



IN THE MATTER OF:

W.N., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Guy-Fleury NTWARI, Legal Counsel, African Union Commission

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

HEARD ON: 26 August 2022, 23 September 2022

Procedural and Factual History

1. On 19 November 2020, Applicant, a former Bilingual Secretary (GSA5) within the Secretariat of the African Union Advisory Board Against Corruption (AUABC), filed the instant application contesting the lawfulness of the appointment of Bilingual Secretary (regular appointment) to serve the AUABC.
2. Counsel for Respondent did not file a timely Answer.¹
3. On 2 March 2021, Respondent requested oral hearing, which was opposed by Applicant on 18 March 2021. On 20 May 2021, Counsel for Respondent filed his rejoinder on Applicant's opposition to oral hearing.
4. Applicant joined AUABC as Bilingual Secretary in October 2013 as a short-term contract, and, over the years, has received excellent appraisals from successive reporting officers.
5. On 20 September 2016, the position of Bilingual Secretary was advertised, which was subsequently withdrawn. It was re-advertised on 2 October 2018, to which Applicant submitted her application.
6. Applicant was interviewed and sat for a written assessment in December 2018. She was ranked fourth out of the eight shortlisted candidates. The Appointment, Promotion and Recruitment Board (APROB) recommended the top candidate for appointment, who subsequently declined the offer. Upon Human Resources Management's (HRM) request for a new recommendation, APROB then recommended the fifth, sixth or the eighth candidate for appointment by Respondent. Respondent thereafter appointed the fifth top candidate.
7. Applicant maintains that she received no information as to the outcome of the interview until 23 September 2020, when she first learned of the appointment of another candidate from an HRM correspondence addressed to AUABC.
8. Applicant alleges that the process of recruitment was neither fair nor free from bias, and the Chairperson of AUABC (M.B.) influenced the process through various communications sent to HRM and by designating a conflicted colleague [S.N.] as his emissary to sit in the shortlisting and interview panels. She claims the candidate ultimately appointed on the post is a personal friend of S.N. In support of her claim of bias, Applicant recounts the following events.

¹ Counsel for Respondent requested leave to submit his Answer out of time. On 19 February 2020, the Tribunal rejected Respondent's request for want of good cause.

9. On 25 September 2018, M.B. wrote to HRM asking for urgent recruitment of a bilingual secretary to fill the post because he intended to remove Applicant from the position. Prior to that, by letter dated 12 September 2018, M.B. asked HRM to expedite the recruitment process and advertise the post only for 15 days as opposed to the regular period vacancies remained open, a request which was not honored by HRM.
10. By e-mailed dated 27 September 2018, M.B. asked HRM to send him the job description of the post of Bilingual Secretary for his approval. M.B. subsequently prepared the job description himself proving to Applicant that he intended to undermine her chances of success as a candidate. On 30 October 2018, M.B. wrote a memorandum to HRM, in which he remarked Applicant was “unqualified,” that she again understood was meant to prejudice her candidacy. HRM did not accept M.B.’s comments about Applicant’s performance.
11. Additionally, acting *ultra vires*, M.B. insisted on being part of the shortlisting process and sent his compatriot (S.N.) as a panel member knowing that individual had difficult relationship with Applicant and other staff in the Secretariat. S.N. sat in the shortlisting panel, chaired the interview panel, and corrected the written examinations alone. Applicant believes this was part of M.B.’s plan to prejudice her candidacy and maintain improper influence on the process.
12. Applicant further claims M.B. made sure the interview date overlapped with AUABC’s own proceedings in December 2018 in order to exclude the Executive Secretary from participating in the interview process, despite the position being within the direct supervision of the Executive Secretary.
13. M.B. also disregarded the questions prepared by the Executive Secretary and prepared his own interview questions. After the interviews, M.B. and S.N. openly spoke or wrote about Applicant’s non-selection for the post even before interview outcome was communicated to her. Applicant also claims M.B. harassed her at work and abused his office.
14. On 9 March 2020, Applicant wrote to the Deputy Chairperson in which she requested a review of the recruitment process but received no reply. On 16 October 2020, after learning of her non-selection for the contested post, Applicant petitioned Respondent to which, again, no answer was received.
15. She filed her application on 19 November 2020, seeking (a) nullification of the appointment decision and re-advertisement of the post; (b) her retention in the post until conclusion of the recruitment process; (c) compensation for loss of earnings in the form of six months’ salary; (d) reinstatement into service if the contested appointment is not nullified; (e) compensation for moral harm; and (f) any other relief deemed appropriate by the Tribunal.
16. These prayers were, through Applicant’s filing of 10 March 2021, amended as follows: (a) compensation in the form of four year’s salary; (b) moral damages in the form of six months’ salary; (c) a formal letter of apology from Respondent; (d) letter of good service; and (f) any other relief deemed appropriate by the Tribunal.
17. By letter dated 10 March 2021, Applicant was notified that, due to the appointment of a Bilingual Secretary (regular), her short-term appointment would not be extended beyond 30 April 2021, at which date she separated from service.
18. Despite being barred from filing further pleadings in the matter for failure to submit a timely Answer, Respondent filed a written brief and attachments on 27 March 2021, which included the recruitment report pertaining to the contested post. Upon consideration, the Tribunal admitted into the record the recruitment report only. Counsel for the Respondent and Applicant were thereafter allowed to present their arguments during the oral hearing of 26 August 2022.

