



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

KENNEDY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. On Friday, 28 April 2017, at 1:35 p.m. New York Time, the Applicant, a Senior Security Officer at the S-3 step 11 level with a permanent appointment serving in the Department of Safety and Security (“DSS”) in New York, submitted an application requesting suspension pending management evaluation of the decision to select a candidate other than him for a position at the S-4 level as Security Sergeant.

2. The Applicant presented the application as an “et al.” application, i.e., on behalf of him and others, noting also that “the petitioners belong to a group of candidates on a permanent roster established in 2008 for the position of S-4 (Security Sergeant)”. However, the application is only signed by him and no other applicants are mentioned by name in the application. While this has no impact on the outcome of the present Order, the Tribunal will handle the application as individually filed by the Applicant.

3. By notification dated 28 April 2017, the Registry acknowledged receipt of the application and, upon the instruction of the Tribunal, instructed the Respondent to file a reply by 5:00 p.m. on the same date.

4. In his duly filed reply, the Respondent claims that the Application should be rejected as the Applicant has failed to meet the tripartite elements required under art. 2.2 of the Dispute Tribunal’s Statute. In this regard, the Respondent submits that: (a) the contested decision is not *prima facie* unlawful; (b) any urgency is self-created; and (c) there is no irreparable harm.

Factual and procedural background

5. In his application, the Applicant sets out the following chronology of facts (emphasis omitted):

1. Petitioners belong to a group of candidates on a permanent roster established in 200g for the position of S-4 (Security Sergeant).
2. In 2012 a promotion exercise was carried out for nine vacant S-4 posts. At the end of the exercise only six posts were filled. At that time the administration indicated that there were not enough suitable applications found—disregarding the list of roster candidates at the time.
3. In November of 2014 another promotion exercise was carried out for five S-4 posts at the end of the exercise five posts were filled and a list of eight candidates were placed on a roster. The list for the newly promoted S-4's and the roster list were published in the Daily Orders by the Office of the Chief on 5, November 2014. None of the petitioners were mentioned ion that list or promoted.
4. On 3, March 2016, the following Vacancy announcement was published in the Daily Orders “Please be informed that Job Opening #55220 for two (2) Security Sergeant Posts (S-4) has been published in Inspira with expiry date 19 March 2016. All eligible (including rostered) candidates are encouraged to apply if interested in the posts. You are also encouraged to take any relevant OHRM courses such as PHP preparation, mock-interview, and others that may be available”.
5. Petitioners applied for the position but none were considered since the names were taken again from the roster established on November 2014 as indicated above.
6. On 22 February 2017 an announcement was made in the Admin Bulletin as follows “7. JOB OPENING: Security Sergeant, S4, Department of Safety and Security, NEW YORK (Job Opening 71692) Please be informed that Job Opening #71692 for S4 Security Sergeant will be published by 1 February 2017, with expiry date of 1 March 2017. All eligible (including rostered) candidates are encourages to apply if interested in the posts. You are also encouraged to take any OHRM courses such as PHP preparation, mock-interview, and others that may be available”. All petitioners again applied,

however the only candidates selected were again from the roster established in November, 2014.

7. The above information shows that there is a pattern of abuse of authority carried out by the administration, which categorically targeted the petitioners and denied them their right of being fairly considered for the vacancies—contrary to Article 101, paragraph 3 of the Charter of the United Nations and contrary to prior practice to use the 2008 roster for promotion to S3 in 2016. In this promotion most or all of 20 Security Officers got promoted from the roster which was also established in 2008.
6. On 28 April 2017, prior to filing his application for suspension of action, the Applicant submitted a request for management evaluation.

Consideration

The mandatory and cumulative conditions for suspending an administrative decision

7. Article 2.2 of the Dispute Tribunal’s Statute states:

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.

8. Article 8.1(c) of the Tribunal’s Statute states that an application shall be receivable if: “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”.

9. Article 13.1 of the Tribunal’s Rules of Procedure states:

The Dispute Tribunal shall order a suspension of action 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.

10. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

- a. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;
- b. The contested decision has not yet been implemented;
- c. The application concerns an administrative decision that may properly be suspended by the Tribunal;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. Its implementation would cause irreparable damage; and
- f. The case is of particular urgency.

Whether the Applicant requested management evaluation of the contested decisions and whether the evaluation is ongoing

11. It follows from art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure 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. As results from the case record, the Applicant submitted his request for management evaluation on 28 April 2017, prior to filing the application for suspension of action, and the Tribunal has not been informed that management evaluation has been finalized. As follows from the Applicant's submissions, the

contested decision is to be implemented on 1 May 2017. The Tribunal therefore considers that the first two cumulative and mandatory conditions for a suspension of action have been fulfilled.

Whether the application concerns an administrative decision that may be properly suspended by the Tribunal

13. The Tribunal notes that the contested decision is a promotion decision to a S-4 level post (Security Sergeant) in DSS, New York, and concludes that the application for suspension of action concerns an administrative decision that may be properly suspended by the Tribunal, thus the third condition is also fulfilled.

Whether the case is of particular urgency

14. The Tribunal notes that according to art. 2.2 of the Dispute Tribunal's Statute and 13 of its Rules of Procedure, a suspension of action application is only to be granted in cases of particular urgency.

15. The Tribunal notes that, in his application, the Applicant indicates 8 April 2017 as the date on which the decision was notified to him or on which he first came to know about the decision. The present application for suspension of action was filed on 28 April 2017, 20 days after the date when the Applicant was first informed about his non-selection. Furthermore, the Applicant states that the decision is to be "implemented" on 1 May 2017, which is on the next business day from the date of his filing. The Applicant has provided no reasons as to why he waited nearly three weeks to file the management evaluation request and the application for suspension of action of the contested decision.

16. The Tribunal concludes that, also in the light of the relevant jurisprudence of the Dispute Tribunal (see, for instance, *Goodwin* Order No. 18 (NY/2016) dated 27 January 2016), the urgency in the present case is self-created and the application therefore fails to meet the test of urgency.

17. Accordingly, the Tribunal finds that one of the cumulative conditions for suspending the contested decision is not fulfilled. It is therefore not necessary for the Tribunal to further examine if the remaining statutory requirements specified in art. 2.2 of its Statute, notably *prima facie* unlawfulness and irreparable damage, have been met in the case at hand.

Conclusion

18. In the light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is denied.

(Signed)

Judge Alessandra Greceanu

Dated this 28th day of April 2017