



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

GAITAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Karen M. Farkas, UNHCR

Introduction

1. By application filed on 9 October 2013, the Applicant, a Senior Supply Officer at the P-4 level at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Budapest, Hungary, seeks suspension of action of the decision to select an external candidate for the position of Chief of Section, Procurement of Goods, P-5, post no. 10012774, advertised under Job Opening 8208 (“the position”).

Facts

2. The position was advertised at UNHCR in the Compendium of posts of March 2013 and the Applicant applied for it. The Applicant indicates that he took a written test and was interviewed during the selection procedure.

3. By email of 27 September 2013, the “Summary of Decisions of the High Commissioner on Assignments Ref. No. 08/2013” was sent to all UNHCR staff. That document lists the position under “March 2013 Compendium”, as an internally and externally advertised Expert Position, with the mention “Recruitment (2)”. Footnote “(2)” of the document indicates that “the names of the recruited candidates [would] be released upon acceptance of the offer. Re-recruitments are of former staff members who are rejoining UNHCR”.

4. By e-mail of 29 September 2013, addressed to the Division of Human Resources Management (“DHRM”), UNHCR, the Applicant asked to be provided with “relevant documentation regarding the selection process as [he] would like to understand the reason why [he] was not selected”.

5. By e-mail of 2 October 2013, addressed to the Director, DHRM, the Applicant asked that “the letter of the job offer to the external candidate [be put] on hold”.

6. By e-mail of 9 October 2013, the Applicant requested management evaluation of the decision to go for external recruitment for the position, and that the implementation of the decision—namely the mailing of the job offer to the external candidate—be suspended. He also asked for an “opportunity to submit a complete request for a management evaluation on the administrative decision, in line with IOM/FOM/034/2009”. On the same day, he filed before this Tribunal the present application for suspension of action.

7. On 10 October 2013, the application was served on the Respondent, who was instructed by the Tribunal to submit his reply by 16 October 2013. The Tribunal also directed the Respondent not to undertake, as from the date of service, any further steps regarding the recruitment against the position until the determination of the suspension of action.

8. In his response of 10 October 2013 to the Applicant’s e-mail of 9 October 2013 (see para. 6 above), the Deputy High Commissioner agreed to put on hold the formal offer to the selected candidate “pending the outcome of the management evaluation” and indicated that he would inform DHRM accordingly.

9. The Respondent filed his reply on 16 October 2013, and attached to it the above-referenced response of the Deputy High Commissioner.

Parties’ contentions

10. The Applicant’s primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The decision is in contradiction with UNHCR Policy and Procedures on Assignments contained in IOM/FOM/033/2010, especially with its para. 15 which states that only when no suitable internal candidates were identified, “using the criteria of competency, performance and language requirements”, UNHCR could look for external candidates;

b. During the last years there has been a “clear pattern” to hire external candidates against eligible and qualified internal UNHCR staff “for most

senior positions in UNHCR supply function”. In the Procurement Management and Contracting Service where he is working, all of the six international senior positions “have been recently filled with external applicants”; this negatively affects “the moral and team spirit of all internal UNHCR supply officers”;

c. “[His] solid knowledge, expertise, experience, skills and recorded high performance, makes [him] a fully qualified and suitable internal candidate”, in fact “the best candidate for the job for reasons that [he] [would] explain in later documents”; he was “shortlisted, interviewed and test[ed]” for the position, but “the staff who carried out the interview and test do not have procurement background”;

d. According to the discussion he had with the hiring managers for the position, the process of interviews and tests was carried out simultaneously with internal and external candidates, “not respecting the procedure established in UNHCR regulations”;

Urgency

e. UNHCR Administration is certainly about to send an offer of appointment to the selected external candidate, hence the decision is about to be implemented;

Irreparable damage

f. The decision fundamentally affects his legitimate career expectations within the Organization;

g. The position “is the only one that perfectly match[es] [his] professional aspirations in the organization”;

h. For personal reasons he does “not want to be forced to return to low level positions in hardship locations”, where he has already “served and demonstrated [his] capacities throughout [his] career in the organization”.

11. The Respondent's primary contentions may be summarized as follows:
 - a. The Deputy High Commissioner took due note of the Applicant's request, contained in his request for management evaluation of 9 October 2013, that the formal offer of appointment to the selected candidate be put on hold until the outcome of the management evaluation; he agreed to this request in his response of 10 October 2013;
 - b. In light of the above, the application for a suspension of action before this Tribunal has become moot.

Consideration

12. Article 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure provide that it may order the suspension, during the pendency of management evaluation, of the implementation of a contested administrative decision that is the subject of an on-going management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

13. It follows from these provisions that an application for suspension of action may only be granted if the contested decision has not yet been implemented and is the subject of an on-going management evaluation.

14. In the present case, the decision that is challenged by the Applicant consists in the decision to select an external candidate as Chief of Section, Procurement of Goods, P-5.

15. The Tribunal notes that following the Applicant's request for management evaluation, the Deputy High Commissioner had agreed, in a written e-mail to the Applicant, to suspend the implementation of the contested decision by putting on hold the formal offer to the selected candidate "pending the outcome of the management evaluation". The Tribunal considers that this is tantamount to a formal suspension of the implementation of the contested decision pending management evaluation and that there is no reason to consider that such a

commitment emanating from the Deputy High Commissioner would not be respected.

16. Therefore, since the contested decision has already been suspended by UNHCR, the Tribunal can only conclude that the Applicant's request for suspension of action has become moot.

17. It follows that it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute and art. 13.1 of its Rules of procedure, namely *prima facie* unlawfulness, urgency and irreparable damage, are met in the case at hand.

Conclusion

18. In view of the foregoing, the Tribunal DECIDES that the present application for suspension of action is moot and there is no need to further decide on the Applicant's request.

(Signed)

Judge Jean-François Cousin

Dated this 17th day of October 2013

Entered in the Register on this 17th day of October 2013

(Signed)

René M. Vargas M., Registrar, Geneva