



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2015/136

Judgment No.: UNDT/2015/045

Date: 5 June 2015

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

BHARATI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

UN Women

Introduction

1. The Applicant, a General staff member of the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”), India, in the service of the Organization from a date prior to 1 November 2014, submitted via email of 30 December 2014 a motion for extension of time to file an application against “the decision of [the United Nations Office of Human Resources Management, International Civil Service Commission] (“UN/OHRM/ICSC”)] [following] the comprehensive salary survey conducted in New Delhi, India, in June 2013 [finding] that the current salaries for locally-recruited staff are above the labour market”, as contained in the UN/OHRM cable of 1 October 2014.

2. Also on 30 December 2014, the Geneva Registry emailed the Applicant requesting him to file his motion via the Tribunal’s eFiling portal; he did so on 22 May 2015.

3. The Applicant submits that:

[c]onsequently, there has been no revision of salary scales after the comprehensive survey for staff members already on board prior to 01/11/2014, including [him]. The decision communicates that the eligible staff already on board prior to 01/11/2014 will continue to be on GS 61 and NO 21, being the earlier salary scale before the comprehensive salary survey in June 2013. Amendments to salary scale revision 61 for the General Service category and revision 21 for the National Officer category, payable to eligible staff already on board prior to 1 November 2014, are issued to reflect revised allowances (the child and language allowance have been revised downward).

4. Having reviewed the Applicant’s submission, the Tribunal is of the view that it is not necessary to grant an extension of time for filing an application, since the filing is sufficient to be regarded as an—incomplete—application.

Facts

5. A Comprehensive Local Salary Survey was conducted in New Delhi in June 2013, and the results of the survey were promulgated by OHRM on its website, as reflected in its cable dated 1 October 2014, in the following terms:

Subject: New Delhi (India) local salaries

(AAA) following the comprehensive salary survey conducted in New Delhi in June 2013, this is to advise you that the results of the survey indicate that salaries for locally recruited staff are above the labour market when compared with the remuneration package of the retained comparators by 13.4 per cent for general service (GGSS) category and 19.4 per cent for national officer category. accordingly, the following salary scales are issued:

- (1) GS 62 and no 22, both effective 1 June 2013, payable only to staff recruited on or after one November 2014. revised net salaries reflect downward adjustment of (-) 13.4 per cent for GGSS and (-) 19.4 per cent for NNOO.
- (2) amend. one to GS 61 and no 21, effective 1 July 2012, payable to eligible staff already on board prior to one November 2014, the amendments are issued to reflect revised allowances.

(BBB) revised allowances in rupees net per annum are as follows:

- (1) child, per child, subject to maximum of six children
 - a. 23,511 applicable to staff members for whom the allowance becomes payable on or after one November 2014;
 - b. 27,156 applicable to staff members for whom the allowance becomes payable prior to one November 2014;
- (2) first language
 - a. 29,532 applicable to staff members for whom the allowance becomes payable on or after one November 2014;

b. 34,104 applicable to staff members for whom the allowance becomes payable prior to one November 2014;

(3) second language

a. 14,766 applicable to staff members for whom the allowance becomes payable on or after one November 2014;

b. 17,052 applicable to staff members for whom the allowance becomes payable prior to one November 2014.

6. In his application, the Applicant stresses that the salary freeze is causing him grave prejudice and that to allow him to challenge the survey and the results thereof, the list of comparators interviewed and retained during the 2013 salary survey should be shared with him.

Consideration

7. The Tribunal recalls that its jurisdiction is limited, and that the General Assembly has emphasized more than once that the Tribunals of the new system of administration of justice shall not have any powers beyond those conferred under their respective statutes (see, e.g., para. 5 of A/RES/67/241, adopted on 24 December 2012). In particular, the scope of the Tribunal's jurisdiction is clearly determined and limited by art. 2.1(a) of its Statute, which provides:

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

8. The Tribunal notes that the Appeals Tribunal recently recalled the definition of an administrative decision in its judgement *Al Surkhi et al.* 2013-UNAT-304,

by quoting the definition developed by the former Administrative Tribunal of the United Nations in Judgement *Andronov* No. 1157 (2003), namely that:

[i]t is acceptable by all administrative law systems, that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

9. The Tribunal further recalls its recent Judgment *Tintukasiri et al.* UNDT/2014/026, in which it held with respect to the decision to freeze salary scales that:

[the] decision is of a general order, in that it concerns all eligible General Service staff and National Officers in Bangkok on board prior to 1 March 2012. As such, the circle of persons to whom the salary freeze applies is not defined individually but by reference to the status and category of these persons within the Organization, at a specific location and at a specific point in time. Moreover, the decision will apply for a duration which, at the time it was taken and as at today, cannot be determined. Indeed, nobody can predict when the gap flagged by the survey will be closed, hence the actual duration of the salary freeze is unknown ... Accordingly, the Tribunal concludes that in applying the test of *Andronov*, the decision to freeze existing salary scales ... does not constitute an administrative decision for the purpose of art. 2.1(a) of the Tribunal’s Statute.

10. The Tribunal finds that Judgement *Tintukasiri et al.* and the present application deal with identical matters. Indeed, the main facts of *Tintukasiri et al.* are summarized in the above-referenced judgment of the Dispute Tribunal as follows:

17. The 2011 Comprehensive Local Salary Survey was conducted from June to December 2011.

18. On 10 January 2012, an [Local Salary Survey Committee (“LSSC”)] meeting was held, to consider and sign the LSSC report

prepared by the salary survey specialists, by 11 January 2013, for presentation to the Headquarters Salary Steering Committee. The results of the survey indicated that United Nations salaries for the General Service and National Officer categories were higher than those of the retained comparators, by 27.2% and 41.4% respectively.

19. On 13 January 2012, the findings of the salary survey specialists were presented to the Headquarters Salary Steering Committee, which unanimously approved the survey results and recommended freezing of salaries for staff members already on board and the implementation of secondary salary scales for staff member recruited after 1 March 2012.

20. The [OHRM] promulgated the salary survey results on its website on 6 February 2012, indicating that the salary scale applicable to staff already on board would be frozen “until the gap is closed”, whereas secondary salary scales would be applied to staff recruited on or after 1 March 2012.

11. The Judgment was appealed, and the Appeals Tribunal, by judgment *Tintukasiri et al.* (2015-UNAT-526) of 26 February 2015 dismissed the appeal and affirmed Judgment *Tintukasiri et al.* No. UNDT/2014/026. In its Judgment, the Appeals Tribunal confirmed the receivability findings of Judgment *Tintukasiri et al.* UNDT/2014/026 without reservation. Considering that the Dispute Tribunal should “recognize, respect and abide by the Appeals Tribunal’s jurisprudence” (*Igbinedion* 2014-UNAT-410), it cannot but reiterate that the decision to freeze the existing salary scales, and to review downward allowances is not an administrative decision for the purpose of art. 2.1(a) of its Statute. The present application is therefore not receivable, *ratione materiae*.

12. The above is a matter of law, which may be adjudicated even without serving the application to the Respondent for reply, and even if it was not raised by the parties (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335).

13. Therefore, the Tribunal decides on the present application by way of summary judgement, in accordance with art. 9 of its Rules of Procedure, which provides that the Tribunal may determine, on its own initiative, that summary judgement is appropriate.

Conclusion

14. In view of the foregoing, the Tribunal DECIDES:

The application be rejected.

(Signed)

Judge Thomas Laker

Dated this 5th day of June 2015

Entered in the Register on this 5th day of June 2015

(Signed)

René M. Vargas M., Registrar, Geneva