



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2016/049,
060, 061, 077
Judgment No.: UNDT/2017/052
Date: 6 July 2017
Original: English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

NATH
KHANNA
JOSHI
BATRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Faiza Zouakri, UNDP

Introduction

1. The Applicants, four locally-recruited General service category staff members of the United Nations Development Programme (“UNDP”) based in India, filed separate applications challenging the adoption of the new salary scales posted on 1 October 2014 on the website of the Office of Human Resources Management (“OHRM”), and entailing the freeze of the salary scales for staff on board prior to 1 November 2014. This measure resulted from the Comprehensive Local Salary Survey conducted in India in June 2013, which concluded that salaries for the locally-recruited staff were above the labour market.

Facts

2. A Comprehensive Salary Survey was conducted in New Delhi in June 2013. The results of it were published by OHRM in its website, as reflected in its cable dated 1 October 2014, that reads as follows:

Subject: New Delhi (India) local salaries

(AAA) Following the comprehensive salary survey conducted in New Delhi in June 2013, this is to advise you that the results of the survey indicate that salaries for locally-recruited staff are above the labour market when compared with the remuneration package of the retained comparators by 13.4 percent for General Service (GGSS) category and 19.4 per cent for National Officer category. Accordingly, the following salary scales are issued:

- (1) GS 62 and NO 22, both effective 1 June 2013, payable only to staff recruited on or after one November 2014, revised net salaries reflect downward adjustment of (-)13.4 per cent for GGSS and (-)19.4 per cent for NNOO.
- (2) Amend. one to GS61 and NO 21, effective 1 July 2012, payable to eligible staff already on board prior to one November 2014, the amendments are issued to reflect revised allowances.

(BBB) Revised allowances in rupees net per annum are as follows:

- (1) Child, per child, subject to maximum of six children

- a. 23,511 applicable to staff members for whom the allowance becomes payable on or after one November 2014;
 - b. 27,156 applicable to staff members for whom the allowance becomes payable prior to one November 2014;
- (2) First language
- a. 29,532 applicable to staff members for whom the allowance becomes payable on or after one November 2014;
 - b. 34,104 applicable to staff members for whom the allowance becomes payable prior to one November 2014;
- (3) Second language
- a. 14,766 applicable to staff members for whom the allowance becomes payable on or after one November 2014;
 - b. 17,052 applicable to staff members for whom the allowance becomes payable prior to one November 2014.

3. In late 2014-early 2015, the four Applicants, together with a large number of staff members in a similar situation and also affected by the above-cited measure, submitted to the Tribunal requests for extension of time to file applications.

4. On 24 March 2015, the Tribunal rendered a joint summary judgment regrouping UNDP staff members who challenged the same decision, including the Applicants, namely *Applicants UNDP UNDT/2015/022*. The Tribunal considered their requests for extension of time as incomplete applications and declared them irreceivable *ratione materiae*.

5. 14 staff members whose cases had been dismissed by the above-referenced judgment filed an appeal against it with the United Nations Appeals Tribunal. The Applicants did not file such any appeal.

6. Further to these appeals, the Appeals Tribunal issued Judgment *Taneja et al.* 2016-UNAT-628, on 24 March 2016, whereby the first instance judgment was reversed and the matter remanded to the Dispute Tribunal with directions to permit those Appellants who had filed an appeal with the United Nations Appeals Tribunal to file their applications with the Dispute Tribunal.

7. On 11 and 12 August 2016, the Applicants filed, respectively, the present applications with the Dispute Tribunal.

8. By Orders Nos. 164, 165, 166 and 168 (GVA/2016) of 22 August 2016, the Applicants were requested to inform the Tribunal whether they had filed an appeal against judgment *Applicants UNDP* UNDT/2015/022, and if so, to provide relevant details and supporting documents.

9. By letter dated 11 October 2016, the President of the Dispute Tribunal requested the President of the Appeals Tribunal to advise on whether, according to the Appeals Tribunal's records, any of the Applicants had filed an appeal, or sent any communication with the view to file an appeal, against the Dispute Tribunal's judgment, and in the affirmative, their current status. By letter dated 28 October 2016, transmitted on 31 December 2016, the President of the Appeals Tribunal responded that none of the Applicants had filed an appeal with the Appeals Tribunal, either via its eFiling portal or by email.

10. The Respondent filed his replies to the four applications on 3 November 2016.

Parties' submissions

11. The Applicants did not file any submissions regarding the receivability of their applications.

12. The Respondent's principal contentions are:

- a. The applications are not receivable as their cases were not remanded to the Dispute Tribunal, because none of the Applicants had appealed the

summary judgment issued in first instance. As a consequence, they were not formally remanded. It cannot be assumed that, in the absence of an appeal, they were automatically granted a right to re-file an application;

b. The statutory time limit to file an application with the Dispute Tribunal has now expired. The Tribunal did not grant any extension of time to the Applicants. The applications are thus time-barred;

c. The decision to freeze salary scales did not constitute an administrative decision.

Consideration

13. As a preliminary matter, the Tribunal deems it fit to adjudicate jointly the various applications at bar by one single judgment, considering that all of them challenge identical decisions, arise from common facts, raise the same factual and legal issues and have the same Respondent.

14. The Tribunal must first analyse the receivability of the present applications.

15. In this regard, article 11.3 of the Tribunal's Statute provides:

3. The judgements and orders of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. *In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.* Case management orders or directives shall be executable immediately. (emphasis added).

16. Pursuant to art. 7.1(c) of the Appeals Tribunal's Statute, the time limit to file an appeal is of "60 calendar days of the receipt of the judgment of the Dispute Tribunal".

17. It is established that none of the Applicants brought an appeal against *Applicants UNDP UNDT/2015/022* within the statutory timeframe, or even later. Hence, said judgment is no longer appealable and the matter dealt with therein became *res judicata*. *Res judicata* signifies that the same cause of action cannot be

adjudicated twice. Indeed, for the stability of the judicial process, it is desirable that there is an end to litigation. Accordingly, “[t]he party who loses cannot re-litigate his or her case” (*Shanks* 2010-UNAT-026bis, para. 4; *Costa* 2010-UNAT-063, para. 4; *Beaudry* 2011-UNAT-129, paras. 16-17; *Masri* 2011-UNAT-163, para. 12; *Meron* 2012-UNAT-198, paras. 25-26; *Abbasi* 2013-UNAT-315, para. 14; *Ghahremani* 2013-UNAT-351, para. 10; *Gakumba* 2014-UNAT-492, para. 12; *Onana* 2015-UNAT-533, para. 43).

18. The instant applications challenge the very same decision, touch upon the same factual and legal issues and, in sum, share the same cause of action, as the cases filed by the Applicants in late 2014-early 2015, disposed of by judgment *Applicants UNDP UNDT/2015/022*. Consequently, insofar as their cause of action has already been ruled upon by a judgment that is now final, these applications are not receivable.

19. The fact that analogous cases of 14 fellow colleagues from UNDP based in India were remanded by the Appeals Tribunal to the Dispute Tribunal has no bearing in this respect. The remand is a specific order by the Appeals Tribunal contained in *Taneja et al.* 2016-UNAT-628, and this Judgment applies strictly only to those Applicants who had formally lodged an appeal against *Applicants UNDP UNDT/2015/022*.

20. Therefore, the present applications are irreceivable as the matter they put to the Tribunal for review is *res judicata*.

Conclusion

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

The applications are rejected.

(Signed)

Judge Teresa Bravo

Dated this 6th day of July 2017

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Entered in the Register on this 6th day of July 2017

(Signed)

René M. Vargas M., Registrar, Geneva