



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/079

Judgment No.: UNDT/2012/048

Date: 13 April 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

KAMANOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, United Nations Secretariat

Introduction

1. The Applicant contests the decision of 9 July 2010 by which the Director of the Statistics Division of the Department of Economic and Social Affairs (“DESA”), in the United Nations Secretariat, informed her that her second reporting officer had requested him to withhold her within-grade salary increment.

2. She requests the Tribunal to: (a) declare that the decision followed a common course of conduct of abuse of authority and discrimination against her; (b) find that the Administration’s protracted reply with regard to the validity of her performance appraisal for the period 2009-2010 represents a denial of her right to due process; (c) order her transfer outside DESA; and (d) order that any adverse material be removed from her file. Furthermore, she requests the Tribunal to order the Respondent to pay her: (a) monetary compensation for the failure to undertake her formal performance appraisal for the period 2009-2010 and (b) monetary compensation equivalent to two years’ net base salary for the damage to her career and the physical and moral injury she suffered as a result of the aforementioned decision.

Facts

3. The Applicant entered the service of the United Nations on 11 December 1989 at the P-2 level on a short-term appointment in DESA. On 1 April 1995, she was granted a permanent appointment and in 1997, she was promoted to the P-3 level as a Statistician in the Statistics Division of DESA.

4. On 9 July 2010, the Director of the Statistics Division informed the Applicant that, in accordance with section 16 of administrative instruction ST/AI/2002/3 on the performance appraisal system, her second reporting officer had decided, on the recommendation of her first reporting officer, to withhold her within-grade salary increment on the grounds that her performance did not meet expectations for the period 1 April 2009 to 31 March 2010. On the same day, in a memorandum, the Director of the Division requested the DESA Executive Office to withhold the Applicant’s salary increment.

5. By letter dated 16 July 2010, the Applicant requested a management evaluation of the decision of 9 July 2010.
6. On 1 August 2010, the Applicant was granted the contested salary increment.
7. On 10 May 2011, the request for management evaluation was rejected as not receivable since the Applicant had received what she was requesting.
8. Following an extension of the relevant deadline, the present application was received by the New York Registry on 25 August 2011.
9. On 26 September 2011, the Respondent submitted his reply and requested the award of costs against the Applicant.
10. By Order No. 263 (NY/2011) of 8 November 2011, the judge handling the case at the New York Registry ordered that it should be transferred to the Geneva Registry.
11. On 3 April 2012, the Tribunal held a hearing on the case, in which the Applicant and Counsel for the Respondent participated by videoconference.

Parties' submissions

12. The Applicant's contentions are:
 - a. The decision of 9 July 2010, by which the Director of the Statistics Division informed her that her second reporting officer had requested him to withhold her within-grade salary increment, was taken in violation of the relevant rules, in particular administrative instruction ST/AI/2002/3;
 - b. The contested decision constitutes an act of harassment.
13. The Respondent's contentions are:
 - a. The application is moot because the Applicant received the within-grade increment in question;

- b. The Statistics Division correctly followed the procedures provided for in section 16 of administrative instruction ST/AI/2002/3. The Applicant has failed to establish that the decision was tainted by extraneous considerations;
- c. The application constitutes an abuse of process that justifies the award of costs against the Applicant.

Consideration

14. It is clear from the documents in the case file that on 25 August 2011, when the present application was filed with the Registry of the Tribunal in New York, the Applicant had already been granted the within-grade increment in question. She therefore had no further interest in appealing before the Tribunal a decision that had already been overturned (see *Calvani* UNDT/2010/027, *Osman* UNDT/2010/158, *Tranchant* UNDT/2011/065 and *Price* UNDT/2011/095).

15. Therefore, the application must be declared non-receivable.

16. While the Respondent requested that the Tribunal should apply article 10.6 of its Statute, which allows it to award costs against a party, the Tribunal considers that in the present case, it is appropriate merely to caution the Applicant strongly that in future, she should appeal before the Tribunal only those decisions that may be prejudicial to her.

Conclusion

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

The application is rejected, as is the Respondent's request for the award of costs against the Applicant.

(Signed)

Judge Jean-François Cousin

Dated this 13th day of April 2012

Entered in the Register on this 13th day of April 2012

(Signed)

René M. Vargas M., Registry, Geneva