



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/GVA/2016/065,
067 and 068
Judgment No.: UNDT/2016/201
Date: 4 November 2016
Original: English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

WAHI
JAYA
SRIVASTAVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

UNFPA

Introduction

1. In August 2016, the Applicants, three locally-recruited General staff members of the United Nations Population Fund (“UNFPA”) based in India, filed separate applications challenging the adoption of the new salary scales posted on 1 October 2014 on the website of the Office of Human Resources Management (“OHRM”), and entailing the freeze of the salary scales for staff on board prior to 1 November 2014. This measure resulted from the Comprehensive Local Salary Survey conducted in India in June 2013, which concluded that salaries for the locally-recruited staff were above the labour market.

Facts

2. A Comprehensive Salary Survey was conducted in New Delhi in June 2013. The results of it were published by OHRM in its website, as reflected in its cable dated 1 October 2014, that read as follows:

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 percent 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 GS61 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.

Consideration

3. As a preliminary matter, the Tribunal finds appropriate to adjudicate jointly the various applications at bar by one single judgment, considering that all of them challenge identical decisions, arise from common facts, raise the same factual and legal issues, and share the same Respondent, since all of the Applicants are staff members of UNFPA in India.

4. The Tribunal must start by addressing the receivability of the applications. Art. 8 of its Statute sets forth the requirements for the receivability of applications, which include, *inter alia*, that:

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

(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;

(ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision.

5. The Tribunal notes that none of the Applicants has provided the Tribunal with any management evaluation request submitted by them against the decisions they intend to contest, nor did any of them at least mention having taken such a step. As a matter of fact, their applications not only contain no information on whether and when they requested management evaluation, but they indicate in relevant part that such information is not applicable ("N/A").

6. According to staff rule 11.2 (Management evaluation):

(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 ... shall, as a first step, submit to the Secretary-General in writing a request for a management 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 management evaluation. (emphasis added)

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

7. It follows from this provision that requesting management evaluation is mandatory regarding any administrative decision, with the exception of two very specific categories of administrative decisions, to wit:

- a. Those taken pursuant to advice obtained from technical bodies; and
- b. Measures taken further to a disciplinary process.

8. Unless the decisions under review fall within one of these two categories, the Applicants should have put them to management evaluation. Absent this request, any subsequent application with the Tribunal will be irreceivable. Moreover, such request must be submitted no later than 60 days after said decisions were notified to the Applicants. The impugned decisions in these cases were rendered public more than two years ago (on 1 October 2014). In other words, if the impugned decisions do not belong to one of the two categories of decisions exempt from management evaluation, the time limit to submit a management evaluation request has been long exceeded and, consequently, the instant applications would be irreceivable *ratione materiae* for want of (timely) management evaluation (*Egglefield* 2014-UNAT-402).

9. Nonetheless, the Applicants seem to consider that no management evaluation was required in their cases. While the contested decisions ostensibly do not constitute measures taken following a disciplinary process, it is possible that the Applicants have deemed that they were taken based on advice by a technical body, i.e., the Comprehensive Salary Survey.

10. Even if this was the case and management evaluation was not required, this would mean, pursuant to the above-quoted art. 8(d)(ii) of the Tribunal's Statute, that the Applicants disposed of 90 days as from their receipt of the administrative decision to institute their cases before the Tribunal. However, they only filed their applications in August 2016, that is, well past the statutory time limit to do so. Hence, on this account, the applications at hand would be irreceivable *ratione temporis*.

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11. For all the above, the Tribunal concludes that the present applications are in any event not receivable and, as such, should be dismissed.

12. The receivability of this application is a matter of law which may be assessed regardless of whether it has or not been raised by the parties, and even without serving the application to the Respondent (*Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335). It is with the foregoing in mind that the Tribunal deemed fit ruling on these cases by summary judgment, pursuant to art. 9 of its Rules of Procedure, without awaiting the Respondent's reply.

Conclusion

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

The applications are rejected.

(Signed)

Judge Teresa Bravo

Dated this 4th day of November 2016

Entered in the Register on this 4th day of November 2016

(Signed)

René M. Vargas M., Registrar, Geneva