



IN THE MATTER OF:

Y.T., 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: 21 August 2020, 17 May 2021

JUDGMENT

Procedural and Factual History

1. On 8 July 2019, the Applicant, an Assistant Auditor within the Office of Internal Audit, filed an application contesting the decision not to select him for the post of Senior Finance Officer (P-3) within the African Union Mechanism for Police Cooperation (AFRIPOL), and alleging discriminatory recruitment practices by the Organization.¹
2. Counsel for Respondent did not file a timely answer.²
3. Upon request by Applicant, on 17 August 2021, the Tribunal ordered Respondent to submit the recruitment record relating to the post being contested by Applicant. Respondent filed the responsive information on 26 September 2020.
4. Applicant first joined the African Union Commission in June 2010. In or about August 2017, Applicant applied for the post of Senior Finance Officer (P-3), AFRIPOL.
5. A shortlisting was completed in March 2018 at which twenty-four (24) candidates including Applicant were shortlisted. That list was forwarded to the Appointment, Promotion and Recruitment Board (APROB), which recommended that all 24 candidates be invited for interview and written assessment.
6. The candidates were interviewed in June 2018 followed by a written assessment. The results were aggregated and submitted to APROB. In October 2018, the names of the top five (5) candidates, including Applicant, were transmitted to the Chairperson for a final selection. A Tunisian candidate was at the top of the list (score: 76.35/100), followed by an Ethiopian candidate (score: 68.6/100) and Applicant (score: 65.13/100). The Chairperson selected the highest scoring candidate.
7. On 15 April 2019, Applicant received an electronic mail notifying him of the appointment of another candidate and his placement in a roster of candidates for future consideration. Applicant requested a feedback on his performance. His request was refused by a recruitment specialist citing unspecified Union procedures.

¹ Even though Applicant complains about his non-selection for various vacancies he had applied to as far back as 2012 and for which he never sought review first by the Chairperson, which are clearly time-barred, the Tribunal will only address the decision not to select him for the post of Senior Finance Officer (AFRIPOL).

² Respondent's Counsel submitted a late answer without presenting good cause for the late filing. The Tribunal rejected Respondent's untimely answer on 27 February 2020.

8. On 9 May 2019, Applicant unsuccessfully petitioned the Chairperson. He then filed his application with the Tribunal on 8 July 2019 seeking an order voiding the appointment, an order appointing him as a Senior Finance Officer or a similar post in Addis Ababa, and an order for unspecified damages.
9. Upon review of the documentary record, the Tribunal concludes that 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.

Discussion

10. The power of staff appointment is vested on the Chairperson or a competent authority of any other organ of the African Union.³ In exercising this authority, the Chairperson or the competent authority is advised by APROB.⁴
11. In a staff selection process, the paramount consideration is the need to guarantee the highest standards of competence, efficiency and integrity.⁵ Additional considerations include the principles of equitable geographical representation, gender parity, and considerations for candidates already in the service of the Organization.⁶
12. The Tribunal's role in reviewing an appointment decision is not to substitute its own 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.⁷
13. Applicant's primary contention against the appointment decision is based on his own subjective impression that he was the highest-scoring candidate in the competitive selection process. The Tribunal has inspected this claim by carefully considering the recruitment report that was made available to the Tribunal at the request of Applicant. Applicant's contentions are contradicted by the recruitment report; he was the third highest scoring candidate, excelled by the successful candidate by eleven (11) points.
14. Applicant complains that his status as an internal candidate did not receive appropriate consideration. Staff regulation 6.4(d) 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 eleven (11) points in the overall assessment, the Tribunal finds no error in the Chairperson's appointment decision.
15. Applicant's claims that he suffered discrimination in the recruitment process on account of his national origin. A staff member who claims that a selection process was tainted by improper considerations bears the burden of proof. However, the Tribunal has not been provided with any evidence of discrimination to substantiate those allegations except Applicant's own bare claims. The Tribunal therefore finds this contention unfounded.
16. Nonetheless, the Tribunal observes that Applicant should have been timely notified that a candidate other than him had been selected. Additionally, when Applicant asked for information on his own performance, he was told that Respondent's procedures did not allow it. Applicant's sentiments of discrimination and sense of unfairness, however incorrect, were likely fueled by Respondent's lack of responsiveness and failure to provide reasonable disclosures in relation to the outcome of the recruitment process.
17. Certainly, candidates already in the employ of the Union should not have to file an application with the Tribunal to learn how they performed during a recruitment process. Beyond the anxiety and stress of waiting for the outcome, the Tribunal appreciates the importance of timely notification to candidates' career planning and to help assure candidates that they received full and fair consideration in the process. The Organization is therefore encouraged to review its recruitment feedback procedures to prevent avoidable cases from resource-hogging the Tribunal.

³ Staff regulation 6.1.

⁴ Staff regulation 6.1(c); Staff rule 55.6 (a); Statute of the Commission art. 18(2).

⁵ Statute of the Commission art. 18(7).

⁶ Staff regulation 6.4(d).

⁷ *M.Y.*, AUAT/2019/001 para. 26; *A.N.*, AUAT/2020/002 para. 16.

Order

18. For the above reasons, the application is DENIED.

Date: 2 June 2021

/signed/

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

Secretary: *Paulo D. Comoane*