



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

REHMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Miles Hastie, UNICEF

Introduction

1. By application filed on 17 August 2016, the Applicant contests the decision “to deprive [her] for recruitment as Programme Assistant GS-6, Health & Medicine, [United Nations International Children’s Emergency Fund (“UNICEF”)], Islamabad, [Pakistan]”, advertised on 8 January 2016.

Facts

2. The Applicant joined UNICEF, Islamabad, Pakistan, on 1 November 2006, as Project Assistant, GS-5, on a Temporary Fixed-Term contract with the Construction Unit. On 17 March 2010, she was selected as Program Assistant GS-6, Construction Unit, which expired on 31 December 2012. She was granted a fixed-term contract as Programme Assistant, GS-6, Education Section, on 1 January 2013 and was separated from service on 31 December 2015, upon the expiration of her fixed-term contract.

3. On 8 January 2016, the vacancy announcement for the above-referenced position was advertised with a deadline for application up to 22 January 2016. The Applicant applied for the position on 11 January 2016, and her application was acknowledged on the same day.

4. On 10 May 2016, in response to an email from her, the Applicant was informed that the review of candidates for the above-referenced position was at the short-listing stage to decide those candidates to be invited to take the written test.

5. On 12 May 2016, as a reply to another email from her, the Applicant received confirmation that the written test was being held on that day. Following her inquiry, the Applicant was informed on 16 May 2016 that she was not short-listed for the advertised position.

6. On 18 May 2016, the Applicant submitted a request for management evaluation, contesting the decision “ignoring [her] from shortlisting for written test against the vacant position”.

7. On 23 May 2016, the Applicant's request for management evaluation was considered as irreceivable *ratione personae* as "[she was] previously separated on 31 December 2015, [she was] not a staff member at any point in the recruitment exercise". Her request was therefore dismissed.

8. As noted above, the application in this matter was filed on 17 August 2016. The Respondent submitted his reply on 25 August 2016.

Parties' submissions

9. The Applicant's principal contentions are:

- a. PCO UNICEF Islamabad violated UNICEF Administrative Instructions CF/AI/2007-007 of 27 June 2007 and CF/AI/2010-001 of 10 March 2010, as well as her legal and contractual rights by depriving her from the selection process;
- b. In light of her profile and experience, as well as under the terms of sec. 5.1 of UNICEF Staff Selection Policy CF/EXD/2009-008, she has a right to stand for a fair chance to be shortlisted for the written test;
- c. Selected candidates for the written test were not more competent than her, and she was deliberately denied of her right to a job;
- d. The decision of the Management Evaluation Unit violated her rights;
- e. She seeks the following remedies:
 - i. that the selection process be declared null and void;
 - ii. payment of compensation in the amount of two-year salary at the level of the contested post for damages to her professional career and for loss of financial earning;
 - iii. disciplinary action against the Chief of Human Resources, PCO, UNICEF;

compensation of USD10,000 for irregularities in the selection process; and

iv. compensation of USD10,000 for the wrongful decision of the Management Evaluation Unit.

10. The Respondent's principal contentions are:

a. The application is irreceivable; the Applicant enjoyed no rights resulting from her status as a former staff member that are relevant to the contested selection exercise;

b. Circumstantial evidence contradicts the Applicant's allegations of bias, as the same hiring manager short-listed her for another (GS-7) position in June 2016, which had a different focus;

c. It is not the role of the UNDT to substitute its own decision for that of the Administration regarding the argument of the Applicant that short-listed candidates were not as competent as her; and

d. The application should be dismissed in its entirety.

Consideration

11. The Tribunal first has to determine whether the present application is receivable. It recalls that for it to have jurisdiction, there are a number of preconditions.

12. Article 2 of the UNDT Statute relevantly provides:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with *the terms of appointment or the contract of employment*. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance (emphasis added)

13. Also, art. 3 of the UNDT Statute relevantly provides:

1. An application under article 2, paragraph 1, of the present statute may be filed by:

[...]

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

14. The Respondent submits that the Applicant’s submission is not receivable as she was not a staff member at any time during the recruitment for the subject post and, as such, did not have any rights in the selection exercise.

15. The Tribunal notes that in *Shkurtaj* 2011-UNAT-148, the Appeals Tribunal decided that “a former staff member has standing to contest an administrative decision concerning him or her if the facts giving rise to his or her complaint arose, partly arose, or flowed from his or her employment. There must be a sufficient nexus between the former employment and the impugned decision”.

16. In light of this binding jurisprudence, the Dispute Tribunal will further determine if there is a sufficient nexus between the former employment of the Applicant and the impugned action and, consequently, if the present application filed by a former staff member is receivable *ratione personae* (*Khan* UNDT/2016/097)

17. It is uncontested that the Applicant was separated from service on 31 December 2015, upon the expiry of her fixed-term appointment, and that she applied to the contested post after the date of her separation. She was, thus, no longer a staff member when she made her application for the contested post on 11 January 2016. While she could have legal standing as a former staff member, the Tribunal notes that in applying the standard set by the Appeals Tribunal in

Shkurtai, there is no nexus between her non-selection to the advertised post and the terms of her previous appointment with UNICEF, which at the time of her application had ended.

18. In this respect, the Tribunal notes that sec. 9 of UNICEF's Administrative Instruction CF/AI/2010-001 does not apply to the Applicant's case. Neither this, nor any other legal provision, confers any rights on the Applicant with respect to her application for a position at UNICEF after the expiry of her fixed-term appointment, that is, as a former staff member.

19. It follows from the above that the application cannot but be rejected as irreceivable *ratione personae*, as it is beyond the jurisdiction of the Tribunal.

20. The Tribunal further determines that this is a matter appropriate to be considered in a summary manner, as provided for in art. 9 (Summary judgment) of its Rules of Procedure, which reads:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgment is appropriate.

Conclusion

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

The application is rejected.

(Signed)

Judge Rowan Downing

Dated this 6th day of September 2016

Entered in the Register on this 6th day of September 2016

(Signed)

René M. Vargas M., Registrar, Geneva