



**Before:** Judge Thomas Laker

**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:**

Stéphanie Cochard, UNOG

## **Introduction**

1. The Applicant is a Programme Management Officer at the P-3 level in the Quality Control and Oversight team, Integrated Programme and Oversight Branch, Division for Operations with the United Nations Office on Drugs and Crime (“UNODC”) based in Vienna, Austria.

2. By application dated 26 July 2012, he contests the decision of UNODC to find him ineligible for a P-5 post of Representative, Sub-Regional Office for the Gulf Cooperation Council Countries (“GCC”), job opening number: 11-DRU-UN-OFFICE ON DRUGS AND CRIME-19887-R-ABU DHABI (X) (“P-5 post”).

## **Background facts**

3. The Applicant entered into the service of the United Nations in 1985. He was promoted to the P-3 in 1992 and in 2006 his fixed-term appointment was converted into a permanent appointment. As of 1 July 2007 he was selected to serve on an assignment at the L-4 level to the post of Regional Programme Coordinator for the GCC, UNODC in Vienna. He was informed that upon completion of his assignment, he would revert to his initial P-3 post.

4. In January 2009, the Applicant applied for the position of Senior Programme Coordinator in Abu Dhabi, at the L-5 level (VA Number 09-PMG-UNODC-420357-R-Abu Dhabi). This vacancy announcement was cancelled in March 2009.

5. In May 2009 the Executive Director of UNODC made a decision to laterally re-assign the Applicant to an L-4 post as Programme Coordinator in Abu Dhabi. However, he never took up this post and this decision was withdrawn on 4 December 2009.

6. The Applicant subsequently contested the decision to no longer re-assign him to above-referenced L-4 post and this Tribunal rejected his application in

judgment *Al-Mulla* UNDT/2011/105. The appeal against this judgment was dismissed by the Appeals Tribunal in judgment *Al-Mulla* 2012-UNAT-226.

7. By inter-office memorandum dated 1 March 2010 addressed to the Executive Director of UNODC, it was recommended:

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.

8. On 2 March 2010, the Applicant received the terms of reference for the aforementioned P-3 post. On 9 March 2010, the Executive Director approved the recommendations contained in the aforementioned inter-office memorandum.

9. By email dated 12 March 2010, the Applicant was advised of his reassignment to the aforementioned post. He took up his functions on 15 March 2010 and by email dated 24 March 2010, he received the personnel action forms for his reassignment to the above post and his return to a permanent appointment at the P-3 level. The Applicant requested management evaluation regarding this reassignment on 1 August 2011. In judgment *Al-Mulla* UNDT/2012/045 this Tribunal found his application not receivable because he did not comply with the prescribed statutory time-limits. The appeal against this judgment is still pending.

## **Facts**

10. The P-5 post in question was advertised in Inspira as from 15 June 2011 to 15 July 2011 and the Applicant applied for it on 14 July 2011.

11. On 7 December 2011, the Applicant received an email from the Office of Human Resources Management informing him that his candidature against the P-5 post was unsuccessful.

12. On 23 January 2012, the Applicant requested management evaluation of the decision and received a response on 27 April 2012 in which the

Organization's decision was upheld. In this decision, the MEU also dealt with the Applicant's allegation that the P-5 post was previously advertised at the P-4 level and that he had been shortlisted. It follows from the documentary evidence before the Tribunal, that this position had been reclassified from P-4 to P-5 effective 1 May 2011.

13. The Tribunal on 4 February 2013 issued a Case Management Order No. 16 (GVA/2013) informing the parties that the matter was suitable to be determined on the basis of the pleadings filed and invited them to make comments, if any. The Respondent indicated that there was no need for a hearing in the matter while the Applicant did not respond.

#### **Parties' submissions**

14. The Applicant joins issue with several claims raised in his previous applications before this Tribunal, referenced above, on which judgments have been rendered; as such they are *res judicata* and cannot be considered by this Tribunal. Therefore, the Tribunal will only determine the Applicant's main relevant contentions regarding the non-consideration for the P-5 post, which are:

- a. He has been a subject of retaliation for participating in a negotiation of a whistle blowing episode;
- b. He was eligible to apply for the P-5 post;
- c. The Administration displayed no interest in placing him on available P-4 posts which points towards prejudice, discrimination and retaliation and therefore contributing to his ineligibility;
- d. His ineligibility argued by the Respondent is as a result of an unlawful demotion from P-4 to P-3 which was designed to ensure that he did not have access to a P-5 post; and
- e. He had initially been shortlisted for the same post.

15. The Respondent's argument is that pursuant to section 6.1 of ST/AI/2010/3 (Staff Selection System), the Applicant as at the time of his application for the P-5 post was at the P-3 level hence ineligible to apply for it.

### **Consideration**

16. The main issue to be determined by the Tribunal is whether or not the Applicant was eligible to apply for the P-5 post as of 14 July 2011.

17. Section 6 of ST/AI/2010/3 provides for "Eligibility requirements" which in part states as follows:

6.1 Staff members holding a permanent, continuing, probationary or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade. Staff members in the General Service and related categories holding a permanent, continuing or fixed-term appointment may apply for positions in the Field Service category at any level, irrespective of the grade held in the General Service and related categories, provided they meet the requirements of the post.

18. As of 15 March 2010, the Applicant was encumbering a P-3 post which he continues to encumber as at the date of his application to the Tribunal. The relevant personal action forms clearly indicate that upon his reassignment to his current P-3 post, his permanent appointment, at the personal P-3 grade, was restored effective 15 March 2010.

19. Since a P-5 position is obviously more than one level higher than P-3, it follows from the above provision that a staff member at the grade of P-3, holding any of the listed types of contract, shall not be eligible to apply for a P-5 post, the Applicant holds a permanent appointment and was a P-3 as at the time of application for the P-5 post.

20. Therefore, the decision to exclude the Applicant from consideration for the P-5 post is legal.

21. The Tribunal does not have to consider whether the Applicant had been initially shortlisted for the post at the P-4 level, before it had been reclassified.

It is undisputed that the position at stake had been reclassified from the P-4 to P-5 level effective 1 May 2011. The Applicant did not take any legal action, be it regarding the cancellation of the vacancy announcement for the P-4 position, or with respect to the reclassification exercise, at the material time and is now no longer entitled to do so.

22. In light of the foregoing, the Applicant's claims regarding his alleged participation in whistle blowing activities as well as regarding being a victim of discrimination, prejudice and retaliation cannot be regarded as relevant with respect to the selection process for the P-5 post.

### **Conclusion**

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

The application is rejected in its entirety.

*(Signed)*

Judge Thomas Laker

Dated this 8<sup>th</sup> day of March 2013.

Entered in the Register on this 8<sup>th</sup> day of March 2013.

*(Signed)*

René M. Vargas M., Registrar, Geneva