



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

BHARDWAJ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Faiza Zouakri, UNDP

Introduction

1. By application filed on 11 August 2016, the Applicant, a locally recruited staff member of the United Nations Development Programme (“UNDP”) in India, challenged the adoption of the new salary scales—posted on the website of the Office of Human Resources Management (“OHRM”)—resulting from a Comprehensive Local Salary Survey conducted in June 2013 in India, which concluded that salaries of locally recruited staff were above the labour market.

2. On 3 November 2016, the Respondent filed his reply to the application *inter alia* arguing that the Applicant’s case was not receivable because her case was not remanded to the United Nations Dispute Tribunal (“UNDT”) by the United Nations Appeals Tribunal (“UNAT”).

Facts

3. The Applicant had previously contested the exact above-mentioned decision before UNDT by application filed in 2014. It was considered together with 28 other cases and disposed of in Judgment *Applicants UNDP* UNDT/2015/022, where the Judge found that the cases were not receivable *ratione materiae* and rejected all 29 applications. It is worth noting that the UNDT issued six other judgments in 2015 concerning a challenge against the above-mentioned decision by 175 locally recruited staff members based in India, namely Judgments UNDT/2015/023 to 028, equally finding the cases not receivable *ratione materiae* and rejecting all applications.

4. Appeals against six out of the seven UNDT judgments¹ were filed before UNAT. By Judgments 2016-UNAT-618, 628, 629, 630, 631 and 632 rendered in March 2016, UNAT reversed the six UNDT judgments, and remanded the Appellants’ cases to the Dispute Tribunal with directions to permit them to file a full application.

¹ UNDT/2015/022, 023, 024, 025, 026 and 028.

5. In her application, the Applicant indicated that it was “being filed pursuant to the decision dated 24.03.2013 of the United Nations Appeals Tribunal in Judgment No. UNDT/2015/022. (Annex II). The said Judgment was based on an appeal by the Applicant.” However, the Dispute Tribunal did not have the record of an outcome of an appeal filed by the Applicant. Consequently, the UNDT Judge President wrote to the UNAT Judge President on 11 October 2016, to *inter alia* ascertain whether the Applicant had appealed Judgment UNDT/2015/022.

6. The Appeals Tribunal Judge President responded on 31 October 2016. According to the Appeals Tribunal’s records, the Applicant filed an appeal form and appeal brief with all the annexes via the UNAT Registry’s email account on 23 May 2015, within the 60 statutory days to do so. However, in her appeal the Applicant cited that she was appealing Judgment UNDT/2015/026.²

7. In the email of 23 May 2015, the Applicant indicated that she faced some challenges in filing her case via the Court Case Management System (CCMS). The Appeals Tribunal Registry asked the Applicant to contact the CCMS support team for assistance with the eFiling problems that she was facing, and also asked her to file her appeal via CCMS. The Applicant contacted CCMS support team that assisted her to create an account, and sent her the link to the eFiling portal. However, she did not file her appeal through the eFiling portal.

8. The Appeals Tribunal Registry did not receive any further communication and or filing from the Applicant. Consequently, the Applicant’s appeal was neither assigned a case number in CCMS, nor was it included as part of the UNDP India group of appeal cases adjudicated by Judgment *Taneja et al* 2016-UNAT-628.

9. According to the Appeals Tribunal, the Applicant did not file a proper appeal in accordance with the instructions of the Registry, and there was no evidence of her having filed or attempted to file an appeal via CCMS after she was provided with a CCMS link and advised to file in the system. Additionally, the Applicant did not contact the Appeals Tribunal Registry or CCMS support

² It should be noted that the UNDT Judgment that concerned the Applicant was UNDT/2015/022.

team to request further assistance. Thus, in the opinion of the Appeals Tribunal President, the Applicant's case should not form part of the cases that were remanded by the Appeals Tribunal to the Dispute Tribunal in March 2016.

Issue

10. The Tribunal finds that the main issue for resolution in this matter is whether the Applicant's case is receivable.

Consideration

11. Article 2 of the Dispute Tribunal's Statute provides for its jurisdiction in matters before it. This Tribunal is competent to review its own jurisdiction with regard to the matter at hand.

12. As noted above, Judgment UNDT/2015/022 addressed the applications of 29 staff members. However, only 14 Applicants sought to appeal the judgment in question and they received an outcome from the Appeals Tribunal by means of Judgment *Taneja et al* 2016-UNAT-628, which remanded the 14 cases to the Dispute Tribunal. The Applicant's claim that in the matter at hand her application was based on an appeal that she had filed, and pursuant to the outcome of *Taneja et al* 2016-UNAT-628, has been refuted by UNAT.

13. It is established jurisprudence that only those Applicants who appeal a UNDT judgment, dismissing multiple applications, can benefit from a UNDT judgment on remand (*Leboeuf et al* UNDT/2014/033). Accordingly, the 15 other staff members, including the Applicant, who were subject of Judgment UNDT/2015/022 cannot rely on the outcome of the appeal in *Taneja et al* to their benefit.

14. Additionally, the doctrine of *functus officio* applies in this case. It dictates that a final decision cannot be reopened and that, once the duties and functions of an office are fully discharged, there is no legal competence for reconsideration of the decision by that office. (*Goodwin* UNDT/2011/104). The Dispute Tribunal was seized of the Applicant's case in 2014, rendered its decision on

24 March 2015, and, thus, brought the Applicant's case to a close. Consequently, this Tribunal became *functus officio*.

15. The Dispute Tribunal ceased to have any jurisdiction over the Applicant's case once Judgment UNDT/2015/022 was rendered. Considering that the Applicant's case was not remanded by the Appeals Tribunal, the Dispute Tribunal cannot adjudicate over the merits of her case.

Conclusion

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

The application is not receivable and is rejected.

(Signed)

Judge Teresa Bravo

Dated this 22nd day of August 2017

Entered in the Register on this 22nd day of August 2017

(Signed)

René M. Vargas M., Registrar, Geneva