## Introduction

1. By application filed on 1 February 2017, the Applicant contests the decisions not to select him for the position of Humanitarian Affairs Officer (Financial Tracking Service) (P-3) in the Office of Coordination of Humanitarian Affairs ("OCHA"), advertised under Job Opening No. 54262, and not to place him on a roster of pre-approved candidates for openings with similar functions at the same level.

## Facts

2. The Applicant is an Economic Affairs Officer at the United Nations Conference on Trade and Development ("UNCTAD"), who holds a continuing appointment at the P-2 level. Since 1 October 2014, he is on a temporary assignment at the P-3 level as an Economic Affairs Officer, UNCTAD, for which he receives a special post allowance.

3. On 14 January 2016, Job Opening No. 54262 was advertised in *Inspira*. It required "[a] minimum of five years of progressively responsible experience in humanitarian affairs, emergency preparedness, crisis/emergency relief management, rehabilitation, development, or other related area". In addition, the vacancy announcement provided that "extensive experience with humanitarian financial tracking, humanitarian pooled funds, accounting and reporting systems, project information management, and humanitarian response plans (HRPs)/appeals" was "highly desirable". The Applicant applied for the position on 25 January 2016.

4. Pursuant to a memorandum dated 16 June 2016 from the hiring manager to the Central Review Committee ("CRC"), 122 candidates were screened eligible for the hiring manager's assessment, 14 of which were from the roster. Fifteen candidates were initially deemed not suitable by the hiring manager, 93 were long listed, and 13 were short-listed, including the Applicant.

c. He was removed from the final selection to "speed up the process", whilst the hiring manager, the OCHA Human Resources and the assessment panel all found that he met the requirements for the post;

d. The Applicant requests the Tribunal to:

i. Rescind the contested decisions and restore his placement on the list of recommended candidates;

ii. Place him on a roster of pre-approved candidates for openings with similar functions at the same level;

iii. Award him material damages in the amount of USD10,000 for loss in pension contributions and retirement benefits and denial of career opportunities; and

iv. Award him moral damages in the amount of USD5,000 for the distress suffered due to the irregularities committed.

21. The Respondent's principal contentions are:

a. The Applicant's candidacy received full and fair consideration and the proper procedures set out in ST/AI/2010/3/Amend.1 (Staff Selection System) were adhered to up to the request for clarification by the CRC;

b. The Respondent acknowledges that the hiring manager did not follow the proper procedures by removing the Applicant from the list of recommended candidates without further re-examinTj ( )Tj 20.730 Td (of)Tj ( )Tj -358.49700928

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22. d. As to remedies, the Respondent argues that the Tribunal cannot place the Applicant on the roster as CRC approval is required in this respect;

e. Furthermore, the Applicant did not suffer any material damage as he currently occupies a post at the P-3 level on a temporary basis, nor has he demonstrated any moral damage; and

f. Consequently, the Respondent requests the Tribunal to reject the application in its entirety.

**Consideration**

22. The Applicant challenges two administrative decisions resulting from his removal from the list of recommended candidates following questions raised by the CRC about his fulfilling the minimum experience requirement for Job Opening No. 54262, namely: the decision not to select him for the post and the decision not to

25. Finally, the Tribunal's power to review discretionary decisions

28. As to the CRC, its role is defined in sec. 8.1 of ST/AI/2010/3/Amend.1 as follows:

> The central review bodies shall review proposals for filing a specific position job opening …, made by the department/office or mission concerned, to ensure that applicants were evaluated on the basis of the corresponding evaluation criteria and that the applicable procedures were followed in accordance with sections 5.2 to 5.6 of ST/SGB/2011/7.

29. Sec. 4.6 of ST/SGB/2011/7 (Central review bodies) further provides that:

> In so doing, the central review bodies shall consider whether:
>
> (a) The recommendation of candidates is reasoned and objectively justifiable based on evidence that the pre-approved evaluation criteria set out in the job opening were properly applied;
>
> (b) The record indicates that there was no mistake of fact or mistake of procedure, prejudice or improper motive that could have prevented a full and fair consideration of the candidates' requisite qualifications;
>
> (c) The record contains a fully justified analysis of each of the competencies listed in the job opening, which must be evaluated during the competency-based interview and/or other assessment methodologies for all short-listed candidates.

30. Pursuant to sec. 4.8 of ST/SGB/2011/7:

> When the central review body has questions or doubts regarding the proper application of the evaluation criteria and/or the applicable procedures, it shall request the necessary information from the head of department/office, the hiring manager or the ex officio member representing the Office of Human Resources Management, the local human resources office or the ex officio member representing the Department of Field Support, as appropriate. Once the questions are answered to the satisfaction of the central review body, that body shall proceed as provided in section 4.6 of the present bulletin.

31. If the central review body finds that the evaluation criteria were properly applied and that the procedures were followed, it "recommends that the head of department/office approve the proposed candidate(s) for selection or placement on a roster"

shall so inform the Assistant Secretary-General for Human Resources Management (sec. 4.9).

> charge of monitoring and analysing budgetary data and developing new methodologies and data tracking system. The candidate's overall experience is focused on Economic issue, covering several areas such as economic research, coordination of intergovernmental meetings, project management, economic data analysis. The candidate has experience with accounting and reporting system when in charge of analyzing payroll and budgetary data to provide reports for the US Department of Justice. As management analyst (US Department of Justice) the candidate also assisted in developing methodologies and an efficient data tracking system and has experience in database development and management. The candidate has experience at HQ and Field level and has knowledge of the UN System.

35. In light of the foregoing, the Applicant was invited to and successfully passed the assessment process,

decision on behalf of the Secretary-General. The decision-maker may well have had a different preference than the one expressed by the hiring manager.

42. Furthermore, the role of the CRC is not only to verify that candidates recommended for a position meet the requirements but also to ensure that the candidates "were evaluated on the basis of the corresponding evaluation criteria and that the applicable procedures were followed", thereby ensuring that all candidates receive full and fair

45. In the exercise of its judicial review, the Tribunal can, however, examine whether in the different phases of the process, the persons involved in the present selection exercise lawfully exercised their discretion (see para. 25 above). There is no indication that the OCHA Human Resources and the hiring manager abused their discretion or exercised it in an unreasonable way when they first found that the

performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation, and shall provide the reasons for that decision.

Rescission of the contested decisions

48. Having found that the selection decision for the contested post was unlawful, and considering that the Applicant had a applicant.

that can be taken into account should be limited to a maximum of

60. The Tribunal may, pursuant to art. 10.5(b) of its Statute, award compensation for harm suffered as a result of a contested decision, if such harm has not been compensated by the rescission. For such compensation to be awarded, the Applicant must identify the harm suffered. The Tribunal notes that art. 10.5(b) of its Statute was amended by the General Assembly on 18 December 2014 to require that compensation for harm be supported by evidence.

61. In this case, the Applicant did not identify any specific material damage for which he requests compensation. In any event, the Tribunal considers that the Applicant's loss of chance to be appointed to a post at the P-3 level and, therefore, to benefit from an increase of salary, is fully compensated by its decision above under art. 10.5(a) of the Tribunal's Statute.

62. Turning to moral damages, the Tribunal notes that the Applicant claimed moral damages in his application without identifying any specific harm. In his additional submission of 16 February 2018, the Applicant merely asserted that "the unfairness of the selection process for the post has demoralized him, caused him to lose faith in justice and the integrity of the staff selection 5.9Tj -350.54598674 -20.69799805 TD (under)T

b. Should the Respondent elect to pay financial compensation instead of effectively rescinding the decision, he shall pay the Applicant the equivalent of two months net base salary at the P-3 level, step 1; and

c. All other claims are rejected.

(*Signed*)
Judge Teresa Bravo
Dated this 26th day of February 2018

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