



**Before:** Judge Goolam Meeran

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MOHAN DAS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PENDING  
MANAGEMENT EVALUATION**

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**Counsel for Applicant:**

Natalie Dyjakon, OSLA

**Counsel for Respondent:**

ALS/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 30 August 2018, the Applicant, a Special Assistant, Political Affairs (P-4) at the United Nations Mission in Afghanistan (“UNAMA”), seeks suspension of action, pending management evaluation, of the decision to reassign her to the newly created position of Mission Planning Officer (P-4) in the Mission Planning Unit and to advertise the post for which she is the incumbent.
2. The application was served on the Respondent on 31 August 2018.

## **Facts**

3. The Applicant joined the Organization in 1996 as a national staff member and then moved to various international positions.
4. In April 2015, the Applicant was appointed as Special Assistant, Political Affairs and deployed as Head of the Field Coordination Cell in the Office of Chief of Staff, UNAMA. According to the Applicant, her role entailed a broad range of responsibilities relating to substantive political affairs as well as related managerial functions.
5. The Applicant alleges that from November 2015, she has been subject to significant changes to her work functions, including the loss of managerial functions, as a result of decisions taken by the Chief of Staff, UNAMA and the Principal Advisor, Peace and Reconciliation, UNAMA. She also claims to have been subject to abuse of authority, harassment and discrimination from these two managers on a number of occasions since February 2017.
6. In May 2017, the Applicant spoke with the Head of Mission and requested that she no longer report to the Chief of Staff. This was in order to ensure that she would no longer be exposed to such conduct. It was agreed that the Applicant would work with the Mission Planning Unit. The Applicant understood that this was a temporary assignment and interim measure to alleviate the stress and tension in the workplace.

7. In November 2017, the Applicant spoke again to the Head of Mission about what she alleges was “continued harassment” from the Chief of Staff, UNAMA, and asked to be allowed to return to a field-based position of Political Affairs Officer (Team Leader) (P-4), as she occupied before her position of Special Assistant, Political Affairs.

8. From 1 April 2018, the Applicant was on certified sick leave.

9. On 12 July 2018, the Applicant was surprised to see that her position of Special Assistant, Political Affairs, was advertised in *Inspira*.

10. In response to her enquiry regarding the advertisement of her post the Applicant received a response from Human Resources on 12 July 2018 stating that she “will be placed on the new established P4 position in Mission planning”. This was a unilateral decision taken without any prior discussion or consultation with her.

11. By memorandum of 27 August 2018 from the Chief of Staff, UNAMA, the Applicant was formally notified of her lateral reassignment to the position of Mission Planning Officer (P-4) at UNAMA. The Applicant was required to sign a form relating to her transfer by 30 August 2018. No job description was attached.

12. The Applicant states that she understands that the position of Mission Planning Officer, while at the same level, requires functions different from her role as Political Affairs Officer and relates to non-substantive planning functions with no managerial responsibility.

13. On 29 August 2018, the Applicant submitted a complaint of harassment, abuse of authority and discrimination against the Chief of Staff, pursuant to ST/SGB/2008/5.

14. On 30 August 2018, the Applicant filed a request for management evaluation challenging the decision to laterally reassign her.

### **Applicant’s contentions**

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

*Prima facie unlawfulness*

- a. The Applicant's reassignment from a Special Assistant, Political Affairs position to a Mission Planning Officer position would have adverse effects on her contractual status and career development as it unduly narrows the scope of her work and involves non-substantive planning functions. It also amounts to a demotion since the Mission Planning Officer position does not entail managerial responsibilities;
- b. The Organization failed to examine if the Applicant fulfils all the requirements for the Mission Planning Officer position and to take into account that the role she performed on a temporary basis was much more limited than the one of a regular Planning Officer;
- c. The Organization failed to consider that the Applicant is likely to remain under the supervision of the two managers who are the subject of her complaint;

*Urgency*

- d. Whilst no date has been set for the Applicant's reassignment, the memo of 27 August 2018 suggests that it is imminent;

*Irreparable damage*

- e. The Applicant would suffer damage to her professional reputation and career prospects by being subject to what she considers as a demotion.

**Consideration**

16. This application is made under art. 2.2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal.

17. Article 13 of the Rule of Procedure provides as follows:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to 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.

2. The Registrar shall transmit the application to the respondent.

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

18. It is clear that the Tribunal is under a duty to transmit a copy of the suspension of action application to the Respondent and to issue a decision within five days thereof. However, there is no requirement, either under art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for the Tribunal to await the Respondent's response before the applicant's request is considered.

19. The Applicant is required to satisfy the Tribunal that the impugned decision appears *prima facie* to be unlawful, is urgent and will cause him/her irreparable harm if implemented. All three elements of the test must be satisfied before the impugned decision can be stayed.

20. It is also clear that the Statute does not require the Tribunal to make a definitive finding that the decision is in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if not rebutted, the claim will stand proven. This means that the onus is on the Applicant to provide a sufficiency of material in order to satisfy the statutory test. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is merely an indication as to what appears to be the case at the SOA stage. This does not mean that unsupported allegations and/or suspicions will suffice.

*Prima facie unlawfulness*

21. The Tribunal is satisfied by an examination of the documents and arguments presented by the Applicant that the decision to reassign her to the position of Mission Planning Officer and to advertise her position of Special Assistant, Political Affairs appear to be *prima facie* unlawful.

22. The documents show that the Applicant's position of Special Assistant, Political Affairs, was advertised on 12 July 2018 while she was still officially encumbering the post. The fact that she had been temporarily assigned to work with the Mission Planning Unit pursuant to a loan arrangement does not affect her lien to the post, to which she had a right of return.

23. It appears from the documents that the decision to formally reassign the Applicant was taken unilaterally by the Chief of Staff, UNAMA, based on a previous request by the Applicant to be temporarily reassigned. In this connection, the reassignment memorandum states:

Following your request to the Head of Mission on 26 May 2017 to work with the Mission Planning Unit and the General Assembly's recent approval of the P4 Mission Planning Officer position in UNAMA, I am pleased to confirm your formal transfer to the Mission Planning Unit. The lateral transfer will regularise the loan arrangement in place since April 2017 by which you temporarily encumbered the position and have undertaken the P4 Mission Planning Officer.

I am attaching the transfer form for your signature. I would appreciate it if you would sign and return the form by 30 August 2018. However, given your current status on certified sick leave, the Chief Human Resources Management Section has advised that either the signed transfer form or a copy of this memorandum will serve as the official record of the staff movement.

24. The Applicant may have agreed or even requested a temporary assignment in the Mission Planning Unit, but this does not mean that she sought to be formally transferred to another position which, incidentally, did not even exist at the time of her initial request. The contested decision appears to use the Applicant's previous request, of a different nature and which had been to alleviate particular concerns at the time to subject her to what appears to be an enforced reassignment.

25. The unilateral transfer of the Applicant to another position to which she had been assigned only on a temporary basis, without her agreement and while her regular position is still available, raises serious concerns as to the motivation for this decision. The decision appears to be either not supported by the facts, in that the Applicant did not request her lateral transfer to the Mission Planning Officer position, or to be ill-motivated.

*Urgency*

26. According to the document attached to the transfer memorandum, the transfer was to be effective as of 1 July 2018. However, the same document was signed by the Chief of Staff on 27 August 2018 and the Applicant was asked to sign it by 30 August 2018, failing which a copy of the memorandum would serve as a record of the movement. It is understood that the transfer will occur imminently, thus the criteria of urgency is satisfied.

*Irreparable damage*

27. The Tribunal is satisfied by the Applicant's arguments that her transfer to a position that she has not chosen, that is not in her preferred field of work and that may entail less managerial functions than the post she formally encumbers, may cause irreparable damage to her career prospects.

**ORDER OF THE TRIBUNAL**

**IT IS ORDERED THAT:**

The decisions to reassign the Applicant from her current position of Special Assistant, Political Affairs to the position of Mission Planning Officer and to advertise her position of Special Assistant, Political Affairs, be suspended pending the outcome of management evaluation.

*(Signed)*

Judge Goolam Meeran

Dated this 31<sup>st</sup> day of August 2018

Entered in the Register on this 31<sup>st</sup> day of August 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva