



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

PLANAS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Marcus Joyce, OSLA

Counsel for respondent:
Shelly Pitterman, UNHCR

Introduction

1. On 17 February 2010, the applicant filed an application with the United Nations Dispute Tribunal (UNDT) contesting the decision of the Assistant High Commissioner for Refugees “not to enter into the merits of [her] request for a management evaluation”, which relates to her non-promotion to the P-5 level in the 2008 Annual Promotions Session.

Facts

2. On 15 September 2009, the applicant submitted an application to the Tribunal contesting the decision of the High Commissioner for Refugees not to promote her to the P-5 level in the 2008 Annual Promotions Session.

3. On 6 November 2009, the Tribunal issued judgment No. UNDT/2009/070, which rejected the application as not receivable because the applicant had failed to request the mandatory management evaluation.

4. On 12 November 2009, the applicant submitted a request for management evaluation to the Deputy High Commissioner. She contested the decision not to promote her to the P-5 level in the 2008 Annual Promotion Session.

5. By letter dated 18 December 2009, the Assistant High Commissioner replied to the applicant’s request for management evaluation stating that it was not receivable.

6. By e-mail dated 17 February 2010, the applicant submitted an application to the Tribunal contesting “the decision of UNHCR not to enter into the merits of [her] request for a management evaluation”.

7. On 22 April 2010, a hearing was held, during which a number of issues, including the receivability of the application, were addressed. In particular, the Tribunal noted that the applicant’s claims are similar to those made by her in an earlier case (Judgment No. UNDT/2009/070). The Tribunal pointed out that the new application might be considered as *res judicata*. The parties agreed to consider the option of an amicable solution and to inform the Tribunal of their decision thereupon.

8. On 25 May 2010, the parties submitted a “consent order” whereby they requested the Tribunal to issue an order reflecting the following terms as agreed between them:

“1. The [a]pplicant is permitted to resubmit her request for management evaluation as submitted to the Secretary General on 28 September 2009 and subsequently to UNHCR under cover of email dated 12 November 2009, in relation to the decision of non promotion dated 28 July 2009. UNHCR agrees to assess the merits of that claim.

2. Her existing application before the Tribunal be withdrawn without prejudice to her right to make a further application to the Tribunal dependant on the outcome of her request for management evaluation.

3. That the [r]espondent will not seek to argue that any such application to the Tribunal would be barred by reasons of [r]es [j]udicata, as it would be following a fresh request for management evaluation.”

Considerations

9. The Tribunal takes note of the parties’ agreement concerning the resubmission of the applicant’s request for management evaluation and the respondent’s commitment to assess the merits of the claim.

10. The Tribunal also notes that the applicant withdraws her application further to the Tribunal’s pointing out concerns with regard to receivability during the hearing.

11. Finally, the Tribunal takes note that the applicant reserves her right to submit a further application dependant on the outcome of the management evaluation and that the respondent agrees not to argue that “such application ... would be barred by reasons of [r]es *judicata*”. In this respect, the Tribunal must clarify that it cannot guarantee the outcome of an application which has not yet been filed. An agreement between the parties cannot have a binding effect on the Tribunal with respect to its task to review the receivability of an application. It is the role of the Tribunal to assess the receivability of an application as a matter of law and to decide ultimately on this matter.

Conclusion

12. In view of the foregoing, the Tribunal DECIDES:

The appeal having been withdrawn, there is no longer any matter for adjudication before the Tribunal. Consequently, the proceedings are closed.

(Signed)

Judge Thomas Laker

Dated this 1st day of June 2010

Entered in the Register on this 1st day of June 2010

(Signed)

Víctor Rodríguez, Registrar, Geneva