



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

NAIR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

UNDP

## **Introduction**

1. On 3 February 2015, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”), filed an application for suspension of action pending management evaluation of the decision to terminate his fixed-term appointment with UNDP.

## **Facts**

2. The Applicant joined UNDP in November 2013, on a one-year fixed-term appointment as a Programme Officer (NO-B) in a project financed by the Ikea Foundation, in India, launched in 2009 and subsequently prolonged and expanded. The Applicant’s appointment was renewed for one additional year, until 3 November 2015.

3. By letter dated 5 January 2015, the Applicant was notified that his fixed-term appointment would be terminated effective 6 January 2015, following the abolition of the post he encumbered. The letter stated that the project came to an end on 31 December 2014 and that, due to the very limited funding available, it had been decided to abolish his position effective that date. In the letter it was further mentioned that the Applicant had already been informed of the decision to abolish the post he encumbered by the Country Director, UNDP India, at a meeting held on 31 October 2014.

4. The Applicant claims to have received the notification of the termination of his appointment on 7 January 2015.

5. The Applicant submitted a request for management evaluation of that decision dated 20 January 2015.

### **Applicant's contentions**

6. The Applicant's primary contentions may be summarized as follows:

#### *Prima facie unlawfulness*

- a. The reasons given by management for the contested decision are factually incorrect. The letter of 5 January 2015 cites the closure/ending of the Ikea Foundation funded project as the prime reason. However, this project did not end on 31 December 2014. UNDP continues to have funding commitment from the donor. Moreover, on 15 January 2015, UNDP India advertised a position of Senior Project Officer for said project;
- b. The Administration misrepresented facts arguing that all agreements with the donor were terminated on 31 December 2014, and that henceforth there would be a new project with a new name. On 31 December 2014, no agreements had been cancelled. The decision to re-design the project had been agreed upon prior to the Applicant's appointment;
- c. The Applicant's position was not included in the project re-design proposal version of November 2014, while it had been in the versions of August and October 2014, although no significant differences exist between these three versions in the technical aspect of the re-designed project, its area of implementation and overall budget proposed. This proves malicious attempts to justify the Applicant's termination *post facto*;
- d. The contested decision amounts to abuse of authority and retaliation for a complaint of the project staff for harassment against the Project Coordinator, and as such, constitutes "prohibited conduct";
- e. All positions under the Ikea funded project were subject to the duration of the project and availability of funds. If one position is abolished due to the ending of the project, all such positions should have been so too. Internationally recruited staff received more favourable treatment;

*Urgency*

f. UNDP India has advertised the position of Senior Project Officer, which is a downgraded version of the position the Applicant held. If the recruitment continues, there is little hope for the Applicant to be reinstated, even in the event that the impugned decision is turned down;

*Irreparable damage*

g. The impugned decision along with the attempts to recruit someone else on a downgraded post with respect to the one the Applicant encumbered, if not stayed, would prevent him from being reinstated in his position, unless the newly recruited person would be terminated. Both scenarios constitute an abuse of justice which cannot be compensated in monetary terms.

**Consideration**

7. Pursuant to art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, the Tribunal is competent to hear and pass judgment on an application filed by an individual requesting the Tribunal:

[T]o suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage.

8. This wording—particularly the use of the term “suspend” and of the conditional tense—implies that once a decision has been implemented the Tribunal can no longer grant its suspension as an interim measure. Indeed, the Tribunal has consistently ruled that it is a condition for granting a request for suspension of action that the decision has not yet been implemented (e.g., *Kawas* Order No. 297 (NY/2014); *Smoljan* Order 43 (GVA/2013), *Applicant* Order No. 167 (NBI/2014)).

9. In the case at hand, it is plainly set forth in the letter informing the Applicant of the impugned decision that it was implemented on 6 January 2015. Additionally, the application confirms that the Applicant was separated on that date.

10. With respect to the Applicant's request to "stay/suspend all current and potential recruitments under the Ikea funded project and reinstate [him] in [his] earlier position", the Tribunal notes that such measures are beyond the Tribunal's powers under the above-cited art. 2.2 of its Statute and 13.1 of its Rules of Procedure. As the Tribunal held in *Applicant* Order No. 87 (NBI/2014):

[A] suspension of action order is, in substance and effect akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the status quo between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

11. For all the foregoing, the Tribunal is satisfied that the termination of the Applicant's appointment was implemented before the present application was filed. It follows that the decision in question does not meet one of the cumulative and mandatory conditions for granting a suspension of action and that, under the circumstances of the instant case, it is not necessary to seek a reply from the Respondent. Furthermore, having reached this finding, the Tribunal does not need to examine the remaining cumulative requirements for granting a suspension of action.

12. Finally, the Tribunal underlines that its decision on the application for suspension of action does not entail any assessment with respect to the lawfulness of the contested decision.

**Conclusion**

13. In view of the foregoing, the application for suspension of action is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 4<sup>th</sup> day of February 2015

Entered in the Register on this 4<sup>th</sup> day of February 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva