

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**A.**  
**v.**  
**WHO**

**134th Session**

**Judgment No. 4529**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs J. P. A. against the World Health Organization (WHO) on 19 March 2019 and corrected on 29 March, WHO's reply of 11 September, the complainant's rejoinder of 17 October 2019 and WHO's surrejoinder of 24 January 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant contests WHO's decision to select Ms V. for the post of Proofreader (Spanish), at grade G-4, in WHO's Headquarters' Word Processing Centre (HQ/WPC).

The complainant joined WHO in May 2000. In December 2007 she was granted a fixed-term appointment as a Word Processing Operator, at grade G-4, in HQ/WPC. In December 2011 her appointment was converted to a continuing appointment. On 3 October 2016, further to the retirement of her immediate supervisor, she was temporarily assigned to carry out the duties of the post of Proofreader, at grade G-5, in HQ/WPC. She served in that capacity until 30 September 2017.

On 23 December 2016 the Organization published vacancy notice HQ/16/TRA/FT822 for the post of Proofreader (Spanish), at grade G-5, in HQ/WPC. The complainant applied for this post and she was shortlisted along with two external candidates. On 1 August 2017 she was invited to take the written test and was also informed of the composition of the Selection Panel. All three candidates took the written test but based on their scores only the complainant and one of the external candidates, Ms V., were retained by the Selection Panel. On 31 August 2017 the complainant was invited to an interview with the Selection Panel scheduled to take place on 15 September 2017. In the meantime, on 12 September 2017, she was informed of a change in the composition of the Selection Panel due to the unexpected absence of the Hiring Manager, who would thus be replaced by another official from the same unit. On 13 September 2017 the complainant confirmed that she did not “have any problem” that the official proposed to replace the Hiring Manager would be “present in the panel”. The complainant was interviewed on 15 September.

In its report of 4 October 2017, the Selection Panel unanimously recommended the appointment of Ms V. as the most suitable candidate. As regards the candidates’ scores, the report stated that the complainant’s “Overall result – 100%” score was 60 points whereas that of Ms V. was 62.8 points. However, the candidates’ respective individual scores shown for the “Written test – 60% weighting” and the “Interview – 40% weighting” were inconsistent compared to the “Overall result” scores. The Selection Panel further stated in the report that the interview had revealed that the complainant had “poor communication skills” and “a level of maturity below the requirements for a G-5 level position”. In the event Ms V. declined the offer of appointment, the Selection Panel recommended that the post be readvertised. By an email of 13 October 2017, the complainant was informed that she had not been selected for the post.

The complainant requested an administrative review of this decision on 2 November 2017. Further to its rejection on 23 January 2018, she submitted an appeal to the Global Board of Appeal (GBA) on 10 April 2018. In its report, submitted on 29 October 2018, the GBA unanimously

recommended the appeal be dismissed. With regard to the apparent inconsistency of the candidates' individual scores in the report of the Selection Panel compared with the overall result scores, the GBA found that it was due to a clerical error and that the overall percentage scores had been calculated and reflected correctly, and they corresponded to the candidates' assessment sheets.

By a letter of 21 December 2018, the Director-General informed the complainant that he had decided to accept the GBA's recommendation to dismiss the appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the Director-General's decision to select an external candidate for the position of Proofreader (Spanish), at grade G-5, in HQ/WPC (vacancy notice HQ/16/TRA/FT822) and to order an "adequate calculation" of the results of the tests including "other useful factors". In the event that the calculation requested above demonstrates that the complainant obtained the higher mark, the complainant further asks the Tribunal to order her immediate selection for the post in question. If the foregoing claims cannot be granted, the complainant asks the Tribunal to cancel the selection and to order a new one. She claims appropriate compensation for moral and professional prejudice and the reimbursement of legal costs.

WHO asks the Tribunal to dismiss the complaint in its entirety. In the event the Tribunal decides to grant the complainant's claim for legal costs, WHO asks the Tribunal to establish a maximum amount of costs and to make payment thereof conditional on the receipt of invoices, the proof of payment and the complainant not being eligible for reimbursement via other sources.

#### CONSIDERATIONS

1. The complainant, a staff member of WHO holding grade G-4, applied for the post of Proofreader (Spanish) in HQ/WPC, at the G-5 level, for which vacancy notice HQ/16/TRA/FT822 was issued. She was one of the candidates shortlisted for the written test and one of the two remaining candidates invited for the interview. On 13 October 2017 she was informed that she had not been selected for the post. In the

internal appeal process, she challenged the decision not to select her for the post before the GBA.

