



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

Judgment No. 2023-UNAT-1355

Ramesh Balakrishnan Menon

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Dimitrios Raikos Judge Gao Xiaoli
Case No.:	2022-1709
Date of Decision:	30 June 2023
Date of Publication:	17 July 2023
Registrar:	Juliet Johnson

Counsel for Appellant: Varun Dewan

Counsel for Respondent: Sylvia Schaefer

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mr. Ramesh Balakrishnan Menon (Mr. Menon), a staff member with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), contested the decision of the Administration to deny his request for a reclassification of his P-4 post to the P-5 level (contested decision).
2. By Judgment No. UNDT/2022/045¹ (impugned Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that the contested decision was not an appealable administrative decision and therefore rejected Mr. Menon's application as not receivable *ratione materiae*.
3. Mr. Menon lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. Mr. Menon joined MINUSMA on a temporary assignment in August 2016. He was granted a continuing appointment as Chief of the Aviation Safety Unit, Grade P-4, in the Office of the Director of Mission Support (DMS) in 2017.
6. During the course of 2019, Mr. Menon sought to have a P-5 post for the Chief of the Aviation Safety Unit established at MINUSMA in the mission structure and included in the budget proposal.
7. After review of the staffing complement, the available resources, and the applicable guidelines, the DMS decided not to establish a P-5 post.
8. On 8 February 2021, Mr. Menon requested the DMS by e-mail to reclassify his P-4 post to the P-5 level which the DMS then also declined.

¹ *Balakrishnan Menon v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/045.

9. On 22 February 2021, Mr. Menon sought management evaluation of the decision not to include a budget proposal for the installation of a P-5 level post resulting in the denial of “[his] legitimate opportunity for career progression in the service of [the] United Nations”.

10. On 11 May 2021, the Management Evaluation Unit (MEU) informed Mr. Menon that MINUSMA would conduct a classification review in terms of Section 1.3 of Administrative Instruction ST/AI/1998/9 (System for the classification of posts) to ascertain whether reclassification of his post was warranted. Consequently, the MEU considered his management evaluation request moot.

11. On 5 August 2021, Mr. Menon filed an application before the UNDT challenging the refusal to include a budget proposal for the installation of a P-5 level post as Chief of the Aviation Safety Unit at MINUSMA.

12. On 20 April 2022, the UNDT held a case management discussion (CMD) and directed the parties to file submissions on whether the application was receivable and whether the UNDT had the competence to grant the requested remedy. The parties agreed that the matter at issue was the reclassification of Mr. Menon’s P-4 post to the P-5 level, since only after this reclassification would it be possible to budget for a P-5 post.

Impugned Judgment

13. On 18 May 2022, the UNDT issued the impugned Judgment, dismissing Mr. Menon’s application on the grounds that it was not receivable *ratione materiae*. It found that the contested decision did not constitute an administrative decision since it had no direct impact on his terms and conditions of appointment.² Furthermore, it concluded that the contested decision did not constitute a final decision, in the circumstances of this case, as the matter was still under consideration by the Administration.³

² Impugned Judgment, paras. 23 and 28.

³ *Ibid.*, paras. 26-28.

Procedure before the Appeals Tribunal

14. On 9 July 2022, Mr. Menon filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 12 September 2022.

Submissions

Mr. Menon's Appeal

15. Mr. Menon contends that the UNDT erred in law and in fact in its conclusion that his application was not receivable *ratione materiae*.

16. He maintains that the conduct of the Administration is in breach of mandatory requirements and failed to take heed of the fact that the Aviation Safety Unit was severely understaffed. In this regard, he argues that the UNDT failed to appreciate that the issues in his application were not restricted to the reclassification of his post from the P-4 to the P-5 level but encompassed within it issues relating to the Administration's illegal conduct, more particularly, deliberately keeping the Aviation Safety Unit understaffed.

17. In his submissions, Mr. Menon does not address the narrow issue upon which the UNDT based its decision on the question of receivability. He, however, contends that the UNDT had drawn the issue too narrowly as it went beyond the mere reclassification and ought to have addressed the question of whether the Aviation Safety Unit staffing structure was in breach of the applicable regulations and guidelines.

18. Mr. Menon requests that the Appeals Tribunal vacate the impugned Judgment, rescind the contested decision, and direct the Administration to carry out "a court monitored, time-bound classification review". Alternatively, he requests that the Appeals Tribunal order the Administration to immediately reclassify his current position to the P-5 level, "coupled with compensation [and] backpay for discharging functions of [a] P-5 Officer, despite being a P-4 Officer".

The Secretary-General's Answer

19. The Secretary-General maintains that the UNDT did not err in holding that the application was not receivable *ratione materiae*.

20. The Secretary-General notes that Mr. Menon's attempt to broaden the scope of the dispute on appeal was inconsistent with the agreement (reached between the parties at the CMD) to define the issue in dispute to be the reclassification of Mr. Menon's post from the P-4 to the P-5 level.

21. The Secretary-General submits that Mr. Menon has failed to substantiate how a potential denial of the desired reclassification of his post could have direct legal consequences adversely affecting the terms of his appointment or his contract of employment.

22. The Secretary-General further points out that the various regulatory and administrative issuances to which Mr. Menon referred, bearing upon the staffing structures of the Aviation Safety Unit, are not part of Mr. Menon's terms of appointment or contract of employment. The staffing of the Aviation Safety Unit has no direct bearing on Mr. Menon's immediate duties; and he has not shown that he was impeded in his right to carry out his functions in accordance with his contract of employment. Staff members may request that the classification of a post be reviewed if the prerequisites set out in Section 1.3 of ST/AI/1998/9 exist, but they acquire no right to reclassification or to be promoted to a reclassified post.

23. The Secretary-General accordingly requests that the appeal be dismissed in its entirety.

Considerations

24. Mr. Menon has requested an oral hearing. Article 18 of the Appeals Tribunal Rules of Procedure provides that UNAT may hold oral hearings "if such hearings would assist in the expeditious and fair disposal of the case". An oral hearing would not be of any assistance in this case as the issue for consideration is straightforward and not complex. The application for an oral hearing is thus denied.

25. Mr. Menon's attempt to broaden the scope of the issue for consideration is untenable. It was clearly agreed at the CMD held on 20 April 2022 that the issue for determination was the desired reclassification of Mr. Menon's post from the P-4 to the P-5 level and the parties are bound by their pleadings and pre-trial agreements.

26. Article 2(1)(a) of the Dispute Tribunal Statute provides that the UNDT "shall be competent to hear and pass judgment on an application filed [...] [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment"

of a staff member. In accordance with the prevailing jurisprudence of this Tribunal, the key characteristic of an administrative decision is its capacity to produce direct legal consequences adversely and directly affecting a staff member's terms of appointment or contract of employment.⁴

27. Mr. Menon's contention that his terms of appointment and contract of employment were directly and adversely affected by the decision not to reclassify his post is not sustainable. Mr. Menon has a contractual right to an appointment at the P-4 level and to enjoy the benefits, as well as to carry out the duties, associated with such a position at that level. He has no right, contractually or otherwise, to insist on the benefits of a P-5 post. While Section 1.3 of ST/AI/1998/9 permits a staff member to seek a classification review, staff members do not have a contractual right to a reclassification of the post itself. Mr. Menon's terms of appointment and his contract of employment do not provide him or any staff member with a right to determine the organizational structure and staffing of the unit in which they work, nor do they oblige the Administration to reclassify posts that particular staff members may encumber.

28. It cannot be denied that Mr. Menon had an interest (as opposed to a contractual right) in the reclassification and that the contested decision impacted on that interest. Nonetheless, the provisions of Article 2 of the UNDT Statute clearly indicate that the UNDT has jurisdiction only in relation to administrative decisions which impact directly on the terms of appointment or contract of employment - in other words, the contractual rights of the staff member. Moreover, as stated previously, staff members do not have a right for their posts to be reclassified in accordance with their wishes. Mr. Menon was not prevented from exercising his rights or discharging the duties and functions assigned to him under his contract of employment or the terms of his appointment as Chief of the Aviation Safety Unit at the P-4 level. Furthermore, even if the post is later reclassified, it will not be Mr. Menon's for the asking; he will still have to compete for the promotion and may not succeed if he does not meet the requirements for a P-5 appointment.

29. The contested decision accordingly did not have a direct adverse effect on Mr. Menon's terms of appointment or contract of employment and consequently did not constitute an administrative decision in respect of which the UNDT had jurisdiction. It follows that the UNDT

⁴ *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 38; *Adnan-Tolon v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-970, paras. 28-29; *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, paras. 61-62.

did not err in holding that the application was not receivable *ratione materiae*. The UNDT was accordingly not obliged to address the merits of the decision not to reclassify the post.

30. The appeal can be disposed of on this basis and there is therefore no need to consider whether the contested decision allegedly being intermediate in nature and not final (the reclassification being ongoing) was not an administrative decision also for that reason.

31. The appeal consequently cannot succeed.

Judgment

32. The appeal is dismissed, and Judgment No. UNDT/2022/045 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Gao

Judgment published and entered in the Register on this 17th day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar