



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2007-0604
Heard at: Toronto, Ontario
Decision date: March 25, 2009

ARUNACHALA NARAYANAN

Complainant

AND

THE DEPUTY MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

AND

OTHER PARTIES

Matter Complaint of abuse of authority pursuant to paragraph 77(1)(a) of the *Public Service Employment Act*

Decision Complaint is dismissed

Decision rendered by Helen Barkley, Member

Language of Decision English

Indexed *Narayanan v. Deputy Minister of Citizenship and Immigration Canada et al.*

Neutral Citation 2009 PSST 0010

Reasons for Decision

Introduction

1 Arunachala Narayanan participated in an internal advertised appointment process (07-IMC-IA-ONT-RHQ-08) for the position of Supervisor (PM-04) with Citizenship and Immigration Canada (CIC) in the Ontario Region. He contends that the respondent, the Deputy Minister of CIC, abused its authority in the application of merit.

2 The complainant alleges that the respondent abused its authority in several ways: by failing to use a standardized test to assess the ability to communicate in writing; by failing to ensure that the assessment board was competent; and by harassing him. He also has concerns about informal discussion.

3 According to the respondent, management has discretion to choose its assessment methods. The assessment board was competent to assess candidates and there was no harassment.

Background

4 In April 2007 the respondent advertised an internal appointment process for Supervisor positions in various locations in Ontario. A written examination was administered in early June 2007, which assessed four knowledge qualifications and the ability to communicate effectively in writing (the Ability). The complainant met the minimum pass mark for the knowledge qualifications, but was not qualified in the Ability.

5 The Ability was assessed by means of an opinion essay of 200 to 250 words. Responses were marked for clarity of message, conciseness, logic, completeness, vocabulary and usage, grammar and spelling. Each criterion was marked on a five point scale. Ratings progressed from one, representing poor/insufficient up to five which represented excellent/exceptional. The pass mark was 24/35. The complainant received 13/35.

6 On November 21, 2007 the complainant filed his complaint with the Public Service Staffing Tribunal (the Tribunal) under paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*).

Issue

7 The Tribunal must determine whether the respondent abused its authority in the choice and application of the assessment method.

Summary of Relevant Evidence

8 The complainant testified that he started his employment with CIC on December 15, 2003. He worked first as a casual employee, and then in 2004 became a term employee. On August 31, 2005 he became an indeterminate employee of CIC. When this appointment process was advertised, he was working in the Citizenship unit at the St. Clair office.

9 He applied for the position of Supervisor and was invited to write an examination on June 7, 2007. On June 29, 2007, he received the following email from Jamie Cartujano, Human Resources Advisor:

Please be advised that you have been successful on the departmental knowledge for the above-mentioned process, and therefore your application has been chosen for further assessment.

You will be contacted in the near future with details regarding the next stage of assessment.

10 Then, after almost three weeks, on July 17, 2007, the complainant received another email, the relevant part of which stated:

Please be advised that you were not successful on the knowledge exam for the above-mentioned process, therefore we are unable to give your application further consideration.

The portion of the exam you did not pass was:

Ability to Communicate in Writing

For this section of the exam, the required pass mark was 24/35, and you received a mark of 13/35.

[. . .]

11 The complainant testified that he was shocked. Having been advised that he would be further assessed, he was then informed on July 17, 2007 that he was not successful on the knowledge exam.

12 The complainant introduced minutes of a staff meeting held on July 12, 2007. In those minutes was a note “PM4 – Knowledge done – simulation next”. Sometime between July 12 and July 17, 2007, the respondent decided to eliminate him.

13 The complainant explained that the respondent made several mistakes in the location of positions. In the advertisement, the location was stated as “Ontario – Various locations in the GTA and Ontario, excluding Ottawa CIC”. The email of June 29, 2007 listed the location as Ontario/Ottawa. The email to the complainant dated July 17, 2009 stated that the location was GTA/GOA. GTA was the “Greater Toronto Area” and GOA was the “Greater Ontario Area”. The respondent had first indicated the location was all of Ontario except Ottawa. Next they indicated it was Ottawa, and finally it was everywhere in the GTA and the Ontario Region. In the complainant’s opinion, these errors demonstrated unprofessional actions.

14 The complainant stated that he pointed out these errors in the location on July 19, 2007. He was informed that an administrative error had been made and the corrected location would be sent to candidates. On July 23, 2007 he received another letter about his elimination from the process, but this time he was advised that he had not been successful in the “written exam” for the process. The area of selection/location was not corrected, but once again was indicated as GTA/GOA.

15 The complainant introduced into evidence the following excerpts from the Public Service Commission (PSC) *Policy - Assessment and the Guide to Implementing the Assessment Policy*:

Policy Requirements

In addition to being accountable for respecting the policy statement, deputy heads must:

- Inform the persons to be assessed, in a timely manner, of the assessment methods to be used, [. . .]

Guide to Implementing the Assessment Policy

It is important that persons be advised, at an appropriate time, of the methods that will be used for assessment. This will improve transparency and will allow the person to prepare for the assessment. Inviting a person to a test and providing as much information as is reasonable on the administration of that test, would meet this requirement. Another method could be to include information regarding the assessment method(s), if known at

that time, directly on the Statement of Merit Criteria. The “appropriate time” will vary depending on the circumstances, but should provide persons with a reasonable period of time in which to prepare for the assessment.

16 The complainant explained that he had been given no information about the assessment method to be used for the ability to communicate in writing. All tests required preparation. In this case candidates had merely been informed there would be a written examination. If the respondent had used a standardized test, which is commonly used for positions from the PM-02 to PM-05 levels, there would have been a link to a website which offers information about how to prepare for the test. In support, the complainant referred to two PSC tests, Written Communication Test (WCT-345) and Written Communication Proficiency Test (WCPT-351).

17 The complainant testified that he had an informal discussion with Giovanna Gatti, chairperson of the assessment board, on July 27, 2007. She showed him the instructions for the communication test and his answer to the ability question. He saw some notes, which stated that his response had a good opening and closing. One error she mentioned was that he had used “e.g.” instead of “example”. She also mentioned there were some awkward phrases. When he asked for the assessment tool, Ms. Gatti would not give it to him, but said she had to talk to Human Resources (HR). He was not given any reasonable explanation as to why he lost marks. He expected that he would see the assessment tool during his informal discussion.

18 The complainant stated that Ms. Gatti had shown him only the first page of the communication test (page 9) and his two handwritten pages during informal discussion. Page 9 had the instructions for the communication test and Ms. Gatti’s handwritten notes about the first four factors: Clarity (good opening and closing; run-on sentences takes away from clarity); Concise (run-on often confusing); Logical; Completeness (opinion expressed and fully supported). According to the complainant, the last two lines of this page were added at a later date. They stated: V and U (awkward and inappropriate usage); grammar (run-on sentences). Ms. Gatti referred him to Jamie Cartujano, Human Resources Advisor, to discuss how to file a complaint with the Tribunal.

19 He also testified that he tried to get an answer from Ms. Cartujano as to “when was the last time the results of parts of one single test were communicated separately” and whether there was a directive on the procedure. She would not answer his question, but referred him to her supervisor, Kathleen Hope. In his view, this was done to intimidate him. He felt frustrated because Ms. Hope would not answer his question either.

20 The complainant introduced into evidence an email sent to him by Ms. Hope on August 2, 2007, the relevant part of which stated:

In summary, you are entitled to informal discussion – which you have participated in with Giovanna Gatti. First and Second notification will be posted on Publiservice; once second notification has been posted you will have the right to go to the tribunal with a complaint about the staffing process. I realize that you are frustrated but I am unable to provide any additional information or documentation.

21 When the complainant finally saw the rating guide in February 2008, he noted that a mistake had been made in adding up the marks he received for each criterion. The total was 12 marks, although he was awarded 13 marks.

22 Ms. Gatti gave evidence on behalf of the respondent. She stated that she was currently the Senior Communications Officer with the Immigration and Refugee Board of Canada. In the summer of 2007 she was Manager of Immigration with CIC. She worked in this position from January 2005 until August of 2008. As Manager of Immigration she had two Supervisors reporting to her, so she was well aware of the duties they performed. She has an extensive background in communications as well as immigration. She had taken two courses on the *PSEA* and had conducted several other appointment processes.

23 Ms. Gatti stated that the assessment board was composed of Karen Ceschia, Manager, Dan Allen, former Director, GOA, and Lisa James, Director, GOA. Ms. Gatti was the chair of the assessment board.

24 She explained that the area of selection for the process was GTA and Ontario, excluding Ottawa. A mistake was made on the location in the June 29, 2007 email sent to candidates. Ms. Gatti did not know how the mistake happened.

25 Ms. Gatti testified that the Statement of Merit Criteria and Conditions of Employment (SMC) had been prepared by herself, Ms. Ceschia and Mr. Allen. Once it was developed, it was shared with the other Directors who would be hiring Supervisors from this appointment process. The Ability was an essential qualification because Supervisors communicate with people on a daily basis. For example, they give direction to employees, they correspond with clients, they provide written input into procedures, and might write an analysis of a particular project.

26 She also explained that the tool decided upon for assessing the Ability was suggested by one of the board members. It was an opinion essay and had been used in a previous Supervisor assessment process. The question was general so that candidates did not need specific knowledge and no preparation was required. The board felt that candidates could provide enough content in 200 to 250 words so that all criteria could be assessed.

27 When asked why the board did not use a standardized test, Ms. Gatti replied that one of the standardized tests was on back order and the other test was multiple choice. The board wanted to use the written ability test near the beginning of the appointment process as a screening tool.

28 The written examination was three hours in length and assessed four knowledge qualifications as well as the Ability. Ms. Gatti referred to the invitation to the test which was sent to candidates on May 29, 2007. This document informed candidates of the five qualifications to be assessed on the written examination.

29 Ms. Gatti attended the written examination on June 7, 2007. She informed candidates that the board would be marking the knowledge portion of the examination first, and that the Ability would be marked after, for those who received a pass mark on the knowledge qualifications. The board felt that it would be more manageable in terms of their schedules to proceed in that way. The board marked the knowledge portion, informed candidates if they were successful or not, and then held informal discussions with those candidates who were eliminated and wished to discuss their elimination.

30 Ms. Gatti testified that candidates such as the complainant were informed by email on June 29, 2007 that they were successful on departmental knowledge. The statement that their application was chosen for further assessment meant that the board would proceed to evaluate the Ability.

31 She stated that during the first two weeks of July approximately 30 informal discussions were held. Four individuals pointed out answers for which the board had not awarded marks, but candidates were able to demonstrate that they had given a correct answer. The board decided to award them additional marks. As a result, two of the candidates received a pass mark for knowledge. The board then proceeded to mark the Ability for all candidates.

32 Ms. Gatti and Ms. Ceschia assessed the Ability. Each read the tests and marked the Ability separately. They then met and reached consensus on a rating for each candidate. They completed the one page document, Assessment Factor, Criteria and Rating Guide (the rating guide) for each candidate. Mr. Narayanan's ability was evaluated and a consensus mark of 13/35 was awarded, based on the board's rating of his answer in relation to seven criteria – clarity, conciseness, logic, vocabulary and usage, completeness, grammar and spelling.

33 She admitted that the email of July 17, 2007 sent to the complainant did contain a mistake. It stated that he was not successful in the knowledge exam, and then went on to say the part he did not pass was the ability to communicate. When the board realized the letter was not accurate, it sent Mr. Narayanan a further letter on July 23, 2007 which stated that he was not successful on the written exam and offering the opportunity to informally discuss his elimination. This clarifying email had been sent to other candidates on July 19, 2007 but it was not sent to the complainant until July 23, 2007. Ms. Gatti had no explanation for this. The letters were prepared by Human Resources. She testified that she had no intention to treat him differently.

34 Ms. Gatti testified that prior to the appointment process she had had no dealings with the complainant, other than to say good morning to him, nor had she ever supervised him.

35 An informal discussion between the complainant and Ms. Gatti was held on July 27, 2007 to provide him with an opportunity to discuss his results. Ms. Gatti stated that the complainant did not want to discuss the knowledge portion of the examination, as he had done quite well. She and the complainant discussed what factors were assessed for the Ability. She showed him the rating guide and they went through it together. The complainant became upset and asked how he could file a complaint. He also stated that the test environment was not acceptable as candidates had only a small flat surface attached to the arm of the chair on which to write. This was insufficient for the writing they had to do. Mr. Narayanan became loud and shoved some papers away. Ms. Gatti informed the complainant she would contact Human Resources and find out how he could make a complaint. The informal discussion ended. Later that day, she informed the complainant by email that Ms. Cartujano would be happy to discuss his questions with regard to filing a complaint.

36 Ms. Gatti made notes of the discussion shortly after it finished and these were introduced into evidence. She had taken notes because the complainant indicated at the time that he wanted to file a formal complaint about the process. Ms. Gatti stated that she wanted to have a record of what took place.

37 Ms. Gatti stated that the assessment board had complied with the PSC *Assessment Policy*. Candidates were advised of the assessment methods to be used. Candidates were advised on the job advertisement that “a written examination may be administered”. They were then informed on May 29, 2007 that a written exam would be held on June 7, 2009, and which qualifications the exam would assess.

Arguments of the parties

A) Complainant’s arguments

38 The complainant argues that the requirements of the PSC *Policy on Assessment* were not met. The Policy requires that candidates be given reasonable information about the assessment methods to be used. There was no information on the

advertisement, SMC or the invitation to the test about the factors or criteria which would be used to assess the ability to communicate in writing.

39 The complainant submits that page 9 given to him at exchange of information was not the same document he saw during informal discussion. Negative comments had been added by Ms. Gatti at a later date.

40 The complainant argues that since Ms. Gatti had written down “logical” and nothing else as part of her notes on page 9, then that must mean that his writing was logical. However on the rating guide document, he only received a rating of one (poor-insufficient). This was evidence that the assessment tool had been changed. Similarly on page 9 she had written: “Completeness – opinion expressed and fully supported”. However on the rating guide he had only received a rating of three (good-minimum needed) and Ms. Gatti had added some comments “incomplete thoughts; opinion expressed, but not explained fully in some cases”. According to the complainant, this showed that Ms. Gatti was not competent to assess candidates. Given that the rating guide was not shown to the complainant until February 14, 2008, the onus was on the respondent to demonstrate the authenticity of the documents.

41 The complainant submitted that Ms. Gatti testified that she did not make an error in marking the complainant’s ability answer. However, although three board members had reviewed and marked the knowledge portion of the examination, Ms. Gatti admitted that they made mistakes in marking four candidates. Since only two board members marked the written communication, Ms. Gatti could have easily made a mistake in the rating of the complainant’s Ability. In fact, it was clear from the rating guide that the total that should have been awarded to him was 12 marks, although the complainant received 13 marks.

42 According to the complainant, the respondent discriminated against him resulting in his elimination from the process. A non-standardized test was used to make it possible for the board to eliminate whomever they wanted. Other people who were eliminated had gone to Ms. Gatti and were given additional marks. The complainant

was the only one who was not given any opportunity to get additional marks which, in his view, constitutes harassment, and any form of harassment is discrimination.

43 In support, the complainant referred to an email he received on August 2, 2007 from Ms. Hope, in which she stated in her last sentence, "I realize that you are frustrated but I am unable to provide any additional information or documentation." According to the complainant, this demonstrated that the respondent knew Mr. Narayanan was being harassed in this appointment process.

B) Respondent's arguments

44 The respondent submits that there was no impropriety in the assessment of the Ability. The assessment board decided to use an opinion essay to assess this essential qualification, which asked candidates to express their opinion about the Ontario smoking ban in commercial establishments. There was no preparation required. Candidates were asked to respond to the question in essay format. The criteria for assessment were listed in the instructions for the communication test.

45 Mr. Narayanan's ability to communicate was assessed and he was awarded 13/25 marks. This rating is noted in the email of July 17, 2007. His mark in this area did not change. The notes Ms. Gatti made on page 9 were her notes and not reflective of the final consensus mark. As she testified, she and Ms. Ceschia met and reached consensus on each candidate. She completed the rating guide for the assessment of the complainant's ability to communicate including notes to substantiate the mark awarded for each factor. He was awarded 13/25 marks, although, as he pointed out, the total for all factors was 12 marks. This error in addition did not affect the outcome of the assessment.

46 The respondent maintains that there was nothing inappropriate about marking the knowledge portion of the examination first. Candidates were informed that the marking would be in phases. The complainant conceded that this information may have been communicated during the examination instructions.

47 During the informal discussion with the complainant, the focus was on Mr. Narayanan's answer and the rating guide. Ms. Gatti did not provide him with a copy of the rating guide as she did not know if it was appropriate to do so, since the appointment process was not finished. Both the complainant and Ms. Gatti agreed that he saw a copy of his answer, which had notations on it. There was no evidence to demonstrate that he had succeeded in this Ability.

48 The complainant raised the issue that the marks of four candidates had been changed following informal discussion. The evidence is that four out of 52 candidates did receive additional marks when errors were discovered in the marking of their examinations. However, no one received additional marks for the ability to communicate.

49 The complainant has provided no evidence that the rating he was awarded was incorrect.

50 With reference to the complainant's statement about harassment and discrimination, the respondent submits that Ms. Hope's reference to his frustration was an empathy statement. If the complainant believed he was being harassed, there was recourse open to him. The Tribunal's jurisdiction is limited to a determination of whether any alleged harassment had an impact on the decision that he was not qualified. There is no evidence that this was the case.

C) Public Service Commission's arguments

51 At the hearing, the PSC provided written submissions on the concept of abuse of authority and how it believes the Tribunal should focus its approach in that area. It did not take a position on whether abuse of authority was proved in this case.

52 The PSC states that compliance with PSC policies is very important. Based on the facts of this case, the PSC is of the view that the *Policy on Assessment* was not breached. Candidates were informed by email invitation that they would be tested on the ability to communicate in writing. At the examination they were informed of the

seven factors which would be used to assess the ability. This was reasonable information to provide to candidates.

53 There was no evidence that the *Policy on Informal Discussion* was breached.

54 With respect to the complainant's contention that a standardized test should have been used, the PSC states that it does not require deputy heads to use PSC tools, such as standardized tests. A deputy head has discretion in this area.

Analysis

55 The complainant alleges abuse of authority in the choice and application of the assessment method for the ability to communicate in writing. He also alleges improper treatment after he was eliminated from further consideration.

56 Section 36 of the *PSEA* is pertinent to this complaint:

36. In making an appointment, the Commission **may use any assessment method**, such as a review of past performance and accomplishments, interviews and examinations, that it considers appropriate to determine whether a person meets the qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i).

(Emphasis added)

57 In *Visca v. Deputy Minister of Justice et al.*, [2007] PSST 0024, the Tribunal stated:

[51] Managers have broad discretion under section 36 of the *PSEA* to select and use assessment methods to determine whether a candidate meets the established qualifications for a position. However, as the Tribunal found in *Jolin, supra*, this discretion is not absolute and a person who was not appointed can complain under paragraph 77(1)(a) of the *PSEA* that there was an abuse of authority in the selection and use of an assessment method.

[...]

[53] As highlighted by the words "may use any assessment method", section 36 of the *PSEA* is non-prescriptive; a selection board may choose from a wide range of assessment tools and methods. [...]

(Bold in original)

58 In this case the assessment board decided to use a written examination to assess the ability to communicate in writing. Candidates were asked to write an opinion essay, and were marked on the basis of seven criteria. The complainant alleges that a standardized test should have been used, and that had it been used, candidates would have been referred to a website in order to prepare for the examination. Because they were not, he contends this is a violation of the PSC's Policy on Assessment, which requires deputy heads to inform candidates of the assessment methods to be used.

59 In *Robert and Sabourin v. Deputy Minister of Citizenship and Immigration et al.*, [2008] PSST 0024, at paragraph 69, the Tribunal stated that "there is a clear obligation under the *PSEA* for deputy heads, and their delegates, to comply with PSC policies established under subsection 29(3)."

60 The Tribunal finds that the assessment method chosen was a proper exercise of the manager's discretion in this area. With respect to the *Policy on Assessment*, candidates were advised in a timely manner of the assessment methods to be used. The advertisement advised candidates that a "written examination may be administered" and the invitation to the examination outlined which qualifications would be assessed and the length of the examination. It was sent to candidates more than a week in advance of the examination date, which provided a reasonable period of time to prepare for an assessment of knowledge qualifications and informed candidates of the Ability to be assessed. The Tribunal finds there was no violation of the PSC *Policy on Assessment*.

61 The process which the board followed to assess candidates was a proper exercise of the board's discretion. Candidates in an appointment process must demonstrate that they meet each of the essential qualifications for the position. In this case the assessment board chose to assess five qualifications through one examination. The Tribunal finds as a fact that candidates were advised at the beginning of the examination that the knowledge qualifications would be evaluated first, to be followed by the assessment of the Ability at a later time. The board evaluated the four knowledge qualifications and eliminated those who did not demonstrate an acceptable level of knowledge. The board informed all candidates of their results for the knowledge

qualifications. It then proceeded to evaluate the Ability. While there is nothing improper in proceeding in this fashion, the board did err in its communication to at least one candidate.

62 The respondent sent an email to Mr. Narayanan on July 17, 2007, the first line of which stated that he was not successful in the knowledge exam. This statement is in direct contradiction to the June 29, 2007 email which stated that he was successful on the departmental knowledge. The email of July 17, 2007 did go on to inform the complainant that the portion of the exam he did not pass was the ability to communicate in writing. However, this type of careless wording results in confusion among candidates and may raise suspicions that results were somehow changed. Similarly, two emails sent to candidates incorrectly stated the location of positions. An error in the addition of marks awarded to the complainant was also noted at the hearing.

63 The Tribunal finds that these errors, while unfortunate, do not amount to abuse of authority. In *Tibbs v. Deputy Minister of National Defence et al.*, [2006] PSST 0008, the Tribunal stated that much more is required than mere errors and omissions to constitute abuse of authority. Abuse of authority requires wrongdoing. In this case, the errors made have no impact on the outcome of the appointment process. While the email of July 17, 2007 was confusing to Mr. Narayanan, it did inform him of the portion of the exam which he did not pass. Once he informed the respondent of the confusion, it was quickly followed up with another email to correct the error. The errors with respect to location are not relevant to this complaint. Finally, the mistake made on the addition of marks awarded to the complainant for the Ability has no impact on the outcome of this appointment process, both marks being below the minimum required for the complainant to advance in the process.

64 Turning to the complainant's submission that Ms. Gatti was not competent to assess his ability, the Tribunal addressed the issue of the competency of the assessment board in *Sampert et al. v. Deputy Minister of National Defence et al.*, [2008] PSST 0009:

[53] There is no provision in the *PSEA* which requires a deputy head to establish an assessment board or that it have a certain composition (for example, to have a human

resources officer on the board). Whether an assessment board is improperly constituted is a question of fact which depends on the specific complaint and the evidence presented at the hearing.

[54] Those who conduct the assessment should be familiar with the work required in the position to be staffed and, in the case of an advertised appointment process, should not have any preconceived notions as to who should be appointed. In some cases, managers will chose to conduct the assessment completely on their own. In other cases, a manager might invite an individual from another department or another area within the department, who has a particular expertise, to participate as a board member.

65 The Tribunal finds there is no evidence to support the contention that Ms. Gatti was not competent to assess the Ability. The evidence shows that she is an experienced Immigration Manager, who has direct experience managing Supervisors. She also has experience as a Communications Officer. She has conducted several appointment processes and received training concerning the *PSEA*. Her testimony was clear and credible. She explained the basis on which the assessment board rated the complainant. This is no evidence that raises doubt about the reliability of the assessment of the complainant.

66 Finally, the complainant raised concerns about informal discussion. He alleges that Ms. Gatti failed to complete his informal discussion, as she did not provide him a copy of the rating guide and did not show him the rating guide during their discussion.

67 The Tribunal addressed the purpose of informal discussion in *Rozka et al. v. Deputy Minister of Citizenship and Immigration Canada et al.*, [2007] PSST 0046:

[76] Informal discussion is intended primarily to be a means of communication for a candidate to discuss the reasons for elimination from a process. If it is discovered an error has been made, for example, if the assessment board did not consider some information listed on a candidate's application, this provides the opportunity for the manager to correct that mistake. However, Informal discussion is not an opportunity to request that the assessment board reassess a candidate's qualifications.

68 The Tribunal finds the following facts: an informal discussion took place on July 27, 2007 between the complainant and Ms. Gatti; they discussed his answer and his rating for the Ability; he was shown, but not given, a copy of the rating guide; the complainant became upset and expressed his interest in finding out about the complaint process; he was referred to Ms. Cartujano. There is no evidence of improper behaviour

on the part of officials at CIC either at the informal discussion, or in the subsequent emails with Human Resources Advisors.

69 The complainant has asserted that he was not given the opportunity to get additional marks and that this constitutes harassment, and that any form of harassment is discrimination. The Tribunal is of the view that these allegations by the complainant are unsupported by the facts. The complainant, who has the burden of proof in this complaint, has brought forward no evidence that could possibly constitute harassment by the respondent. He mentioned discrimination several times during the hearing, but did not refer to any prohibited grounds of discrimination under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6). If the complainant believed there was discrimination in this process, he was required to file a notice with the Canadian Human Rights Commission. No such notice was filed. There is no evidence of acts or omissions that could constitute harassment or discrimination in this appointment process.

Decision

70 For the foregoing reasons, the complaint is dismissed.

Helen Barkley
Member

Parties of Record

Tribunal File	2007-0604
Style of Cause	<i>Arunachala Narayanan and the Deputy Minister of Citizenship and Immigration Canada et al.</i>
Hearing	October 21-22, 2008 Toronto, Ontario
Date of Reasons	March 25, 2009
APPEARANCES:	
For the complainant	Arunachala Narayanan
For the respondent	Karen Clifford
For the Public Service Commission	John Unrau