Discussion

19. The power of appointment of staff members is vested on the Chairperson or a competent authority of any other organ of the African Union.² In exercising this authority, the Chairperson or the competent authority is advised by the APROB.³
20. In a staff selection process, the paramount consideration is the need to guarantee the highest standards of competence, efficiency and integrity.⁴ Additional considerations include the principles of equitable geographical representation, gender parity, and considerations for candidates already in the service of the Organization.⁵
21. The Tribunal’s role in reviewing an appointment decision is not to substitute its own decision for that of Respondent but rather to examine: (a) whether the procedures set out in the Staff Regulations and Rules as well as other laws of the

² Staff regulation 6.1.

³ Staff regulation 6.1(c); Staff rule 55.6 (a); Statute of the Commission art. 18(2).

⁴ Statute of the Commission art. 18(7).

⁵ Staff regulation 6.4(d).

Organization were properly applied; and (b) whether the staff member's candidacy received proper consideration.⁶ A staff member who claims that a selection process was tainted by improper considerations bears the burden of proof.⁷

22. Applicant challenges the lawfulness of Respondent's decision to appoint a Bilingual Secretary to serve the AUABC. She complains that her candidacy for the post did not receive fair consideration because of bias and other improper considerations on the part of M.B. She argues that Respondent breached the selection principles set forth in applicable regulations and rules.
23. Applicant's chief complaint is that one panel member, S.N., was biased against her. This complaint is based on her own belief that S.N. participated in the selection process at the behest of M.B. in order to undermine her candidacy. The Tribunal is split on whether M.B., and by extension S.N., were biased against Applicant.
24. The majority finds no bias on the part of M.B. They find that as the head of the institution, M.B. was responsible to ensure the overall functioning of the board through appropriate decision. As such, there was nothing improper in his involvement in the recruitment process, which was authorized under AUABC's rules of procedure. Consequently, the majority does not find merit in Applicant's claim that M.B. exceeded his authority.
25. The minority finds bias as, among other things, M.B. had made it clear that he did not want Applicant to be appointed in the advertised post, even expressed his preference to fill the post from a roster or he had already made up his mind that Applicant was unqualified for the post. M.B.'s improper comments reinforce the minority's view that Applicant's claim of bias is not entirely unfounded.
26. Nevertheless, as discussed below, the majority and minority concur in the conclusion that Applicant did not show serious defect in the process which impacted fair consideration of her candidacy. In other words, the nexus between the alleged bias and the outcome of the recruitment process has not been successfully established. Despite some misgivings about the process, it is the view of the Tribunal that the various hypotheses underpinning Applicant's claim of biased appointment are all handicapped by implausibility.
27. Applicant contends that, she and panel member S.N., a colleague at the AUABC, did not get along well and by representing M.B. at the shortlisting and interview panels, S.N. influenced the recruitment process against her. However, whether M.B. was biased or not, there is no evidence that the involvement of M.B. in the recruitment process leading up to the interview phase influenced the ultimate outcome, much less the appointment recommendations of APROB.
28. The shortlisting report reveals that there were fifty-six (56) candidates for the post. Applicant was one of the eleven (11) candidates shortlisted for interview and written examination. Applicant's contention is that the appointed candidate was a friend of S.N. A careful review of the interview and written examination score sheets as well as the overall candidate rating work sheet, Applicant still excelled the candidate allegedly preferred by S.N. Further, the Tribunal could not detect any pattern of bias or suspect variations in the scoring of Applicant or other candidates. Nor does it find any other ground to question the panel's overall evaluation report.
29. Applicant's contention has another hurdle. APROB initially recommended the top candidate for appointment, and it was only after that candidate had declined that APROB recommended the fifth, sixth and eighth candidates. The fifth candidate, alleged to be a friend of S.N., was appointed by Respondent. Had the top candidate not declined the offer, the alleged friend of S.N. would not have been offered the post. This sequence of events weakens Applicant's suggestion that the appointed candidate received special preference.
30. APROB is an independent advisory body presumably outside the influence of M.B. In the absence of any convincing evidence, it is untenable to suggest that, as Applicant does here, M.B. somehow influenced its appointment recommendations. In respect to APROB's second appointment recommendations, the only common-sense puzzle for the Tribunal is why, after the top candidate had declined, APROB skipped the second, third and fourth candidates to recommend the fifth, sixth and eighth candidates.
31. During oral hearing, Counsel for Respondent urged the Tribunal to accept that considerations of geographic balance underpinned APROB appointment recommendations, the three candidates all being from least or unrepresented regions of the continent. The Tribunal agrees, despite the contested post being free from individual country quota restrictions, geographic distribution can still be a rational consideration. Indeed, during the material time, three out of the seven staff at AUABC hailed from the southern region, thus the need to geographically balance AUABC's workforce.

⁶ *M.Y. v. Chairperson*, AUAT/2019/001 para. 26; *A.N. v. Chairperson*, AUAT/2020/002 para. 16.

⁷ *Y.T. v. Chairperson*, AUAT/2021/002 para. 15.

32. Be that as it may, even if APROB had, in making its appointment recommendations, strictly followed the ranked list of candidates, Applicant's success was still a long shot. Aside from the top candidate who declined the offer of appointment, there were two other candidates ahead of her.
33. During oral hearing, Applicant virtually addressed the Tribunal in amplification of her case, and the Tribunal's genuine impression is that any employer would have been very proud to retain her as a staff member. She was eloquent and articulate and left an indelible impression in the minds of the Members of the Tribunal, but the disposition as above and the facts of the case are unfortunately against Applicant. Regrettably, the Tribunal must decline the application.
34. Consequently, the application is DENIED.

Date: 21 October 2022

/signed/

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

Secretary: _____

