



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** René M. Vargas M.

NAEEM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Muhammad Asim Bhatti

**Counsel for Respondent:**  
Esther Shamash, UNDP

## **Introduction**

1. The Applicant, a staff member of the United Nations Development Programme (“UNDP”), contests the decision to restructure the Environment and Climate Change Unit (“ECCU”) at the UNDP Country Office in Pakistan (“UNDP Pakistan”), “through which [his position] was being abolished”.

2. For the reasons stated below, the Tribunal finds the application not receivable and dismisses it.

## **Facts and procedural history**

3. After a period on a service contract, the Applicant was recruited, on 1 October 2002, as an Administrative Assistant at the G-4 level in the UNDP Pakistan. He was promoted to the position of Programme Assistant, at the G-5 level, in July 2006 and was granted a permanent appointment in July 2009. On 1 February 2010, he was appointed as Programme Associate at the G-6 level.

4. In November 2021, a Limited Change Management Review (“LCMR”) was conducted in UNDP Pakistan. The review was focused on the “environment and climate change portfolio [...] to increase effectiveness in implementation and delivery, improve oversight and accountability for results, and position UNDP for the future in this area with enhanced value addition as a development partner and improved resource mobilization”.

5. On 25 November 2021, the LCMR team issued its report which included three possible scenarios. However, it strongly recommended that “a limited realignment effort be undertaken designed to deliver Scenario [three] focused on a redesign of the ECCU in both structure and capacities”. Specifically, the LCMR report recommended creating two new positions, namely, a National Officer (NO) A and a G-5 level position, and redesigning three positions, namely, the Assistant Resident Representative (NOC), the Management and Programme Support Analyst (NOB) and the Programme Associate (G-6) position, which the Applicant encumbered.

6. On 30 November 2021, the LCMR team met with the staff of ECCU, including the Applicant, to discuss the report.

7. On 29 December 2021, the Resident Representative of UNDP in Pakistan was informed of the decision of the Director of the Regional Bureau for Asia and the Pacific to accept the recommendation for “Scenario [three]” in the LCMR report and to start its implementation.

8. In January 2022, UNDP Pakistan began the implementation of the LCMR recommendations.

9. In April 2022, a new organigramme for ECCU was prepared. It included the upgrade of the post of Programme Associate, the Applicant’s position, from the G-6 to the G-7 level.

10. Following a classification by the Office of Human Resources of the five new positions in the new organigramme, the position of Programme Associate was classified at the G-7 level.

11. On 13 May 2022, the Resident Representative updated the affected ECCU staff and Staff Representatives on the process and informed them that a Job Matching review exercise would be conducted.

12. On 18 May 2022, a non-competitive job matching for the new positions in the ECCU was conducted.

13. On 30 May 2022, the Resident Representative, UNDP Pakistan, informed the Applicant that following the completion of the non-competitive job matching, he remained an affected staff member. Consequently, the Applicant had to compete in the Job Fair to find an alternative placement and was eligible to apply for up to three vacancies in the first round of the Job Fair.

14. On 2 June 2022, the first round of the Job Fair, which was only open to staff in UNDP Pakistan, was launched. Five positions at the G-5, G-7, NOA, NOB and NOD levels were advertised with an application deadline of 9 June 2022. According to the announcement of this round of the Job Fair, staff who had received

notification that their positions were affected by the LCMR like the Applicant, were to be given priority consideration.

15. On 6 June 2022, the Applicant requested management evaluation of the decision to “[introduce] a new staffing structure which is being implemented right away through which the position (Programme Associate GS-6) [encumbered by the Applicant] [was] being abolished”.

16. On 9 June 2022, the Applicant applied for the positions of Programme Assistant (G-5), Programme Associate (G-7) and Programme Management Analyst (NOA) in the first round of the Job Fair.

17. On 20 July 2022, the Applicant was informed of the outcome of his applications in the Job Fair as follows:

Noting that you did not attend the technical assessments for the G-5 Programme Assistant and the NOA Programme Management Analyst positions, the recruitment facilitators were not able to recommend your candidature to proceed to the next step of the selection process for these posts.

For the G-7 Programme Associate position, we regret to inform you that in line with the competitive selection process previously established for this post, you were not successful in your application.

18. On 12 August 2022, the Applicant was informed that his request for management evaluation was found not receivable *ratione materiae*.

19. On 23 August 2022, the Applicant applied to the positions of Programme Management Analyst (NOA), and Programme Associate (G-7) in the second round of the Job Fair.

20. On 26 August 2022, the Applicant also applied for the position of Programme Assistant at the G-5 level.

21. On 30 August 2022, the Applicant filed the present application.

22. On 19 October 2022, the Respondent filed his reply.

23. By Order No. 104 (GVA/2023) of 22 August 2023, the Tribunal ordered the Respondent to file updated information concerning the restructuring exercise by 1 September 2023 and the Applicant to file a rejoinder by 8 September 2023.

24. Following a reminder, on 5 September 2023, the Respondent complied with the above-mentioned order.

25. On 7 September 2023, the Applicant filed his rejoinder.

26. By Order No. 149 (GVA/2023) of 9 November 2023, the parties were instructed, *inter alia*, to file their respective closing submission, which they did on 20 November 2023.

## **Consideration**

### *Receivability*

27. The issue at stake in the present case is whether the application is receivable, as receivability is a condition *sine qua non* for judicial review by the Tribunal.

28. The Respondent submits that the application is not receivable because the Applicant did not identify an administrative decision capable of review. He claims that the Applicant has not been formally notified of the abolition of his post, much less received a notice of termination of his appointment. Nor has he identified another decision with a direct impact on the terms of his appointment. The Respondent states that the administrative processes following the restructuring of ECCU have not been concluded and that the Applicant continues to report for duty.

29. The Appeals Tribunal has held that it is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties' contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review (*Fasanella* 2017-UNAT-765, para. 20).

30. In his application, the Applicant identifies the contested decision as follows: “UNDP Pakistan management through a baseless and deceitful Limited Change Management ... exercise restructured a single unit (ECCU) ... which resulted in abolishing [his] position”. He indicates that the decision was made on 25 November 2021, referring to the LCMR report and its subsequent implementation, and notes that he was informed of the decision on 30 May 2022.

31. In determining the issue, the Tribunal is guided by the Applicant’s request for management evaluation. In his request, the Applicant contested the decision to “[introduce] a new staffing structure ... through which the position (Programme Associate GS-6) currently held [by him] [was] being abolished”.

32. However, the case record shows that by the time the Applicant filed his application, he had not been formally notified of the abolition of his post and the restructuring exercise was still ongoing. To date, the situation remains the same as showed by the November 2023 communication to the Applicant asking him to confirm his interest in the position of Programme Assistant at the G-5 level. So far, the Applicant is still serving at the G-6 level in UNDP Pakistan.

33. It is well-settled jurisprudence that the Organization has the power to restructure some or all its departments or units, which includes the abolition of posts, the creation of new posts and the redeployment of staff. The Appeals Tribunal has held that it will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment for staff (*Loeber* 2018-UNAT-844, para. 18).

34. However, even in a restructuring exercise, like in any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members (see *Loeber*, para. 18; *De Aguirre* 2016-UNAT-705, para. 31). In this context, the Appeals Tribunal has also constantly held that the key characteristic of an administrative decision subject to judicial review is that the decision must “produce direct legal consequences” affecting a staff member’s terms and conditions of appointment (*Lee* 2014-UNAT-481, para. 49). Therefore, in order to be reviewable, an administration decision must have a direct adverse impact on

the terms of appointment or contract of employment of an individual staff member (*Mkhabela* 2022-UNAT-1289 para. 42, *Loeber*, para. 19).

35. The Appeals Tribunal held in *Lee*, para. 51, that the stages of a restructuring process are merely “acts prefatory to or preceding an administrative decision that would [produce] direct legal consequences” to a staff member’s employment. It found that “[a]lthough Ms. Lee cannot challenge the discretionary authority of the Secretary-General to restructure the Organization or to abolish her post, she may challenge an administrative decision resulting from the restructuring once that decision has been made”.

36. In line with the above, the Tribunal finds that the Applicant cannot challenge the Secretary-General’s discretionary authority to restructure ECCU as the exercise of this discretion has had no direct impact on the Applicant’s terms of appointment or contract of employment. The Applicant can only challenge an administrative decision resulting from the restructuring, which once made directly affects the terms of his appointment, such as his reassignment to another position or the termination of his appointment. However, no decision has yet been made in this respect.

37. For the sake of clarity, the Tribunal notes that while the Applicant refers to a separation notice in his rejoinder, he failed to provide evidence of such a decision, notwithstanding the Tribunal's explicit request to produce it in Order No. 149 (GVA/2023).

38. It thus follows that the application is not receivable *ratione materiae*. Consequently, the Applicant’s allegations concerning the restructuring process cannot be examined at this stage.

**Conclusion**

39. In view of the foregoing, the Tribunal DECIDES to dismiss the application.

*(Signed)*

Judge Sun Xiangzhuang

Dated this 13<sup>th</sup> day of December 2023

Entered in the Register on this 13<sup>th</sup> day of December 2023

*(Signed)*

René M. Vargas M., Registrar, Geneva