Federal Court  Cour fédérale

Date: 20241004

Docket: T-1600-23

Citation: 2024 FC 1567

Toronto, Ontario, October 4, 2024

PRESENT: Madam Justice Go

BETWEEN:

HOWARD PERSAUD

Applicant

and

ATTORNEY GENERAL OF CANADA,
DEPARTMENT OF JUSTICE

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Mr. Howard Persaud [Applicant] applied for two promotional opportunities within the Royal Canadian Mounted Police [RCMP]. The RCMP evaluation process requires validation of multiple competencies. The Applicant submitted the same competency examples for both positions. Two different validation committees [VCs] reviewed the Applicant's competencies. Each VC was composed of two Subject Matter Experts [SMEs]. One validation committee

[VC1] failed two of the Applicant's competencies for general context, while another validation committee [VC2] passed the same competences for specific context. The Applicant was removed from both promotion opportunities due to his failed competencies.

[2] The Applicant submitted a grievance to the Office for the Coordination of Grievances and Appeals [OCGA], arguing that the VC1's rationales were not sound nor meaningful. The initial level adjudicator found that the Applicant had not established that the VC1's decision was contrary to law or relevant policy and dismissed the grievance [initial level decision].

[3] The Applicant sought a review of the initial level decision by a final level adjudicator. The final level adjudicator upheld the initial level decision and dismissed the grievance [Decision].

[4] The Applicant, who is self-represented, seeks judicial review of the Decision. I dismiss the application, as I find there was no procedural fairness breach, and the Applicant has failed to discharge his burden to demonstrate that the Decision was unreasonable.

II. Issues and Standard of Review

[5] While the Applicant frames his arguments solely as a procedural fairness issue, and submits that no standard of review applies, some of his arguments go to the reasonableness of the Decision. As such, I will address both of the following issues:

a. Was the Decision procedurally unfair?
b. Was the Decision reasonable?

[6] The standard of review of a decision's merits is reasonableness: *Vavilov* at paras 10, 25. The Court should assess whether the decision bears the requisite hallmarks of justification, transparency and intelligibility: *Vavilov* at para 99. The Applicants bear the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

[7] With respect to the issue of procedural fairness, the standard is akin to correctness. The focus of this Court is on whether or not the procedure allowed the applicant to know the case to meet and have a full and fair opportunity to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56.

III. Analysis

A. *Was the Decision procedurally unfair?*

[8] In his written submissions, the Applicant advances multiple arguments to assert that the Decision was procedurally unfair. At the hearing, the Applicant abandoned some of the arguments and conceded on several other points. I will restrict my analysis to the arguments that the Applicant continued to rely on at the hearing.

[9] One of the Applicant's procedural fairness arguments stemmed from his previous failed attempt to seek disclosure of certain information. Among other things, the Applicant requested disclosure about who the decision makers were at the National Promotion Unit [NPU] who approved the non-validation rationales by the VC1. The Applicant argued that without knowing the identity of the decision makers, the Applicant was unable to prepare his submission in the

grievance process. The Applicant's request was dismissed by a collateral issue initial level adjudicator. Before the initial level adjudicator, the Applicant argued that he had a right to know this information and to evaluate the supporting evidence, including internal emails. The initial level adjudicator found that the requested information did not meet the requirements set out in subsection 31(4) of the *RCMP Act*, RSC, 1985, c. R-10, and as such, denied the request.

[10] Before this Court, the Applicant maintains that the denial of his disclosure request was procedurally unfair because he does not know who made the competency decision, what information was relied upon to make the decision, or how the decision was made. As such, the Applicant asserts that the non-disclosure of the information he requested was procedurally unfair.

[11] I reject the Applicant's submission. As the final level adjudicator acknowledged, the Applicant was permitted the right to be heard and was provided with the written reasons as to why his request was denied. I also note that beyond repeating the same argument about the need to know the identity of the decision makers at the NPU, the Applicant does not explain how that information was material to his grievance. Further, not knowing the identity of the decision maker at the NPU has not prevented the Applicant from advancing arguments about both the fairness of the process as well as the soundness of the non-validation rationales. While the Applicant may disagree with the decision to deny him disclosure, there was no procedural fairness breach as the Applicant alleged.

