



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

LI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 12 March 2014, the Applicant, a P-5 level Chief, Transport Facilitation and Logistics Section, Transport Division, Economic and Social Commission for Asia and the Pacific (“ESCAP”) in Thailand filed an application for suspension of action, pending management evaluation, of a job opening advertising the position of Chief at the D-1 level in the Transport Division, ESCAP. The Applicant contends *inter-alia*, that the job opening does not adequately follow the generic job profile and covers less than one third of the actual functions of the post, and that it has been prepared in order to favour a particular potential candidate.

2. The Registry transmitted the application to the Respondent on 13 March 2014. The Respondent duly filed his reply on 14 March 2014, requesting that the application be dismissed on grounds, *inter alia*, that the management evaluation is no longer pending.

Brief Background

3. On 28 February 2014, the position of Chief at the D-1 level in the Transport Division, ESCAP was advertised under the job opening number 14-ECO-ESCAP-33661-R-BANGKOK(G) with a deadline of 29 April 2014.

4. On 12 March 2014, the Applicant submitted his request for management evaluation to “freeze this job opening urgently for a review and investigation. The Applicant submits that “if what [he is] reporting is true, the job opening should be revised before re-posting and the current incumbent of the post should be excluded from recruitment process for this post and adequate disciplinary measure may be taken accordingly”. Prior to this, the Applicant had apparently sent an e-mail to the Chief of Human Resources Management Section and the Executive Secretary of ESCAP regarding this matter.

Applicant's contentions

5. With respect to the requirement of *prima facie* unlawfulness under art. 2.2 of the Statute, the Applicant submits that the job opening contravenes art. 4.5 of the administrative instruction ST/AI/2010/3 on staff selection system in that it does not adequately follow the generic job profile approved by the Office of Human Resources Management. The Applicant explains that the job opening omits substantive functions inherent to the post, thereby tailoring it to favor a potential candidate whose current functions are largely reflected in the job opening. Further the job opening departs from previous ones pertaining to the same position in many respects, including those covering the incumbent's responsibilities, experience and professionalism. According to the Applicant, not only does "the current job opening obviously intend[s] to reduce [his] competitiveness or block [him]", but it also represents a retaliatory measure by the current Chief, whose previous attempt to favor a candidate in a P-5 level recruitment process was prevented by the Applicant. The individuals involved in the drafting of the job opening thus potentially violated staff regulations 1.2(b) and 4.3 of ST/SGB/2012/1 (Staff Regulations) as well as Staff Rule 1.2(j).

6. With respect to the requirement of particular urgency under art. 2.2 of the Statute, the Applicant states that this requirement is satisfied given that the job opening will be closed on 29 April 2014.

7. With regard to the requirement of irreparable damage, the Applicant submits that the current job opening will prevent him and other competent persons from applying because it fails to correctly indicate relevant working areas and responsibilities. Additionally, candidates will be "unfairly treated based on the current job opening" and the successful candidate may not be fully competent to perform the duties required.

Respondent's contentions

8. The Respondent contends that the management evaluation was completed on 13 March 2014, and, therefore, there is no longer any basis for the Applicant's request for suspension of action, and no scope for any order suspending the alleged decision pursuant to Article 2.2 of the Statute. Accordingly, the application should be rejected.

Consideration

9. Article 2.2 of the Tribunal's Statute states:

2. The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

10. Thus, in accordance with art. 2.2, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

11. It also follows that the suspension of action of a challenged decision may only be ordered when management evaluation for that decision has been duly requested and is still ongoing (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

12. In this case, the Management Evaluation Unit (MEU) completed its review of the request for management evaluation on 13 March 2014 and concluded that it was not receivable. The MEU found that since the Applicant did not apply for the post, the job opening had no direct legal consequences for him and did not affect his rights as a staff member. Furthermore, the MEU determined that, should the Applicant elect to apply for the post, job openings are not considered as a final “administrative decision” for the purposes of staff rule 11.2 (a).

13. Since an application under art. 2 (2) of the Statute is predicated upon an ongoing and pending management evaluation, and as the management evaluation in this case is no longer pending and has been completed, there is no longer any basis for the Applicant’s request for suspension of action, and the application is dismissed.

14. Consequently, it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute, namely *prima facie* unlawfulness, urgency and irreparable damage, are met in the case at hand.

Order

15. The application for suspension of action is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 18th day of March 2014