



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

FAISAL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**SUMMARY JUDGMENT
ON RECEIVABILITY**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

N/A

Introduction

1. By application filed on 6 June 2020, the Applicant contests:
 - a. The 7 December 2018 decision to downgrade the post that he encumbered with the Country Office Islamabad, Office of the United Nations High Commissioner for Refugees (“UNHCR”), from Associate Information and Communications Technology (“ICT”) Officer post (National Officer level) to Senior ICT Associate (GS-7 level);
 - b. The 19 February 2019 decision to advertise the downgraded position as an “internal/external vacancy”; and
 - c. His non-selection, in December 2013, for the P-3 position of ICT Support Officer, Vacancy No. 8393, with the Country Office Islamabad, UNHCR.

Consideration

Preliminary observation

2. Pursuant to art. 8.4 of the Tribunal’s Rules of Procedure, the Registrar “shall transmit a copy of the application to the respondent and to any other party a judge considers appropriate” after ascertaining that the application complies with articles 8.1 and 8.3 of said Rules. Also, under art. 10 of the Tribunal’s Rules of procedure, the Respondent shall have 30 calendar days to submit a reply.
3. The Tribunal has, on several occasions, considered matters of receivability on a priority basis without first serving the application on the Respondent or awaiting the Respondent’s reply (see *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masyllkanova* UNDT/2013/033, *Kalpokas Tari* UNDT/2013/180, *Karambizi* UNDT/2018/001, *Madi* UNDT/2018/006, *Nwogu* UNDT/2018/041 and *Morales* UNDT/2019/158).
4. After a review of the application and its supporting documents, the Tribunal deems that the present matter can be determined on a priority basis without first transmitting a copy of the application to the Respondent for a reply.

Receivability

5. The issue arising for consideration is the receivability of the present application. In *Christensen* 2013-UNAT-335, the Appeals Tribunal held that “the UNDT is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute” when determining the receivability of an application. The Appeals Tribunal held that:

This competence can be exercised even if the parties of the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable.

6. The Tribunal has, accordingly, chosen to proceed by way of a judgment on receivability as it is competent to raise the issue of jurisdiction *sua sponte*.

7. The Applicant contests three decisions: one taken in 2013 (his non-selection to a P-3 position), another one taken in December 2018 (downgrading of the post he encumbered), and a third one taken in February 2019 (advertisement of the downgraded position).

8. Art. 8.4 of the Tribunal’s Statute and art. 7.6 of its Rules of Procedure, provide that an application shall not be receivable if it is filed more than three years after an applicant’s receipt of the contested administrative decision. Recalling that the Applicant only filed his application in June 2020, the Tribunal finds that his challenge against the 2013 decision is not receivable *ratione temporis*.

9. With respect to the 2018 and 2019 contested decisions, the Applicant clearly indicated in section VI of his application form that he did not request management evaluation. In connection with decisions such as those that the Applicant intends to challenge, staff rule 11.2, clearly requires the filing of a request for management evaluation of a contested decision as a mandatory first step prior to seizing this Tribunal.

10. Pursuant to the above-mentioned staff rule and the Secretary-General's delegation of authority to the United Nations High Commissioner for Refugees, the latter determined that UNHCR staff members shall address requests for management evaluation to the Deputy High Commissioner within 60 days from the date a staff member received notification of an administrative decision.

11. The mandatory nature of management evaluation requests as a first step for judicial review is further asserted in art. 8.1(c) of the Tribunal's Statute and has been confirmed by the Appeals Tribunal (see *Servas* 2013-UNAT-349).

12. In the absence of a request for management evaluation, the Tribunal cannot but find that the Applicant's challenge to the 2018 and 2019 decisions is not receivable *ratione materiae*.

Conclusion

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

To reject the application as not receivable *ratione temporis* and *ratione materiae*.

(Signed)

Judge Teresa Bravo

Dated this 18th day of June 2020

Entered in the Register on this 18th day of June 2020

(Signed)

René M. Vargas M., Registrar, Geneva