



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/075

Judgment No.: UNDT/2012/064

Date: 4 May 2012

English

Original: French

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** René M. Vargas M.

KAMANOU

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant contested before the Joint Appeals Board (“JAB”) in New York the failure to recognize her contribution to a study on poverty published by the Economic Community of West African States (“ECOWAS”) and to select her for a P-4 post advertised in vacancy notice STT-DESA-413905-R-New York and for a temporary P-4 post, both in the Statistics Division of the Department of Economic and Social Affairs (“DESA”), United Nations Secretariat.
2. She requested that the JAB recommend to the Secretary-General that:
  - a. She be granted a P-4 position in the Statistics Division or be transferred to another office pending her promotion to the P-4 level;
  - b. She be given credit for her contribution to the ECOWAS publication entitled “ECOWAS Poverty Profile” during the period 2003-2006;
  - c. She be awarded damages as compensation for the moral and material damage suffered.
3. Pursuant to the transitional measures set out in General Assembly resolution 63/253, the case, which was pending before the JAB when it was abolished on 1 July 2009, was transferred to the Dispute Tribunal.

## **Facts**

4. 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 2000, she was promoted to the P-3 level as a Statistician in the Statistics Division of DESA.
5. The Applicant was involved in the drafting of a study entitled “ECOWAS Poverty Profile” between 2003 and the first half of 2006 and even thereafter, albeit occasionally owing to sick leave. In November 2007, the study was published by ECOWAS and the Statistics Division was credited as having

collaborated in its publication. The preface of the document listed the names of the primary authors, including some members of the Statistics Division. The Applicant's name was not mentioned.

6. On 16 August 2007, Vacancy Announcement No. STT-DESA-413905-R-New York for the post of Statistician at the P-4 level in the Statistics Division of DESA was posted on the Galaxy online jobsite. On 14 October 2007, the Applicant applied for the post. Five candidates, including the Applicant, were shortlisted for interviews with a three-member panel. The Applicant was not recommended for the post.

7. On 3 July 2008, DESA posted an internal vacancy announcement for the post of Statistician at the P-4 level in the Statistical Planning and Development Section of the Statistics Division. The Applicant applied for the post on the same day and was interviewed by an interview panel on 17 July 2008. She was not selected.

8. On 13 November 2008, the Applicant requested that the Secretary-General review the decision not to select her for either of the two aforementioned P-4 posts and the decision not to include her name among the authors of the ECOWAS Poverty Profile.

9. On 16 and 17 December 2008, the Applicant was informed that the Secretary-General had refused to change the contested decisions. On 19 January 2009, she submitted to the JAB in New York an incomplete statement of appeal, which she completed on 20 March 2009.

10. On 20 May 2009, the Respondent submitted his reply.

11. As the JAB had not considered the case by 1 July 2009, when it was abolished, the case was transferred to the Dispute Tribunal for consideration.

12. On 14 May 2010, the judge handling the case at the New York Registry delivered Judgment UNDT/2010/093, ruling exclusively on the decision not to attribute the Applicant for her contribution to the aforementioned publication. That judgment was annulled by Appeals Tribunal Judgment *Kamanou* 2011-

UNAT-113 of 11 March 2011, which remanded the case to the Dispute Tribunal for a *de novo* review.

13. By Order No. 263 (NY/2011) of 8 November 2011, the remanded case was transferred from the Dispute Tribunal's New York Registry to the Geneva Registry.

14. By Order No. 46 (GVA/2012) of 2 March 2012, the Tribunal ordered the Applicant to file, in preparation for the hearing, a final submission summarizing her position and specifying the remedial actions sought. The Applicant filed her submission on 20 March 2012 and the Respondent submitted his comments on 28 March 2012.

15. On 22 March 2012, the Respondent offered to call eight witnesses to testify at the hearing and attached written statements from four of them. The next day, the Applicant objected to that offer. In Order No. 60 (GVA/2012) of 26 March 2012, the Tribunal stated that it would not call those witnesses to provide evidence during the hearing. It did, however, add to the case file the four written statements submitted and invited the Respondent to file and serve written statements by the other proposed witnesses. The Respondent did so on 29 March 2012 and the Applicant submitted her comments on the eight written statements on 30 March 2012.

16. On 3 April 2012, the Tribunal held a hearing on the present case, in which the Applicant and Counsel for the Respondent participated by videoconference.

17. Also on 3 April 2012, the Respondent submitted a final statement from one of the proposed witnesses. By Order No. 68 (GVA/2012), the Tribunal informed the Applicant that it would not base its findings on that belated statement.

### **Parties' submissions**

18. The Applicant's contentions are:

a. She was discriminated against by her supervisors by being denied promotion over the years; she applied unsuccessfully for P-4 posts at least 10 times in the eight years prior to her application, while staff members from Italy, the Netherlands and Germany who had entered the same service at the P-2 level after her were promoted. Candidates were selected based on their race and nationality, not their competencies;

b. She was subject to verbal harassment in 2005 when her Section was abolished, and again in January 2009. The Applicant's supervision and work assignments changed frequently, compromising her career prospects. The Director of the Statistics Division abolished the Applicant's Section and, consequently, she did not belong to any particular Section for a few months and had three reporting officers during that time. Her supervisors, who were at the D-1 and D-2 levels, were replaced by staff members at the P-3 and P-5 levels; it was a form of harassment to have imposed on her a supervisor who was at the same level as her;

c. The harassment to which she was subjected is also demonstrated by the fact that she was not recognized as a co-author of the ECOWAS Poverty Profile, which was published by ECOWAS, and that she was not selected for either the P-4 post advertised in Vacancy Announcement No. STT-DESA-413905-R-New York or the temporary P-4 post in the Statistical Planning and Development Section of the Statistics Division. As a result of those acts of harassment, she had to be placed on sick leave; she then contacted the Ombudsman, the Medical Service and the Ethics Office;

d. Her second reporting officer, the Chief of the Statistical Planning and Development Section, considered that, owing to her technical knowledge, she did not meet the fundamental requirements of the posts for which she had applied. Yet, between 2000 and 2006, he had stated in her performance evaluations that she showed outstanding professionalism with

regard to statistics. The Section Chief's claim that the selections were based on professional criteria was untenable;

e. Her applications had not been given fair consideration. The interview panel for the post advertised in Vacancy Announcement No. STT-DESA-413905-R-New York comprised her Section Chief—a German national—and the DESA Executive Officer—an Italian national—while the panel for the temporary post comprised the two people mentioned above and a staff member from a German-speaking country;

f. The work that she had carried out and her qualifications demonstrated that she had all the competencies required for the disputed posts;

g. The Applicant's Section Chief explained to her verbally in 2005 that the criteria followed by the panel during the interviews were not based solely on competencies and that some posts were reserved for staff members from particular countries. The Section Chief had admitted to her that his choice was entirely discretionary and she reported this to the Director of the Statistics Division, who, rather than investigating the matter, had engaged in retaliatory actions against her;

h. It had been decided after the ECOWAS study was completed that she would be promoted to the P-4 level. However, while she was on mission in Abuja in February-March 2006, she was transferred to the Demographic and Social Statistics Branch, but without a promotion. A German national with less experience than her was selected for the post advertised in Vacancy Announcement No. STT-DESA-413905-R based on racial criteria. The assertion that that candidate met all of the requirements for the post is completely false;

i. With regard to her contribution to the ECOWAS Poverty Profile, she was involved in that project from November 2003 to June 2006. In stating that her contribution was less significant than she claims, the Director of the Division was mistaken as to the period during which she

worked on the study. Some of her supervisors colluded to deny her due credit for her role in the project.

19. The Respondent's contentions are:

a. In accordance with the Charter of the United Nations and with chapter IV of the Staff Regulations in force at the time, the power of appointment of staff members rests with the Secretary-General. However, his discretion is limited by the obligation to appoint the most qualified staff and to respect the selection processes. It is not for the JAB nor the Tribunal to substitute their assessment of staff members' qualifications for that of the Secretary-General;

b. If the Applicant contends that the selection processes were tainted by prejudice against her, she must provide supporting evidence. Yet, the documents submitted show that the selection processes were conducted in accordance with section 7 of administrative instruction ST/AI/2006/3 on the staff selection system and that the Applicant's competencies were evaluated on the basis of interviews. This selection process was validated by the Central Review Committee;

c. In the case of the post advertised in Vacancy Announcement No. STT-DESA-413905-R, the Applicant's experience and qualifications did not give her any particular priority for selection and the interview panel found that her technical knowledge did not cover a broad range of statistical programmes, as was explicitly required by the Vacancy Announcement. Furthermore, the fact that the candidate selected for the post in question had fewer years of experience than the Applicant does not, in and of itself, show prejudice;

d. In the case of the temporary vacancy, the interview panel determined that the Applicant did not meet the fundamental requirements, particularly in terms of knowledge and experience with statistical programmes and management of data of substantial complexity;

e. With regard to the dispute over the publication of the ECOWAS report, the Applicant's request is not receivable because the decision was taken by the Secretariat of ECOWAS regarding one of its own publications; it is not an administrative decision taken by the United Nations;

f. Subsidiarily, the Applicant did not work single-handedly on the publication. She fails to establish that United Nations staff members colluded to exclude her name from the list of persons involved in that publication, even though her work on the study was recognized in her performance evaluation.

