Introduction

1.   ! " a##$%&at%on f%$ed on 1   'e()ua)" 2014* t+e A##$%&ant &ontests t+e de&%s%on to se§e&t t , o ot+e) a##$%&ants to t+e t , o #osts of -en%o) .nte)#)ete) /0ng$%s+1 at t+e .nte)#)etat%on -e)2%&e /3.-41* De#a)tment of

sent an e-mail to the OIC, a.i., DC5, indicating, inter alia, that a more detailed comparative analysis of all considered posted candidates, as needed.

.   The D1 post of Chief, a.i., DC5 = 2acant since 1 August 2013 = , as transferred on loan to the Department for General Assembly and Conference Management /3DGACM41* upon request of the Under-Secretary-General, DGACM, effective 2 September 2013 through 30 June 2014. Since beginning of 2013, the D1 post of Chief, a.i., DC5 has been advertised three times; a first time under JO 26430*, with a closing date of 12 March 2013*, without generating a successful candidate? subsequently* under JO 28846*, which, as cancelled upon the temporary loan of the post to DGACM? finally* under JO 32:08*, with a closing date of 23 March 2014.

8.   By a 3Note de service4 dated 3 October 2013 referring to the loan of the post of Chief, a.i., to DGACM until 30 June 2014* the Director* DC5* announced that the responsibility for the Interpretation Service from 4 October 2013 through 30 June 2014, would be assigned to five Chiefs of Section, a.i., for periods of approximately two months each. Therefore, for the first period = from 4 October 2013 through : December 2013 = the responsibility, as assigned to one of the Chiefs of Section, a.i., DC5. On 3 December 2013* the Director* DC5* decided that said Chief of Section, would continue to serve as OIC of the A.-B until the selection of the new, Chief of Service.

C.   By memorandum of 2C November 2013 addressed to the Petrocal Assembly of UNOG Staff Interpreters* DC5* the Under-Secretary-General* DGACM* conveyed the reasons for the decision to temporarily loan the D1 post of Chief, a.i., DC5* to DGACM. He further noted that in view, of the concerns expressed by staff to ensure continuity* it had been agreed to appoint one OIC, a.i., UNOG* for the whole duration of the loan and stated that all Chiefs of Section, a.i., DC5* were competent to act as OICs during that period.

10.   On C December 2013* the Chief of Section* explicitly* acting as OIC, a.i., OIC7in7 Charge Interpretation Service DC54* sent a memorandum to <9M -* UNOG*

se$e&ted &and%date and a fema$e &and%date ot+e) t+an t+e A##$%&ant* fo) se$e&t%on to t+e t , o #osts o#ened unde) sa%d J6.

11.   6n 10 De&em(e) 2013* t+e D%)e&to) of Adm%n%st)at%on* UN6G* t)ansm%tted t+e)e&ommendat%on fo) t+e t , o #osts o#ened unde) J6 1378AN7UN6G72 6 7 97G0N0VA /81* %n&$ud%ng t+e $%st of t+e)oste)ed &and%dates* to t+e A&t%ng D%)e&to)7Gene)a$* fo) t+e f%na$ se$e&t%on de&%s%on. T+e a(o2e7ment%oned memo)andum of C De&em(e) 2013 , as an %nteg)a$ #a)t of t+e su(m%ss%on to t+e A&t%ng D%)e&to)7Gene)a$.

12.   6n 12 De&em(e) 2013* t+e A&t%ng D%)e&to)7Gene)a$ se$e&ted t+e t , o)e&ommended &and%dates fo) t+e t , o #osts. T+e" , e)e not%f%ed of t+e%) se$e&t%on on 13 De&em(e) 2013. T+e A##$%&ant (e&ame a , a)e of t+%s de&%s%on , +en s+e $ogged %nto +e) .N-P.9A a&&ount on 13 De&em(e) 2013.

13.   6n 20 De&em(e) 2013* t+e A##$%&ant su(m%tted a)e;uest fo) management e2a$uat%on of t+e de&%s%on to se$e&t t , o ot+e) &and%dates fo) t+e t , o #osts o#ened unde) t+e a(o2e7efe)en&ed J6.

14.   A$so on 20 De&em(e) 2013* t+e A##$%&ant f%$ed a)e;uest fo) sus#ens%on of a&t%on of t+e se$e&t%on de&%s%on %n fa2ou) of t+e se$e&ted &and%date. T+e T)%(una$* (" 6)de) No. 200 /GVA/2013l of 31 De&em(e) 2013* o)de)ed t+at t+e de&%s%on %n ;uest%on (e sus#ended* #end%ng t+e out&ome of t+e A##$%&antDs)e;uest fo) management e2a$uat%on. !" memo)andum of 4 'e()ua" 2014* t+e Unde)7-e&)eta)"7Gene)a$ fo) 5 anagement %nfo)med t+e A##$%&ant t+at t+e -e&)eta)"7

a negative impact on her motivation to work and caused her sleepless nights and considerable stress.

16. The Respondent's principal relevant contentions are:

a. Neither the fact that a previous decision was reversed by the Administration, nor that the Tribunal ordered suspension of the contested selection decision pending management evaluation constitute proof of the unlawfulness of that selection decision; the standard for granting a suspension of action is much lower than the one to be applied in a consideration of the case on the merits;

b. The decision to temporarily loan the D71 post to DGAC[5] is not an administrative decision which could have been or was the subject of the Applicant's request for management evaluation; it is therefore not properly before the Tribunal; in the same line, the decision to appoint the Chief of Section as OiC does not have any direct legal effects on the Applicant, who therefore has no standing to contest said decision. In any event, the appointment of the Chief of Section as Acting Manager was in accordance with staff rule 3.10/a1, which provides that staff members "shall be expected to assume temporarily" as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts"; further, the final decision was made by the Acting Director-General, within his delegated authority;

c. The Appeals Tribunal held that "[t]he Secretary-General enjoys broad discretion in selection matters and it is not the function of the UNDT or [the] Appeals Tribunal], in the absence of evidence of bias, discriminatory practices or mala fides, to substitute its judgment for that of the Secretary-General" (Bofill 2013-UNAT-383);

d. Therefore, the Tribunal is limited to examine whether the procedure was properly followed and whether the Applicant was given fair and adequate consideration; a selection decision "should be upheld when candidates have received full and fair consideration, when discrimination

there were six other rostered and recommended candidates, including three female candidates. The question, whether the Applicant would have been selected instead of the selected candidate is speculative.

E. The Respondent met the standard set by the Appeals Tribunal in Judgment Rolland [2011-UNAT-1221] to make a minimal showing that the Applicant's candidature was given full and fair consideration. The presumption of regularity should stand and the application be rejected in its entirety.

20. The successful candidate, who was joined to the application under art. 11 of the Tribunal's Rules of Procedure, alleges that his qualifications and experience are superior to those of the other rostered candidates and that he fulfils all the requirements of the post.

Consideration

21. The Tribunal recalls the jurisprudence of the Appeals Tribunal in appointment and promotion matters, whereby a selection decision should be upheld when candidates have received full and fair consideration, when discrimination and bias are absent, when proper procedures have been followed and when all relevant material has been taken into account [Rolland 2011-UNAT-122; Charles 2013-UNAT-286]. In addition, the Appeals Tribunal has clarified that the direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation

OIC, IS and Hiring Manager

23.   G%t+)es#e&t to t+e #e)son , +o a&ted as <%)%ng 5anage)* t+e 9es#ondent a)gues t+at a C+%ef of -e&t%on &ou$d $eg%t%mate$" (e a##o%nted as 6.C* .-* %n a&&o)dan&e ,%t+ staff)u$e 3.10/a1* and f)om t+e)e de)%2e +%s &a#a&%t" to a&t as <%)%ng 5anage) %n t+e se$e&t%on #)o&ess fo) t+e &ontested #ost? +e fu)t+e) notes t+at %n an" e2ent* t+e f%na$ se$e&t%on de&%s%on , as taFen (" t+e A&t%ng D%)e&to)7Gene)a$* UN6G* , o* unde) t+e te)ms of -T/A./2010/3/Amend.1* &ou$d +a2e &+osen an" of t+e f%2e)ema%n%ng)oste)ed &and%dates = %n&$ud%ng t+e A##$%&ant = , +o , e)e not)e&ommended fo) se$e&t%on (" t+e <%)%ng 5anage).

24.   T+e T)%(una$, %s+es to em#+as%He t+at %t)esu$ts f)om 2a)%ous #)o2%s%ons of -T/A./2010/3/Amend. 1 t+at t+e <%)%ng 5anage) #$a"s an %m#o)tant)o$e at a$$ t+e

6 .C* . - = d‰d ‰n fa&t +a2

dut%es (e &$ea)$" def%ned aga%nst an existing #ost. .n ot+e) ,o)ds› ,+e)e t+e)e %s no #ost* t+e #os%t%on of an 6.C $a&Fs %ts essent%a$ fundament.

30.   As a matte) of fa&t* u#on t+e t)ansfe) of t+e #ost of C+%ef* .-* to DGAC 5 at t+e end of -e#tem(e) 2013* .- , as de#)%2ed of t+e D71 #ost* t+oug+ t+e 9es#ondent noted and adm%tted t+at t+e need of se)2%&e fo) t+at #ost &ont%nued to e@%st. .n t+at s%tuat%on* t+e Adm%n%st)at%on of UN6G a&ted as %f t+e D71 #ost +ad not (een t)ansfe))ed* to t+e e@tent t+at %t a##o%nted an 6.C to , +om %t e@tended* de facto* t+e same aut+o)%t" 2ested on t+e C+%ef* .-* t+at %s* inter alia* to a&t as <%)%ng 5anage) fo) t+e &ontested #ost.

31.   T+e T)%(una$ notes t+at t+e Adm%n%st)at%on &annot +a2e %t (ot+ ,a"s› e%t+e) t+e D71 #ost of C+%ef* .-* , as st%$$ a2a%$a($e* and t+e need of se)2%&e &ont%nued to e@%st o)* as %t , as t+e &ase* t+e D71 #ost , as tem#o)a)%$" $oaned to DGAC 5. Unde) t+e fo)me) s&ena)%o* #end%ng t+e)egu$a))e&)u%tment of t+e D71 #ost* t+e Adm%n%st)at%on s+ou$d +a2e #u($%s+ed a tem#o)a)" 2a&an&" announ&ement fo) %t* %n a&&o)dan&e ,%t+ se&. 3 of -T/A./2010/4/9e2.1 /Tem#o)a)" a##o%ntments1*[1] and &ou$d +a2e t+e)efo)e a##o%nted someone as 6.C* .-* , +o &ou$d +a2e $ega$$" a&ted on and f%na$%sed t+e se$e&t%on #)o&ess %n%t%ated (" t+e fo)me) C+%ef* .-* as <%)%ng 5anage). Unde) t+e $atte) s&ena)%o* t+e tem#o)a)" $oan of t+e D71 #ost &)eated a 2a&uum at t+e .-* , +%&+ , as de#)%2ed of a C+%ef fo) a$most one "ea). T+%s de&%s%on* , +%&+ %s a ;uest%on of o)gan%sat%on of se)2%&e* &e)ta%n$" fa$$s , %t+%n t+e d%s&)et%on of t+e Adm%n%st)at%on. <o , e2e)* (" &+oos%ng to t)ansfe) t+e #ost* t+e Adm%n%st)at%on , as #)e&$uded f)om a&t%ng as %f t+e #ost , as st%$$ a2a%$a($e at UN6G.

