



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

BEZZICCHERI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

François Lorient

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. The Applicant seeks an order for execution of Judgment *Bezziccheri* UNDT/2019/012, which:
 - a. Ordered the rescission of a decision from the Medical Director, Medical Services Division, United Nations Headquarters, communicated to her on 29 December 2014, not to recommend her for disability consideration by the United Nations Staff Pension Committee (“UNSPC”); and
 - b. Awarded her costs in the amount of USD5,000.

Facts

2. On 28 October 2021, the Applicant filed an application for an order for execution of Judgment *Bezziccheri* pursuant to art. 32.2 of the Tribunal’s Rules of Procedure
3. On 13 December 2021, the Respondent filed his reply asserting that *Bezziccheri* has been fully executed because the contested decision was rescinded, and costs were paid as ordered. The Respondent also maintains that *Bezziccheri* did not “outline a specific course of action for the Administration to take within a period of time”, which is required under article 32.2 of the Tribunal’s Rules of Procedure.
4. On 5 January 2022, the Applicant filed a motion for leave to add and file annex 27 to the application, which is an email exchange with the Medical Director, Division of Healthcare Management and Occupational Safety and Health (“DHMOSH”), dated 7 and 18 December 2021, where the latter *inter alia* informs the Applicant that the Medical Board would not accept any reports or medical certificates issued or submitted after the time of sick leave certification.
5. On 17 January 2022, the Applicant filed a motion addressed to the UNDT President requesting a fast-track hearing on the request for execution of *Bezziccheri*.
6. On the same date, the instant case was assigned to the undersigned Judge.

7. By Order No. 12 (GVA/2022) of 26 January 2022, the Tribunal requested the parties to attend a case management discussion (“CMD”) on 9 February 2022.

8. On 31 January 2022, the Applicant filed a motion seeking the joinder of a third party. In his motion, the Applicant requested the participation of a representative of the United Nations Joint Staff Pension Fund (“UNJSPF”) at the CMD.

9. On 2 February 2022, the Respondent responded to the Applicant’s 31 January 2022 motion, pursuant to the Tribunal’s instructions, submitting that the participation of a representative of the UNJSPF would neither assist the Tribunal in this matter nor serve judicial economy and efficiency. Accordingly, the Respondent requested the rejection of the abovementioned motion.

10. On the same day, the Applicant submitted a motion for disclosure requesting the Tribunal to order the Respondent to submit all its communications with the UNJSPF since 2013 concerning the Applicant’s case.

11. By Order No. 16 (GVA/2022) of 4 February 2022, the Tribunal rejected the Applicant’s 31 January and 2 February 2022 motions.

12. On 9 February 2022, the parties attended a Case Management Discussion (“CMD”).

Parties’ submissions

13. The Applicant’s principal contentions are:

a. Judgment *Bezziccheri* has not been fully executed because there is a chain of underlying errors and omissions behind the contested decision from 2014 that have not been corrected and are repeating themselves;

b. The Medical Director, DHMOSH, is biased against the Applicant and is refusing to accept for review by the medical board the medical reports submitted by the Applicant after her separation from service, i.e., December 2013, in contradiction with *Bezziccheri* and the request from

Dr. Bancroft, Joint Medical Services, of 19 December 2013, i.e., before her separation from service; and

c. The Organization has not acted in accordance with its own rules and procedures in violation of administrative rule H.3 of the Administrative Rules of the United Nations Joint Staff Pension Fund (JSPB/G.4/Rev.21), thus the Applicant should be allowed to request her disability benefit directly to the Pension Fund under administrative rule H.4(a).

14. The Respondent's principal contentions are:

a. The Judgment has been fully executed and the application is void. The contested decision has been rescinded, which is confirmed by the ongoing discussions with the Applicant concerning the appointment of a Chair to the Medical Board, and the use of medical reports from after her separation from service;

b. No new administrative decision has been taken at this point and, consequently, there is no decision to contest before the Tribunal;

c. The delays in procedures after the issuance of *Bezziccheri* are mainly due to the Applicant's appeal to UNAT and the following application for revision of the UNAT Judgment. The matter had to be suspended pending the full review by UNAT. Once litigation was final, the Respondent diligently resumed the new medical review process; and

d. Administrative Rule H.4(a) does not apply in this case as the Organization has not failed to act in accordance with administrative rule H.3. All administrative steps to resolve the Applicant's issue are being pursued by the Organization in accordance with its rules.

Consideration

The Applicant's motion of 17 January 2022 for a fast-tracked hearing

15. On 9 February 2022, the parties attended a CMD during which the Tribunal addressed all the legal issues at stake in the case at hand and conveyed its views to the parties.

16. The Tribunal finds that the current application does not raise any contentious facts that justify the need for a hearing. Instead, the Tribunal is of the view that the case is fully briefed and can be decided on the papers.

17. Therefore, the Applicant's motion for a fast-tracked hearing is rejected.

Request for execution of judgement

18. The Tribunal notes that *Bezziccheri* ordered the rescission of the decision notified to the Applicant on 29 December 2014 and awarded the Applicant costs in the amount of USD5,000. The awarded costs have been paid, as per the account of both parties. Thus, what remains to be considered is if the 2014 contested decision has been fully rescinded or not.

19. Article 12.4 of the UNDT Statute establishes the conditions for an execution of judgement:

Once a judgement is executable under article 11, paragraph 3, of the present Statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

20. After a careful analysis of the case and the corresponding documentary evidence, the Tribunal finds that this Tribunal's decision in *Bezziccheri* has been fully executed and, consequently, that the application is moot.

21. In fact, the issues at stake are of a medical nature and that is why this Tribunal remanded the matter by Order No. 24 (GVA/2016) so that a medical board is convened and a determination on the Applicant's sick leave entitlements is made.

22. This medical determination is a condition *sine qua non* for the submission for consideration for a disability benefit by the UNSPC.

23. The Tribunal is also of the view that, contrary to what the Applicant argues, administrative rule H.4(a) does not apply in her case. This rule provides that a UNJSPF participant can directly request the UNSPC for a determination about the granting of a disability benefit, under article 33(a) of the UNJSPF Regulations, if “the organization has not acted in accordance with [administrative] rule H.3”.

24. Administrative rule H.3 sets out the circumstances under which an Organization shall request a UNSPC determination about a disability benefit. Of relevance to the case at hand is its sub-paragraph (a), which reads as follows:

Whenever during, or on the expiry of, the appointment of a participant **there is reason to believe that he or she may be incapacitated** within the meaning of article 33(a). (emphasis added)

25. There is an established procedure to determine whether a UNJSPF participant is incapacitated within the meaning of art. 33(a) of the UNJSPF Regulations. If an Organization refuses to follow such procedure, a staff member could invoke administrative rule H.4 and address the UNSPC directly. This is not the Applicant’s case. This Tribunal’s ruling in *Bezziccheri* rescinded the decision not to recommend the Applicant for disability consideration, which entailed the launching of a new procedure to assess if she is incapacitated. Both parties confirmed that such procedure was launched and that there are disagreements on how to move forward with it.

26. The existence of disagreements does not amount to a failure to act in accordance with administrative rule H.3. In fact, the Applicant’s rather broad reading of what constitutes “a failure to act in accordance with” in administrative rule H.4(a) would result in the circumvention of the procedure that needs to be followed prior to seeking a determination by the UNSPC on a request for a disability benefit.

Conclusion

27. In view of the foregoing, the Tribunal DECIDES that the application is **rejected**.

(Signed)

Judge Teresa Bravo

Dated this 18th day of February 2022

Entered in the Register on this 18th day of February 2022

(Signed)

René M. Vargas M., Registrar, Geneva