



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

SHAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**SUMMARY JUDGMENT
ON RECEIVABILITY**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Lucienne Pierre, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Military Observer Group in India and Pakistan (“UNMOGIP”), filed an application contesting the adjustment of the structure of the Mission Support as reflected in an Inter-Office Memorandum (“IOM”) from the Chief of Mission Support (“CMS”) to Mission Support Section Chiefs and All Staff in India dated 27 September 2021.

Facts

2. On 27 September 2021, the CMS issued Inter-Office Memorandum No. CMS/2021/011 (“IOM”) announcing a restructuring of reporting lines in the Mission Support, namely, on the chain of supervision of first reporting officers.

3. On 15 November 2021, the Applicant requested management evaluation (“MER”) of the above-mentioned IOM, requesting, specifically, that “[his] roles and responsibilities not be changed.”

4. On 30 December 2021, the Management Evaluation Unit (“MEU”) rejected the MER as not receivable.

5. On 18 March 2022, the Applicant filed an application before this Tribunal contesting the above-mentioned IOM.

6. On 31 March 2022, the Respondent filed a motion to have receivability determined as a preliminary matter and to enforce page limits pursuant to the Tribunal’s Practice Direction No. 4.

7. On 5 April 2022, the instant case was assigned to the undersigned Judge.

8. By Order No. 48 (GVA/2022) of 8 April 2022, the Tribunal instructed the Applicant to file his comments, if any, on the issue of receivability of his application by 15 April 2022. Through the same order, the Tribunal suspended the Respondent’s deadline to file his reply on the merits pending its decision regarding the issue of receivability.

9. On 15 April 2022, the Applicant submitted his comments as per the Tribunal's instruction.

Parties' submissions

10. The Applicant's principal contentions are:

- a. The change in reporting lines and restructuring of UNMOGIP technological resources is frustrating and stressful, as it limits the Applicant's professional growth and career development;
- b. Besides changing the Applicant's reporting lines, the IOM in question purposefully downgraded his roles and responsibilities;
- c. Such downgrading and restructuring of reporting lines are part of a retaliation scheme that the Applicant has been suffering from UNMOGIP management due to his reporting of wrongdoings in the section since his tenure as the President of Srinagar Staff Association, as well as an attempt to "kill career growth of capable national staff"; and
- d. The unfair and unjust treatment the Applicant has been subjected to for years should be given exceptional priority in the name of justice.

11. The Respondent's principal contentions are:

- a. The application is not receivable *ratione materiae* because the Applicant failed to identify a final administrative decision that is in non-compliance with his terms of appointment or contract of employment, as required under art. 2.1(a) of the Tribunal's Statute.
- b. Notwithstanding, if the Tribunal identifies the challenged decision as the IOM in question, the application is still not receivable *ratione materiae* because the IOM is not an administrative decision but a regulatory decision of general application.

Consideration

Whether the Tribunal can issue a summary judgment on receivability

12. Art. 9 of the Tribunal's Rules of Procedure provides that:

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 judgement is appropriate.

13. Pursuant to the provision above and to established jurisprudence, the Dispute Tribunal can choose to issue a summary judgment without taking any argument or evidence from the parties as the Tribunal's Statute prevents it from receiving a case that is not receivable (see *Faust* 2016-UNAT-695, para. 23).

14. Likewise, art. 19 of the Tribunal's Rules of Procedure provides that it may issue any order or direction that is appropriate for the fair and expeditious disposal of the case. In addition, as established in *Ngoma-Mabiala* 2013-UNAT-361, such provision allows the Tribunal to deal with issues of receivability as a preliminary matter in the interest of judicial economy.

15. Therefore, the Tribunal can examine and rule upon the matter of receivability as a preliminary matter through a summary judgment in the interest of fairness and judicial economy.

Whether the Applicant has identified a contested decision

16. The Tribunal acknowledges that the Applicant has identified the 27 September 2021 IOM from the CMS (cf. paragraph 2 above) as the contested decision under review.

Whether the application is receivable ratione materiae

17. To be receivable before this Tribunal, an application needs to challenge a final administrative decision that is related to the Applicant's terms of appointment or contract of employment. The contested decision identified by the Applicant is neither.

18. The above-mentioned IOM is not an administrative decision, nor it is specifically related to the Applicant's professional relationship with the Organization. The IOM in question is nothing but an operational decision of general application that promoted a change in the reporting lines of all UNMOGIP staff members serving on the Indian side. It is an operational decision within the scope of the managerial discretion of the CMS.

19. The Applicant argues that the restructuring of reporting lines promoted through the IOM in question was done in retaliation and as a form of workplace harassment by CMS management by downgrading his roles and responsibilities. In this sense, it would have altered his terms of appointment. However, even if this change in the reporting lines did affect the Applicant's responsibilities, that does not mean the IOM had a legal effect *per se* on his terms of appointment or contract of employment. No staff member has the right to select his or her own supervisors (*Rees* 2012-UNAT-266), much less to choose not to have one.

20. Thus, the contested decision, i.e., the 27 September 2021 IOM, is not a challengeable administrative decision that can be subject to this Tribunal's jurisdiction. As a result, the application is not receivable *ratione materiae*.

21. The Tribunal takes this opportunity to remind the Applicant that the Organization has mechanisms in place to assist staff in matters of alleged workplace harassment or retaliation. If the Applicant intends to formally complaint against management for retaliation or workplace harassment, the Tribunal is not the place to do so. He should follow the relevant procedure pursuant to ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), and ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).

Conclusion

22. In view of the foregoing, the Tribunal DECIDES that the application is not receivable *ratione materiae*.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 13th day of May 2022

Entered in the Register on this 13th day of May 2022

(Signed)

René M. Vargas M., Registrar, Geneva