32.   .n 2%e , of t+ese &ons%de)at%ons* t+e T)%(una$ &on&$udes t+at %n t+e #)esent &ase* %n t+e a(sen&e of a D71 #ost aga%nst , +%&+ an 6.C* .-* &ou$d +a2e (een $ega$$" a##o%nted* t+e C+%ef of -e&t%on $a&Fed t+e ega aut+o)%t" to a&t as <%)%ng

---

[1]   -e&. 3 of -T/A./2010/4/9e2.1 #)o2%des› Tem#o)a)" Eo(o#en%ng* se$e&t%on and a##o%ntment #)o&ess* Tem#o)a)" Eo(o#en%ng* 33.1 G +en a need fo) se)2%&e fo) mo)e t+an t+)ee mont+s (ut $ess t+an one "ea) %s ant%&%#ated* a tem#o)a)" Eo(o#en%ng s+a$$ (e %ssued (" t+e #)og)amme manage). 3.2 G +%$e t+e de&%s%on to %ssue a tem#o)a)" Eo(o#en%ng fo) a need fo) se)2%&e fo) t+)ee mont+s o) $ess %s made at t+e d%s&)et%on of t+e #)og)amme manage)* an" e@tens%on (e"ond t+)ee mont+s s+a$$)e;u%)e t+e %ssuan&e of a tem#o)a)" Eo(o#en%ng.4

 5 anage) fo) t+e &ontested #ost. 6n t+at g)ound a§one* t+e se§e&t%on de&%s%on %s %$$ega$.

Gender equality under ST/ I/!″″″/″

33.   T+e T)%(una$ no, tu)ns to t+e ;uest%on of ,+et+e) t+e se§e&t%on de&%s%on ,as taFen %n 2%o$at%on of t+e te)ms of -T/A./1CCC/C /-#e&%a$ measu)es fo) t+e a&+%e2ement of gende) e;ua$%t". T+e 9es#ondent &on&eded at t+e +ea)%ng t+at t+%s adm%n%st)at%2e %nst)u&t%on a##$%ed to t+e &ase at +and. 5o)e %m#o)tant$"* t+e T)%(una$ notes t+at t+e memo)andum of 10 De&em(e) 2013 of t+e D%)e&to)* D%2%s%on of Adm%n%st)at%on* to t+e A&t%ng D%)e&to)7Gene)a$* states t+at 3AaBs of 18 6&to(e) 2013* t+e)e#)esentat%on of ,omen %n a$$ &atego)%es at UN6G %s 4 K* and t+e)e#)esentat%on of ,omen %n sen%o) P)ofess%ona$ #os%t%ons %s 41.:K4. .t fo$$o,s t+at t+e :0K)e#)esentat%on of ,omen %n t+e P)ofess%ona$ &atego)"* ,+%&+ %s t+e goa$ set do,n (" -T/A./1CCC/C* +as not (een atta%ned* ne%t+e) ,%t+%n t+e .-* no) ,%t+%n UN6G.

34.   T+e)efo)e* t+e T)%(una$ +as to e@am%ne ,+et+e) t+e)e$e2ant se&t%ons of t+at adm%n%st)at%2e %nst)u&t%on +a2e (een &o))e&t$" a##$%ed to t+e &ase at +and. -e&t%on 1.8/a1 of adm%n%st)at%2e %nst)u&t%on -T/A./1CCC/C #)o2%des t+at>

> 1.8 /a1 Va&an&%es %n t+e P)ofess%ona$ &atego)" and a(o2e s+a$$ (e f%$$ed* ,+en t+e)e a)e one o) mo)10(ne)3.8476 6( )-an&

36.   T+e T)%(una$ notes t+at t+e ;ua$%f%&at%ons of t+e A##$%&ant* ,+o , as a
)oste)ed &and%date* 3mat&+ʌedℬ t+e)e;u%)ements fo) t+e 2a&ant #ost4 +en&e* ,+en

39.   With respect to the requirement of supporting documentation, the Respondent confirmed that only the PHPs of the candidates recommended for selection were attached, in addition to some formal documents, such as the J6. In follows that e.g. the PHP of the Applicant was not submitted to the Acting Director-General.

