



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-315

**Abbasi
(Applicant)**

v.

**Secretary-General of the United Nations
(Respondent)**

**JUDGMENT ON APPLICATION FOR REVISION AND
INTERPRETATION**

Before:	Judge Luis María Simón, Presiding Judge Inés Weinberg de Roca Judge Sophia Adinyira
Case No.:	2010-107
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Applicant:	Legal Line Law Associates
Counsel for Respondent:	Amy Wood/Phyllis Hwang

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an application for revision and an application for interpretation, both filed by Ms. Farzana Abbasi, of Judgment No. 2011-UNAT-112, rendered by the Appeals Tribunal on 11 March 2011.

Facts and Procedure

2. Ms. Abbasi brought suit before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), claiming she was not selected for positions with the United Nations Children's Fund (UNICEF) in Peshawar, Lahore, and Quetta, because of her gender. The Dispute Tribunal found that Ms. Abbasi was discriminated against on the basis of her gender. It held that the Secretary-General had failed to discharge the burden of providing a non-discriminatory reason for rejecting Ms. Abbasi's candidacy for the positions in question. The Dispute Tribunal awarded Ms. Abbasi 12 months' net base salary for loss of opportunity and career development and USD 30,000 for distress. The Secretary-General appealed.

3. In Judgment No. 2011-UNAT-112, the Appeals Tribunal vacated the UNDT Judgment in its entirety, finding no violation of Ms. Abbasi's right to be equally considered during the selection process. It further found that the UNICEF's Gender Parity and Equality Policy had been applied in her favour.

4. On 1 August 2011, Ms. Abbasi requested a 30-day extension to file an application for interpretation and revision of the Appeals Tribunal Judgment. She was given a 15-day extension instead.

5. On 22 August 2011, Ms. Abbasi submitted an application for revision and an application for interpretation. The Secretary-General filed his comments on both applications on 13 October 2011.

Submissions

Ms. Abbasi

6. Ms. Abbasi states that cheating took place during the written examination, and that she learnt about this from a former colleague on 24 July 2010. Ms. Abbasi contends that, but for the cheating, she would not have ranked below second place in the selection process, giving her the opportunity to choose either Lahore or Peshawar as her post.

7. Ms. Abbasi requests that this Court review its own Judgment and reinstate the Dispute Tribunal's decision, as the Appeals Tribunal made an error in fact and law. In the alternative, she requests an oral hearing, full disclosure of all relevant documents and award of exemplary damages and costs.

8. In her application for interpretation, Ms. Abbasi seeks clarification of certain aspects in the Judgment.

Secretary-General

9. The Secretary-General maintains that there is no basis to grant Ms. Abbasi's application for revision. Ms. Abbasi's allegation of cheating by an unnamed candidate is not relevant to the grounds on which the Appeals Tribunal based its Judgment. As such, her allegation is not a decisive fact within the meaning of Article 11(1) of the Statute of the Appeals Tribunal.

10. The Secretary-General notes that Ms. Abbasi had failed her written examination but was nevertheless selected to proceed to the interview stage because of UNICEF's Gender Parity and Equality Policy. The written examination was considered in the overall evaluation and Ms. Abbasi ranked third, entitling her to her third choice of location. The Appeals Tribunal found that the selection process was fairly conducted and that Ms. Abbasi's gender did not improperly influence the final outcome.

11. The Secretary-General submits that whether or not another unnamed candidate cheated in the written examination neither affects the Appeals Tribunal Judgment, nor does it constitute a decisive fact under Article 11(1) of the Statute of the Appeals Tribunal.

12. The Secretary-General states that he has no observations to make on Ms. Abbasi's application for interpretation.

Considerations

13. Applications for revision of judgments are governed by Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must identify a fact that, at the time of the judgment, was unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; and that, the fact identified would have been decisive in reaching the decision.¹

14. As this Tribunal stated in *Shanks* and *Costa*,² the authority of a final judgment – res judicata – cannot be readily set aside. There are only limited grounds, as enumerated in Article 11 of the Statute of the Appeals Tribunal, for revision of a final judgment.

15. This Court also held, in *Beaudry*,³ that any application which, in fact, seeks review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfills the strict and exceptional criteria established by Article 11 of the Statute.

16. As to the application for revision filed by Ms. Abbasi, the Appeals Tribunal finds that it constitutes a disguised way to criticize the Judgment or to disagree with it. Article 11(1) of the Statute and Article 24 of the Rules of Procedure do not allow the use of an application for revision for such a goal or as a way to modify, complete or improve a judgment by this Tribunal.

17. In the case at bar, we note that, by her own account, Ms. Abbasi became aware of the allegation of cheating on 24 July 2010, well before the date of our Judgment at issue. But even if the “cheating” in the written test had been qualified as previously unknown not due to Ms. Abbasi's negligence, it would not have had a decisive impact on the outcome of the case, because the circumstance did not affect the performance of Ms. Abbasi or of the candidates better qualified than her. As established by the Dispute Tribunal, Ms. Abbasi did poorly in the written test but was nevertheless allowed to go on competing for the positions,

¹ *Macharia v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-128, at para 7.

² *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063.

³ *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129.

due to the gender policy in her favor. Therefore, it becomes irrelevant if another person not ranked higher than her cheated in the written test; it would not have affected the final outcome of the selection procedure with regard to the candidates better qualified than Ms. Abbasi. The “unknown” fact would have been of no interest to the Appeals Tribunal during its review of the UNDT judgment.

18. Turning to the application for interpretation, the Appeals Tribunal notes that interpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubts about the will of the Tribunal or the arguments leading to a decision. But if the judgment is comprehensible, whatever the opinion the parties may have about it or its reasoning, an application for interpretation is not admissible, as it happens in the present case.

Judgment

19. In light of the foregoing, this Tribunal dismisses the application for revision and application for interpretation of its Judgment No. 2011-UNAT-112.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

Entered in the Register on this 19th day of April 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar