



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

SHARMA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON MOTION FOR EXTENSION OF  
TIME TO FILE AN APPLICATION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
United Nations Environment Program

## **Introduction**

1. The Applicant is a Principal Officer at the D-1 level at the Secretariat for the Convention on Biological Diversity (“CBD”), United Nations Environment Program, in Montreal, Canada. On 11 January 2016, the Dispute Tribunal received from the Applicant an incomplete motion for extension of time to file an application together with one annexure uploaded in the eFiling portal of the Dispute Tribunal.

2. On the same day, the Registry of the Dispute Tribunal advised the Applicant by email that his motion was incomplete and requested him to upload in the eFiling portal a completed motion that included the following information:

- a. The Applicant’s name on the cover page of the motion;
- b. The Applicant’s personal information;
- c. The Applicant’s employment information at the time of the contested decision;
- d. The Applicant’s contact information;
- e. Whether the Applicant has legal representation;
- f. Whether a management evaluation request was made;
- g. How much extra time is needed to file the application;
- h. The reasons for requesting the extension of time.

3. The Applicant was also advised in the same transmission that annexes 1, 3 and 4 listed in the submitted form were missing, including the request for management evaluation.

4. On 12 January 2016, the Applicant responded to the Registry by email and attached an updated, unsigned motion for extension of time. The cover page of the motion did not list the Applicant's name or the date of the motion. The Applicant seeks an extension of time until 15 March 2016 to file an application contesting the decision to laterally transfer another staff member to fill the vacant post of Deputy Executive Director at the D-1 level, Secretariat, CBD ("the contested post"). The Applicant states that he applied for the position when it was advertised. The following four annexes were appended to the updated motion:

a. An undated and unsigned Word document entitled "description of the problem";

b. Two Word documents entitled "RE\_84999: Position of Deputy Executive Director, D-1" and "RE\_84999: Position of Deputy Executive Director, D-1 (RS)" reproducing email exchanges dated 10 September 2015. The email exchanges document the concerns expressed by the Applicant and one of his colleagues after having been informed by the Executive Secretary, CBD that a request for the lateral move of the selected candidate for the contested post had been approved;

c. A copy of a memorandum from the Executive Secretary, CBD to all staff dated 11 November 2015 and advising that the selected candidate had been officially appointed, effective 5 October 2015, to the contested post.

5. In the document marked "description of the problem", which sets out a brief chronology of events, the Applicant alleges favouritism of the selected candidate and contravention of ST/AI/2010/3 (Staff selection system) because, *inter alia*, the selection process for the contested post was cancelled after the post had been advertised for 60 days, the deadline for applications had closed, and applications for the post had been submitted. The Applicant submits that any lateral move should have preceded the advertisement of the contested post. In this document, the Applicant makes reference to

a letter dated 3 September 2015 advising that the Executive Secretary, CBD, had recommended a certain staff member to fill the contested post through a lateral transfer and a letter dated 17 September 2015 informing him that the post had “been cancelled and may be advertised later”. These letters were not attached to the motion and are therefore not before the Tribunal.

6. On 13 January 2016, the Registry advised the Applicant, again by email, that all case filings must be submitted through the Dispute Tribunal’s eFiling portal, that all pleadings must be included in the motion and not in a separate document, and that email correspondence attached as annexes must be copies of originals and not reproduced in Word documents.

7. On 19 January 2016, the Registry followed up with the Applicant via email to check whether he was experiencing technical difficulties. The Applicant did not respond. However, on 20 January 2016, he uploaded to the eFiling portal the documents he had submitted via email on 12 January 2016, as a separate filing to a new case. The documents uploaded by the Applicant were subsequently added manually by the Registry to the case file opened for the current motion.

**Issues pertaining to the motion for extension of time**

8. The Applicant seeks an extension of time until 15 March 2016 to file an application contesting the decision to laterally transfer another staff member to fill the contested post, for which he had applied. He states in his motion that he was notified or became aware of the decision on 11 November 2015 although he also attaches to his motion an email exchange, dated 10 September 2010, in which he was informed that the lateral transfer of the selected candidate had been approved.

9. The reason provided by the Applicant for his request for an extension of time to file an application is that he has “formally requested informal mediation by the UN Ombudsman on 10<sup>th</sup> January 2016 and [is] awaiting their services which may hopefully

resolve the problem”. The Applicant further states that he has not requested management evaluation of the decision he seeks to contest.

### **Applicable law**

#### *Filing of motions*

10. Article 4 of the Dispute Tribunal’s Practice Direction No. 5 on the Filing of Motions and Responses (adopted by the Tribunal pursuant to art. 36.2 of the Rules of Procedure of the Dispute Tribunal) states that all requests to the Tribunal shall be made by motion stating the grounds relied on for the determination sought.

#### *Extension of time*

11. Article 8 of the Tribunal’s Statute states:

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant’s receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

...

(iv) Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the

application is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

...

12. Staff rule 11.2 (Management evaluation) states:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

13. Staff rule 11.4(a) (United Nations Dispute Tribunal) states:

A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within ninety calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d), whichever is earlier.

### **Consideration**

#### *Defective motion*

14. It goes without saying that there is an obligation on parties to comply with the most basic of requirements to found any application or motion before the Tribunal, and that all pleadings must contain all the material facts and particulars supported by relevant annexes. Templates for motions and responses are available on the website of the Dispute Tribunal. As stated by the Tribunal in *Granfar* Order No. 51 (NY/2012), “[w]hen requesting an extension of time, applicants should ensure that all relevant documentation pertaining to the motion, particularly pertaining to the reasons for it, are provided to the Tribunal” (para. 23).

15. It is the responsibility of every applicant to ensure that submissions before the Tribunal are filed following the established procedures and in a structured and coherent manner. If an applicant fails to comply with the procedural requirements for filing, the Tribunal may decide not to accept an application or motion. The Tribunal notes that the Applicant’s motion is not signed, is untitled in that he is not cited as a party on the cover page, and lacks all the material particulars and supporting documents. Despite several reminders, including telephonic follow-up by the Registry, the Applicant has failed to comply with the essential requirements to sustain the motion. The Tribunal finds that on this basis alone, the motion is fatally flawed and defective, and stands to be dismissed.

*No request for management evaluation*

16. Furthermore, the Applicant has indicated in his motion that he has not requested management evaluation of the decision he seeks to contest. Pursuant to art. 8.1(c) of the Statute of the Dispute Tribunal and staff rule 11.2(a), an applicant must, as a mandatory first step (other than in cases that fall under staff rule 11.2(b)), request management evaluation of a contested decision before filing an application with the Tribunal. The date that a staff member submits a request for management evaluation, and the date that the Management Evaluation Unit responds to the request, if at all, determines the deadline for filing an application to the Dispute Tribunal (art. 8.1(d) of the Statute).

17. The annexes to the motion show that the Applicant was notified of the approval of the request for the lateral transfer of the selected candidate on 10 September 2015. If this is taken as the date of notification of the contested decision, he was required under staff rule 11.2(c) to submit a request for management evaluation by 9 November 2015, 60 days from the date of notification. Even taking the most favourable date, namely the date of 11 November 2015 when all the staff of the Secretariat of the CBD were notified that the recommended officer had been “officially appointed”, the Applicant would have been required under staff rule 11.2(c) to submit a request for management evaluation by 10 January 2016.

18. The Applicant states that he has not requested management evaluation. Submitting a request for management evaluation is, with a few exceptions, a necessary requirement for having a case determined by the Dispute Tribunal in accordance with staff rule 11.2(a) (see for instance, *Planas* 2010-UNAT-049, *Kovacevic* 2010-UNAT-071, *Ajdini et al.* 2011-UNAT-108, *Gehr* 2013-UNAT-299, and *Servas* 2013-UNAT-349). The Applicant’s failure to request management evaluation would thus render any subsequent substantive application before the Tribunal ill-fated and doomed.



19. Staff rule 11.2(c) states that the deadline for submitting a request for management evaluation may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General. The Applicant states that he submitted a formal request for mediation by the United Nations Ombudsman on 10 January 2016, the day before the motion for extension of time was received by the Registry of the Tribunal.

20. However, the Applicant has not submitted evidence of his request to the Office of Ombudsman, and there is no averment or evidence to suggest that the Secretary-General has extended the deadline for submitting a management evaluation request provided for under staff rule 11.2(c). In accordance with art. 8.3 of its Statute, the Dispute Tribunal cannot suspend or waive the deadlines for management evaluation (see, e.g. *Costa* 2010-UNAT-036; *Eng* 2015-UNAT-520).

21. The Tribunal cannot extend the deadline for filing an application when the Applicant has not complied with the statutory requirement to file a request for management evaluation of the contested decision, as any subsequent application would be not receivable.

22. In any event, the Tribunal may only suspend or waive the deadlines for filing an application in exceptional circumstances. There is no proof that there is any ongoing mediation before the Office of the Ombudsman, and the mere fact that the Applicant has requested mediation of the dispute is not an exceptional circumstance.

23. Finally, in view of the findings above, in particular that the motion is fatally defective and any subsequent application ill-fated, and in the interests of judicial economy, the Tribunal has not sought a response to the motion from the Respondent.

**Conclusion**

24. For the reasons stated above, the motion is dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 27<sup>th</sup> day of January 2016