



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/065
Judgment No.: UNDT/2025/080
Date: 28 October 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

THAPA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Victoria Nakaddu Mujunga, AS/ALD/OHR, UN Secretariat

Introduction and Procedural History

1. The Applicant was seconded to the United Nations Mission to Support the Hudaydah Agreement (UNMHA) in Yemen by the Government of Nepal to serve as the Chief of the Military Advisory Unit (C/MAU) on a one-year fixed term appointment at the P5 level.
2. He was not renewed at the end of his one-year tenure and has filed an application with the Tribunal challenging that decision alleging it as discriminatory.
3. The Respondent submits that there was no expectation of renewal; that there is a policy in place limiting the tenure of UN Military Experts on Mission to one year unless exceptional circumstances require extension; and that the decision was not discriminatory.
4. The parties have filed their respective closing submissions, making this matter ready for judgment.

Facts and Submissions

5. The Applicant was seconded to the Mission by the Government of Nepal until 20 August 2024 to serve as the Senior Military Liaison Officer and Chief of the Military Advisory Unit.
6. At around the six-month mark, on 1 March 2024, the Force Generation Service, Office of Military Affairs (FGS/OMA), enquired whether the Mission intended to extend the Applicant's tenure. On 15 March 2024, the Mission formally informed the FGS/OMA that the Mission would not be renewing the Applicant's appointment.
7. The Applicant says he began "hearing about" this decision in mid-May and queried it shortly thereafter. On 26 May 2024, the Applicant wrote to the Head of Mission (HoM) seeking clarification on what he had been hearing and asked that his appointment be extended.
8. On 29 May 2024, the Chief of Staff verbally conveyed the impugned decision to the Applicant.

9. The Applicant's case is that the decision to not renew his appointment was tainted by extraneous factors: that the putative resource constraints were a "pretext"; that there was no operational necessity for the decision; that the decision unfairly targeted him and was discriminatory. The Applicant insists that he had a legitimate expectation of renewal, and that that expectation was thwarted by bias, procedural irregularities and unequal treatment.

10. For his part, the Respondent argues that the impugned decision was lawfully made, and that the Applicant had no right to renewal of his appointment.¹

Considerations

11. The Tribunal must determine whether the decision to not renew the Applicant's appointment was properly made and therefore lawful or, as alleged by the Applicant, whether the decision was tainted by extraneous factors so that it can be deemed to have been improperly motivated, irregularly made and therefore unlawful.

12. At the outset, it is important to state that the law on the expiry and non-renewal of appointments within the United Nations system is clear. Fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment (*Nouinou* 2019-UNAT-902, para. 44). However, a decision not to renew is subject to review, notwithstanding the fact that fixed-term appointments are extinguished upon expiry (*Obdeijn* 2012-UNAT-201, para. 33).

13. In *Nouinou*, the Appeals Tribunal held that:

47. [...] [A]n administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive. The staff member has the burden of proving such factors played a role in the administrative decision.

¹ The Respondent initially argued that the Applicant's complaints about his performance evaluation were not receivable as moot. The Applicant did not address this in his rejoinder, and it appears that he is no longer pursuing a claim based on his performance evaluation, if he ever was.

48. The Appeals Tribunal has consistently held that:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.

49. As part of its judicial review, it is necessary to determine whether the decision was vitiated by bias or bad faith, that is, if it was taken for an improper purpose. A decision taken for an improper purpose is an abuse of authority. It follows that when a complainant challenges a discretionary decision, he or she by necessary implication also challenges the validity of the reasons underpinning that decision. In this respect, as applied to the present case, the Tribunals may examine the circumstances surrounding the abolition of the staff member's post to determine whether the impugned decision was tainted by abuse of authority.

14. In *Ahmed* 2011-UNAT-153, the Appeals Tribunal held that

47. [U]nless the Administration has made an "express promise ... that gives a staff member an expectancy that his or her appointment will be extended", or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member's fixed-term appointment is not unlawful.

15. The Applicant acknowledges this jurisprudence in first arguing that he had a legitimate expectation that his appointment would be renewed for a further year.

16. He claims that the Mission had a "consistent practice" of C/MAUs serving for two consecutive years. This practise was followed for both of his predecessors in the post, as evidenced by written communication from the Department of Peace Operations (DPO) informing the Government of Nepal of his selection for the post; and that his "initial contract will be for a period of one year with a possibility of further extension." The Applicant has also submitted an email from a former

Deputy Head of Mission confirming that she was not aware of a policy limiting the appointment of the C/MAU to one year.

17. In examining this claim, the Tribunal first notes that regarding prior renewals for other occupants of the post, the law is clear that “past renewals of an appointment [are not] a basis for an expectancy of renewal.” *Kacan* 2015- UNAT- 582, para. 19. *See also, Igbinedion* 2014-UNAT-411, para. 26; *Hepworth* 2015-UNAT503, para. 42; *Abdeljalil* 2019-UNAT-960, para. 41. Thus, any prior renewals for other occupants of the post do not give rise to a legitimate expectation of renewal.

18. Additionally, there is no legitimate expectation of renewal, “unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended.” *Muwambi* 2017- UNAT- 780, para. 25; and *Igbinedion*, para. 26. In addition, “the jurisprudence requires this promise at least to be in writing.” *Muwambi*, para. 25.

19. Although the communication to the Government of Nepal is in writing, it does not contain an express promise of renewal. Indeed, it clearly says that extensions beyond the one-year initial contract are merely “a possibility”. Of course, “possibility” means something that may happen, but also may not. It certainly does not give rise to a legitimate expectation.

20. Regarding the email from a former Deputy Head of Mission, her lack of awareness of long-standing jurisprudence does not serve as evidence of a contrary policy or an express promise of renewal. The Tribunal finds that the Applicant has not established that he had a legitimate expectation of renewal.

21. The analysis then must proceed to whether the Administration abused its discretion or based the decision on discriminatory or other improper considerations. In this regard, the record also contains communication from the HoM dated 6 March 2024, indicating that the Mission “has in place a policy of military personnel completing one year of service in the mission.” The HoM tied this policy decision to the reduction in the Mission’s financial allotment for 2024; and said that the

Mission did “not require this P5 position to be advertised” until the “full financial situation is apparent.”

22. The Applicant has proffered no evidence to support his contention that a new practise was put in place to target him specifically. Thus, the Tribunal finds that “the circumstances surrounding the decision” have been adequately explained and that the “validity of the reasons underpinning that decision” have not been rebutted.

23. On this topic, the Applicant first disagrees with the HoM’s decision to do away with the P5 position, arguing that the post was operationally necessary and that his decision “disregarded critical operational needs” for the security of the Mission. The Applicant is, of course, entitled to his views; but the decision is for the HoM to make, and not for either the Applicant or the Tribunal to second-guess. The Mission’s reasoning for not renewing this appointment was “sufficiently clear, precise, and intelligible.” *Jafari* 2019-UNAT-927.

24. The Applicant then alleges that the decision was based on “discriminatory or improper grounds.” Specifically, he alleges in his closing submissions that the HoM “exhibited a clear preference for personnel from developed nations, while simultaneously rejecting qualified candidates from other regions.” The Applicant further states that “[t]his pattern of bias, exclusion, and obstruction, stemming directly from the HOM’s conduct, demonstrates a culture that prioritized personal preference over mandate effectiveness and further taints the non-extension decision with bad faith.”

25. The jurisprudence is clear that “[a]llegations of discrimination, improper motive and bias are very serious and ought to be substantiated with evidence.” *Ross* 2019-UNAT-944, para. 25. As clearly stated by the Appeals Tribunal in *Assad* 2010-UNAT-021 and *Jennings* 2011-UNAT-184, “the burden of proving improper motivation lies with the staff member contesting the decision.” (See also, *Obdeijn* 2012-UNAT-201 para. 38; *Nwuke* 2015-UNAT-506 para. 49; *Hepworth* 2015- UNAT-503 para. 44; *Muwambi* 2017-UNAT-780, para. 27).

26. The evidence presented to the Tribunal by the Applicant is neither clear nor convincing in respect of the bias and discrimination he alleges. While the Applicant alludes to various differences that he has with the HoM, the record contains no evidence that demonstrates that the non-renewal decision was connected to the Applicant's nationality or any other "personal preference" of the HoM.

27. The Applicant also argues that there was a procedural irregularity in that the Senior Management Team (SMT) was not consulted regarding the renewal decision. The Applicant cites to ST/SGB/2011/6/Rev.1 (Staff-Management Committee) and ST/AI/2014/3 (Consultation Procedures) as support for this argument.

28. However, those two documents apply to "Secretariat-wide issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, and shall provide advice and recommendations to the Secretary-General." By their very terms, ST/SGB/2011/6/Rev.1 and ST/AI/2014/3 do not apply to decisions made at the mission level regarding whether to renew a particular appointment.

29. Instead, the authority to extend temporary and fixed term appointments is clearly vested in the Head of Entity by ST/AI/2019/2 (*Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules*). The Head of Mission was not required to consult with anyone under his supervision before deciding not to renew an appointment. Put differently, all members of the SMT report to the HoM, and not seeking their views does not render the decision improper or unlawful.

30. The Applicant also argues that the Senior Administrative Officer (SAO) tasked with implementing the impugned decision did not have the delegated authority to do so. To support this argument, he provided the Tribunal with emails between the SAO and the Office of Military Affairs (OMA) in the Department of Peace Operations (DPO). However, this correspondence simply conveys the decision taken by the HoM on 6 March 2024 in his own email to DPO. The SAO did not *make* the decision; he was merely implementing the HoM's decision.

31. Having carefully reviewed the record, the Tribunal concludes that the Applicant has not met his burden of proof to establish that the decision was unlawful.

32. For these reasons, the application lacks merit.

Conclusion

33. The application is DISMISSED.

(Signed)

Judge Sean Wallace

Dated this 28th day of October 2025

Entered in the Register on this 28th day of October 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi