



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/038
(UNAT 1644)
Judgment No.: UNDT/2011/014
Date: 14 January 2011
English
Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

VILLANUEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Sergei Raskalei, UNOG

Introduction

1. By application filed on 3 November 2008 with the former UN Administrative Tribunal, the Applicant, a P-3 staff member, contested the decision refusing to appoint him to the P-4 post of Deputy Chief, Security and Safety Section of the United Nations Office at Geneva (“UNOG”).

2. In additional written submissions filed in the Registry of the former UN Administrative Tribunal on 29 July 2009, the Applicant, having taken note of the Secretary-General’s decision of 9 December 2008 granting him partial satisfaction following his request for review of the above decision and awarding him 11 months’ net base salary as compensation for the damage suffered, reduced his claims and requested the Tribunal to order the Secretary-General:

- a. To redeploy him to a vacant post at level P-4, in exchange for the P-3 post he currently occupies, and pay him the salary he would have received if he had been promoted to level P-4 in 2007;
- b. If that is not possible, to give him absolute priority for any level P-4 post of Chief or Deputy Chief of Security within the Department of Safety and Security;
- c. To launch an internal review of the Department of Safety and Security to identify and ameliorate the mechanisms that allowed the commission of such an unlawful act and determine individual accountability.

3. Pursuant to the transitional measures set out in General Assembly resolution 63/253, the application, which was pending before the Administrative Tribunal, was transferred to the United Nations Dispute Tribunal on 1 January 2010.

Facts

4. The Applicant entered the service of the United Nations Economic Commission for Latin America and the Caribbean in Santiago, Chile on 10 July 1994 as Chief Security Officer in the Division of Administration and Security, at level P-3. On 1 September 1998, he was transferred to a level P-3 post at UNOG as Deputy Chief (Second Officer) of the Security and Safety Section.

5. On 17 November 2006, he submitted an application for the P-4 post of Deputy Chief, Security and Safety Section at UNOG. In January 2007, the Applicant was appointed Acting Deputy Chief pending the selection of a candidate for the post.

6. On 23 February 2007, on the proposal of the programme manager, the Central Review Committee recommended that the Director-General of UNOG approve the Applicant's appointment. On 26 February 2007, the Director-General asked the Under-Secretary-General, Department of Safety and Security for clearance to appoint the Applicant, pursuant to section III (18) of the document entitled "Lines of Reporting, Responsibilities and Administrative Arrangements for Security and Safety Services at Offices away from Headquarters and Regional Commissions".

7. By memorandum of 27 June 2007 to the Director-General of UNOG, the Under-Secretary-General, Department of Safety and Security expressed reservations about the Applicant's leadership qualities and suggested that other candidates be interviewed before a final decision was taken. In the end, on 30 July 2007 another candidate was selected for the post.

8. On 1 August 2007, the Applicant submitted to the Secretary-General a request for a review of the above-mentioned decision. Following the Secretary-General's rejection of his request on 10 September 2007, the Applicant submitted an appeal to the Joint Appeals Board ("JAB") on 5 October 2007.

9. The JAB submitted its report to the Secretary-General on 21 July 2008. It concluded, among other things, that the decision refusing to grant promotion to

the Applicant was unlawful, and recommended that the Secretary-General appoint the Applicant to a P-4 post, or, if he refused such appointment, pay him compensation equal to 11 months' net base salary and, in addition, give him absolute priority for any P-4 post in the security field.

10. On 3 November 2008, the Applicant submitted his application to the former Administrative Tribunal.

11. On 9 December 2008, the Deputy Secretary-General informed the Applicant that the Secretary-General took the view that the contested decision was unlawful and had therefore decided to pay him the compensation proposed by the JAB. He refused, on the other hand, to appoint him to a P-4 post or give him absolute priority in promotion to any P-4 post in the security field.

12. On 11 June 2009, having requested, and been granted, several extensions of time by the Administrative Tribunal, the Respondent filed his answer to the application. The Applicant filed his rejoinder on 24 July 2009.

13. As the case could not be decided by the UN Administrative Tribunal before its abolition on 31 December 2009, it was transferred to the United Nations Dispute Tribunal on 1 January 2010.

14. By letter dated 5 January 2011, the Tribunal informed the parties that it considered that no hearing was necessary in the case and granted them one week in which to give their views on that question. On 10 January 2011, the Respondent stated that he agreed with the Tribunal's position that no hearing was necessary. The Applicant also replied on the same day, making no objections.

Parties' contentions

15. The Applicant's contentions are:

- a. The Applicant acknowledges that, in deciding to pay him an indemnity equal to 11 months' net base salary, the Secretary-General has compensated him for his economic damage. However, the irregularities committed have seriously violated his fundamental rights, as well as

harmed the credibility and integrity of the Organization's selection and recruitment process, and economic compensation is not a sufficient remedy. For this reason, he has requested the Tribunal to order the actions listed in paragraph 2 hereof.

16. The Respondent's contentions are:
 - a. The Applicant has been adequately compensated for the damage suffered by the award of an amount equal to 11 months' net base salary, and no other remedial action is required;
 - b. To grant him absolute priority for every P-4 post becoming vacant in the field of security would ultimately violate the rights of other candidates;
 - c. Launching an internal review of the Department of Safety and Security would not constitute remedial action vis-à-vis the Applicant.

Judgment

17. In his latest written submissions, the Applicant acknowledges that he has been compensated for the economic damage resulting from the decision, acknowledged by the Secretary-General as unlawful, refusing to appoint him to the P-4 post of Deputy Chief, Security and Safety Section at UNOG. Since the Applicant is no longer seeking an award of monetary compensation, it only remains for the Tribunal to decide the claims set forth by the Applicant in his rejoinder to the Respondent of 24 July 2009 and repeated in his email of 10 January 2011 to this Tribunal, as set out in paragraph 2 of this Judgment.

18. Article 10.5 of the Statute of this Tribunal provides:

As part of its judgment, the Tribunal may order one or both of the following: *a)* Rescission of the contested administrative decision or specific performance ...; *b)* Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant ...

19. First, with regard to the Applicant's claim that the Tribunal order the Secretary-General to exchange the P-3 post he currently occupies for a P-4 post and appoint him to that, the Tribunal is bound to reject such a claim as, except in specified cases which are not applicable here, the Tribunal has no power to issue orders to the Administration.

20. Concerning the Applicant's claim that the Tribunal order the Secretary-General to give him absolute priority for any P-4 post of Chief or Deputy Chief of Security that might arise in the Department of Safety and Security, the provisions of the Tribunal's Statute cited above do not give it authority to issue such orders to the Administration—orders that would, in any event, contravene the provisions governing the selection of staff, which impose a duty on the Administration to select the best qualified candidate for a given post at the time of the selection.

21. As for the Applicant's claim that the Tribunal order the Secretary-General to launch an internal review of the Department of Safety and Security so as to identify and ameliorate the mechanisms that allowed such an unlawful act to be committed, the Tribunal's function is a judicial one of upholding the individual rights of staff member applicants, and it has no power, therefore, even where it finds lacunae in the workings of the Organization, to compel the Administration to take corrective action. The Tribunal must inevitably, therefore, rule such a claim inadmissible.

22. Lastly, with regard to the Applicant's final claim, for the determination of individual accountability, article 10.8 of the Statute of the Tribunal provides: "The Tribunal may refer appropriate cases to the Secretary-General of the United Nations ... for possible action to enforce accountability."

23. Even supposing that the Applicant intended to rely on the above provision in claiming that the Tribunal order the Secretary-General to hold certain staff members personally accountable, that is a power available to the Tribunal alone, which it may exercise on its own motion if it deems it appropriate, even in the absence of a request by an applicant. Furthermore, whether or not the Secretary-General takes any such action to enforce accountability cannot adversely affect the rights of a staff member applicant. This claim by the Applicant is therefore

inadmissible and, in any event, the Tribunal does not consider that there is any need in the present case to avail itself of the above-cited provision.

Decision

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

The application is dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 14th day of January 2011

Entered in the Register on this 14th day of January 2011 month year

(Signed)

Víctor Rodríguez, Registrar, Geneva