2. On 29 October 2018 the GBA concluded that the selection process was conducted in compliance with the WHO regulatory framework and the decision not to select the complainant for the position was justified. The GBA did not find evidence of bad faith, mistakes of fact or of law, unfairness, bias or discrimination and recommended that the appeal be dismissed. By a letter of 21 December 2018, the complainant was informed that the Director-General had accepted the GBA's recommendation to dismiss her appeal and all claims for redress. This is the impugned decision.

3. The complainant challenges the impugned decision on the following grounds:

- (a) the decision not to select her for the position was based on errors of fact and of law, and was in breach of the Staff Regulations and Staff Rules;
- (b) the selection process was biased, irregular and misguided, and the Selection Panel demonstrated prejudice against her;
- (c) she was subjected to serious discrimination that damaged her professional career;
- (d) there were no guidelines for the selection process related to the General Service category of staff, "leaving the discretionary power of a selection committee without identifiable limits".

4. According to the Tribunal's well-established case law, in matters of appointment through competition the Tribunal has limited power to review a contested selection, as explained, for instance, in Judgment 3652, consideration 7:

"The Tribunal's case law has it that a staff appointment by an international organisation is a decision that lies within the discretion of its executive head. Such a decision is subject to only limited review and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if

a clearly wrong conclusion was drawn from the evidence (see Judgment 3537, under 10). Nevertheless, anyone who applies for a post to be filled by some process of selection is entitled to have her or his application considered in good faith and in keeping with the basic rules of fair and open competition. That is a right which every applicant must enjoy, whatever her or his hope of success may be (see, inter alia, Judgment 2163, under 1, and the case law cited therein, and Judgment 3209, under 11). It was also stated that an organisation must abide by the rules on selection and, when the process proves to be flawed, the Tribunal can quash any resulting appointment, albeit on the understanding that the organisation must ensure that the successful candidate is shielded from any injury which may result from the cancellation of her or his appointment, which she or he accepted in good faith (see, for example, Judgment 3130, under 10 and 11).”

5. Also, in Judgment 1549, consideration 9, the Tribunal pointed out that it will not replace the organisation’s rating of the candidates with its own.

6. The complainant contends that WHO failed to observe Staff Regulations 4.2 and 4.4 by choosing an external candidate less qualified than herself, by giving more weight to the interview and by disregarding her 17-year working experience with the Organization.

7. WHO submits that the selection process was correctly applied, that it was objective and that it complied with the Staff Regulations and Staff Rules. It maintains that it was based as much as possible on the Harmonized Selection Process applicable to internationally recruited staff in the Professional and Higher-Level categories.

8. With regard to the provisions that are applicable to the selection process, these are set forth in Article IV of the Staff Regulations and Section 4 of the Staff Rules, both of which are entitled “Appointment, Transfer, Reassignment and Promotion”. Specifically, Staff Regulation 4.3 relevantly states:

“So far as is practicable, selection shall be made on a competitive basis”.

Staff Regulation 4.2 provides:

“The paramount consideration in the appointment, transfer, reassignment or promotion of staff members shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting staff members on as wide a geographical basis as possible.”

Staff Regulation 4.4 states:

“Without prejudice to the inflow of fresh talent, posts shall be filled by reassignment of staff members, as defined by, and under conditions established by, the Director-General, in preference to other persons. This preference shall also be applied, on a reciprocal basis, to the United Nations and specialized agencies brought into relationship with the United Nations.”

Staff Rule 410.1 provides:

“The paramount considerations in the selection of staff members shall be efficiency, competence and integrity. For posts in the professional category and above, geographical representation shall also be given full consideration. Such representation is not a consideration in appointments to posts subject to local recruitment.”

WHO eManual III.4.2 entitled “Selection”, which applied at the relevant time, relevantly states:

“The harmonized selection process is effective for all advertised fixed term vacancies for positions in the professional and higher-level categories issued from 15 March 2014.

The harmonized selection process described in [Information Note 10/2014] replaces the current eManual III.4.2.10 - 230 [...]”

WHO eManual III.4.2 also contains provisions regarding selection and assignment policy; professional staff; ad hoc advisory Selection Panels; General Service staff; interviews, tests and references; after selection procedures, etc.

9. Vacancy notice HQ/16/TRA/FT822 listed the required qualifications under the headings “Education”, “Skills”, “WHO competencies”, “Experience”, and “Languages”. Under the heading “WHO competencies”, the vacancy notice listed: “1. Communicating in a credible and effective way; 2. Fostering integration and teamwork; 3. Producing results; 4. Moving forward in a changing environment; 5. Respecting and promoting individual and cultural differences”.

The vacancy notice also stated that “[a] written test and interviews may be used as a form of screening”, and “[a]ny appointment/extension of appointment is subject to WHO Staff Regulations, Staff Rules and Manual”.

10. In the present case, the selection process consisted of a preliminary screening, an anonymous written test, a competency-based interview and the recommendation and decision procedure. Contrary to the complainant’s allegation, her long work experience with WHO was taken into account in the selection process. When proposing her as one of the short-listed candidates, the detailed comments regarding her work experience in the Spanish Word Processing Team and related performance were recorded in the Candidate Rating Table. While it is true that the complainant was an internal candidate with a long experience at WHO, the Organization must follow its own rules for fair competition. The correct interpretation of Staff Regulation 4.4 when read with Staff Regulation 4.2 (both cited in consideration 8 above) is that persons already in the service of the Organization have priority only if their qualifications appear to be equal to those of other candidates (see, for example, Judgment 1954, consideration 7). In Judgment 3652, consideration 12, the Tribunal also recalled that:

“Similarly, it was stated in Judgment 2392, under 9:

‘It is well settled that preferences such as those mentioned [i.e. by reason of being an internal candidate and by reason of gender] must be given effect to where the choice has to be made between candidates who are evenly matched. On the other hand, they have no role to play where there is a significant and relevant difference between the candidates. [...]’”

11. In its report, the Selection Panel set out in detail how it had reached its recommendation. The Panel did notice that the complainant “came across as an energetic person, with a long experience in processing documents”, however it considered that “[t]he interview revealed as such poor communication skills and a level of maturity below the requirements for a G5 level position”. As “[c]ommunicating in a credible and effective way” is one of WHO’s competencies, and was also set out in the vacancy notice, the Tribunal finds that it was

open to the Selection Panel to assess as it did the candidates' respective competencies, which the Tribunal will not interfere with. Also, the difference of 2.8 points in the "Overall result – 100%" score between the complainant and the selected candidate is material. When the complainant's competencies were not found to be equal or comparable to the competencies of the selected candidate, there was no obligation for WHO to give special consideration to the complainant's status as an internal candidate. Staff Regulations 4.2 and 4.4 were respected. The Tribunal is satisfied that WHO carried out a competitive selection process and it has found no evidence to support the allegation that the appointment decision was tainted by errors of fact or of law, or a breach of the Staff Regulations and Staff Rules. The complainant's allegations are unfounded.

12. The complainant further contends that the selection process was biased and misguided. She argues that the selection process was irregular, as the replacement of the Hiring Manager on the Selection Panel was sudden. She further argues that there was a difference of 2 points against her in the scores, which she asks WHO to explain. She also argues that the criteria used for the selection were subjective, that the comments made in the Selection Report regarding her communication skills were partial and biased, and that the selected candidate did not fulfil the requirements of the position.

13. According to the written note in the Selection Report and the correspondence between the complainant and the Human Resources Department, prior to the interview the complainant was duly informed that the Hiring Manager was replaced by Mrs P. due to his sick leave. Upon being notified, the complainant replied, by an email dated 13 September 2017, raising no objection. Therefore, there is no irregularity with regard to the replacement of the Hiring Manager.

14. As to the inconsistency in the candidates' individual scores in the Selection Report as compared to the overall scores, which the GBA considered to be a clerical error, WHO explains that the column of written test in the Selection Report erroneously recorded the candidates'

raw point scores (54 for the complainant and 41 for the selected candidate) instead of percentage points after the conversion. The Tribunal accepts WHO's explanation and considers that there was simply a clerical error. In the selection process, the written test was given a 60% weighting and the interview was given 40%. According to the original records contained in the Candidate Assessment Forms, the complainant had achieved 54 points out of a maximum of 88 points in the written test, consequently, her percentage point after weighted was 36.8% ( $54 \div 88 \times 60\%$ ). Meanwhile, the selected candidate had achieved 41 points out of a maximum of 88 points in the written test, her percentage point after weighted was 28% ( $41 \div 88 \times 60\%$ ). The Candidate Assessment Forms correctly recorded their respective weighted scores in the written test, that is, 36.8% vs 28%. Their overall scores were also correctly recorded in the Candidate Assessment Forms. The complainant achieved an overall score of 60% as her interview score (after weighted) was 23.2% ( $36.8\% + 23.2\% = 60\%$ ). In contrast, the selected candidate got an overall score of 62.8% as her interview score (after weighted) was 34.8% ( $28\% + 34.8\% = 62.8\%$ ). However, the Selection Report erroneously typed their raw scores of written test, respectively, 54 points and 41 points, into the sub-column "written test" as "54" vs "41", which should have been recorded as 36.8% vs 28%. Considering that their overall scores were correctly recorded in the Selection Report, as 60% for the complainant and 62.8% for the selected candidate, which corresponded with the overall scores in the Candidate Assessment Forms, the Tribunal finds that the GBA rightly concluded that the Selection Panel was not misled by the clerical error showed in the sub-column.

15. The Tribunal's firm case law has it that the complainant bears the burden of proving allegations of bias and prejudice. Moreover, the evidence adduced to prove the allegations must be of sufficient quality and weight to persuade the Tribunal (see, for example, Judgments 4382, consideration 11, and 2472, consideration 9). In the present case, the complainant provides no evidence from which the Tribunal may conclude or reasonably infer that she was treated with bias or prejudice during the selection process.

16. In the contested selection process, the written test was the same for all candidates and was corrected through blind scoring by the Selection Panel members. Before the interview the complainant was informed that the interview would be conducted by the members of the Selection Panel and would consist of WHO competency-based questions. She was provided with a copy of the WHO Competency Based Interviewing Guide to allow her to prepare for the interview. At the interview, the candidates were asked the same questions, which were in line with the competencies and requirements set out in the vacancy notice. The overall scores included the points for the written test and the interview. The final recommendation was unanimously adopted by the Selection Panel members, who agreed that the selected candidate was the most suitable for the position, having scored higher than the complainant. The Selection Panel's comments pertaining to the complainant's communication skills were drawn from the interview and collectively endorsed. Regarding the Selection Panel's remark that the complainant had "poor communication skills and a level of maturity below the requirements for a G5 level position", it was open to the members of the Selection Panel to express that opinion. The complainant alleges that the selected candidate lacked technical competencies, but the Tribunal considers that the inquiry emails, sent by the selected candidate in the months after she started on the new position, could not be used to demonstrate that she did not satisfy the required technical competencies specified in the vacancy notice. The competencies should be assessed by reference to contemporaneous materials generated for the purposes of that assessment or historical material made available for that assessment. Additionally, it was open to the Selection Panel to recommend readvertising the position, if the preferred candidate refused the offer of appointment. The complainant's allegation that the Selection Panel's "destabilizing remarks" and decision to readvertise the post amounted to defamation and damaged her professional career is grounded in her own perception and not supported by any evidence. The complainant's allegations that she was subject to bias, prejudice and discrimination in the selection process are not substantiated.

17. The Tribunal will now consider the allegation brought forward by the complainant in her rejoinder that there were no guidelines for the selection procedure related to the General Service category of staff. The allegation is unfounded. As mentioned above (in consideration 8), the selection process is set out in the applicable provisions contained in the Staff Regulations and Staff Rules, and the WHO eManual. The Selection Report did not state that it applied or took into account the Harmonized Selection Process, which appears in terms only to apply to positions for internationally recruited staff in the Professional and High-level categories, as is argued by the complainant. What is important is that the contested selection process was consistent with the applicable provisions contained in the Staff Regulations and Staff Rules, and the WHO eManual, and the complainant has not established that the absence of specific guidelines expressly governing selection processes for posts in the General Service category had any bearing on the lawfulness of the impugned decision. Hence, the complainant's allegation that the Selection Panel's discretionary power was "without identifiable limits" is unfounded.

18. Regarding the complainant's request that she be provided with "the individual notes given by each panelist during the interview", WHO explains that there are no records of "individual notes" as the Candidate Assessment Forms reflected the Selection Panel's collective assessment. The process is that at the end of each candidate's interview the panel members discuss the answers given to the interview questions by the candidate and collectively agree on the score to be given for each assessed competency. The Tribunal notes that WHO has disclosed to the complainant the key documents from the selection process, including the Selection Report and the Candidate Assessment Forms for the complainant and for the selected candidate. Each of the Candidate Assessment Forms indicates the score points in the written test, the score points given for each of the five assessed competencies in the interview, and the overall score, as well as overall assessment, without additional information referring to the existence of individual notes. The Tribunal is satisfied with WHO's explanation that the individual notations do not exist because only the Panel's collective assessment is

to be recorded in the Candidate Assessment Form. The complainant's request for disclosure is accordingly rejected.

19. In the foregoing premises, the complaint will be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

DRAŽEN PETROVIĆ