



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2021-1642

Gautam Mukhopadhyay
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

ORDER No. 437 (2022)

1. On 22 July 2021, the United Nations Dispute Tribunal in Nairobi (Dispute Tribunal or UNDT) issued Judgment No. UNDT/2021/085 in the case of *Mukhopadhyay v. Secretary-General of the United Nations*, in which the Dispute Tribunal held that the decision to terminate Mr. Gautam Mukhopadhyay's service was unlawful and ordered rescission of that decision, or pursuant to Article 10(5) of the UNDT's Statute, payment of two year's net base salary as compensation in lieu of rescission (the First Judgment).
2. On 15 October 2021, the Dispute Tribunal issued Judgment No. UNDT/2021/119 in the case of *Mukhopadhyay v. Secretary-General of the United Nations*, whereby the Dispute Tribunal held that the Secretary-General's decision to withhold three months' compensation in lieu of notice as part of Mr. Mukhopadhyay's termination indemnities was unlawful. The Dispute Tribunal rescinded that decision and ordered the Secretary-General to pay the three month's compensation in lieu of notice (the Second Judgment).
3. On 25 November 2021, the Administration decided to execute the First Judgment by rescinding the termination decision and reinstating Mr. Mukhopadhyay effective 11 September 2020. Mr. Mukhopadhyay had been separated from service on 10 September 2020.

4. On 14 December 2021, the Secretary-General appealed the Second Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). On the same day, he filed a Motion seeking leave to file additional evidence in the form of a memorandum dated 25 November 2021, which informed Mr. Mukhopadhyay of the decision to reinstate him effective 11 September 2020. The Secretary-General requests that the Appeals Tribunal exceptionally accept this additional evidence, as it is highly relevant to the appeal, and it was not available during the consideration of the case before the UNDT.

5. On 21 December 2021, Mr. Mukhopadhyay through his Counsel filed his objections to the motion, maintaining that the motion fails to meet the requirements of Article 2(5) of the UNAT Statute, in that it neither establishes exceptional circumstances nor promotes an expeditious resolution of the proceedings. On 13 January 2022, he filed an answer to the appeal that the Secretary-General submitted on 14 December 2021.

6. Pursuant to Article 2(5) of the Appeals Tribunal Statute, this Tribunal may receive additional evidence “[i]n exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence ... in the interest of justice and the efficient and expeditious resolution of the proceedings.”¹ However, to allow evidence under this paragraph, such evidence must not have been known to either party at the level of the Dispute Tribunal.

7. In the present case, the Appeals Tribunal finds that the Tribunal should receive the additional evidence in the interest of justice and the efficient and expeditious resolution of the proceedings. The execution of the First Judgment may be relevant and material to the issues pertaining to the Second Judgment under appeal. Mr. Mukhopadhyay will have an opportunity to make submissions on the relevancy and materiality of this evidence in a supplement to his answer. The weight to be placed on this evidence, if any, will be determined by the Tribunal in its reasons.

¹ See also Article 10(1) of the Appeals Tribunal Rules of Procedure.

IT IS HEREBY ORDERED that the Secretary-General's motion is **GRANTED**. Mr. Mukhopadhyay shall have 15 days, effective from today's date, within which to file a supplement to his answer limited to the additional evidence that I have decided to receive, if he wishes to do so.

Original and Authoritative Version: English

Dated this 24th day of January 2022
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
Duty Judge

Entered in the Register on this 24th day
of January 2022 in New York, United States.

(Signed)
Weicheng Lin, Registrar