



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

AGHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON REQUEST FOR SUSPENSION
OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Administrative Law Section, UN Secretariat

Introduction

1. On 20 July 2015, the Applicant, a security officer in the Department of Safety and Security (DSS) in New York, filed an undated handwritten request for suspension of action pending management evaluation. According to this request, the Applicant appears to contest the fact that his name is not included in the indefinite roster of candidates pre-approved for S-3 (senior security officer level) posts in connection with a selection exercise for eight posts associated with job opening number 15-SEC-DSS-42689-R-NEW YORK (JO 42689). This JO had a posting period of 18 June 2015 to 18 July 2015.

2. The application was accompanied by seven annexes, including a copy of a handwritten request for management evaluation dated “10-15-2015” and seeking protection of his “right to be on an indefinite roster to be considered for promotion”. The Applicant also attached a number of email communications concerning his queries on the issue of roster membership and validity as well as screen shots of his Inspira account. Of particular importance is an email from the Office of Human Resources Management (OHRM) acknowledging his status as a roster candidate for JO 42689, which reads as follows:

OFFICE OF THE CHIEF

1. SENIOR SECURITY OFFICER POSTS (S-3) HAS BEEN PUBLISHED IN INSPIRA

Please be informed that JO#15-SEC-DSS-42689-R-NEW YORK (R) for eight (8) Senior Security Officer posts (S-3) has been published in Inspira, with expiry date 18 July 2015. Kindly note that the intention is to fill these eight posts from the 2011 roster which is the valid current roster for S-3, as per OHRM. All rostered candidates who are still interested in being considered for the higher level position are required to apply. Only the rostered

candidates who have applied for the advertised position will be considered.

Please note, as per staff selection system, the Hiring Manager can complete the selection process at any time (before the expiry date) once the candidate(s) selected is from the roster.

There are at least another nine (9) posts to be filled through the 'normal process' (i.e., written technical assessments, interviews) and will be posted shortly. The decision to publish two JOs was made in order to make the process more efficient considering the level of operational activities in the coming months.

All eligible candidates are encouraged to take the relevant OHRM courses.

3. On the face of it, this communication would appear to contradict an announcement or information circular which appears to have been sent by DSS as advice to potential candidates. From the manner of presentation in the series of annexes to the request, it is not clear if the explanatory paragraph accompanied the JO or was sent separately by DSS management. In any event, its contents appear to be the motivating factor behind the request for suspension of action.

4. In response to the Applicant's application for this particular JO the acknowledgment email from OHRM dated 5 July 2015 and entitled "Your application for the position of Senior Security Officer (8 posts), S3, Department of Safety and Security, New York (Job Opening 42689)" advised the Applicant as follows (emphasis added):

Dear Mr. AGHA,

We are pleased to confirm receipt of your application for the position of Senior Security Officer (8 posts), S3 (Job Opening 42689).

You will be identified as a rostered candidate for this job opening as you were previously placed on a roster of pre-approved candidates for positions with similar functions at the same level, provided you meet the requirements indicated in the job opening.”

....

Consideration

5. Requests for suspension of action pending management evaluation are to be decided in accordance with art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal’s Rules of Procedure.

6. While it is clear that the Tribunal is under a duty to transmit a copy of the request for suspension of action to the Respondent and to issue a decision within five days thereof, there is no requirement, either under art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for the Tribunal to defer consideration of the request until receipt of the Respondent’s response. In fact, service to the Respondent is all that is required under the Rules. The request for suspension of action stands or falls on its merits as presented at the time.

7. A request under art. 2.2 of the Statute is also predicated upon an ongoing and pending management evaluation of an administrative decision that may properly be suspended by the Tribunal and any order to suspend a contested administrative decision ends on the date on which the management evaluation is completed. Further, the Tribunal must proceed on the basis of an impression regarding whether the Applicant satisfies the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal’s Rules of Procedure, namely that the decision *appears* to be *prima facie* unlawful, that the matter *appears* of particular urgency, and that the implementation of the decision would *appear* to cause irreparable damage. The Tribunal is not expressing a conclusive finding but merely applying the statutory test and expressing an opinion based on the material presented in support of this urgent

request. Whether this preliminary indication is upheld when the substantive issues of fact and law are subsequently considered will depend on the evidence, arguments and submissions of the parties. However, the benefit afforded by the suspension of action procedure is to indicate a preliminary view which may assist either party to consider its position.

8. The Applicant attached a signed copy of a management evaluation request that is dated “10-15-2015” or 15 October 2015, which would clearly appear to be erroneous. The Tribunal has to consider if a request had been made for management evaluation. The Applicant satisfies this requirement notwithstanding the manifest typographical error on the date.

9. The central issue in this case is whether the request for suspension of action is misconceived given the documentary evidence, namely Inspira screen shots and an email communication from OHRM, showing that he is a roster candidate for the JO 42689.

10. It is unclear to the Tribunal what decision is to be suspended. The Applicant does not specify which decision he is contesting in his request for suspension of action nor does he do so in the request for management evaluation. Notwithstanding the confusion on the part of the Applicant, it is clear from the terms of the communications from OHRM dated 5 July 2015 that the Applicant has been identified as a roster candidate for JO 42689.

11. Since the record demonstrates that OHRM considers that the Applicant is a roster candidate for the JO through the message in his Inspira account and to his email account, there appears to be no issue for determination regarding his status as a roster candidate.

12. The Tribunal finds that, in view of OHRM having recognized the Applicant as a roster candidate for JO 15-SEC-DSS-42689-R-NEW YORK, there is no matter for suspension or determination.

13. This request for suspension of action would appear to be based on a fundamental mistake of fact on the part of the Applicant. If the Administration considers, notwithstanding the clear and unequivocal terms of the 5 July 2015 communication from OHRM, that the communication from the “Office of the Chief” supersedes OHRM’s decision, they are to write directly to the Applicant, who will then have the opportunity of challenging the decision if he so wishes. Whether or not this will be a fruitful exercise is a matter for the Administration who will no doubt wish to consider the practicalities of the current exercise. In doing so, DSS may wish to bear in mind the number of vacancies to be filled on an apparently urgent basis, the number of candidates for S-3 posts on the indefinite roster, the number of candidates who were placed previously on rosters which have expired, the exigencies of the service and the interest of good employment relations and any other material factor relevant to the operational needs of the Department.

(Signed)

Judge Meeran

Dated this 22nd day of July 2015