



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/030

Judgment No.: UNDT/2011/109

Date: 23 June 2011

Original: English

Before: Judge Marilyn J. Kaman

Registry: New York

Registrar: Santiago Villalpando

SURVO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 15 April 2011, the Applicant filed an application for suspension of action. In this application, he described the circumstances surrounding the contested administrative decision as follows:

... the Applicant has been ordered to return and report in a demoted position (P-4 Statistician) to the Statistics Division (8th floor B block of the ESCAP [Economic and Social Commission for Asia and the Pacific] secretariat building), where he had served as Section Chief (ESCAP/[Statistics Division]/[Statistical Information Services Section (“SISS”)]) from June 2003 to September 2010. This was preceded by the reclassification of the SISS Chief post from P-4 to P-5 and the Applicant losing the position in a non-promotion case to another candidate in September 2011. The contested decision in the instant case is the Administration’s attempt to identify the incumbent (Applicant) “a suitable post”, which should have been done before the successful candidate assumed the duties on 13 September 2010.

2. The Applicant further informed that, on 13 April 2011, he had “requested mediation from the Mediation Service[s]” of the Ombudsman.

3. In an email of 15 April 2011 to the parties, the Registry acknowledged receipt of the application, served it on the Respondent instructing him to file and serve a reply by 18 April 2011, and called for a tentative hearing on 20 April 2011. The Registry further observed the following:

The Registry notes that the Applicant states that he is currently also intending to have the present matter solved amicably through the mediation services of the Ombudsman. However, the Registry has not received any written confirmation from the parties that they seek mediation in accordance with art. 15.3 of the Rules of Procedure. If the parties seek to have the matter solved through mediation, they are to immediately notify the Registry in writing for the Tribunal to provide the parties with the necessary orders under art. 15.4.

4. By a motion of 18 April 2011, jointly signed by the Applicant and the Officer-in-Charge of the Administrative Services Division (no mentioning made of which department), the Applicant requested the Tribunal to immediately refer the case to the Mediation Services of the Ombudsman. In the forwarding email, the Applicant requested that the proceedings before the Tribunal be suspended three months.

5. In an email of 18 April 2011, Counsel for the Respondent, while confirming the agreement to go to mediation, stated that “[p]ursuant to [art.] 2.2 of the Statute [of the Tribunal] the matter should be dismissed for lack of urgency, rather than deferred”. In a subsequent email of the same day, Counsel for the Respondent clarified that “[t]he Respondent request [sic] that the matter be referred to mediation pursuant to [art.] 15 of the Rules of Procedure, and that the proceedings be suspended”.

6. In Order No. 114 (NY/2011) of 18 April 2011, pursuant to art. 15 of the Rules of Procedure, the Tribunal referred the present case to the Office of the Ombudsman for mediation and suspended the proceedings for a period of sixty days, i.e., until 24 June 2011. The Tribunal also instructed the parties that the filing and serving of the Respondent’s reply and the hearing were postponed until further notice.

7. In a letter of 22 June 2011, Ms. Susan John, Regional Ombudsman, Bangkok, Office of the United Nations Ombudsman and Mediation Services, informed the Tribunal that:

... In respect of the Application for Suspension of Action of the decision by the Executive Secretary of ESCAP to return Mr. Survo to the Statistics Division, the parties, after having participated in mediation, have reached a successful resolution on the particular issue that was the subject of the suspension of action. Accordingly, it is my understanding that the Applicant is requesting that his Application for Suspension of Action, case UNDT/NY/2011/030 be withdrawn. It is

my further understanding that he will be submitting to the Tribunal a request for withdrawal of the Application for Suspension of Action.

Consideration

8. At the request of the parties, the Tribunal referred the case to mediation pursuant to art. 15 of the Rules of Procedure.

9. Under art. 15.6 of the Rules of Procedure, “It shall be the responsibility of the Mediation Division [here, the Regional Ombudsman in Bangkok] to apprise the Dispute Tribunal of the outcome of the mediation in a timely manner”. The Regional Ombudsman in Bangkok did so on 22 June 2011, informing the Tribunal that the “particular issue” that was subject of the suspension of action has been resolved “successfully”.

10. According to art. 8.2 of the Statute of the Dispute Tribunal, “An application shall not be receivable if the dispute arising from the contested decision had been resolved by an agreement reached through mediation”.

11. With the matter of the suspension of action being resolved by a mediation agreement, the application is therefore no longer receivable.

12. The Tribunal finds that, in light of the mediation agreement between the parties, the application for suspension of action is not receivable under art. 8.2 of the Statute of the Dispute Tribunal. The Tribunal may therefore proceed to dismiss the application and close the case, without any need for a formal withdrawal of the application by the Applicant.

Conclusion

13. The application is dismissed in its entirety upon the resolution of the dispute by an agreement reached through mediation.

(Signed)

Judge Marilyn J. Kaman

Dated this 23rd day of June 2011

Entered in the Register on this 23rd day of June 2011

(Signed)

Santiago Villalpando, Registrar, New York