



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

CHARLES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON MOTION FOR REINSTATEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. On 7 June 2010, the Applicant submitted an application in which he alleged that his candidature for a P-4 level post in the Department of Peacekeeping Operations was not given full, fair and timely consideration.

2. The Respondent's reply to the application was submitted on 7 July 2010.

3. Subsequently, the Tribunal issued Orders No. 74 (NY/2011) and No. 148 (NY/2011), dealing with a number of procedural matters.

4. On 13 February 2012, the Applicant filed a notice of withdrawal of his application, stating:

2. In light of the recent judgments of the [Dispute Tribunal] and owing to personal reasons, I hereby respectfully withdraw my application. Accordingly, all claims and allegations set out in my application are hereby respectfully withdrawn.

3. I wish to assure the Tribunal that this application was submitted for its consideration based on what I considered to be serious factual and procedural flaws on the part of the Respondent, which violated my due process rights. However, in order to mitigate the burden placed on the limited resources of the Organization, including the Tribunal, and in order to focus my diminishing energies on more important aspects of my life, I have considered it prudent and in the best interest of all Parties to withdraw this application.

5. In light of the Applicant's request for withdrawal of his application, by Order No. 31 (NY/2012) dated 17 February 2012, the Tribunal ruled that:

In light of the Applicant's withdrawal of his application and there remaining no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2010/075 is therefore closed without determination of its merits.

Consideration

6. By motion dated 3 January 2012, the Applicant requests that his application in the present case be reinstated and therefore, in effect, also that the case be reopened even though it was closed by Order No. 31 (NY/2012).

7. In support of his motion the Applicant submits, *inter alia*, that:

a. “[A] senior official at the Secretariat” has informed him that his “candidature [would] never get full and fair consideration as [he has been] identified as a ‘trouble maker’ and no manager would want to hire [him]”;

b. “Whereas [he has] always suspected as much, to actually hear the same from a fairly senior management official was troubling”;

c. “This statement [is] corroborated [by] the negative results of the many recent applications and the statement made to [him] by the Director of the Procurement Division some time ago that [the Applicant has] found [himself] in a deep hole (challenging management’s selection decisions) and [he] should stop digging in order to be free (words to that effect)”;

d. “Further to the information already shared with the Tribunal in [his] pleadings in this case, it has become clear that the decision taken by [the Programme Case Officer] in this case was void of reason and therefore part of the abuse of authority in failing to give full and fair consideration to [his] candidature”;

e. “It is a generally accepted principle of law that a court/tribunal has continuing and exclusive jurisdiction of the Parties with regard to matters in a case and is therefore authorized to re-instate a withdrawn or struck out matter within its plenary powers. In many jurisdictions, the Rules of Civil Procedure

expressly provides for the re-instatement of a matter on motion and requires “just terms for reason(s)” that may justify that relief; and

f. “The Courts have determined that an Order for re-instatement should be granted when any of four conditions is shown to exist including: (a) an intervening change in controlling law; (b) the availability of new evidence; (c) the need to correct clear error; (d) *the need to prevent the reoccurrence or continuation of the conduct/practice and to prevent manifest injustice to the Party seeking relief*” (emphasis in original).

8. General Assembly resolution 63/253 dated 17 March 2009, which enacts the internal justice system of the United Nations, confines the powers of the Tribunal to those explicitly conferred to it in its Statute (art. 29). Article 7 of the Statute obliges the Dispute Tribunal to establish its own rules of procedure, subject to approval by the General Assembly.

9. The Rules of Procedure of the Dispute Tribunal explicitly only outlines three situations in which, at the request of a party, the Tribunal may reopen a case after its final disposal, namely if this party applies for a revision, an interpretation or a correction of the judgment (arts. 29 – 31). The Applicant’s request for reinstatement of the present case is not covered by neither of these articles or otherwise specifically envisioned in the Rules of Procedure—a situation which may also be described as the Applicant intending to renounce a former request for withdrawal of a case (see also *Sheykhiyani* UNDT/2009/023, para. 11). The Tribunal notes that, in the present case, it makes no difference whether the case was closed by Judgment or by Order because it was clear from the ruling closing the case that it constituted the final decision of the Tribunal.

10. Specifically concerning a request for a revision of a judgment, the Tribunal observes that art. 29 only applies where “a decisive fact” has been discovered which was “unknown” to the Dispute Tribunal and the party applying for revision at

the time the judgment was rendered. From the Applicant's motion for reinstatement appears that he does not submit that any such new decisive fact was unknown to him. Rather, in addition to him allegedly being labeled as a "troublemaker", which he already suspected when he filed his motion for withdrawal (see para. 7(b) above), it appears that his motion was motivated by the recent judgments in *Finniss* UNDT/2012/200 and *Obdeijn* 2012-UNAT-201. In this regard, the Tribunal notes that, in *Eid* 2012-UNAT-145, the Appeals Tribunal stated that a change in jurisprudence is an issue of law and not of fact and does not provide a ground for revising a previously rendered judgment (paras. 1 and 18). In line herewith, in his motion for reinstatement, the Applicant states that "[t]his Motion is submitted in the absence of any specific provision in the Statute of [the Dispute Tribunal] and its Rules of Procedure ... expressly giving direction on the procedure for re-consideration of an Order of Withdrawal and to re-open a case for determination on its merits".

11. Pursuant to art. 19 of the Rules of Procedure, the Tribunal may "at any time ... issue any order or give any direction" for "the fair and expeditious disposal of the case and to do justice to the parties". However, art. 19 does not provide a legal basis for the Tribunal to reinstate the present case as, by its own terms, art. 19 only applies during the proceedings and not after these have been closed.

12. Article 36 of the Rules of Procedure provides the Tribunal with the general authority to deal with "[a]ll matters that are not expressly provided for in the rules of procedure" by "decision ... on the particular case, by virtue of the powers conferred on it by article 7 of its statute".

13. The Dispute Tribunal in *Sheykhiyani* stated that (para. 15):

Once sent to the court a withdrawal of action cannot be made undone. In general procedural law does not tolerate to turn back the clock, as reasons of security and reliability tie the parties to their statements unless they were in error about their meaning.

14. This Tribunal affirms the findings of *Sheykhiyani* adding that, for the withdrawal to be valid, it must also be made in relation to a specific case and at the free will of an applicant. The Tribunal observes that, in the present case, with reference to Case No. UNDT/NY/2010/075 and entirely at his own initiative by his motion for withdrawal dated 13 February 2012, the Applicant withdrew his application “[i]n light of the recent judgments of the [Dispute Tribunal] and owing to personal reasons” considering such withdrawal to be “prudent and in the best interest of all Parties”. Accordingly, the Tribunal finds that the motion for withdrawal remains valid in that:

- a. The motion was filed by the Applicant;
- b. The Applicant did so at his own free will;
- c. The motion was specifically filed in relation to the present case; and
- d. When filing the motion, the Applicant was fully aware of the legal consequence of his withdrawal, namely the closure of this case.

IT IS ORDERED THAT:

15. The Applicant’s motion for reinstatement is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 25th day of April 2013