

*Translated from French*



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/GVA/2011/092

Judgment No.: UNDT/2012/045

Date: 5 April 2012

English

Original: French

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**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** René M. Vargas M.

AL-MULLA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Winston Sims

**Counsel for Respondent:**

Ingeborg Daamen-Mayerl, UNOV/UNODC

## **Introduction**

1. By an application filed with the Registry of the Tribunal in Geneva on 19 December 2011 and completed on 17 January 2012, the Applicant, a staff member at the United Nations Office on Drugs and Crime (“UNODC”), contests the decision to reassign him to a P-3 post after he had held a P-4 post.

2. He requests the Tribunal to rescind that decision, refer the case to the Secretary-General for possible action to enforce accountability, and order the payment of several years’ net base salary as compensation for damages suffered.

## **Facts**

3. The applicant joined the United Nations in Vienna in 1985. He was promoted to the P-3 level in 1992, and in 2006 his fixed-term appointment was converted into a permanent appointment.

4. On 1 July 2007, the Applicant was appointed to an L-4 post (under the 200 series of the former Staff Rules applicable to technical assistance project personnel) as Regional Programme Coordinator for the Gulf Cooperation Council Countries, Division for Operations, UNODC, Vienna. The letter of offer, dated 21 May 2007, stated:

Your permanent appointment status will be frozen for the duration of this assignment. Upon completion of this assignment, you would revert to your current P-3 contractual status and level, and would be required to apply for and be selected for positions for promotion to the P-4 level.

5. On 9 April 2009, the Applicant was informed of the decision of the Executive Director of UNODC to laterally reassign him to the UNODC Subregional Office in Abu Dhabi.

6. After initially declining the transfer, then accepting it, then postponing his entry-on-duty date several times, the Applicant was informed during a meeting on 1 December 2009 of the decision taken by the Executive Director to no longer

laterally reassign him to the UNODC Subregional Office in Abu Dhabi as Special Representative to the Gulf Countries at the P-4 level. He was also advised that he would continue to perform his functions of Regional Programme Coordinator for the Gulf Cooperation Council Countries in Vienna until such time as the new Head of the UNODC Subregional Office in Abu Dhabi was appointed, and that thereafter, in accordance with his permanent appointment, he would be transferred to a yet-to-be-identified P-3 post in Vienna.

7. By email dated 4 December 2009, the Chief of the Human Resources Management Service confirmed to the Applicant the decisions that had been communicated to him during the meeting on 1 December.

8. On 21 December 2009, the Applicant requested a management evaluation of the decision to no longer laterally reassign him to Abu Dhabi, and on 23 December, he filed an Application requesting the Tribunal to suspend implementation of that decision. The application was registered under the number UNDT/GVA/2009/109 and was followed on 4 May 2010 by an application on the merits.

9. By inter-office memorandum dated 1 March 2010 addressed to the Executive Director of UNODC and titled “Recommendation for redeployment of posts and reassignment of staff within the Division for Operations and the Division for Treaty Affairs”, the directors of the two divisions recommended the redeployment of posts and the reassignment of staff within the two divisions, as of 1 April 2010. With regard to the Applicant, the memorandum made the following recommendation:

To assign [the Applicant] PSC post 202565, P-3) to the Quality Control and Oversight Unit within IPB and change the post title to Programme Officer (Quality Control). For this post, [the Generic Job Profile] of a Senior Programme Officer applies but it is to be complemented with ... short [Terms of Reference] ... This lateral reassignment will constitute a substantive change in functions to be performed by the staff member.

10. On 2 March 2010, the Applicant received the terms of reference for the aforementioned P-3 post.

11. On 9 March 2010, the Executive Director approved the recommendations contained in the aforementioned inter-office memorandum.

12. By email dated 12 March 2010, the Applicant was advised of his reassignment to the aforementioned P-3 post. He took up his new functions on 15 March 2010.

13. By email dated 24 March 2010, the Applicant received the personnel action forms for his reassignment to the aforementioned post and his return to a permanent P-3 appointment.

14. By email dated 3 June 2011, the Human Resources Management Service transmitted to the Applicant a copy of Human Resources Action Request No. 2011/02/9271 regarding his March 2010 reassignment in accordance with the inter-office memorandum of 1 March 2010.

15. In *Al-Mulla* UNDT/2011/105 of 22 June 2011, the Tribunal dismissed the application on the merits submitted by the Applicant on 4 May 2010 appealing the decision of 4 December 2009 to no longer reassign him laterally to Abu Dhabi. With regard to the Applicant's reassignment to a P-3 post, the Tribunal noted:

6. The Applicant was also critical of the fact that after the withdrawal of his lateral reassignment he was required to return to a post at his original P-3 level. Again that decision has not been the subject of a management evaluation and is not receivable by the Tribunal.