### **Consideration**

20. This case was remanded to the Dispute Tribunal by the Appeals Tribunal following the latter's annulment of a previous judgment in its Judgment UNAT-2011-113 of 11 March 2011. In light of the fact that the case was remanded to the Dispute Tribunal by the Appeals Tribunal, the judge who is now ruling on the case is entitled to take his decision based on all the written evidence added to the case file at any stage of the trial proceedings, whether on the initiative of the parties or at the request of the judges who conducted those proceedings. However, the present judge will not consider either the content of the annulled judgment or all the testimony given and statements made orally before the judges who have dealt with this case in the past.

21. In an order, the present judge stated that he would not call the witnesses proposed by the Respondent to testify at the hearing but accepted their written statements. He considered that the many documents in the case file allowed him to make an informed decision and that the parties had been afforded the opportunity to submit their comments on all those documents.

22. The Applicant first contests the decision not to include her name in the list of authors of a study on poverty published by ECOWAS.



23. First, a ruling must be made on the receivability of the application, and particularly on the competence of the Tribunal to adjudicate such a dispute. It is not contested by the parties that the Applicant, who was employed with the United Nations Secretariat and worked in DESA, was involved at least from 2005 in drafting the aforementioned study at the behest of her supervisors and under the supervision of ECOWAS and that, in November 2007, the study was published by the Secretariat of ECOWAS. It contained a preface signed by both by the DESA Director and the President of the ECOWAS Commission, as well as a list of people who had participated in the drafting of the study, which did not include the Applicant's name.

24. Given that, according to its Statute, the Tribunal is competent to pass judgment on the legality of a decision taken by DESA but is not competent to pass judgment on the legality of a decision taken by ECOWAS, it is important to determine which organization took the decision not to include the Applicant's name.

25. All of the case file documents, particularly a letter dated 11 February 2010 from the Head of the Statistics Service in the ECOWAS Secretariat, who acknowledges having participated in the publication of the said study, show that the study is an ECOWAS publication as indicated by its title and logo, for which it holds the copyright, and that the final list of the people who participated in its drafting was drawn up by the President of the ECOWAS Commission. It follows that the decision contested by the Applicant was not taken by DESA. The Tribunal is, therefore, not competent to assess the legality of the decision. Thus, the application must be rejected insofar as it concerns the failure to acknowledge the Applicant's contribution to the study on poverty.

26. Second, the Applicant contests the decisions not to select her for either the P-4 post advertised in vacancy announcement STT-DESA-413905-R-New York, or the temporary P-4 post, both in the Statistics Division of DESA.

27. Since the Applicant failed to provide a specific argument for each decision but made the same arguments for both of them, and since she did not argue that

there were separate irregularities for each selection process, the Tribunal will consider all of the Applicant's arguments together.

28. The only argument presented by the Applicant in support of the contention that the decisions not to select her were unlawful is that she was harassed and discriminated against by her supervisors.

29. With regard to the harassment to which she claims to have been subjected, she alleges, *inter alia*, that she was assigned various duties that did not match those given in her job description. However, the case file does not show that management had asked the Applicant to perform tasks that were different from those for which she was recruited. While she maintains that DESA had no right to make her work on the drafting of the poverty study published by ECOWAS without her role as co-author being acknowledged, the Applicant does not seriously argue that the involvement of DESA in the study was contrary to the mission assigned to that Department. Moreover, the fact that her supervisors did not succeed in having ECOWAS include her name as co-author of the study is not sufficient to establish that she was harassed by her supervisors.

30. The Applicant considers that she has proven the discrimination to which she claims to have been subjected by saying that, since 2002, she has applied unsuccessfully for at least 10 P-4 posts, whereas in her performance evaluations she has most often been rated as exceeding performance expectations. The fact that the Applicant has failed to obtain a promotion several times even though the quality of her performance was acknowledged by her supervisors is not sufficient to establish that she was discriminated against since, at least in the case of the contested selection processes, her annual performance evaluations were only one of the elements taken into consideration when examining her application, the other being the outcome of her interviews with the interview panels.

31. Moreover, while she alleges that staff members of African descent were discriminated against in DESA as compared to their colleagues of European descent, it should be noted at the outset that the complaints that the Applicant filed with the bodies set up within the Organization to allow staff members to report discrimination were not successful. Furthermore, the Respondent, in his

submissions, provided the Tribunal with information demonstrating that there is no discrimination against staff members of African descent in that Department.

32. Thus, it follows from the above that the Applicant has failed to establish that the selection processes for the contested posts were flawed.

**Conclusion**

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

The application is rejected.

*(Signed)*

Judge Jean-François Cousin

Dated this 4<sup>th</sup> day of May 2012

Entered in the Register on this 4<sup>th</sup> day of May 2012

*(Signed)*

René M. Vargas M., Registrar, Geneva