



IN THE MATTER OF:

E.N., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Yared S. NIGUSSIE, Esq.

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

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

HEARD ON: 22 August 2022, 23 September 2022

JUDGMENT

Procedural and Factual History

1. On 14 June 2021, Applicant, a Human Resources Officer (HRO) within the Human Resources Management (HRM) at the African Union Commission, filed an application contesting the alleged refusal to appoint him HRO in the regular category from a roster of pre-approved candidates established in September 2008.
2. Respondent submitted his written Answer on 1 November 2021. Applicant's written Observations were received on 10 December 2020.
3. In 2008, Applicant competed for a regular post, HRO (P-2). Respondent appointed another candidate in the post while placing Applicant and two other candidates in a roster for future consideration. In November 2009, Applicant was appointed from the roster as HRO in the fixed-term category.
4. In December 2012, the Organization advertised five posts of Human Resources Officer (P-2). On 7 February 2013, Applicant asked to be matched with one of the advertised posts for roster-appointment as a regular staff. He alternatively applied for the advertised posts which matched his profile. Applicant received no response on his request for roster-appointment and claims he was not notified of the outcome of the recruitment process.
5. Applicant next followed up with HRM on 6 November 2019, inquiring why he had not been considered for appointment from roster or through the competitive process he took part in 2013. In the meantime, Applicant learned that the reason he was not offered regular appointment was because his home country's quota had been fully subscribed at the time.
6. By memorandum dated 17 March 2021, HRM advised Applicant that his request had been presented to APROB but he could not be appointed on a P-2 regular post because the roster was too stale having been established in 2008. HRM further advised Applicant that, in any case, the practice of filling a post from roster had been abolished by the Executive Council.
7. On 15 April 2021, Applicant petitioned the Chairperson to reconsider HRM's unfavorable decision but received no response. This application followed, wherein Applicant seeks: (a) regular appointment as HRO (P-2) effective 1 January 2013; (b) regular appointment as HRO (P-3) effective 1 January 2017, as well as an award of various sums of damages.
8. Respondent asks the Tribunal to dismiss the application as untimely. On the merits, Respondent denies breaching applicable staff rules. Respondent argues that there is no right to appointment from roster. Further, Applicant was properly not appointed through a competitive recruitment process because his country's allotted quota was encumbered 100% at the time of consideration.

9. The facts and issues have been presented adequately in the pleadings and this matter is determined without the need to invite the parties for an oral hearing

Discussion

10. For an application to be receivable, a staff member must seek review by the Chairperson within thirty days of the contested administrative decision.¹ The Chairperson has thirty days in which to complete the review, failing which the request will be deemed constructively denied.²
11. The staff member then has additional thirty days to file an application with the Tribunal, reckoned thirty days after the filing of administrative review request or from the date of receipt of a decision on the administrative review request, whichever comes first.³ Staff members must strictly comply with these mandatory timelines.⁴
12. In his application filed on 14 June 2021, Applicant contests the decision not to appoint him on a regular HRO (P-2) post from a 2008 roster. He collaterally complains that Respondent unlawfully failed to appoint him on any of the regular HRO (P-2) posts for which he applied in 2013.
13. The Tribunal does not accept Applicant's characterization of the 17 March 2021 HRM memorandum as the contested decision. The memorandum was triggered by Applicant's own 19 November 2019 correspondence appearing, albeit implausibly, to seek the status of the HRO positions advertised in 2012. Applicant cannot reset the filing timelines through an inquiry to HRM filed more than six years after the material events in this case.⁵
14. Applicant does not assert, nor is there evidence in the record, that Respondent led him to believe that his roster-appointment or his competitive candidacy in respect to the 2012 vacancies was under consideration at least through November 2019. The application is time-barred.
15. There being no need for determination of other issues in this case, the application is DISMISSED.

Date: 21 October 2022

/signed/

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

Secretary: _____



¹ Staff rule 62.1.

² *Id.*

³ Staff rule 62.1; AUAT Statute art.13(iv).

⁴ *M.Z.L.*, AUAT/2018/001, para. 13.

⁵ See e.g., *Staedtler*, 2015-UNAT-546; *Sethia*, 2010-UNAT-079.