



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

MOTHA

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 email of 15 March 2015 addressed to the generic address of the Tribunal's Registry in Geneva, the Applicant, a former staff member of the United Nations High Commissioner for Refugees ("UNHCR"), filed an application for suspension of action pending management evaluation of the decision to separate him from UNHCR on 1 March 2015.

Facts

2. As per his application, the Applicant entered the service of UNHCR on 30 April 2002 as a Telecom Satellite Technician in Afghanistan (Field Service level 5 ("FS-5")). He worked in several duty stations, and as of 30 June 2009, he was granted an indefinite appointment. Prior to his separation, and before moving to India, his current country of residence, he occupied the post of "ICT Technician", in Beirut, Lebanon.

3. By memorandum dated 7 May 2014 from the Director, Division of Human Resources Management, UNHCR, the Applicant was provided information in relation to his status as a staff member in-between assignments ("SIBA") for a period of nine months as at the end of his standard assignment length. He was encouraged to apply to suitable vacancies as widely as possible to increase his chances of a timely reassignment, and was notified that his "indefinite appointment [would] be terminated should [he] remain without a regular assignment for a cumulative period of nine months as from the end of [his] assignment [at that time], *i.e.* as from 1 May 2014".

4. By memorandum dated 24 February 2015 from the Personnel Administration Officer, Personnel Administration and Payroll Section, UNHCR, which, according to the Applicant, he received on 27 February 2015, he was informed that his appointment would be terminated in line with UNHCR rules governing indefinite appointments granted after the one-time review, which prescribe that such appointments are terminated effective nine months from the end of the staff member's last assignment if no new regular assignment was

secured. Since that was the Applicant's situation, he was informed that he would be separated from UNHCR effective 1 March 2015. The memorandum further listed details of the Applicant's final entitlements and administrative formalities to be completed in connection with his separation from service.

5. On 9 March 2015, the Applicant addressed a request for management evaluation of his separation decision to the Deputy High Commissioner, to which to date he has not received a reply.

Applicant's contentions

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

Prima facie unlawfulness

a. Since the memorandum of 7 May 2014 quotes rules and regulations applicable to staff of the Professional category, and not of the Field Service category, it is not legitimate and therefore null and void;

b. Despite the indication in the memorandum of 7 May 2014 that he would be contacted for a possible temporary or regular assignment, it never happened during his time as SIBA; such a lack of efforts from UNHCR in finding a position for him is contrary to UNHCR "Policy on Resolving situations of [SIBAs]" of June 2014;

c. Notwithstanding his efforts to apply for posts, he was not selected, while he is aware of the selection of other candidates to the Professional category who did not even meet the criteria of holding a university degree; similarly, no preference was given to him as a candidate holding an indefinite appointment and having worked in difficult emergency operations;

Urgency

d. He is the sole bread-winner for his family and he still has to support two children who are studying;

Irreparable damage

- e. In view of his age, it would be difficult for him to find another job, and his family will be left without support.

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 not yet be implemented (e.g., *Elkeiy* Order No. 43 (GVA/2015), *Kawas* Order No. 297 (NY/2014); Applicant Order No. 167 (NBI/2014)).

9. In the case at hand, it is plainly set forth in the memorandum sent to the Applicant dated 24 February 2015 that his separation would be implemented on 1 March 2015. Additionally, in his application, the Applicant confirms that he is a “former UN staff member”, who was separated on that date.

10. A decision resulting in the cessation of service of a staff member with the Organization is fully implemented as from the date of his/her separation (see, e.g., *Nair* Order No. 27 (GVA/2015)). Moreover, 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 received on 15 March 2015. 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 17th day of March 2015

Entered in the Register on this 17th day of March 2015

(Signed)

René M. Vargas M., Registrar, Geneva