UNITED NATIONS DISPUTE TRIBUNAL

Cases No.:	UNDT/GVA/2018/101, 102, 103, 104 and 105
Judgment No.:	UNDT/2019/121
Date:	28 June 2019
Original:	English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ALEX
ARORA et al.
CHATURVEDI et al.
DANIEL et al.
KAPOOR et al.

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Mohammed Abdou, OSLA

Counsel for Respondent:
Elizabeth Brown, UNHCR; Esther Shamash, UNDP; Alister Cumming and Zarqaa Chohan, UNICEF; Katrina Waiters, UNFPA; Mylène Spence and Ivanova Galan, UN-WOMEN

Introduction

1. The Tribunal is seized of 80 applications related to a challenge against the result of the comprehensive salary scale survey for local staff in India, conducted in June 2013. The applications involve the United Nations Secretariat, the Office of the United Nations High Commissioner for Refugees ("UNHCR"), the United Nations Entity for Gender Equality and the Empowerment for Women ("UN-WOMEN"), and three United Nations Funds and Programmes: the United Nations Development Program ("UNDP"), the United Nations Population Fund ("UNFPA") and the United Nations Children's Fund ("UNICEF").

2. This judgment concerns 25 applications, grouped in five cases,[1] related to 25 Applicants based in New Delhi working for:

a. UNHCR (1 Applicant, Case No. UNDT/GVA/2018/101);

b. UNDP (3 Applicants, Case No. UNDT/GVA/2018/102);

c. UNICEF (15 Applicants, Case No. UNDT/GVA/2018/103);

d. UNFPA (4 Applicants, Case No. UNDT/GVA/2018/104); and

e. UN-WOMEN (2 Applicants, Case No. UNDT/GVA/2018/105).

Facts

3. The 2013 Comprehensive Salary Scale Survey for local staff based in India ("2013 India Salary Survey") was conducted pursuant to the methodology adopted by the International Civil Service Commission ("ICSC") (see ICSC/72/R.11, Review of the methodology for surveys of the best prevailing conditions of employment at duty stations other than headquarters and similar duty stations - survey methodology II) and the Manual for the conduct of surveys of the best prevailing conditions of employment at duty stations other than Headquarters and similar duty stations – methodology II.

[1] A listing of the Applicants, per case, is attached to this judgment.

4. As per the above methodology and art. II of the Memorandum of Understanding ("MOU") between the United Nations and the World Health Organization ("WHO") for 2012-2013, WHO was designated to continue to act as responsible agency for the coordination of the local salary scale survey in New Delhi. Therefore, WHO had the overall responsibility for the survey, including the appointment of the salary survey specialists.

5. Pursuant to the above-referenced MOU, the United Nations acted as an agent for WHO in performing activities described in the MOU relating to the 2013 salary survey in India.

6. On 10 July 2014, the Chief, Compensation and Classification Section ("CCS"), Human Resources Policy Service ("HRPS"), Office of Human Resources Management ("OHRM"), United Nations, provided the results of the "comprehensive salary survey that [OHRM] conducted on behalf of WHO in New Delhi" to WHO for its approval as the responsible agency.

7. By memorandum dated 17 September 2014, a Human Resources Specialist, Compensation, Human Resources Policy and Administration of Justice Unit, Human Resources Department, WHO, Geneva, informed the Chief, CCS, HRPS, OHRM, United Nations, of the approval of the survey results.

8. The findings of the survey indicated that the salaries of the General Service and the National Officer categories in New Delhi were higher than the labour market by 13.4 per cent and 19.4 per cent, respectively. Because the salary survey entailed more than a 5% decrease in salaries, existing General Service and National Officer staff appointed prior to 1 November 2014 had their salaries "grandfathered/frozen", and new staff were subject to a new salary scale.