16. By email dated 30 June 2011, the Human Resources Management Service transmitted to the Applicant, at the latter's request, a copy of the inter-office memorandum of 1 March 2010.

17. By letter dated 29 July 2011, which was apparently transmitted to the Management Evaluation Unit of the Secretariat of the United Nations in New York on 1 August 2011, the Applicant submitted to the Secretary-General a request for management evaluation of the decisions contained in (i) the inter-office memorandum of 1 March 2010 approved by the Executive Director on 9 March 2010, including the decision to "demote" him from P-4 to P-3; and (ii)

Human Resources Action Request No. 2011/02-9271 concerning his March 2010 reassignment in accordance with the inter-office memorandum of 1 March 2010.

18. The Applicant filed an incomplete application with the Tribunal on 19 December 2011 and completed it on 17 January 2012. In his application, he contested (see application form, sections III and IV) “the decisions to appoint him from P-4 to P-3” as contained in (i) the 4 December 2009 decision of the Chief of the Human Resources Management Service, for which he had requested a management evaluation on 21 December 2009; and (ii) the inter-office memorandum of 1 March 2010 approved on 9 March by the Executive Director of UNODC, which he received in June 2011 and for which he said he had requested a management evaluation on 29 July 2011.

19. The Respondent filed his reply on 24 February 2012.

20. By Order No. 63 (GVA/2012) of 30 March 2012, the Tribunal advised the parties that it would first rule on the receivability of the application, without holding a hearing.

### **Parties' submissions**

21. The Applicant's contentions are:

- a. The contested decision violated his rights;
- b. He was the victim of mismanagement, abuse of authority, discrimination, prejudice, bad faith, deception and retaliation.

22. The Respondent's contentions are:

- a. The Applicant was reassigned to a P-3 post on 15 March 2010 and was officially informed thereof on 12 March 2010. He should have requested a management evaluation of that decision no later than 14 May 2010, but did not do so until over a year had passed. The application is therefore time-barred;

- b. The contention that the Applicant was not advised of the contested decision until June 2011 is unfounded and in bad faith.

### **Consideration**

23. The Applicant contests the decision to reassign him to a P-3 post after he had held a P-4 post. The evidence provided shows that he was notified of that decision on 12 March 2010.

24. Staff rule 11.2(c) states that “[a] request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested”.

25. In the present instance, however, the Applicant did not request a management evaluation of the decision to reassign him to the P-3 post until 1 August 2011, over one year late.

26. Article 8, paragraph 3, of the Statute of the United Nations Dispute Tribunal points out, moreover, that the Tribunal “shall not suspend or waive the deadlines for management evaluation”, and according to established case law of the United Nations Appeals Tribunal, the article precludes the Dispute Tribunal from extending the deadline for submitting a management evaluation request to the Secretary-General (see for example *Costa* 2010-UNAT-036, *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini et al.* 2011-UNAT-108).

27. In his application, the Applicant states that he became aware of the contested decision through the email of 4 December 2009 from the Chief of the Human Resources Management Service and the inter-office memorandum of 1 March 2010, approved by the Executive Director of UNODC on 9 March 2010, a copy of which he did not receive until 30 June 2011.

28. As regards the email of 4 December 2009, inasmuch as it informs the Applicant that he would be transferred to a yet-to-be-identified P-3 post, and assuming that this is an administrative decision which could be appealed, no

management evaluation request was filed with regard to that decision within the time limits established under staff rule 11.2(c) cited above.

29. With reference to the inter-office memorandum of 1 March 2010, while the Applicant maintains that he was unaware of it until 30 June 2011, it only confirmed the decision to reassign the Applicant to a P-3 post, of which he had been officially notified on 12 March 2010. Moreover, that decision was implemented on 15 March 2010, and since then, he has been performing the functions associated with a P-3 post and is being compensated accordingly. Furthermore, he received the personnel action forms for his reassignment on 24 March 2010. Therefore, the Applicant cannot seriously maintain that he did not become aware of the contested decision until 30 June 2011.

30. Given that, according to established case law, confirmation decisions do not reopen the time limits for appeal (see the Appeals Tribunal judgment *Sethia* 2010-UNAT-079 and several judgments of the United Nations Dispute Tribunal, including *Rahman* UNDT/2011/183, *Payman* UNDT/2011/193, *McCloskey* UNDT/2012/022), the decision of which the Applicant was reportedly notified on 30 June 2011 could not have reopened the time limits for filing a request for management evaluation.

31. Thus, in the absence of a management evaluation request submitted in a timely fashion, the application must be declared irreceivable.

### **Conclusion**

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

The application is dismissed in its entirety.

(Signed)

Judge Jean-François Cousin

Dated this 5<sup>th</sup> day of April 2012

Entered in the Register on this 5<sup>th</sup> day of April 2012

*(Signed)*

René M. Vargas M., Registrar, Geneva