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*Federal Public Sector
Labour Relations and
Employment Board Act and
Public Service Employment Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

SABITA SRIVASTAVA

Complainant

and

**DEPUTY HEAD
(Department of Health)**

Respondent

and

OTHER PARTIES

Indexed as

Srivastava v. Deputy Head (Department of Health)

In the matter of a complaint of abuse of authority under sections 77(1)(a) and (b) of the
Public Service Employment Act

Before: Joanne B. Archibald, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Complainant: Herself

For the Respondent: Patrick Turcot, counsel

For the Public Service Commission: Louise Bard, senior analyst

Heard via videoconference,
July 25 and 26, 2023.

REASONS FOR DECISION

I. Introduction

[1] The complainant, Sabita Srivastava, made a complaint under ss. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; “PSEA”), alleging abuse of authority by the respondent, the deputy head of the Department of Health. According to the complainant, abuse of authority occurred in the application of merit and in the choice of an advertised appointment process to staff the position of scientific evaluator IV, classified CH-04 and located in Ottawa, Ontario (“the CH-04 position”). The complainant also alleged human rights discrimination based on the prohibited ground of age. The process number was 19-NHW-HPFB-IA-NCR-265874 (“the appointment process”).

[2] The respondent denied abusing its authority in the appointment process or discriminating against the complainant.

[3] The Public Service Commission did not attend the hearing and provided written submissions addressing the applicable policies and guidelines. It did not take a position on the merits of the complaint.

[4] For the following reasons, the complaint is dismissed.

II. Background

[5] On April 2 and 16, 2020 respectively, the “Notification of Appointment or Proposal of Appointment” was issued for the appointments of Tahir Rana (“candidate 1”) and Christiane Grise-Bard (“candidate 2”) to the CH-04 position.

[6] The complainant made the complaint on July 20, 2020.

[7] In its decision of September 25, 2020, the Federal Public Sector Labour Relations and Employment Board (“the Board”) dismissed the respondent’s motion to dismiss the complaint on the basis of timeliness. The Board noted the suspension of all regulatory timelines due to the COVID-19 pandemic and the reinstatement of timelines effective July 6, 2020. As such, it determined the complaint timely.

III. Summary of the evidence

A. For the complainant

[8] The complainant addressed the following allegations:

- 1) She was unfairly assessed as she is potentially better qualified and more knowledgeable than the appointed persons.
- 2) The assessment method was unreasonable and did not allow the assessment of merit.
- 3) The appointments of candidates 1 and 2 were influenced by personal favouritism.
- 4) The outcome of the complainant's candidacy was tainted by bias and discrimination.
- 5) The choice of a non-advertised appointment process was an abuse of process.

1. Unfair assessment of the complainant

[9] The complainant testified that she was the most experienced among the respondent's CH-03 employees. Her performance appraisals reflected her ability to communicate, critically evaluate data, and write reports, and stated that she was ready for the CH-04 position. The performance appraisals were not presented in evidence.

[10] Under cross-examination, the complainant recalled participating in two informal discussion meetings after receiving the results of the appointment process. She agreed that when she raised concerns about her examination results, a second assessor remarked it. After the second marking, she still did not receive a pass mark.

2. Unreasonable assessment method

[11] The complainant stated her belief that there was no link between the skills evaluated in the assessment process and the qualifications for the CH-04 position. She provided no evidence to support her belief.

[12] Further, the complainant noted that candidates chose to answer one of two examination questions. In her case, she chose question 1. It was divided into three parts. The rating guide stated that the entire answer was considered in assessing these three merit criteria:

EA1. Ability to critically evaluate complex pharmaceutical quality data, assess reports and make independent evidence-based recommendations.

EA2. Ability to use risk-based approach to evaluate the impact of product quality on safety and efficacy.

EA6. Ability to communicate effectively in writing.

[13] The complainant objected to the failure to provide one separate question for each individual merit criterion. In her view, a proper assessment would provide a single question for each individual criterion. She expressed concern that three qualifications were evaluated based on one question.

[14] According to the rating guide, the minimum required scores for merit criteria EA1, EA2, and EA6 were 6 out of 10, 6 out of 10, and 3 out of 5, respectively. The complainant received scores of 3, 4, and 2. She felt certain that the assessor misunderstood her answer but offered no evidence to support her view.

[15] The complainant stated her belief that the assessment board did not prepare the rating guide until after administering the written examination in October 2019. She acknowledged in cross-examination that she had no proof to support her belief.

[16] The complainant also questioned marks found at the top of the pages of the examinations and wondered about the assessment board's treatment of marginal notes on candidate 2's examination paper.

3. Personal favouritism

[17] In the complainant's view, personal favouritism influenced the selection of candidate 2. Alison Ingham was a member of the assessment board for the CH-04 position and the complainant's manager from 2013 to 2015 ("the former manager"). The complainant recalled that while candidate 2 was on maternity leave, the former manager organized a group of employees to visit her.

[18] The complainant related this to candidate 2's success on the written examination. Candidates chose to answer either question 1 or question 2. The complainant testified that she knew that candidate 2 responded to question 2 on the written examination, but she did not know whether the former manager marked this question.

4. Bias and discrimination

[19] The complainant testified that in 2015, the former manager told her that she did not understand the complainant's written work and that she would fail the complainant in a CH-04 appointment process were she to mark it. In the present process, the former manager marked the complainant's unsuccessful examination. For the complainant, this proved that the former manager would never support her candidacy in any process.

[20] The complainant testified that she was a victim of age discrimination. She stated that opportunities to work in a CH-04 position had been denied to her since 2008 but that other employees enjoyed those opportunities.

[21] To support the discrimination allegation, the complainant testified that the former manager told her that her spouse had retired. She considered that this was shared with her to pressure her to retire.

[22] The complainant also raised an allegation of discrimination based on race. However, she withdrew it at the hearing and did not pursue it further.

5. Choice of process

[23] The complainant expressed the view that it was unfair to conduct an advertised appointment process and not appoint her in a non-advertised process. It effectively announced to her that she would never qualify for the CH-04 position. It declared her failure beforehand.

[24] The complainant stated that she asked repeatedly for the opportunity to act in a CH-04 position. An advertised appointment process constituted an abuse of authority as it wrongly overlooked this request and her right to advance her career.

B. For the respondent

1. Unfair assessment of the complainant

[25] The former manager testified that before her retirement, she was a manager of one of three generic drug quality divisions in the Bureau of Pharmaceutical Science ("BPS"). From 2013 to 2015, she supervised the complainant.

[26] The former manager stated that as requested by Dr. Girard, a division manager, she was trying to help the complainant improve her reports so that they could be used without revision. She created an action plan identifying the complainant's strengths and weaknesses and provided guidance for improvement, to meet job expectations.

[27] After 18 months and no noticeable improvement, a letter of instruction was prepared to set out the conditions that the complainant had to fulfil. If she did not, termination could follow. However, the complainant then received a transfer to another division, and no further action was taken.

[28] The associate director, Rita Moucharef ("the associate director"), participated in the informal discussion with the complainant after the results of the appointment process were known. After receiving the complainant's concerns, she appointed a second assessor to review the complainant's examination. While the complainant's score improved, it failed to meet the required minimum pass mark.

[29] The associate director confirmed that the complainant was eliminated from consideration in this appointment process based on her performance in the written examination.

2. Unreasonable assessment method

[30] The associate director addressed her role in the appointment process. She testified that she led all human resources activities for the BPS, including the CH-04 appointment process. She appointed the assessment board members.

[31] The former manager testified concerning the assessment process. She worked with other managers to develop a statement of merit criteria. The managers were experts in their fields. All of them took bias-free training to support their participation as assessment board members.

[32] The assessment board created the statement of merit criteria and the rating guide. Its chosen assessment tools included a screening letter, a written examination, an interview, and reference checks. The assessment did not use performance appraisals.

[33] The former manager prepared examination question 1. It addressed work in the BPS. Another manager prepared question 2. It concerned the Office of Clinical Trials

("OCT"). Candidates chose which question they preferred to answer. Each question addressed separate subject matter but rated the same assessment criteria.

[34] The former manager identified the rating guide used to evaluate questions 1 and 2. She noted that it bore the date of May 2019, and this reflected the date when it was created. She confirmed that candidates wrote the examination in October 2019.