9. Following WHO's approval, OHRM published the above-mentioned new salary scale on its website on 1 October 2014, in the following terms:

> Subject: New Delhi (India) local salaries
>
> (AAA) Following the comprehensive salary survey conducted in New Delhi in June 2013, this is to advice 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 per cent 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 GS 61 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 [1] November 2014;
>
> b. 27,156 applicable to staff members for whom the allowance becomes payable prior to [1] November 2014;
>
> (2) First language
>
> a. 29,532 applicable to staff members for whom the allowance becomes payable on or after [1] November 2014;
>
> b. 34,104 applicable to staff members for whom the allowance becomes payable prior to [1] November 2014;

(3) Second language

a. 14,766 applicable to staff members for whom the allowance becomes payable on or after [1] November 2014;

b. 17,052 applicable to staff members for whom the allowance becomes payable prior to [1] November 2014.

Procedural History

10. The Applicants were among 296 General Service staff members based in India who, between December 2014 and February 2015, emailed to the Dispute Tribunal's Geneva Registry ("Geneva Registry") individual motions for extension of time to file an application to challenge the result of the 2013 India Salary Survey.

11. At the time, the Geneva Registry emailed all Applicants, who were all self-represented, requesting that the individual motions, and their annexes, be filed via the Tribunal's eFiling portal ("CCMS").

12. In March and June 2015, the Dispute Tribunal issued eight judgments,[2] which concerned 205 General Service staff members who had filed via CCMS an individual motion for extension of time to file an application. In those judgments, the Tribunal considered the motions as incomplete applications and found them not receivable *ratione materiae* upon reliance on *Tintukasiri et al.* UNDT/2014/026, noting that the decision to freeze the existing salary scales and to review allowances downward did not constitute an administrative decision for the purpose of art. 2.1(a) of the Tribunal's Statute. Ninety-eight (98) Applicants appealed the Dispute Tribunal's judgments before the United Nations Appeals Tribunal.

[2] See Judgments *Applicants UNDP* UNDT/2015/022; *Applicants UNFPA* UNDT/2015/023; *Applicants UNHCR* UNDT/2015/024; *Manoharan, Chandran, Sharma, Subramanian, Naik, Siddiqui* UNDT/2015/025; *Applicants UNICEF* UNDT/2015/026; *Arya, Ranjan, Khambampati* UNDT/2015/027; *Mullick, Gurudutta, Jaishankar, Varghese, Berry* UNDT/2015/028 and *Bharati* UNDT/2015/045.

13. In May 2016, the Appeals Tribunal issued seven judgments[3] finding that this Tribunal had "exceeded its competence and jurisdiction and committed errors in procedure when it determined that the requests for an extension of time were the 'equivalent' of applications". The Appeals Tribunal, therefore, reversed the above-mentioned Dispute Tribunal's judgments and remanded all 98 cases to this Tribunal, with directions to permit the Applicants to file their applications.

14. Details of the procedural history and adjudication of the 98 remanded cases can be found in Order No. 2 (GVA/2019) of 18 January 2019 and in six judgments that this Tribunal recently issued in May 2019.[4]

15. Towards the end of November 2017, while interacting with the Office of Staff Legal Assistance ("OSLA") concerning the provision of legal representation for self-represented applicants whose case had been remanded, the Geneva Registry identified that 91 of the 2014/2015 motions for extension of time to file an application from General Service staff members based in India had not been adjudicated in this Tribunal's judgments of March and June 2015.

16. In light of the Appeals Tribunal's judgments of May 2016, the Tribunal decided *suo moto* to reach out to the 91 self-represented General Service staff members involved to permit them to file their individual application. Furthermore, noting the complexity of the issues to be addressed, identical to the ones the Tribunal was to examine in the context of the 98 cases remanded by the Appeals Tribunal, the Tribunal instructed its Geneva Registry to request OSLA to reach out to the 91 self-represented potential applicants to offer its legal representation services.

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[3] See Judgments *Subramanian et al* 2016-UNAT-618; *Taneja et al.* 2016-UNAT-628; *Prasad et al* 2016-UNAT-629; *Bhatia et al* 2016-UNAT-630; *Thomas et al* 2016-UNAT-631; *Jaishankar* 2016-UNAT-632 and *Bharati* UNAT-2016-633.

[4] See Judgments *Prasad et al.* UNDT/2019/099; *Thomas et al.* UNDT/2019/100; *Gera et al.* UNDT/2019/101; *Bhatia et al.* UNDT/2019/102; *Manoharan, Chandran, Sharma, Subramanian, Naik, Siddiqui* UNDT/2019/103 and *Jaishankar, Bharati* UNDT/2019/104.

17. Following numerous communications with all involved, which started on 7 December 2017 through all available means (i.e., phone, email and postal mail), the Tribunal noted towards the end of 2018 that:

a. 5 of the 91 General Service staff members concerned had confirmed to the Tribunal that they did not want to pursue the matter. The Tribunal issued the respective Order on Withdrawal and each case file was closed;[5]

b. 61 of the 91 General Service staff members concerned did not respond to the Tribunal's communications despite having been clearly advised that failure to do so would result in the closure of the matters for want of prosecution;

c. 25 of the 91 General Service staff members concerned confirmed their intention to pursue the matter and retained the services of OSLA for their legal representation. These are the Applicants covered by this judgment, whose applications were grouped in five cases.

18. By Order No. 186 (GVA/2018) of 8 November 2018,[6] the Tribunal closed the above-mentioned 61 matters for want of prosecution, while exceptionally granting the possibility for each staff member concerned to "apply for reinstatement of her/his respective matter upon submission of a full justification for such reinstatement".

19. On 18 January 2019, the Judge assigned to the cases remanded by the Appeals Tribunal, Judge Rowan Downing, issued Order No. 2 (GVA/2019) *inter alia* returning the case files to the Geneva Registrar "for possible reassignment to another judge". The remanded cases together with the five cases involving the 25 applications referred to in para. 2 above were reassigned to the undersigned Judge.

[5] See Case No. UNDT/GVA/2017/074 (Duggal), Case No. UNDT/GVA/2017/113 (Bhuyan), Case No. UNDT/GVA/2018/015 (Charles), Case No. UNDT/GVA/2018/023 (Das) and Case No. UNDT/GVA/2018/033 (Sahoo).

[6] See Case No. UNDT/GVA/2018/119 (Aggarwal et al.).

20. On 21 January 2019, following OSLA's compilation of all the documents needed from the 25 Applicants, OSLA Counsel filed an "amended" application on the merits on their behalf, further to their individual motion for extension of time emailed in 2014/2015.

21. On 22 January 2019, the undersigned Judge held a Case Management Discussion ("CMD") with the parties, i.e., the Applicants' OSLA Counsel and the five Respondents' Counsel.

22. During the CMD, the undersigned Judge provided the parties with background information about the cases and discussed with them the way forward, noting that the intention was to bring them procedurally on par with the cases remanded by the Appeals Tribunal, so that all cases could be heard together if the hearing previously set by Judge Downing for 13 and 14 February 2019 concerning the remanded cases was to be held. It was therefore agreed that the Respondents would submit a reply within the next seven days, and that OSLA Counsel would have three days thereafter to submit comments on additional receivability arguments mentioned by the Respondents at the CMD.

23. Finally, the undersigned Judge advised the parties that following receipt of the above-mentioned submissions, she would decide on whether a hearing was necessary and, in the negative, vacate the hearing dates.

24. On 29 January 2019, Counsel for the Respondents submitted their replies, raising *inter alia* the issue of the receivability of the applications *ratione temporis* and *ratione materiae*.

25. On 31 January 2019, OSLA Counsel submitted his comments on the issue of receivability *ratione temporis*. In it, OSLA Counsel also incorporated by reference his 10 August 2017 comments on receivability filed in the cases remanded by the Appeals Tribunal to the Dispute Tribunal (see paras. 13 and 14 above).

26. By Order No. 6 (GVA/2019) of 7 February 2019, the Tribunal found that it was "in the interests of justice to determine the receivability of the applications as a preliminary matter, before entering into an examination of their merits". Furthermore, noting that such an issue is of a purely legal nature, the Tribunal decided to adjudicate them on the papers.

Parties' submissions on Receivability

27. The Tribunal is mindful of the short period to file submissions given to the parties in the cases being adjudicated following the CMD. Noting OSLA Counsel's incorporation of his comments on receivability filed in connection with the remanded cases, the Tribunal also took into account, by reference, the Respondents' submissions on receivability filed therein, namely those dated 9 June 2017. The below summary of contentions reflects this course of action.

28. The Applicants' principal contentions can be summarized as follows:

a. The applications are receivable *ratione temporis*; the Applicants learned about the contested decisions on or around 9 October 2014 and acted diligently by emailing individual motions for extension of time to file an application. This was well ahead of the applicable 90-day time limit to file an application before the Dispute Tribunal;

b. Their motions were not processed at the time and, therefore, no decision was issued;

c. Throughout 2018, OSLA made extensive attempts to contact the Applicants with a view to obtaining their consent to be represented by the Office. In January 2019, the Geneva Registry completed the registration of the Applicants' cases and OSLA Counsel filed their applications on the merits on 21 January 2019, only a few weeks after said formal registration of the cases;

d. The applications are also receivable *ratione materiae*. A request for management evaluation was not required. Staff rule 11.2(b) provides that the Secretary-General must determine if a decision was taken pursuant to the advice from technical bodies. In *Tintukasiri et al.*, the "Administration … found that requests for management evaluation were not receivable 'since the decision was taken pursuant to the advice from [a] Local Salary Survey Committee ("LSSC") in conjunction with salary specialists, and as such of a technical body under the terms of staff rule 11.2(b)". This is the case of the Applicants;

e. Furthermore, the above determination was made on behalf of the Secretary-General as per the language in the letters responding to the requests for management evaluation in *Tintukasiri et al.*;

f. Additionally, staff rule 11.2(b) does not impose a specific formal requirement for the determination of technical bodies. There is no requirement to have a "complete public list of technical bodies" and the determination in *Tintukasiri et al.* was made public in two judgments;

g. Assuming that no determination has been made, the Secretary-General's silence should be interpreted in favour of receivability;

h. The contested decision is an administrative decision affecting the terms of appointment of the Applicants; it is non-compliant with Annex I of the Staff Rules and Regulations, since the Secretary-General, amongst others, failed in his duty to fix the salary scales for staff members at the best prevailing conditions of employment in the locality of the UN office concerned;

i. The Applicants contest (1) the decision to freeze their respective salaries; and (2) the Administration's decision to maintain the salary scale in force prior to the salary freeze, insofar as this decision affects them;

j. Alternatively, the Applicants submit that a general salary freeze decision includes an implied decision to apply the freeze to the affected staff members individually; these implied decisions would therefore be the subject of the present challenge;

k. In the further alternative, the Applicants submit that they have all received oral confirmation from management that the salary freeze is applicable to them individually and thus seek to challenge these specific oral administrative decisions;

l. The Tribunal's Statute makes no distinction between acts of individual application and regulatory measures; art. 2 does not require for the decision to explicitly identify or name the specific individual(s) concerned; rather, what is required is that the staff member be adversely affected by the contested decision; concluding otherwise would allow the Administration to unilaterally define the jurisdictional boundaries of the Dispute Tribunal by framing its decision in a particular way;

m. Requiring that a document identifies each staff member by name and is individually communicated to each staff member is particularly problematic in cases like the present ones, where the Administration has refrained from submitting individual notifications of the salary freeze;

n. The Respondents' contention that the Applicants ought to have challenged the monthly salary payslips must be dismissed, *inter alia*, since they do not contain or even explicitly refer to the impugned decision—what is challenged in this case is the salary freeze, not the amount of remuneration; further, payslips may reflect the implementation of the contested decision, but do not contain the administrative decision or the reasons for it; it is not logic to ask the Applicants to disregard a clear and unequivocal notification of a salary freeze and seek to challenge the same decision through a document that does not specifically refer to it; time-limits are triggered by notification, not implementation; and

o. Concerning the Respondents' reliance on *Tintukasiri et al.* in support of their argument that the contested decision is not reviewable, the Applicants are of the view that the Dispute Tribunal is "not bound by a particular judgment but rather by the [Appeals Tribunal] jurisprudence as a whole". *Andati-Amwayi* 2010-UNAT-058 and *Pedicelli* 2015-UNAT-555 are also relevant to the Applicants' cases and should be given precedence over *Tintukasiri et al.*.

29. The Respondents' principal contentions can be summarized as follows:

a. The applications are not receivable *ratione temporis* because the Applicants failed to file an application within 90 days as of the date at which the salary scale became applicable, that is, at the latest, by 1 February 2015;

b. The Applicants did not support their individual motions for extension of time to file an application with any exceptional reason warranting its granting, nor did the Applicants identify any justification for filing the applications late;

c. Furthermore, the Tribunal did not grant the extension of time as required by art. 8(3) of its Statute;

d. The applications are not receivable *ratione materiae* because the Applicants failed to request management evaluation, which was required since their claims do not fall within the exception of staff rule 11.2(b), i.e., administrative decisions taken pursuant to advice from technical bodies. WHO did not advise the United Nations of the salary scales, but rather informed it of them;

e. Exceptions to requesting management evaluation should be interpreted restrictively. The Secretary-General has not determined that WHO is a technical body and, therefore, it cannot be considered as such for the purpose of staff rule 11.2(b). Furthermore, designation as a technical body cannot be inferred from the silence of the Organization or by analogy;

f. The Appeals Tribunal has held that absent "a determination by the Secretary-General that a specific decision-making body is a technical body, the exemption from … a management evaluation request under [s]taff [r]ule 11.2(b) does not apply" (see *Faust* 2016-UNAT-695 (para. 39) and *Gehr* 2014-UNAT-479 (paras. 25-26);

g. The Applicants cannot reasonably rely upon the quoted position of the UN Secretariat's Management Evaluation Unit ("UN MEU"), in *Tintukasiri et al.* in support of their not requesting management evaluation. First, the UN MEU has a discrete delegation of authority from the Secretary-General, which does not include the designation of technical bodies. Additionally, the UN MEU's opinions are not binding on the separately administered Funds and Programmes and other UN Entities who conduct their own management evaluation;

h. The Respondents are not estopped from arguing that the contested decision was not taken on the advice of a technical body, because they did not represent to the Applicants that this is the case. In the case of *Tintukasiri et al.*, the UN MEU made a concession that a salary scale promulgated on the advice of the LSSC was a decision taken pursuant to the advice from a technical body. However, this concession was made without apparent authority (see para. 29.g above). It was not issued to the Applicants in this case, with the intention that they rely on it. Instead, it was referred to in a judgment and this does not amount to a general waiver for all such cases;

i. The applications are also not receivable *ratione materiae* because the challenge concerns "an unreviewable regulatory/legislative enactment", and not an "appealable administrative decision"; *Tintukasiri et al.* is not distinguishable from the instant applications. Also, all the criteria of an unreviewable regulatory enactment are present in the case at hand. The Applicants intend to challenge a "policy decision of general application, which is not an administrative decision subject to judicial review"; and

j. Judgment *Pedicelli* 2015-UNAT-555 does not assist the Applicants. That judgment approved and distinguished *Tintukasiri et al.*, it did not overrule it. In *Pedicelli*, the Applicant did not contest the change from a 9-grade salary scale to a 7-grade one but, instead, the fact that upon conversion she was placed at the wrong grade. *Pedicelli* did not involve a "challenge to the enactment/scale itself".

Consideration

Receivability ratione temporis

30. It is a fact that the Applicants' 2014/2015 individual motions for extension of time were not processed at the time and, therefore, were not adjudicated by this Tribunal in its decisions of March and June 2015. It is also a fact that when the Geneva Registry identified the issue, the Appeals Tribunal had reversed the Dispute Tribunal's March and June 2015 judgments and had remanded the cases with clear directions to permit the filing of applications.

31. It is the Tribunal's view that the above directions called for reaching out to those concerned to give them also the opportunity to file an application and, more importantly, to have a judicial decision on their individual matter. Also, given the Appeals Tribunal directions in connection with the remanded cases, it would have been judicially counter-effective for the Dispute Tribunal to issue a judgment along the lines of its March and June 2015 rulings.

32. All of the above, place the Applicants' matters outside the scope of art. 8.3 of the Dispute Tribunal's Statute and, therefore, a decision on the individual motions for extension of time was not needed. What was required, and which was done, was to undertake all actions to ensure that all concerned be given the opportunity to file an application and exercise their right for judicial review.

33. Having re-examined the chronology of events, the Tribunal is satisfied that the Applicants, through their OSLA Counsel, acted promptly to file their applications. The Tribunal, therefore, finds that they are receivable *ratione temporis*.

Receivability ratione materiae

34. The Respondents argue that the applications are not receivable *ratione materiae* because the Applicants failed to request management evaluation of the contested decision, and the Tribunal cannot waive such mandatory requirement.

35. The Tribunal recalls that pursuant to staff rule 11.2(b) (emphasis added):

> A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, **as determined by the Secretary-General**, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

36. The Tribunal confirms that a request for management evaluation is a legal and jurisdictional requirement of a compulsory nature that cannot be waived, neither by the parties nor by the Tribunal.

37. Indeed, the purpose of management evaluation is to allow the Organization to correct itself or to provide acceptable remedies to the parties in cases where, upon review, it determines that an administrative decision is unlawful or that the correct procedure was not followed.

38. Management evaluation is *a sine qua non* condition to have access to the internal justice system. Access to justice is not an absolute right and procedural limitations, such as this one, are compatible with the nature and scope of access to justice, provided that they are prescribed by law and do not impair the very essence of such right.

39. Pursuant to staff rule 11.2(b), there are only two situations where the requirement to request management evaluation does not apply: disciplinary cases and decisions taken pursuant to advice obtained from technical bodies as determined by the Secretary-General.

40. The case at hand is not of a disciplinary nature, leaving the Tribunal to assess whether the contested decision, taken upon the advice of the LSSC and Salary Survey specialists, was taken upon the advice of a technical body. Relevantly, staff rule 11.2(b) does not provide for a particular way, e.g., administrative instruction or otherwise, for the Secretary-General to determine technical bodies.

41. The Tribunal notes that at the time of OHRM's communication (see para. 9 above), the Secretary-General had not yet issued an administrative instruction determining what bodies constitute technical ones for the purpose of staff rule 11.2(b). The relevant administrative instruction (ST/AI/2018/7) was issued only on 18 May 2018. Prior to this, staff members had little information, if none at all, concerning what constituted a technical body.

42. It is the Tribunal's view that not requesting management evaluation is an exception to the general rule and, as a consequence, it is incumbent on the Applicants to show that they fall under it.

43. In the present case, the Applicants argue that, at the time they filed their applications, they relied on a previous position by the Administration in *Tintukasiri et al.* whereby "requests for management evaluation were not receivable 'since the decision was taken pursuant to the advice from the [Local Salary Survey Committee ("LSCC")] in conjunction with salary survey specialists, and as such of a technical body under the terms of staff rule 11.2(b)" (brackets in the original). Furthermore, the Applicants claim that in that case, the UN MEU made a determination about the matter on behalf of the Secretary-General.

44. Administrative practices need to be consistent and uniform over a certain period of time, so that staff members rely on and build legitimate expectations in relation to them. The Tribunal is of the view that the position adopted by the UN MEU in one or two cases does not constitute a consistent and coherent administrative practice that could lead the Applicants to build a legitimate expectation on which they could have relied upon. Furthermore, it does not rise to the level of judicial precedent given the UN MEU's nature as an administrative body within the Organization.

45. Moreover, the fact that the Secretary-General has delegated authority to the UN MEU to perform management evaluations on his behalf under ST/SGB/2010/9 (Organization of the Department of Management), cannot lead to conclude that the Secretary-General is bound by its interpretation of such requirement in one or two specific situations. On the contrary, delegation of powers is defined from top to bottom of the hierarchical chain and not the other way around.

46. To be more precise, sec. 3 of ST/SGB/2010/9 describes the overall functions of the Under-Secretary-General for Management, whereas its sec. 10 describes the core functions of the UN MEU. The definition of "technical bodies" is not specifically contemplated in such description of functions. Instead, delegation of authority, to that effect, is contemplated in two other legal instruments: ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances) and, more recently, in ST/AI/2018/7 (Technical bodies).

47. In accordance with sec. 4.2 of ST/SGB/2009/4, "[a]dministrative instructions shall be promulgated and signed by the Under-Secretary-General for Management or by other officials to whom the Secretary-General has delegated specific authority".

48. As a consequence, the Tribunal finds that defining a technical body requires a specific delegation of authority to be exercised under the form of an administrative instruction.

49. From the Tribunal's point of view, it is not the role of the UN MEU to replace the legislative or administrative powers of the Secretary-General unless a delegation of authority has been issued.

50. The Tribunal understands that it is the Secretary-General's exclusive prerogative to legislate and to define what "technical bodies" are, as he recently did, through the Under-Secretary General for Management, in ST/AI/2018/7.

51. The Appeals Tribunal had the same view in its Judgment *Gehr* UNAT-2014-479, where it held that:

> 25. There was no evidence before the Dispute Tribunal (nor before this Tribunal) that the Secretary-General had made a determination pursuant to Staff Rule 11.2(b) designating rebuttal panels as "technical bodies".
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> 26. In the absence of such designation and having regard to the specific provisions of Staff Rule 11.2(b) and the overarching import of Staff Rule 11.2(a) (especially when read together with Article 8(1)(c) of the Dispute Tribunal Statute), the Appeals Tribunal finds that the [Dispute Tribunal] had no legal nor evidential basis to justify its determination that a rebuttal panel constituted a technical body, thus exempting Mr. Gehr from the mandatory first step of management evaluation. Moreover, even absent any designation process by the Secretary-General, the particular requirements set out in Section 14.1 of ST/AI/2010/5 do not persuade the Appeals Tribunal that the Secretary-General intended that a rebuttal panel should be considered as a technical body.

52. However, the Tribunal is aware of the fact that the UN MEU's determination was reflected in a public judgment of both the Dispute and the Appeals Tribunal (*Tintukasiri et al.* UNDT-2014-026, para. 25, *Tintukasiri et al.* 2015-UNAT-526, para. 6). Nonetheless, the Tribunal underlines that none of these judgments created a "judicial precedent" in respect of the requirement related to the request for management evaluation.

53. In fact, both judgments only addressed the issue of "irreceivablity" from the point of view of the nature of the contested decision and did not adjudicate on the point at stake in the instant applications, i.e., the definition of a technical body, nor did they include a determination on the applicability or not of such legal requirement.

54. In *Ovcharenko et al., Kucherov* UNDT/2014/035, this Tribunal stated in the factual section that:

> 15. Some of the Applicants, including Applicants *Ovcharenko* and *Kucherov*, requested management evaluation of the administrative decision of the Secretary–General to implement the … actions and recommendations of the ICSC and the General Assembly[.]

55. In that Judgment, this Tribunal held that:

> 20. As a preliminary matter, since the applications are being rejected on other grounds below, the Tribunal finds that it is not necessary to examine the question whether the Applicants were in fact obliged to submit a request for management evaluation prior to filling an application with the Tribunal and to determine the Receivability *ratione temporis* of the application.

56. The Tribunal also notes that no official communication was issued by the Secretary-General, following the issuance of the above judgments, to inform staff members that the UN MEU's determination therein with respect to the qualification of the LSSC in conjunction with salary survey specialists as a "technical body", for the purpose of staff rule 11.2(b), was correct or that it reflected the Secretary-General's view with respect to such determination.

57. The Applicants allege that should it be concluded that the Secretary-General has made no determination concerning technical bodies in the context of staff rule 11.2, his "silence should be interpreted in favour of receivability". This argument cannot stand. In this connection, the Tribunal recalls what the Appeals Tribunal held in *Faust* 2016-UNAT-695:

> 31. The plain wording of the Staff Rule cited above makes it clear that the general rule that a request for management evaluation must be submitted prior to seeking judicial review of an administrative decision is only subject to two exceptions: i) when the administrative decision imposes a disciplinary or non-disciplinary measure following the completion of a disciplinary process; and ii) when the administrative decision is taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General.

> 32. As for all exceptions, these situations must be interpreted restrictively. The provisions may not be interpreted broadly such as to conclude, for example, that any technical body could be equated to a "technical bod[y], as determined by the Secretary-General" within the meaning of Staff Rule 11.2(b). Similarly, not every formal panel can be likened to a "technical body". Therefore, an analogy cannot be drawn to determine whether the investigation panel in this case constitutes a "technical body". (footnote omitted)
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> 33. Ms. Faust argues that she was exempt from the requirement of submitting a request for management evaluation as a prerequisite to invoking the jurisdiction of the [Dispute Tribunal]. She claims that the determination by the Secretary-General under Staff Rule 11.2(b) is irrelevant. She also contends that in the absence of such determination by the Secretary-General, the remaining "ambiguity" should be assumed by the Organization.
>
> 34. Ms. Faust's reliance on these arguments is misconceived. This is a case where we apply the general principle of interpretation *ubi lex non distinguit, nec nos distinguere debemus*, i.e. where the law does not distinguish, neither should we distinguish (footnote omitted).

58. Finally, it is worth noting that, as pointed out by the Respondents, UN MEU's opinions are not binding on management evaluations that the separately administered Funds and Programmes and other UN Entities conduct. This notwithstanding, the Tribunal took note of the position taken at the 30 October 2018 CMD, held in connection with the cases remanded by the Appeals Tribunal, by Respondents' Counsel representing the separately administered Funds and Programmes and other UN Entities that they would most likely accept a Secretary-General's determination as to what constitutes a technical body for the purpose of staff rule 11.2(b), and not make a separate determination.

59. Indeed, while the authority to review requests for management evaluations has been delegated to the separately administered Funds and Programmes and other UN Entities concerned, the determination of what constitutes a technical body under staff rule 11.2(b) rests solely on the Secretary-General. Any other approach would lead to a system with different standards applying to different employing organizations.

60. Based on the above, the Tribunal finds that requesting management evaluation was, in these cases, a compulsory requirement. Since the Applicants did not do so, their applications are irreceivable.

61. In closing, the Tribunal wishes to commend OSLA for its efforts in reaching out to all self-represented Applicants to propose its services, thus assisting in allowing to as many of them proper legal representation in connection with complex legal issues. The Tribunal also commends both parties for their cooperation in filing submissions within a very short period after the holding of the CMD.

Conclusion

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

The applications are rejected as not receivable *ratione materiae*.

(*Signed*)
Judge Teresa Bravo
Dated this 28th day of June 2019

Entered in the Register on this 28th day of June 2019
(*Signed*)
René M. Vargas M., Registrar, Geneva

List of Applicants - Judgment UNDT/2019/121

Case Name	Case No.	Employment Entity	Applicant Last name	Applicant First name
Alex	**UNDT/GVA/2018/101**	UNHCR	Alex	Preethy
Arora et al.	**UNDT/GVA/2018/102**	UNDP	Arora	Seema
			Kekre	Akhilesh
			Singhal	Sarvesh
Chaturvedi at al.	**UNDT/GVA/2018/103**	UNICEF	Agnihotri	Neha
			Bhavnani	Sapna
			Chaturvedi	Apurva
			Dakthon	Tsepal
			Dogra	Sharmila
			Doshi	Yogesh
			Lama	Bijay
			Mohanty	Goutam
			Nayak	Ramesh
			Sahoo	Nikhila
			Sankaran	Mangala
			Selvaraj	Vasuki
			Singh	Minakshi
			Toteja	Rekha
			Utham Kumar	Reeja
Daniel et al.	**UNDT/GVA/2018/104**	UNFPA	Daniel	Lizy
			Jacob	Sunil
			Saxena	Pankaj
			Wahi	Sudhir
Kapoor et al.	**UNDT/GVA/2018/105**	UN-Women	Kapoor	Meena
			Oberoi	Sucheta