



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

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Judgment No. 2024-UNAT-1450

**Mohammad Tofazzel Hossain**

**(Applicant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT ON APPLICATION FOR REVISION**

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Before: Judge Gao Xiaoli, Presiding  
Judge Nassib G. Ziadé  
Judge Graeme Colgan

Case No.: 2023-1848

Date of Decision: 28 June 2024

Date of Publication: 23 July 2024

Registrar: Juliet E. Johnson

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Counsel for Applicant: Self-represented

Counsel for Respondent: Noam Wiener

**JUDGE GAO XIAOLI, PRESIDING.**

1. Mr. Mohammad Tofazzel Hossain (Mr. Hossain) has filed an application for revision of Judgment No. 2023-UNAT-1359 (UNAT Judgment)<sup>1</sup> before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
2. For the reasons discussed herein, the Appeals Tribunal dismisses the application.

**Facts and Procedure**

3. In the UNAT Judgment, the Appeals Tribunal considered an appeal of the Secretary-General of Judgment No. UNDT/2022/069 (UNDT Judgment).<sup>2</sup> In the UNDT Judgment, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) had granted Mr. Hossain's application in which he had contested the Administration's decision not to renew his fixed-term appointment (contested decision) due to the abolition of his post.
4. In 2016, Mr. Hossain was serving as a Finance Specialist with the Programme Management Unit (PMU) in the Zimbabwe Resilience Building Fund (ZRBF), a program supported by the United Nations Development Programme (UNDP) Country Office in Zimbabwe. The ZRBF was funded by the United Kingdom's Department for International Development (DFID).<sup>3</sup>
5. In February and March 2018, the Head of the PMU and the UNDP Resident Representative told Mr. Hossain, respectively, that according to their long-term Human Resources Strategy (HR Strategy) for the ZRBF, his internationally-recruited position would be abolished and a national staff post created in its place. As a result, his fixed-term appointment would not be renewed.<sup>4</sup>
6. In November 2018, following a review of the ZRBF's activities by DFID, the decision to abolish Mr. Hossain's post was set aside.

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<sup>1</sup> *Mohammad Tofazzel Hossain v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1359 (19 July 2023).

<sup>2</sup> *Hossain v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/069.

<sup>3</sup> UNAT Judgment, para. 3.

<sup>4</sup> *Ibid.*, paras. 5-6.

7. Based on recommendations by DFID, a Panel of three independent experts was commissioned to conduct a capacity assessment of the ZRBF in January 2019. The Panel issued a report (Panel Report) that recommended that the Finance Unit of the PMU be restructured.<sup>5</sup> Various donors of ZRBF subsequently met to discuss the Panel Report and concluded that converting several internationally-recruited posts to nationally-recruited posts, including Mr. Hossain's post, was advisable. Subsequently, the ZRBF Steering Committee adopted a new organizational structure for the ZRBF, and among the changes was the abolition of Mr. Hossain's post.<sup>6</sup>

8. Upon review of Mr. Hossain's challenge to the abolition of his post, the UNDT found that the failure to consult with him about it constituted an abuse of authority. The UNDT also found that the contested decision was tainted by bias, and the fact that only Mr. Hossain's post out of the three internationally-recruited posts was abolished was proof of discrimination. The UNDT also inferred bias from a difficult relationship between Mr. Hossain and his supervisor.<sup>7</sup>

9. The UNDT further concluded that the Panel had strayed from the DFID mandate, and that it did not independently reach its conclusions. Rather, the Panel's recommendations were predetermined and based on the HR Strategy formulated by the Head of the PMU and the Resident Representative in 2018. Accordingly, the UNDT rescinded the termination of Mr. Hossain's fixed-term appointment.<sup>8</sup>

10. Upon consideration of the Secretary-General's appeal of the UNDT Judgment, the Appeals Tribunal found that the UNDT's conclusions were "legally and factually incorrect".<sup>9</sup>

11. In the UNAT Judgment, the Appeals Tribunal first held that the Panel's assessment was well-within the mandate of DFID, and the UNDT erred in concluding otherwise.<sup>10</sup>

12. Second, the Appeals Tribunal held that there was no obligation on the part of the PMU to consult with Mr. Hossain about the abolition of his post.<sup>11</sup>

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<sup>5</sup> *Ibid.*, para. 11.

<sup>6</sup> *Ibid.*, para. 13.

<sup>7</sup> *Ibid.*, para. 19.

<sup>8</sup> *Ibid.*, paras. 21-22.

<sup>9</sup> *Ibid.*, para. 65.

<sup>10</sup> *Ibid.*, para. 66.

<sup>11</sup> *Ibid.*, para. 70.

13. Third, the Appeals Tribunal thought that it was unreasonable for the UNDT to conclude that the contested decision was tainted by bias merely because Mr. Hossain had interpersonal conflicts with his supervisor. The Tribunal emphasized that the abolition decision was recommended by the Panel of independent experts.<sup>12</sup>

14. Fourth, the Appeals Tribunal rejected the UNDT's finding that the Panel's recommendations were "predetermined", noting that there were considerable differences between the Panel Report and the earlier HR Strategy proposed by the PMU.<sup>13</sup>

15. Fifth and finally, the Appeals Tribunal held that the sole fact that Mr. Hossain's post was selected for abolition among the three internationally-recruited posts did not render the contested decision unfair or tainted by improper motives.<sup>14</sup>

16. For all of the foregoing reasons, the Appeals Tribunal held that the abolition of Mr. Hossain's post was the result of a legitimate reorganization of the PMU, and there was no illegality in the non-renewal of his fixed-term appointment.<sup>15</sup> The Tribunal accordingly reversed the UNDT Judgment.

17. On 19 August 2023, Mr. Hossain filed an application for revision of the UNAT Judgment.

18. The Secretary-General submitted his comments on 26 September 2023.

### **Submissions**

#### **Mr. Hossain's Application**

19. Mr. Hossain submits that the UNAT erred in law and in fact when it reversed the UNDT Judgment. He argues that the UNAT overlooked important and relevant evidence.

20. In particular, Mr. Hossain contends that the UNAT made "a serious error" in considering the restructuring of the PMU to be an isolated event, and the UNAT wrongly ignored the events that led up to the restructuring. Mr. Hossain appends various materials to his application from February 2017 through November 2018 to purportedly show that "the plot" to abolish his

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<sup>12</sup> *Ibid.*, paras. 72, and 74-75.

<sup>13</sup> *Ibid.*, para. 77.

<sup>14</sup> *Ibid.*, para. 80.

<sup>15</sup> *Ibid.*, para. 79.

position began in February 2017, before the issuance of the Panel Report.<sup>16</sup> Mr. Hossain submits meeting minutes that were shared with him<sup>17</sup> and e-mail communications he had with the head of the PMU,<sup>18</sup> about the HR Strategy proposal to replace the Finance Specialist Position and to build the capacity of national staff.

21. Mr. Hossain submits that the Talent Management Review Group (TMRG) decided on 30 March 2017 to phase out his Finance Specialist position effective December 2018, which he only came to know through the Court Case Management System (CCMS).<sup>19</sup> Mr. Hossain also introduces a Personnel Action Report from September 2017 that shows that his fixed-term appointment was extended for six months.<sup>20</sup>

22. Mr. Hossain argues that the Panel Report resembled the HR Strategy, and has prepared a comparative analysis of the two, which was submitted to the UNAT with his application.<sup>21</sup>

23. Mr. Hossain submits that the Panel did not need to review the HR Strategy document, but that the UNDP Country Office made it available so that the Panel would support their decision to abolish his post. Mr. Hossain argues that “the UNAT’s honorable Judges have failed to detect the improper motivation of [Country Office] management, consequently, the UNAT delivered incorrect, and inconsistent Judgment”.<sup>22</sup>

24. Mr. Hossain submits that the Panel was not truly independent. He argues that there was no reason to conduct a capacity assessment of the ZRBF which was in a mature phase. He submits that the Panel recommendations were contrary to the terms and conditions of the Project Cooperation Agreements between UNDP and its partners.

25. Mr. Hossain claims that the Panel incorporated the predetermined ideas of the PMU, i.e., the HR Strategy, and that “the UNAT Honorable Judges have failed to validate the information provided” by him and instead relied on the “speculative and unsubstantiated information” from

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<sup>16</sup> These materials attached to the application include the Panel Report (annex 4), the revised ZRBF Organigram (annex 5), the HR Strategy (annex 17), and an 8 March 2018 letter notifying Mr. Hossain of the abolition of his post (annex 7). All of these annexes were in the original case file underlying the UNAT Judgment.

<sup>17</sup> Application for revision, annex 6 (minutes dated February 2018).

<sup>18</sup> Application for revision, annex 8 (e-mails dated June 2018).

<sup>19</sup> Application for revision, annex 3.

<sup>20</sup> Application for revision, annex 1. This document was not included in the original case file.

<sup>21</sup> Application for revision, annex 9. This document was created by Mr. Hossain.

<sup>22</sup> Application for revision, annex A, para. 2(viii).

the Secretary-General. Accordingly, Mr. Hossain argues that “the UNAT has denied [him] justice” and “erred in fact and law”.<sup>23</sup>

26. Mr. Hossain submits that the UNAT failed to appreciate the Country Office management’s intention to get rid of him, as was supported by a witness statement.

27. Mr. Hossain avers that the UNDT had made a balanced judgment, and that the UNDT had the opportunity to observe the body language of the parties during lengthy oral hearings. He submits that the UNDT findings were “undermined by the UNAT Honorable Judges simply by doing a desk review of some documents and relying on the [Secretary-General’s] speculative submissions”.<sup>24</sup>

28. Mr. Hossain submits that the UNAT did not consider his closing submissions and as a consequence “delivered a wrong Judgment”.<sup>25</sup>

29. Mr. Hossain hopes that the UNAT will revise the UNAT Judgment “in the interest of upholding the image and reputation of UNAT”.<sup>26</sup>

### **The Secretary-General’s Comments**

30. The Secretary-General recalls that an application for revision under Article 11(1) of the Appeals Tribunal Statute (Statute) is made “on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision”.

31. The Secretary-General submits that Mr. Hossain’s assertions fail to demonstrate any new and decisive facts that were unknown to him or the Appeals Tribunal at the time of the UNAT Judgment.

32. The Secretary-General argues that rather than introducing new facts, Mr. Hossain simply reiterates the arguments he already made and argues that the Appeals Tribunal did not understand these facts, applied the law incorrectly, and issued an incorrect Judgment.

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<sup>23</sup> *Ibid.*, para. 3.

<sup>24</sup> *Ibid.*, para. 6.

<sup>25</sup> *Ibid.*, para. 9.

<sup>26</sup> *Ibid.*, para. 10.

33. The Secretary-General asserts that the goal of an application for revision is to enable a party to request reconsideration when new and decisive facts have come to light that would manifestly change the outcome of the Appeals Tribunal’s deliberations. Here, Mr. Hossain has merely relitigated his arguments from the prior UNAT Judgment.

34. The Secretary-General submits that although Mr. Hossain clearly disagrees with the UNAT Judgment, pursuant to the Appeals Tribunal Judgment in *Giles* “no party may seek revision of a judgment merely because he or she is dissatisfied with it and wants to have a second round of litigation”.<sup>27</sup>

35. The Secretary-General concludes that because Mr. Hossain has failed to substantiate any new, decisive fact that was unknown to him or the Appeals Tribunal at the time of the UNAT Judgment, there is no basis upon which his application for revision may be granted.

36. The Secretary-General requests that the Appeals Tribunal dismiss the application in its entirety.

### Considerations

37. With respect to the application for revision of Judgment No. 2023-UNAT-1359, we first recall the legal principle emphasized in *Costa* that: “the authority of a final judgment - *res judicata* - cannot be so readily set aside. There are only limited grounds as enumerated in Article 11 of the Statute of the Appeals Tribunal for review of a final Judgment.”<sup>28</sup>

38. Article 11(1) of the Statute provides:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

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<sup>27</sup> *Howard Andrew Giles v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1224, para. 25.

<sup>28</sup> *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063, para. 4.

39. In *Mohammad*, we said:<sup>29</sup>

[F]or an application for revision to be considered receivable, it should comply with four requirements simultaneously:

- i) the new fact discovered was unknown to the Appeals Tribunal and to the party applying for revision at the time the judgment was rendered;
- ii) such ignorance was not due to negligence of the moving party;
- iii) the new fact would have been decisive in reaching the original judgment;
- iv) the application was made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

40. Therefore, the sole issue for consideration in this case is whether Mr. Hossain has presented a new and decisive fact that was unknown to him and the Appeals Tribunal when the UNAT Judgment was decided, and that would have materially impacted the outcome of the UNAT Judgment.

41. In Section III(a) of his application for revision, Mr. Hossain is supposed to identify the decisive facts that were unknown to him and the Appeals Tribunal at the time of the original UNAT Judgment. However, he has not identified any specific fact or facts. Instead, he has submitted five pages of argumentation as to why the Appeals Tribunal's analysis was wrong.

42. In Section III(b) of the application for revision, Mr. Hossain states that he became aware of the new fact or facts on the date that he received the UNAT Judgment. He seems to be arguing that the new fact is the UNAT Judgment itself.

43. After review of the documents submitted in his answer to the original appeal as compared to the annexes Mr. Hossain submitted to his application for revision, there are very few documents that are new, but even those that are new, were known to him before the UNAT Judgment was issued. We analyze these documents one by one as follows:

(a) Application, annex 1: Personnel Action Report. This document was not in the original UNAT case file, but Mr. Hossain ran this report on 9 February 2017, so it has been known to him

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<sup>29</sup> *Samar Nayif Mahmud Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1352, para. 31.



since that time. He submits it to show that his fixed-term appointment was extended for six months. However, this was known to the UNAT when it issued its Judgment.<sup>30</sup>

(b) Application, annexes 10 and 11: Project Cooperation Agreements. These documents were not in the original UNAT case file; however, these agreements from 2016 would have been known to Mr. Hossain. Mr. Hossain introduces these agreements to argue that the Panel's capacity assessment work was not aligned with the DFID mandate. However, this argument was already considered and rejected by the UNAT in its Judgment.<sup>31</sup>

(c) Application, annex 9: Comparison between the Panel Report and HR Strategy; annex 12: Feedback-Answer-Panel Report; and annex 13: Abstract from Donors and Steering Committee. These are documents created by Mr. Hossain for the purpose of re-litigating his position. They are not original source documents, but rather commentaries or analyses prepared by him regarding his views of the Panel Report and the work of the Panel. These arguments were already addressed by the UNAT in its Judgment.<sup>32</sup>

44. From the above, we can see that Mr. Hossain did not present a new fact that was unknown to him or the Appeals Tribunal when the UNAT Judgment was decided, not to mention a decisive fact that would have materially impacted the outcome of the UNAT Judgment. As the Secretary-General submitted, Mr. Hossain only argues that the Appeals Tribunal did not understand the facts, applied the law incorrectly, and issued an incorrect Judgment. Indeed, there is no fact discovered after the issuance of the UNAT Judgment, which was unknown to Mr. Hossain and to the Appeals Tribunal. An application for revision cannot be granted if the applicant fails to specify the new and decisive fact that the Appeals Tribunal was not aware of when it considered the original appeal.

45. Rather, Mr. Hossain's submissions essentially repeat or add to the same arguments that he raised before the UNAT in the prior proceedings. As we have stated many times, no party may seek revision of a judgment merely because that party is dissatisfied with the pronouncement of the Appeals Tribunal and wants to have a second round of litigation.<sup>33</sup> In *Massah*, we stated that: "[t]he application under examination is inadmissible since its actual

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<sup>30</sup> UNAT Judgment, para. 6.

<sup>31</sup> *Ibid.*, para. 66.

<sup>32</sup> *Ibid.*, paras. 71 and 74-79.

<sup>33</sup> *Elasoud v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-391, para. 13.

goal is to litigate the case *de novo* as a result of counsel not agreeing with the final Judgment, an option which is not provided to the parties by the applicable law.”<sup>34</sup> In *James*, we held that where the applicant “seeks a review because he disagrees with the Appeals Tribunal’s analysis of his claims” that “this does not fulfil the strict and exceptional criteria set forth in Article 11 of the Statute”.<sup>35</sup> Finally, in *Giles*, we reiterated that:<sup>36</sup>

[A]n application for revision is not a substitute for an appeal; and no party may seek revision of a judgment merely because he or she is dissatisfied with it and ‘wants to have a second round of litigation’. A revision of a final judgment is an exceptional procedure and not an additional opportunity for a party to re-litigate arguments that failed at trial or on appeal.

46. Based on the foregoing jurisprudence, it is obvious that Mr. Hossain’s application for revision of the UNAT Judgment does not comply with the requirements set out in Article 11(1) of the Statute. His application for revision of the UNAT Judgment must be dismissed. We repeat again on this occasion that “[t]he Appeals Tribunal is the final appellate body in the United Nations’ internal justice system and an application for revision of a judgment cannot be a collateral means of contesting the judgment, nor can it be allowed to be a second right of appeal”.<sup>37</sup>

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<sup>34</sup> *Massah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-356, para. 15.

<sup>35</sup> *James v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-680, para. 14.

<sup>36</sup> *Giles Judgment, op. cit.*, para. 25.

<sup>37</sup> *Ahmad Shuaib Payenda v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1276, para. 21.

**Judgment**

47. The application for revision of Judgment No. 2023-UNAT-1359 is dismissed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Gao, Presiding

*(Signed)*

Judge Ziadé

*(Signed)*

Judge Colgan

Judgment published and entered into the Register on this 23<sup>rd</sup> day of July 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar