



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/065

Order No.: 72 (NY/2010)

Date: 16 April 2010

Original: English

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**Before:** Judge Adams

**Registry:** New York

**Registrar:** Hafida Lahiouel

KAMANOU

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUSPENSION OF ACTION**

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**Counsel for applicant:**

Self-represented

**Counsel for respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. In addition to this application, the applicant is presently also before me on a previous application concerning the inclusion of her name in a publication in respect to which she gave certain assistance and in respect of a failed candidacy for promotion to the P-4 level. She has now applied as I understand it for a P-5 post, one of the prerequisites for appointment to which is that a candidate must hold a P-4 post. According to the applicant, she was denied the right to apply for this position since she holds a P-3 position. The applicant seeks to have this decision rescinded to allow her to apply for the P-5 post.

2. The application was heard on 7 April 2010 and I delivered an *ex tempore* ruling refusing the application. In this case, the applicant applied for a temporary relief according to art 10.2 of the Statute; or, in the alternative, for a suspension of action pending management evaluation under art 13 of the Rules of Procedure. I initially decided to deal with her application under art 10.2 of the Statute. After hearing the applicant's submissions at the hearing, I have, however, decided that the relevant provision is art 2.2 of the Statute (and art 13 of the Rules of Procedure) since otherwise I would not have authority to consider her application.

3. The following is the text of that ruling, with minor editorial changes to clarify a point or correct a grammatical solecism.

## **Facts**

4. Since the applicant does not hold a P-4 post, she is *prima facie* unable to be considered for the promotion in question. Because she is a P-3 at step 14, the applicant has sought an exception from the Secretary-General upon the basis, as I understand it, that this is the equivalent at least in salary terms to a P-4 at step 5. She informs me that in the past this has resulted in the exception which she seeks. However, she has not yet got a response to that request and has now sought management evaluation. I understand that interviews are impending and the

applicant seeks order to suspend the conduct of interviews, pending the outcome of the management evaluation.

5. The applicant has also relied, in seeking the exception, upon a reclassification of her present post, acknowledging that it involves the responsibilities of a P-5. She has been informed that the classification process is complete but despite being told that she would receive an official communication as to its outcome some three weeks ago, it has not yet been given to her at the time of the hearing.

### **Consideration**

6. In order to satisfy the requirements of art 2.2 of the Statute, giving jurisdiction to suspend implementation of a contested administrative decision during the pendency of the management evaluation to which it is subject, it is necessary, first of all, that there be an administrative decision. Then the administrative decision must be *prima facie* unlawful, the case must require particular urgency, and its implementation must cause irreparable damage.

7. Assuming for present purposes that the contested administrative decision is that she has not yet received the exception she sought, the applicant has failed to persuade me that the decision of the management to take further time to consider her application is unlawful. Nor is there any reason to conclude on the material presently before me that a decision to refuse exception in the present circumstances would be unlawful. It is not sufficient to refer to other similar cases in which an exception has been granted since, for obvious reasons, such cases must depend on their particular circumstances. But without that additional information no meaningful assessment can be made of the appropriateness or otherwise of a refusal to grant the exception sought.

8. The urgency in this case is that the applicant apprehends, as I understand it, that the interviews and possibly the appointment process may be completed before her application for exception is determined. The requirement of urgency might be satisfied in this situation, but it is not necessary for me to decide this point because the suspension must be refused for the reason given above.

9. Moreover, the applicant cannot show that the implementation of the administrative decision would cause irreparable damage. A failure to obtain promotion will almost always be capable of being compensated by money payment and there is no reason to infer that this could not occur in the present case.

10. For these reason, the application for the suspension is refused.

*(Signed)*

Judge Adams

Dated this 16<sup>th</sup> day of April 2010