



Before: Rowan Downing
Registry: Geneva
Registrar: René M. Vargas M.

PRASAD et al.
GERA et al.
JAISHANKAR et al.
THOMAS et al
BHATIA et al
MANOHARAN et al.
SINGH
SRINIVASAN
SHARMA
THAPLIYAL
SESHADRI
SAXENA
KUMAR
DAS
YADAV
SINHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Mohamed Abdou, OSLA (65 Applicants)

Self-represented (10 Applicants)

Counsel for Respondent:

Elizabeth Brown, UNHCR; Bart Willemsen and Zarqaa Chohan, UNICEF; Robert Nadelson, UNDP; Katrina Waiters, UNFPA; Melissa Bullen and Mylène Spence, UN-Women; Alan Gutman, ALS/OHRM

¹ This Order applies to 75 Applicants. Their names and case numbers, per employing Organization, are given in the lists attached to this Order.

Introduction

1. In 2016, the United Nations Appeals Tribunal remanded to the Dispute Tribunal a total of 98 cases related to a challenge against the result of the comprehensive salary scale survey for local staff in India conducted in June 2013. The cases were then assigned to the undersigned Judge. Pursuant to the remand, the Applicants, all self-represented at the time, filed their applications with this Tribunal, which were served on the Respondents who, in turn, filed their replies.

2. After extensive attempts on the part of the Tribunal and the Office of Staff Legal Assistance (“OSLA”) to contact all Applicants, the number of OSLA represented Applicants was brought to 64 and that of self-represented Applicants to 10. The remaining 24 Applicants either withdrew their case or remained unresponsive to the Tribunal’s communications and their cases were closed.

3. UNAT remanded an additional case at the end of 2018 and the Applicant also opted for OSLA representation, thus bringing the number of OSLA represented Applicants to 65 for a total of 75 Applicants.

4. Following several case management orders from the Tribunal and submissions from the parties, the matter was set down for a hearing on the merits currently scheduled to be held on 13 and 14 February 2019.

Consideration

5. On 22 December 2018, the General Assembly adopted resolution A/RES/73/276 on the Administration of justice at the United Nations (“the Resolution”). Paragraphs 37 and 38 provide:

37. Decides to extend the positions of the two ad litem judges in Geneva and Nairobi and the current incumbent judges, pending the nomination of candidates by the Internal Justice Council and the appointment of the aforementioned four half-time judges by the General Assembly, which should take place no later than 31 December 2019;

38. Also decides not to extend the ad litem judge position in New York, which expires on 31 December 2018.

6. The Resolution, which was made available on 7 January 2019, does not provide for a date for the termination of the appointments of the *ad litem* judges in Geneva and Nairobi. I further note that the difficulties for judges not having an identified date for the end of appointment was pointed out to a number of members of the Fifth Committee when a draft of the resolution was provided. Notwithstanding, the General Assembly adopted the formulae as set out in paragraph 37 of the Resolution.

7. I have only been able to ascertain that, following the Resolution, administrative action has been taken to maintain the *ad litem* judges in Geneva and Nairobi on the Organization's payroll until 31 March 2019 to ensure continuity in the payment of related entitlements (e.g., salary) up to that date. I can therefore only assume that the date of end of my appointment is 31 March 2019. I cannot speculate as to what may occur beyond 31 March 2019, as this is the only written advice I have available to me.

8. As an *ad litem* judge sitting on the Tribunal, I find myself in an extremely difficult position in respect of the hearing of these matters, which have been long delayed in their final determination by a remission back to the Tribunal from the Appeals Tribunal and difficulties locating and ensuring representation for as many of the Applicants as possible.

9. In the absence of a specific and reasonable transition period with respect to end of my tenure as an *ad litem* judge, and notwithstanding the considerable judicial and administrative time invested in the cases to date, I have had to consider whether it is possible to continue with the hearing in these matters, set down for 13 and 14 February 2019, and if it will be possible to finalize the adjudication of these cases by 31 March 2019. In this connection, I also note that the General Assembly made no arrangements for a transitional period concerning the non-renewal of the *ad litem* judge in New York. This has left the Tribunal's New York docket with cases partly heard and or considered by said judge and may entail having cases reheard and/or determined by another judge.

10. It is concerning that the General Assembly made no transitional arrangements in view of the costs lost by the Applicants, the Organization (e.g., time of Respondent's lawyers, time of staff members who appeared as witnesses) and staff members generally who have contributed to OLSA, as a consequence of the high likelihood for a rehearing of the cases. There are also costs lost in connection with the operation of the Tribunal. It may be, however, that the General Assembly was not advised that there were such cases or the impact that an immediate separation would have on Applicants and the Respondent alike in respect of the substantial costs wasted.

11. I have also considered issues such as the rule of law in the Organization, access to justice and justice itself arising from the need to have rehearings, and my duty as a judge to ensure that justice is done in a fair and proper manner. I am also well aware of the significant costs in the cases at hand not only to the Applicants in merely attending the hearings by video from India, but also the significant costs to the international tax payer and staff members in respect of the lawyers provided through OSLA for the Applicants, as well the costs of the six lawyers who represent the Respondent through six United Nations Agencies before the Tribunal. There has to be little doubt that all these costs amount to tens of thousands of US dollars.

12. After reflection upon the above matter, I have concluded that adjudication of the cases in question by 31 March 2019 is not feasible and that, as a result, at this stage I must withdraw as the judge assigned to the cases; they will be returned to the Registrar for possible reassignment to another judge. To do otherwise would not be in the interests of the Applicants, Respondents, staff members who contribute to the operations of OSLA and the international tax payer. Funds of the United Nations and Applicants should not be wasted through having rehearing of cases and fairness for the parties in adversarial hearings must not be compromised. The losses for the Organization and the uncompensated costs for the Applicants would be too great if I am unable to deliver the judgments before the end of my appointment.

Conclusion

13. In view of the foregoing, it is ORDERED that:

- a. Until further clarification, if any, the files in these cases be returned to the UNDT Geneva Registrar for possible reassignment to another judge;
- b. The hearing date is not vacated; and
- c. Any party to the cases has liberty to apply to bring on a case management discussion with a notice of four business days.

(Signed)

Rowan Downing

Dated this 18th day of January 2019

Entered in the Register on this 18th day of January 2019

(Signed)

René M. Vargas M., Registrar, Geneva