[35] The associate director confirmed that three essential ability qualifications were assessed by the written examination. As stated in the statement of merit criteria, to be successful, a candidate had to meet every essential qualification. She testified that each of the three parts of the question permitted candidates the opportunity to demonstrate the three abilities. Each ability received a separate score.

[36] The associate director testified that she anonymized the candidates' papers before they were given to the assessors for marking. She accomplished this by randomly assigning candidate numbers to the examinations and by removing personal information, with the goal of ensuring fairness and removing the opportunity for bias.

[37] The former manager marked the examination papers of candidates who answered question 1. Another manager marked question 2. The former manager testified that she could not identify any candidate from their examination.

[38] Counsel for the respondent addressed the marks at the top of examination papers by noting that they recurred in the same location on consecutive pages, suggesting that they were consistent with marks left by staples.

3. Personal favouritism

[39] The former manager acknowledged that she had trained candidate 2 and that they had a collegial relationship. When candidate 2 was absent on maternity leave, the former manager visited her at her home with her team members. In 2015, candidate 2 received a promotion to a position elsewhere. They did not subsequently share a working or social relationship.

[40] The associate director confirmed that she had no personal relationship with the complainant, candidate 1, or candidate 2. Additionally, candidate 2 worked outside the BPS.

[41] The associate director testified that the complainant selected question 1 and that it reflected the work of the BPS. Candidate 1 also answered question 1. Both examinations were assessed by the former manager. Another manager evaluated candidate 2, who answered question 2, concerning the OCT. The former manager had no role in evaluating candidate 2's examination.

4. Bias and discrimination

[42] The associate director appointed the members of the assessment board, all of whom were CH-05 managers. All of them took training on eliminating bias.

[43] The former manager testified that the complainant often told her that she wished to be successful in a CH-04 appointment process. During training, she tried to explain that if the complainant wrote an examination the way she wrote reports, it would not be acceptable, and she would fail. The former manager endeavoured to point out areas that were not at the CH-04 level. She denied that she had told the complainant that she would never pass the complainant if she assessed the complainant for a CH-04 position.

[44] As for the age discrimination allegation, the former manager denied any mention that the complainant retire or any pressure being placed on her to retire. She added that her own husband retired early and had tried to persuade her to retire as well. The former manager talked to many colleagues as she wrestled with the decision of whether to retire.

5. Choice of process

[45] The associate director testified that the CH-04 position is senior. Normally, senior positions are staffed through an advertised appointment process. As stated on the job opportunity advertisement for the process, the objective was to create a pool of qualified candidates for the BPS and the OCT. Seven positions were to be staffed immediately. This supported the decision to proceed with an advertised appointment process.

IV. Arguments

A. For the complainant

[46] The complainant stated that her main concerns were the examination questions and the use of one question to assess several rated criteria. She argued that it was an abuse of authority in the application of merit to mark a question in this manner.

[47] As for candidate 2's written examination, the complainant felt that candidate 2's responses did not correspond to the marks she received. The complainant noted marginal comments on the examination but did not see how they were reflected in the final scores that were awarded for the rated criteria EA1, EA2, and EA6.

[48] The complainant noted that her own examination had been independently marked by a second assessor after she complained. She understood that while she still failed to qualify, the mark improved. She believed that this demonstrated the former manager's poor evaluating ability. She felt that her performance appraisals should have been used in the evaluation of her candidacy.

[49] The complainant argued that favouritism and bias were used to select candidates.

[50] As for abuse of authority in the choice of process, the complainant stated that her right to advance her career had been stopped. The BPS has provided acting opportunities to many other employees. Even though she has requested an opportunity to act many times, she has not received one. Discrimination has held her back.

B. For the respondent

[51] Candidates chose between two questions. Each question assessed the same essential qualifications. The process generated a pool of qualified candidates who were equally eligible for appointment in either the BPS or the OCT.

[52] The respondent did not question the complainant's workplace performance. However, in the written examination, she failed to demonstrate that she met the essential qualifications for the CH-04 position. For this reason, she was eliminated from the process.

[53] Section 36 of the *PSEA* allows the respondent to choose the assessment method. In this case, it first screened the applications, followed by the written examination, an interview, and reference checks. Performance evaluations were not used.

[54] The respondent argued that the complainant did not show that the result was unfair or that the assessment methods were unreasonable. The rating guide was not flawed. It was created and approved before the examinations took place.

[55] Disagreement with the choice of a written examination, the marking, and the rating guide is not evidence of wrongdoing.

[56] Concerning favouritism, the complainant provided no evidence to show that personal favouritism or gain influenced the assessment results. Further, the examination of candidate 2 was not marked by the former manager, who had organized a visit to candidate 2 during her maternity leave. The former manager marked only question 1 and not question 2, which candidate 2 elected to answer.

[57] Favouritism concerning candidate 1 was alleged without evidence to support the allegation.

[58] As for bias, the complainant provided no evidence to address the test for a reasonable apprehension of bias. The examinations bore no personal identifiers and had only a number to identify the candidates. The first and second marking of her examination were anonymized. Both showed that she failed to meet the standard to succeed in the assessment.

[59] While the complainant testified that the former manager pressured her to retire, the former manager testified that while she contemplated retirement, she discussed it with her colleagues. She denied ever mentioning or discussing the complainant's retirement with her.

[60] As for discrimination, the respondent accepted that the complainant was protected from discrimination based on age and that she was unsuccessful in the process. However, the complainant did not demonstrate that age was a factor in the outcome of the appointment process.

[61] Lastly, the choice to use an advertised process rested with the respondent. It was a discretionary choice, and there was no evidence of an improper exercise of that

discretion. In this case, the CH-04 was considered a senior level position, and seven vacancies were to be staffed. The need to create a pool of qualified candidates was a reasonable justification to proceed with the advertised process.

V. Analysis

[62] Sections 77(1)(a) and (b) of the *PSEA* provide as follows:

77 (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Board's regulations — make a complaint to the Board that he or she was not appointed or proposed for appointment by reason of

(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2);

(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process

77 (1) Lorsque la Commission a fait une proposition de nomination ou une nomination dans le cadre d'un processus de nomination interne, la personne qui est dans la zone de recours visée au paragraphe (2) peut, selon les modalités et dans le délai fixés par règlement de la Commission des relations de travail et de l'emploi, présenter à celle-ci une plainte selon laquelle elle n'a pas été nommée ou fait l'objet d'une proposition de nomination pour l'une ou l'autre des raisons suivantes :

a) abus de pouvoir de la part de la Commission ou de l'administrateur général dans l'exercice de leurs attributions respectives au titre du paragraphe 30(2);

b) abus de pouvoir de la part de la Commission du fait qu'elle a choisi un processus de nomination interne annoncé ou non annoncé, selon le cas [...]

[63] A complainant who comes before the Board bears the onus of proving their allegations on the standard of the balance of probabilities. (See *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8.)

[64] The complainant advanced a case alleging abuse of authority in the application of merit and in the choice of an advertised internal appointment process.

1. Unfair assessment

[65] Addressing first the application of merit, the complainant asserted that she is the respondent's most experienced employee. That may be, but her experience does

Federal Public Sector Labour Relations and Employment Board Act and Public Service Employment Act

not entitle her to be appointed to a CH-04 position. The *PSEA* governs appointments in the federal public service. Section 30 provides that public service appointments must be made on the basis of merit. Therefore, to be considered for appointment, a person must demonstrate that they meet the qualifications for the position, thus demonstrating merit.

[66] The complaint did not attain the pass mark for the essential qualifications assessed by the examination. She presented no evidence to support her belief that her examination was improperly marked. She referred to others' examination papers but failed to show that their answers were improperly assessed or that the examination was defective. While the scores awarded to the complainant by two different assessors differed, neither score met the minimum requirement to succeed on the examination or be further considered in the appointment process.

[67] The evidence raised no suspicion that the former manager improperly, unfairly, or unreasonably marked the complainant's written examination. The allegation that she was unfairly assessed is dismissed.

2. Unreasonable assessment method

[68] The complainant next alleged that the assessment method was unreasonable. The assessment board chose to administer a written examination to assess three essential qualifications. It is clear from the *PSEA* that an examination is a permitted assessment method. Section 36(1) provides as follows:

36 (1) In making an appointment, the Commission may, subject to subsection (2), 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).

36 (1) Sous réserve du paragraphe (2), la Commission peut avoir recours à toute méthode d'évaluation — notamment la prise en compte des réalisations et du rendement antérieur, examens ou entrevues — qu'elle estime indiquée pour décider si une personne possède les qualifications visées à l'alinéa 30(2)a) et au sous-alinéa 30(2)b)(i).

[69] It provides broad discretion to a manager with respect to choosing the method assessment. (See *Visca v. Deputy Minister of Justice*, 2007 PSST 24 at para. 42.)

[70] The complainant provided no evidence beyond her belief to demonstrate that the examination failed to assess the stated qualifications. Nor did she show a foundation for her assertion that question 1 could not assess the rated qualifications. Moreover, there is no requirement for a single question to assess each qualification in an assessment.

[71] Further, while the complainant asserted that the assessment board created the rating guide after administering the examination, the documentary evidence before the Board sufficiently demonstrated that it was created in May 2019, several months in advance of the examination.

[72] The allegation that the written examination was not a proper assessment tool is dismissed.

3. Personal favouritism

[73] The complainant also alleged that the former manager exhibited personal favouritism toward candidate 2. The parties agreed that the work unit led by the former manager visited candidate 2 after the birth of her child. However, the former manager did not mark candidate 2's examination, and the complainant presented no evidence to suggest that the former manager influenced the assessment of candidate 2's examination.

[74] The complainant also made an allegation of personal favouritism concerning candidate 1. She offered no evidence of it.

[75] The former Public Service Staffing Tribunal described personal favouritism in its decision in *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7 at para. 41, as follows:

41 Where there is a choice among qualified candidates, paragraph 30(2)(b) of the PSEA indicates that the selection may be made on the basis of additional asset qualifications, operational requirements and organisational needs. The selection should never be for reasons of personal favouritism. Undue personal interests, such as a personal relationship between the person selecting and the appointee should never be the reason for appointing a person. Similarly, the selection of a person as a personal favour, or to gain personal favour with someone else, would be another example of personal favouritism.

[76] There was no evidence presented to suggest an undue personal interest, a personal relationship, or a personal favour or gain that tainted the appointment of either candidate 1 or candidate 2. Additionally, the fact of a social outing to visit candidate 2, particularly when the former manager did not mark her examination, does not approach the threshold of personal favouritism.

[77] The allegation of personal favouritism is dismissed.

4. Bias and discrimination

a. Bias

[78] As for bias, it is common ground that the test for a reasonable apprehension of bias is whether a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the decision maker, whether consciously or not, would not decide the matter fairly (see *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394). The onus of demonstrating bias rests with the party that alleges it (see *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 at para. 114).

[79] The complainant did not establish those circumstances. On the contrary, the evidence showed that her written examination was anonymized and given to the former manager to assess. There is no suggestion that the former manager identified the complainant or bore her any degree of ill will that would have influenced the marking.

[80] Although the complainant testified that the former manager stated that she would never pass the complainant in a CH-04 appointment process, the former manager's recollection contradicted this evidence. She testified that she referred to the quality of the complainant's work as she trained the complainant from 2013 to 2015, when she told the complainant that it would not be sufficient for the CH-04 position she sought.

[81] Given the safeguards surrounding the identification of those who completed the written examination and the contradictory evidence about the communication between the complainant and the former manager, I am unable to find on the balance of probabilities that there is a foundation for the allegation of a reasonable apprehension of bias. The allegation of bias is therefore dismissed.

b. Discrimination

[82] As for discrimination against the complainant, s. 80 of the *PSEA* provides that when considering whether a complaint under s. 77 is substantiated, the Board may interpret and apply the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; “*CHRA*”). The *PSEA* also provides in s. 78 as follows:

78 Where a complaint raises an issue involving the interpretation or application of the Canadian Human Rights Act, the complainant shall, in accordance with the regulations of the Board, notify the Canadian Human Rights Commission of the issue.

78 Le plaignant qui soulève une question liée à l'interprétation ou à l'application de la Loi canadienne sur les droits de la personne en donne avis à la Commission canadienne des droits de la personne conformément aux règlements de la Commission des relations de travail et de l'emploi.

[83] Although it is unclear whether the complainant did provide notice of the allegation of discrimination to the Canadian Human Rights Commission, I will provide my reasons as if she had properly placed the human rights discrimination matter before the Board.

[84] According to s. 7 of the *CHRA*, it is a discriminatory practice to refuse to employ or to continue to employ an individual based on a prohibited ground of discrimination. Section 3 of the *CHRA* states that age is among the prohibited grounds of discrimination.

[85] To demonstrate that the respondent committed a discriminatory act, the complainant had to show *prima facie*, meaning at first view, evidence of discrimination that “... covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent-employer” (from *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536).

[86] To do so, the complainant had to demonstrate that 1) she possesses a characteristic protected against discrimination under the *CHRA*, 2) she suffered an adverse employment-related impact, and 3) the protected characteristic was a factor in the adverse impact. (See *Moore v. British Columbia (Education)*, 2012 SCC 61.)

[87] Turning to the first part of the test, it is not disputed that the complainant is a person of age. Therefore, she possesses a characteristic that is protected from discrimination. Secondly, she suffered an adverse employment-related impact when she was not selected for the CH-04 position. Accordingly, the first two branches of the *prima facie* test for discrimination are met.

[88] However, the third branch remains unsatisfied. It was not sufficient for the complainant to claim that she was treated unfairly. In *Beaudoin v. Deputy Minister of Indian and Northern Affairs Canada*, 2018 FPSLRB 41 at paras. 122 and 123, this Board, citing the Canadian Human Rights Tribunal's decision in *Filgueira v. Garfield Container Transport Inc.*, 2005 CHRT 32, confirmed that a complainant must provide "... something in the evidence, independent of what the complainant believes ..." to ground the allegation of discrimination.

[89] In the circumstances of this case, objective assessment criteria formed the basis for assessing her examination. The examination was anonymized before it was assessed. When measured against the rating guide, the complainant's performance did not objectively demonstrate success on the essential ability qualifications that were being assessed. The complainant has not demonstrated that the assessment was unreasonable.

[90] As such, there is no evidence beyond the complainant's belief that discrimination on the basis of age was a factor in reaching this conclusion.

[91] As the third branch of the test is not met, no further answer to the discrimination allegation is required from the respondent.

[92] To conclude, the evidence does not support the allegation of an abuse of authority in the application of merit based on the complainant's assessment, the fitness of the written examination for the assessment, personal favouritism, bias, or discrimination.

5. Choice of process

[93] Concerning the respondent's choice of an advertised internal appointment process, I note the provisions of s. 33 of the *PSEA* that provide as follows:

33 In making an appointment, the Commission may use an advertised or non-advertised appointment process.

33 La Commission peut, en vue d'une nomination, avoir recours à un processus de nomination annoncé ou à un processus de nomination non annoncé.

[94] The use of “may” in s. 33 expresses clearly that the choice of whether to use an advertised or non-advertised process is discretionary. The PSEA assigns the choice to the Public Service Commission or its delegate. (See also *Richard v. Deputy Minister of National Defence*, 2013 PSST 24.) To succeed in a complaint made under s. 77(1)(b) of the PSEA, a complainant must demonstrate that the choice of an advertised appointment process was an abuse of authority. (See *Jarvo v. Deputy Minister of National Defence*, 2011 PSST 6 at para. 7.)

[95] The complainant wished to be promoted to the CH-04 level or to have an opportunity to act in the position. She felt that an advertised process barred her career progression when she sought to be appointed on a non-advertised basis.

[96] The respondent replied that the CH-04 is a senior level position and that the respondent’s practice is to use advertised processes for such positions. Secondly, seven vacant positions were to be filled, and a pool of candidates was required.

[97] I accept that the complainant is disappointed by not advancing in her career. However, the choice of an advertised process was not unreasonable or arbitrary. I am satisfied that the respondent’s evidence provides “... a clear rationale for the choice of process” (from *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 46 at para. 64).

[98] I find no abuse of authority in the choice to use an advertised appointment process.

[99] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VI. Order

[100] The complaint is dismissed.

January 3, 2024.

**Joanne B. Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**