Signed)*

Judge Teresa Bravo

Dated this 3<sup>rd</sup> day of December 2018

Entered in the Register on this 3<sup>rd</sup> day of December 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva