



IN THE MATTER OF:

*A.N., Applicant*

v.

*Chairperson of the African Union Commission, Respondent*

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Namira Negm, Legal Counsel, African Union Commission

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 13 August 2020

JUDGMENT

***Procedural and Factual History***

1. On 4 February 2019, the Applicant, a Senior Policy Officer within the Women, Gender and Development Directorate (WGDD), filed an application contesting the decision not to select him for the post of Head, Gender Policy and Monitoring Division (P-5), alleging irregularities in the appointment process.
2. The application was served on Respondent on 14 February 2019. Counsel for Respondent did not file a timely Answer.
3. On 16 March 2020, the Tribunal ordered Respondent to submit the recruitment record relating to the post being contested by Applicant. Under the same order, Applicant was required to file his reply to the new evidence and submit on damages. Both parties were invited to exchange pleadings on damages.
4. Upon review of the documentary record, the Tribunal believes the facts and issues have been presented adequately in the pleadings and the Tribunal determines this matter without the need to invite the parties for an oral hearing. The facts of the case are summarized as follows.
5. Applicant entered into service of the African Union Commission on 17 September 2014, after having served as a Human Rights Officer in the African Union's Central African Republic office.
6. On or about 8 August 2016, the Organization advertised the post of Head, Gender Policy and Monitoring Division (P-5). The application window closed on 8 September 2016. A shortlisting was completed on 16-17 August 2017, listing four (4) candidates, including Applicant.
7. On 21 August 2017, the director of WGDD, the hiring manager for the contested post and Applicant's supervisor, requested the director of Administration and Human Resources Management to advertise the post again citing the Short List Report, in which the director had noted "[the post] requires seniority from candidates and experience in the required field."
8. Accordingly, a second vacancy announcement was issued on 28 August 2017, keeping the application period open for a period of two weeks. A second short listing was conducted on 19 October 2017, during which candidates who had been short-listed in 2016 were carried over, and twelve (12) more candidates were added to the short list.

9. The combined results of the first and second shortlisting were forwarded to the Appointment, Promotion and Recruitment Board (APROB). On 7 November 2017, APROB considered the Short List Report and recommended that the top eleven (11) candidates be invited for interview and written assessment.
10. Between 27-28 February 2018, ten (10) candidates, including Applicant were interviewed. Applicant was the third top, with 52.9 points. The interview results constituted 70% of the overall assessment. In relation to the interview, Applicant complained that the WGDD director, his supervisor, was part of the interview panel and improperly asked him performance related questions that made him uncomfortable. Applicant also complained that a staff member who had applied for but not shortlisted for the same post was improperly allowed to sit as interview panel member.
11. The interviews were followed by a written assessment, and subsequently the aggregate scores of the ten (10) candidates were submitted to APROB, which upon considering the combined scores prepared a final list of six (6) recommended candidates, including Applicant. That list was transmitted to the Chairperson on 4 October 2018.
12. On or about 9 October 2018, the Chairperson selected the external female candidate from Malawi with the highest numerical score. After an unsuccessful review request filed with the Chairperson on 3 January 2019, this Application followed.
13. Applicant asks the Tribunal to cancel the selection process, order retroactive upgrade of his salary grade to P-5, to hold accountable officials responsible for the unlawful selection, and to order compensation for moral harm.

### *Discussion*

14. The power of appointment of staff members is vested on the Chairperson or a competent authority of any other organ of the African Union.<sup>1</sup> In exercising this authority, the Chairperson or the competent authority is advised by the [APROB].<sup>2</sup>
15. In a staff selection process, the paramount consideration is the need to guarantee the highest standards of competence, efficiency and integrity.<sup>3</sup> Additional considerations include the principles of equitable geographical representation, gender parity, and considerations for candidates already in the service of the Organization.<sup>4</sup>
16. Our role in reviewing the appointment decision is not to substitute the Tribunal's decision for that of the administration but rather to examine: (a) whether the procedure set out in the Staff Regulations and Rules as well as other laws of the Organization were properly applied; and (b) whether the staff member's candidacy received proper consideration.<sup>5</sup>
17. Applicant's primary contentions against the appointment decision are based on four grounds. First, Applicant claims that the decision to appoint a candidate other than him was tainted by bias since the Director lacked objectivity. To support this contention, Applicant points out that during the interview the Director asked him questions related to his performance intending to expose shortcomings. He also claims that the Director over scored the candidate who ultimately received the appointment.
18. A staff member who claims the selection process is tainted by improper considerations bears the burden of proof. From the evidence submitted by Applicant, the animosity between Applicant and the Director is clear to the Tribunal. The various exchanges between them depict a difficult and tense working environment. However, we note that his issues with the Director postdate the contested interview and the problems appear to have progressively worsened after another candidate was appointed for the post. If there were pre-existing problems prior to the interview, we would think Applicant would have requested the Director's recusal from the recruitment process. The Tribunal has not been provided with such evidence and hence is unpersuaded that the Director harbored bias against Applicant to warrant cancellation of the selection process.
19. Applicant's second contention is that the selected candidate lacked the minimum qualifications required for the post. The vacancy announcement required a master's degree and at least ten (10) years of related work experience. Applicant presented no evidence that the selected candidate did not meet these requirements, apart from claiming the Organization should have credited *only* the years of work experience gained *after* the candidate obtained a master's degree. Applicant did not provide any authority mandating this particular requirement. Hence, we find his second contention unfounded.

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<sup>1</sup> Staff regulation 6.1.

<sup>2</sup> Staff regulation 6.1(c); Staff rule 55.6 (a); Statute of the Commission art. 18(2).

<sup>3</sup> Statute of the Commission art. 18(7).

<sup>4</sup> Staff regulation 6.4(d).

<sup>5</sup> *Abbasi*, 2011-UNAT-110; para. 23 & 24; *ILOAT Judgment* No. 2060, para. 4; *ILOAT Judgment* No. 2457, para. 6; *In re Rene Michel Bauman*, WBAT Decision No. 532 (2016).

20. Applicant thirdly contends that the selection of the Malawian candidate was improper because Malawi's quota was fully subscribed at the time of her appointment. There is no doubt that the Organization is mandated to ensure equitable representation of member states across the African Union workforce and that each member state is allocated a fixed quota of staff under Staff rule 27.2. It follows then that a staff selection decision that violates established quotas of member states may be cancelled on that ground alone. But, such is not the case here. Despite an indication in the memorandum transmitting APROB's list of recommended candidates that Malawi's quota was full, from Respondent's subsequent submissions the Tribunal is convinced that this information was in error and that the Organization was permitted to recruit one more Malawian candidate before Malawi's quota became full. Consequently, we find this ground unfounded.
21. Finally, Applicant complains that his internal candidacy did not receive appropriate consideration. Staff regulation 6.4(a) states that "without prejudice to the need for recruitment of fresh talents...due consideration may be given to [internal candidates] *with competent qualification and experience...*" [Our emphasis]. Staff regulation 6.4(b) states that when recruiting staff "preference shall be given to persons with the highest standards of efficiency, competence and integrity ...". Reading both provisions together, and given that the selected candidate excelled Applicant by a margin of seven (7) points in the overall assessment, we find no error in the Chairperson's final selection.
22. In consideration of the above and despite the isolated irregularities pointed out by Applicant, we are not convinced that the said irregularities vitiated the selection process; to the contrary Applicant's participation in the process received transparent and fair consideration.

***Order***

23. For the above reasons, the Tribunal DENIES the application.

Date: 14 September 2020

*/signed/*

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SYLVESTER MAINGA, PRESIDENT  
JAMILA B. SEDQI  
PAULO D. COMOANE

Secretary: *Daniel Wedderburn*