



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

AL-MULLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON APPLICATION FOR
REVISION**

Counsel for Applicant:
Winston Sims

Counsel for Respondent:
Jérôme Blanchard, 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. He requests the Dispute Tribunal to vacate the entirety of Judgment *Al-Mulla* UNDT/2013/046 or paragraphs 3-4, 6-9, 11-12, 14-16 and 18-23 of this judgment.

Facts

2. On 8 March 2013, the Dispute Tribunal issued Judgment *Al-Mulla* UNDT/2013/046, in which it rejected the Applicant’s application contesting the decision to find him ineligible to compete for a P-5 post. The Tribunal held that at the time of applying for the post, the Applicant was at the P-3 level and the rules governing the staff selection process provided that staff members shall not be eligible to apply for positions more than one level higher than their personal grade.

3. On 3 July 2013, the Applicant filed with the Tribunal an incomplete application for revision of said judgment which was completed on 6 August 2013.

4. The application was served on the Respondent who filed his comments to the Applicant’s request for revision on 13 September 2013.

5. The Tribunal issued a case management Order No. 181 (GVA/2013) on 22 November 2013, ordering the parties to file reasoned objections, if any, to a judgment being rendered based on their written pleadings. The parties did not file any objections.

Applicant's contentions

6. The Applicant submits that the Respondent in his replies in case No. UNDT/GVA/2011/092, dated 24 February 2012, and in case No. UNDT/GVA/2013/019, dated 12 June 2013, acknowledges facts which “[reveal] [...] that the UNDT process had been abused and its decision had been so severely compromised as to completely discredit it.”

Considerations

7. Article 12.1 of the Statute, which is echoed in art 29.1 and art. 29.2 of the Tribunal's Rules of Procedure, provides that:

Either party may apply to the Dispute Tribunal for a revision of an executable judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.
(Emphasis added)

8. The decisive fact being relied upon by the Applicant is the alleged acknowledgement by the Respondent in one of his earlier replies dated 24 February 2012. The Applicant submits that the Respondent in that reply acknowledges that the decision regarding the Applicant's return to his initial P-3 post or “demotion” had been subject of management evaluation, which is contrary to what the Respondent had initially argued in *Al-Mulla* UNDT/2011/105.

9. The Tribunal does not need to consider whether the statements made by the Respondent in his reply of 24 February 2012 constitute a “decisive fact” in the meaning of the above quoted provision. In any case, the Tribunal notes that 24 February 2012 precedes the date of the Applicant's initial application on 26 July 2012 and, of course, the date of judgment *Al-Mulla* UNDT/2013/046 issued on 8 March 2013. Therefore, it is obviously impossible that any such fact might be considered to be “unknown to the Dispute Tribunal and to the party applying for revision” “[...] at the time the judgment was rendered”.

10. In addition, it is also obvious that the present application for revision, based on an alleged “decisive fact” contained in the Respondent’s reply of 24 February 2012 and submitted only in the summer of 2013, clearly missed the strict time-limit, according to which an application for revision “[...] must be made within 30 calendar days of the discovery of the fact”.

11. The Applicant additionally indicates that this admission by the Respondent was later repeated in another reply on 11 June 2013. This Tribunal finds that the alleged admission as indicated by the Applicant was first made on 24 February 2012 and its repetition on 11 June 2013 cannot make it a new fact.

Costs

12. Article 10.6 of the Tribunal’s Statute empowers the Tribunal to award costs against a party where it “determines that a party has manifestly abused the proceedings before it”.

13. The Respondent prayed the Tribunal to award costs against the Applicant for abuse of process and for filing a frivolous claim.

14. In this case, the Applicant brought an obviously unfounded application for revision and after filing two other requests for revision with the Dispute Tribunal, while relying on the same “decisive fact” and having lost the two earlier applications (see *Al-Mulla* UNDT/2013/107, *Al-Mulla* UNDT/2013/129).

15. Against this background, this Tribunal finds that the Applicant has manifestly abused the proceedings before it and awards costs against him.

Conclusion

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

- a. The application is rejected; and
- b. The Applicant is ordered to pay the sum of US\$800 as costs to the Secretary-General of the United Nations.

(Signed)

Judge Thomas Laker

Dated this 17th day of December 2013

Entered in the Register on this 17th day of December 2013

(Signed)

René M. Vargas M., Registrar, Geneva