



Before: Judge Goolam Meeran

Registry: Geneva

Registrar: René M. Vargas M.

LACKNER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

ALS/OHRM, UN Secretariat

Introduction

1. On 29 August 2018, the Applicant, a Judicial Affairs Officer (P-4) at the United Nations Assistance Mission in Afghanistan (“UNAMA”), requested suspension of action, pending management evaluation, of decisions relating to the recruitment exercise for the position of Senior Judicial Affairs Officer (P-5) at UNAMA.

Facts

2. On 17 February 2017, UNAMA published Job Opening 17-Rule of Law-FMADPKO-74088-R-Kabul (M) for the post of Senior Judicial Affairs Officer (“JO 74088”). The Applicant submitted his candidature for it and the job opening was later cancelled.

3. On 4 June 2018, UNAMA published the above-mentioned JO 97210 as a “Recruit from Roster” (“RFR”) job opening, namely one that “is only open to roster applicants who are already placed on pre-approved rosters, following a review by a United Nations Central Review Body”. The Applicant applied for the position.

4. On 14 July 2018, he filed a request for management evaluation against:

1. The decision by the recruitment/selection panel
 - a. Not to list [him] as first recommended qualified candidate;
 - b. Not to rank [him] as second recommended qualified candidate

In the recruitment procedure of the recruitment for the Senior Judicial Affairs Officer, P5, No. 17-Rule of law-FMADPKO-74088-R-Kabul (M);

2. The decision by the UNAMA senior mission management to stop the recruitment process 74088 and to launch a new recruitment process with slightly changed TORs (new process 97210).

3. The decision to launch the new recruitment process 97210 as a RFR recruitment, but not using standard TORs, but custom tailored TORs, tailored for a specific candidate, who is wanted to be recruited for this post by some of the decision makers in the UNAMA senior management.
5. That request for management evaluation is still under review.
6. On 22 August 2018, the Applicant was notified that he was not selected for the post advertised under JO 97210.

Consideration

7. The application for suspension of action lacks clarity in that it is not entirely clear which of the decisions that the Applicant is aggrieved about is the subject of the request to suspend pending the outcome of management evaluation. Further, the Tribunal has power to suspend only matters that are the subject of an ongoing management evaluation. The Applicant requested management evaluation, on 14 July 2018, in relation to matters referred to under para. 4 above. It would appear that the Applicant did not file a request for management evaluation against the decision of 22 August 2018. If he had done so the onus is on him to produce proof thereof. He failed to do so.

8. The Tribunal recalls that art. 2.2 of its Statute provides that (emphasis added):

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.

9. The above language is also echoed in art. 13.1 of the Tribunal's Rules of Procedure. It follows that applications for suspension of action presuppose the existence of an administrative decision that has not yet been implemented and which is subject to an ongoing management evaluation.

10. There can be no doubt that the decision not to list the Applicant as first recommended qualified candidate and not to rank him as second recommended qualified candidate in the recruitment procedure for JO 74088 was already implemented, since that JO has been cancelled (decision 1 in the Applicant's request for management evaluation). Equally, the decision by UNAMA to stop the recruitment process for JO 74088 and to *launch* a new recruitment process under JO 97210 as a RFR and not using standard TORs (decisions 2 and 3 of the request for management evaluation), has already been implemented: JO 74088 was cancelled (above) and the posting period for JO 97210 expired on 18 June 2018.

11. The Tribunal finds that the Applicant's request in connection with JO 74088 and the launching of JO 97210 is not receivable *ratione materiae*.

12. The Tribunal further notes that the Applicant was notified of his non-selection for JO 97210. He stated in his application for suspension of action that "the pending MEU intervention ... is of course not yet addressing the decision on the result of the selection process from 22 August 2018, as it was submitted with 15 July 2018, a while before the result of the selection process, aiming to halt or stop the selection process 97210". Since it appears from a plain reading of his application that the Applicant did not file a request for management evaluation against the decision of his non-selection, notified to him on 22 August 2018, the Tribunal does not have power to suspend it pursuant to art. 2.2 of its Statute and art. 13 of its Rules of Procedure.

13. It is open to the Applicant, if appropriate, to file another application for a suspension of action provided that he complies with the statutory requirements.

14. Given the defect in this application it was not necessary to serve it on the Respondent prior to issuing the Order.

IT IS ORDERED THAT:

15. The application for suspension of action is refused.

(Signed)

Judge Goolam Meeran

Dated this 31st day of August 2018

Entered in the Register on this 31st day of August 2018

(Signed)

René M. Vargas M., Registrar, Geneva