[12] Another contentious issue underlying the Applicant's procedural fairness argument involves the initial level adjudicator's decision to exclude an email dated August 31, 2020. Specifically, the Applicant argued in his grievance that the RCMP process requires the validation of the Applicant's competency for specific context, before the validation of the same competency for general context. The Applicant also argued that in the email in question, the Respondent admitted there was an error in the process of validation and made an offer to the Applicant to make the necessary changes to the validation of the competency for general context to reflect a "Met" competency result. The Applicant submitted before the final level adjudicator that the exclusion of the email by the initial level adjudicator was procedurally unfair and that it breached his right to be heard. The Applicant submits before the Court that the final level adjudicator incorrectly claimed the email was part of the initial stage, and the email contained the same information as in the Respondent's submission.

[13] Having reviewed the email and the Respondent's submission to the adjudicators, I find no merits with the Applicant's argument. The final level adjudicator quoted extensively from the explanation of the Respondent about the email that confirmed the error in the process and the offer the Respondent made to the Applicant to correct the error. The final level adjudicator then noted the initial level adjudicator's analysis and agreed with their not considering emails and correspondence with respect to the initial stage discussions as they were "without prejudice." The final level adjudicator finally concluded that nothing turned on the August 31, 2020 email as the Respondent in their initial level submission provided the same offer and explanation that was in the said email. At the end of the day, the initial level adjudicator relied on the exact same

information that was included in the email, and as such it was not a breach of procedural fairness.

[14] In other words, the final level adjudicator conducted a detailed analysis of the content of the email, the reasons of the initial level adjudicator to exclude the email and came to their own conclusion as to why the exclusion did not affect the Applicant's procedural right. I see no error arising from the final level adjudicator's analysis. At the hearing before me, the only argument that the Applicant made to challenge this conclusion was that the Respondent's explanation at the initial level submission did not admit their error. I disagree.

[15] While the word "error" may not have appeared in the submission, the Respondent acknowledged that in their submission that the Applicant "should have been awarded with a Met" on the particular competency for general context. In any event, the Applicant has not demonstrated both to the final level adjudicator and to the Court how his right to procedural fairness was breached, when all the relevant information contained in that email was not only reflected, but analysed in the Decision.

[16] As a related issue, the Applicant also argues that the evaluation process of his competencies was a procedural error. Pointing to the RCMP's application guidelines, the Applicant submits that his competencies should have been evaluated by the VC responsible for the specific competencies first. The Applicant submits the final level adjudicator's failure to address this issue was an error in the process.

[17] I note that the Applicant made the same argument before the initial level adjudicator. The initial level adjudicator acknowledged this argument but ultimately concluded that even if the specific context validation had been accepted for the general context competency, the Applicant would still have been removed from both staffing actions because of the non-validation of the other competency that required validation in both staffing actions. The Decision confirmed the initial level adjudicator's analysis and conclusion. The Applicant essentially is making the same argument before this Court, when the issue was in fact addressed by the final level adjudicator.

[18] Finally, the Applicant submits that there is institutional bias and discrimination within the RCMP and the final level adjudicator erroneously found that the Applicant's allegation was speculative. However, the Applicant conceded at the hearing that his allegation was based solely on his own personal experiences about the general state of discrimination within the RCMP, and that he has no specific evidence to substantiate such allegations.

[19] I have no reason to doubt the Applicant's assertion that he experiences discrimination within the RCMP, nor do I wish to downplay the Applicant's strongly held belief that he was denied promotional opportunities because of discrimination. However, as the final level adjudicator noted, the issue of bias was addressed by the initial level adjudicator who found that the Applicant was provided with the names of the SMEs, and was given an opportunity to object to their participation on the respective VCs. The Applicant did not submit an objection. While agreeing with the initial level adjudicator that at this juncture, the Applicant should have done his due diligence and ought to have registered his concern, if any, the final level adjudicator also

agreed with the Applicant that if he did learn about a serious behaviour issue on the part of any SME after the fact, it would be appropriate to raise that issue as soon as it became apparent.

[20] The final level adjudicator noted the case law cited by the initial level adjudicator stating that an allegation of reasonable apprehension of bias must be supported by material evidence (*Delva v Canada (Attorney General),* 2022 FC 693 at paras 60-61) and concluded that the Applicant's allegation was speculative at best. As such, the final level adjudicator confirmed the initial level adjudicator's conclusions.

[21] The Applicant simply fails to point to any evidence that could contradict the final level adjudicator's conclusion; his concession at the hearing confirmed the reasonableness of this conclusion.

B. *Was the Decision unreasonable?*

[22] The Applicant makes two arguments that speak to the merits of the Decision.

[23] First, the Applicant submits that the initial level adjudicator applied "circular arguments" in justifying how the same competencies could be evaluated differently by different SMEs while still being reasonable. The Applicant argues that the final level adjudicator supported the same circular arguments, which the Applicant alleges are unsound, and that it was an error because competencies should be evaluated based on the RCMP policy and not on the minds of the evaluators.

[24] I am not convinced by the Applicant's argument. The final level adjudicator acknowledged that while it was not his mandate to perform a *de novo* comparison of the candidates, as per *Vavilov*, the rationales provided in the decision under review must be sound and meaningful. The final level adjudicator then conducted an examination of whether the initial level adjudicator's findings with respect to the rationales were clearly unreasonable or not. The final level adjudicator considered the examples the Applicant provided for the competencies, as well as the rationales provided by VC1 in rejecting them. The final level adjudicator then turned to the initial level adjudicator's analysis of the validation process and their explanation as to how it could be reasonable that different SMEs can view similar competency examples and conclude with different opinions on its level. The final level adjudicator concluded the initial level adjudicator correctly determined the two rationales did not breach policy. In light of these detailed reasons, I reject the Applicant's argument that the final level adjudicator supported the "unsound arguments" made by the initial level adjudicator, contrary to the RCMP policy.

[25] Finally, the Applicant submits that the final level adjudicator reviewed the Team Leadership competencies in error, and submits in his written argument that the Decision failed to disclose that these competencies are no longer used by the RCMP because of the previous errors in evaluating them. I have no information before me to confirm whether the Team Leadership competencies are still in use or not by the RCMP. At the hearing, the Applicant added that the final level adjudicator failed to look at all the evidence and repeated some of the same arguments he made about the fallacy in the Decision.

[26] I reject this argument.

[27] The Decision included reasons of the final level adjudicator confirming the initial level adjudicator's analysis of the rationales of the VC1 regarding these competencies. The Applicant has not pointed to any reviewable error, nor do I find any, arising from the Decision.

[28] For these reasons, I dismiss the application.

C. *Should costs be ordered?*

[29] The Respondent asks the Court to order costs in the sum of $500.00 against the Applicant, citing two grounds. First, the Respondent incurred expenses in defending the Decision. Second, this is the second judicial review application involving the same Applicant. The first judicial review application, which was dismissed, also involved similar allegations of racism, discrimination, and institutional bias within the context of promotion, thus resulting in a "pattern."

[30] However, as the Applicant points out, his previous judicial review was about a different matter. In *Persaud v Attorney General of Canada*, 2023 FC 811, the Applicant alleged that in 2012 the RCMP failed to manage his case properly while he was on medical leave from his duties and sought promotion of two ranks by way of redress. Thus, the issue in that case was completely different from the case at hand. I also agree with the Applicant that it is within his right to seek recourse from the Court.

[31] Having said that, the Applicant pursued a number of arguments that he ultimately abandoned. In the process, resources were spent by both the Court and the Respondent to review

and respond to the Applicant's application, which was ultimately unsuccessful. In light of all of the above, I order costs of $250.00 inclusive against the Applicant.

IV. Conclusion

[32] The application for judicial review is dismissed with costs.

JUDGMENT in T-1600-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed with costs.

2. The Applicant is to pay costs of $250.00, inclusive, to the Respondent, forthwith.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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