40.   In these circumstances, and in the absence of a written analysis with appropriate supporting documentation as required under sec. 1.8/d1 of ST/AI/1999/C, the Tribunal cannot but conclude that the Administration failed to respect said provision. It further notes that this violation may have influenced the final selection decision of the Acting Director-General, which firstly, was based on the recommendation of a person who was not duly authorized to act as Hiring Manager, and, secondly, was taken on the basis of incomplete information and without sufficient documentation.

41.   In view of these two procedural irregularities, it is not necessary for the Tribunal to assess whether there are additional contraventions regarding sec. 1.8/a1 of ST/AI/1999/C. It is sufficient to acknowledge that the Applicant, being a rostered candidate, had a significant chance to be selected for the post. Therefore, the contested decision has to be rescinded, as requested by the Applicant.

Consequences of the rescission

42.   Since the rescinded decision concerns a promotion, art. 10.5/a1, of the Tribunal's Statute applies, which provides that where the Tribunal orders the rescission of a promotion decision, the Judge shall set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the contested decision.

43.   As per the jurisprudence of the Appeals Tribunal, in determining the amount for compensation under art. 10.5 of its Statute in non-promotion cases, the decision must take into account two factors, namely the nature of the irregularities on which the rescission of the contested decision was based and the chance that the staff member would have had to be promoted had those irregularities not been

&omm%tted /Solan#i 20107UNAT7044? see. a$so Me$oui 20127UNAT7220 and %%leton 20137UNAT734 1. T+e A##ea$s T)%(una$ a$so +e$d t+at , +en &a$&u$at%ng su&+ &om#ensat%on* on t+e (as%s of t+e #)o(a(%$t" fo) an A##$%&ant to (e #)omoted (ut fo) t+e #)o&edu)a$ ()ea&+* t+e #e)%od of t+e d%ffe)en&e %n sa$a)" (et, een an A##$%&antDs g)ade and t+at of t+e &ontested #ost t+at &an (e taFen %nto a&&ount s+ou$d (e $%m%ted to a ma@%mum of t, o "ea)s /Hastings 20117UNAT7 10C1.

44.   .n t+e &ase at +and* t+e T)%(una$ +as de&%ded to)es&%nd t+e se$e&t%on de&%s%on on t+e (as%s of t, o #)o&edu)a$ %))egu$a)%t%es* to , %t* t+e fa&t t+at t+e <%)%ng 5anage) $a&Fed t+e aut+o)%t" to a&t as su&+* and t+at no ,)%tten ana$"s%s and a##)o#)%ate su##o)t%ng do&umentat%on , e)e su(m%tted to t+e A&t%ng

Eustifying an award of moral damages, in the amount of USD4,000 /cf. Malmstrom et al. 2013/UNAT/73: ? dechagic et al' 2013/UNAT/73:C1.

Conclusion

46.   In view of the foregoing, the Tribunal DECIDO->

a.   The decision to select the selected candidate for one of the #osts advertised under Jб 1378AN/UN6G72   6 797G0N0VA /81 /P7: several is rescinded?

(.   In case the Respondent elects to pay compensation instead of the rescission, the amount of compensation to be paid to the Applicant is set at USD2,000?

&.   In addition, the Administration shall pay the Applicant the equivalent of USD4,000 for moral damages?

d.   The aforementioned compensation shall bear interest at the United States prime rate, with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable?

e.   All other claims are rejected.

/Signed/

Judge Thomas Laker

Dated this 16th day of June 2014