



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/042

Judgment No.: UNDT/2013/048

Date: 13 March 2013

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:

Self-Represented

Counsel for respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction and Procedural History

1. On 14 July 2012 the Applicant, the Chief Disarmament Demobilisation and Reintegration/Senior Disarmament Demobilisation and Reintegration (DDR) Advisor for the United Nations Support Mission in Libya (UNSMIL), filed a motion with the United Nations Dispute Tribunal (UNDT) requesting an extension of time to challenge a selection process decision which he claims discriminated against him.

2. The Applicant submitted that the exigencies of work and lack of resources facing the Applicant in UNSMIL make it difficult for him to file his substantive application within the prescribed time-limits. The Applicant became aware of the decision on or around 29 February 2008. The Applicant received no written communication of the decision to not appoint him, or that the post has been filled.

3. The Applicant filed a request for management evaluation on 18 March 2012. The Management Evaluation Unit concluded on 21 April 2012 that the Applicant's request was not receivable.

4. The Tribunal granted the Applicant's Motion for Extension of Time on 24 July 2012, and gave the Applicant four (4) weeks to file his substantive application.

5. This Application was filed on 21 August 2012 and served on the Respondent. The Respondent filed his preliminary submissions on receivability on 11 October 2012, and his Consolidated Reply to the Application on 22 October 2012. In both filings, the Respondent moves the Court to first determine if the Application meets the receivability threshold stipulated in the Statute and Rules of the United Nations Dispute Tribunal.

6. The Tribunal afforded the Applicant the opportunity to respond to the Respondent's submissions on receivability, which response the Applicant filed on 7 January 2013.

Parties' Submissions

7. The Applicant submits that towards the later part of 2010, he noticed he was being passed over for several positions in field missions in favour of women candidates who were less qualified and sometimes had no field experience. He approached the then Under-Secretary-General for the Department of Field Support, Ms Susana Malcorra for an explanation/justification on the policy. His queries were not responded to.

8. On 18 March 2012, the Applicant sought management evaluation of the "decision not to give [him] a decision." The Management Evaluation Unit issued its decision against the Applicant on 21 April 2012.

9. The Respondent contends that the present application must be dismissed because it does not identify the specific administrative decision that is being challenged. The Application, the Respondent submits, is defective *ratione materiae*. On this ground alone, the Respondent moves the court to rule on the receivability of the Application as a preliminary issue.

Deliberations

10. The jurisdiction of the United Nations Dispute Tribunal is set out in the Statute. Article 2 of the Statute affords the Tribunal the authority to hear and pass judgment on an application filed by an individual to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

11. This provision must be read together with Article 8.2(e) of the Tribunal's Rules of Procedure, which requires an applicant to state "when and where the contested decision, if any, was taken (with the contested decision attached)."

12. The Applicant's gripe is with a policy that is being applied across the Organization. He has, since *circa* December 2010, written to various officials complaining of sexual discrimination against male staff members in the Organization's staff selection process. His aim was to "get a justification and change in policy." The Applicant describes the contested decision as: "the decision 'not to give me a decision' regarding discrimination against men in the UN hiring process in general and the rostering process in particular."

13. The Tribunal has examined the papers the Applicant has submitted and considered the arguments he raises as to why the failure to provide an explanation for the policy and the lack of a response to his many queries should be tantamount to an administrative decision for the purposes of the present Application.

14. While the Applicant makes reference to having been passed over for several posts in field missions, he has not identified which posts these were.

15. When seeking to challenge a policy, it is imperative that an applicant is specific in identifying how that policy has adversely affected him. A broad brush suggestion that a particular policy is discriminatory is not sufficient for the purposes of litigation. The Tribunal is not in the business of reviewing policies within the Organisation, except where an applicant clearly demonstrates that a specific decision has been made, which is adverse to his or her interests, in furtherance of that policy.

16. While the Applicant is correct in referring to jurisprudence of the Tribunal which holds that the failure to decide may sometimes constitute an administrative

decision and therefore subject to challenge, those cases are distinguishable from the facts of his Application.

17. The case of *Tabari* 2011-UNAT-177, for example, is distinguishable from the present application. Mr Tabari had specifically requested the payment of hazard pay for a specified period. Two months after his request was made, he began the process of challenging UNRWA's silence in response to his request.

18. Similarly, in the case of *Rosanna* UNDT/2011/217, the Applicant had sent several emails and two memoranda to the UNEP/DEWA management requesting reclassification of her post to enable her to take advantage of the said reclassification before her impending retirement. She also requested, in the alternative, an extension of her retirement date in order to apply and compete for the reclassified post. When none of these emails and first memorandum was responded to, the Applicant then wrote a final memorandum in which she put the Respondent on notice that the absence of a response from them, by a given deadline, would constitute a denial of her requests.

19. The Applicant in this case has had ample opportunity to apprise the Tribunal of the specific selection exercises which were concluded without giving him due consideration. Notification that he was not considered or successful in any of those selection exercises would have constituted an "administrative decision" for the purposes of the present application. The policy, which the Applicant alleges is discriminatory, would have been properly raised by him as grounds for his claim against the Respondent. An examination of the policy, its ambit and its application, would then have been properly before this court.

20. Presented as it is, the Application leaves the Tribunal with little choice but to refuse it for want of subject-matter jurisdiction. The Tribunal therefore cannot continue to adjudicate this matter.

21. The Application is **DISMISSED**.

(Signed)

Judge Vinod Boolell

Dated this 13th day of March 2013

Entered in the Register on this 13th day of March 2013

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi