

Introduction

1. On 22 February 2012, the Applicant, a Security Officer with the Department of Safety and Security (“DSS”), submitted an application for suspension of action, pending management evaluation, of the

10. The Respondent submits that the Equivalency Matrix was prepared pursuant to sec. 6.1 of ST/AI/2010/3), which states (footnotes omitted):

Section 6

Eligibility requirements

6.1 Staff members holding a permanent, continuing, probationary or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade. Staff members in the General Service and related categories holding a permanent, continuing or fixed-term appointment may apply for positions in the Field Service category at any level, irrespective of the grade held in the General Service and related categories, provided they meet the requirements of the post.

11. The Applicant was informed of the decision declaring her ineligible for the position on 16 February 2012.

Applicant's submissions

12. The Applicant's principal contentions may be summarised as follows:

Prima facie unlawfulness

a. The Equivalency Matrix does not have the force of law and cannot curtail the rights of staff members. Alternatively, the Equivalency Matrix was not approved after consultation with the relevant organizational units and appropriate staff representative bodies as required with respect to all rules, policies, and procedures intended for general application (see ST/SGB/2009/4);

Urgency

b. Unless the contested decision is suspended, the recruitment process will continue without the Applicant's name on the list of approved candidates;

Consideration

14. This is an application for a suspension of action pending management evaluation. It is an extraordinary discretionary relief, which is generally not appealable, and which requires consideration by the Tribunal within five days of the service of the application on the Respondent. Therefore, parties approaching the Tribunal must do so with sufficient information for the Tribunal to, preferably, decide the matter on the papers before it. An application may well stand or fall on its founding papers.

15. Article 2.2 of the Tribunal's Statute provides that the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

Receivability

16. The Respondent contends that the present application is not receivable as the selection exercise is still ongoing and its propriety will be reviewed at the end of the process by a central review body.

17. The Tribunal finds that, as far as the Applicant's situation is concerned, the contested decision has the effect of bringing her participation in the selection process to an end. The decision that she is not eligible to participate in the selection process has been made, and the Respondent has failed to show to the Tribunal's satisfaction that any final review of the process by a central review body would encompass review of eligibility of every one of the 145 candidates. In any event, central review bodies make recommendations, which the Administration may or may not follow. The making of a recommendation is quite distinct from the relief the Applicant is seeking in the present application.

18. The Tribunal finds that, in the particular circumstances of this case, the present application is receivable.

Irreparable damage

19. One of the requirements for a successful application for interim relief is that the Applicant must satisfy the Tribunal that the implementation of the decision would result in irreparable harm.

20. It is generally accepted that financial loss only is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage.

21. The Respondent submits that the Applicant would be only one out of 145 candidates considered for the job. It is unclear whether 145 is the total number of candidates for the post or candidates whose names were released for consideration. In any event, in view of the Applicant's unopposed submission that she has been performing the functions of the advertised job for the last 36 months, it appears that, if she were permitted to continue with the application process, she may have a fairly good chance to be among the qualified candidates considered at the final stage of the selection process.

22. However, the Tribunal is not persuaded that the harm to the career of the Applicant, in the event her suspension of action application is not granted, would be such as to constitute irreparable damage. The Applicant has not shown that the pool of potential jobs that she can apply for is so narrow as to effectively preclude her from any career advancement other than by applying for this G-6 post. The Applicant also holds a fixed-term appointment and makes no averment that she is in any danger of losing her current employment.

Annex 6, had not yet been forwarded to staff and management representatives for consideration and comment. The Assistant Secretary-General further stated that the preparation of the final draft of the administrative instruction would proceed with the established global consultative process and “we certainly intend to engage and consult with both management in DSS as well as staff representatives”.

29. In her email of 8 October 2011, the Assistant Secretary-General also comments on the issues of grade equivalencies which apparently have been the subject of ongoing discussion for a number of years, particularly because of the incongruity that similarly situated staff members such as those serving in security services have served under different categories in different duty stations. The Assistant Secretary-General recognised that

