



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-076



**Sethia
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Rose Boyko Judge Luis María Simón
Judgment No.:	2010-UNAT-079
Date:	29 October 2010
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Amy Wood

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Ashish Kumar Sethia (Sethia) joined the International Criminal Tribunal for Rwanda (ICTR) at the level of FS-3, step I, in March 2000. In December 2000, Sethia sought a review of his entry level, which was rejected in February 2001. Thereafter, Sethia made repeated demands to the management of ICTR for a review of his entry level. On 28 March 2008, after his retirement, Sethia submitted a request for administrative review of his entry level by the Secretary-General.

2. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that Sethia's application was not receivable as it was time-barred. This Court affirms the Judgment of the Dispute Tribunal. Sethia failed to make a request for administrative review of the decision regarding his entry level within the two-month time limit under former Staff Rule 111.2(a). We consider that the repeated requests by Sethia to the management of ICTR over a period of seven years for a correction of his entry level were a mere restatement of the original claim and did not stop the deadline for contesting the decision from running. As held by this Tribunal in *Costa*,¹ the Dispute Tribunal does not have the power to waive or suspend the deadline for requesting administrative review under the old internal justice system. The appeal is therefore dismissed.

Facts and Procedure

3. Sethia joined the ICTR on 14 March 2000 as an Administrative Assistant in the Office of the Registrar at the level of FS-3, step I, on secondment from the United Nations Development Programme.

4. On 21 December 2000, Sethia sought a review of his entry level and the Chief of Personnel informed him in writing in February 2001 that the level of entry offered was correct and in accordance with the procedures in effect at that time.

¹ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

5. Sethia was promoted to the FS-4 level and then to the FS-5 level. He retired on 13 March 2007. In 2008, Sethia again requested a review of his entry level. On 7 February 2008, he was informed by the Chief of the Division of Administrative Support Services of ICTR that his entry level had been properly determined in February 2001 and his request for review of the administrative decision was not receivable as it was not made within the applicable time limit. On 28 March 2008, Sethia submitted a request for administrative review of his entry level. On 2 May 2008, the Administrative Law Unit informed him that his request was time-barred and, furthermore, the determination of his entry level was proper. Sethia filed an appeal with the Joint Appeals Board on 30 June 2008. The appeal was transferred to the Dispute Tribunal following the introduction of the new internal justice system from 1 July 2009.

6. On 1 March 2010, the Dispute Tribunal rendered Judgment No. UNDT/2010/037, which found that Sethia's application was time-barred. The Dispute Tribunal found that Sethia was advised of the contested decision on 9 February 2001 and he did not comply with the two-month time limit under former Staff Rule 111.2(a) to make a request for administrative review of the decision. Applying its decision in *Rosca*,² the Dispute Tribunal found that the question of waiver of the time limits applicable to cases transferred from the old internal justice system was governed by Article 8(3) of the Statute of the Dispute Tribunal (UNDT Statute), which allows for waiver or suspension of deadlines only in "exceptional cases". Sethia's explanation for the approximately seven year delay in filing a request for administrative review was that a tense and fearful atmosphere prevailed in the ICTR starting in January 2001. The Dispute Tribunal found that these reasons were untenable and, at best, subjective reasons for not complying with the time limit and did not satisfy the requirement of "exceptional" in Article 8(3) of the UNDT Statute. Further, Sethia was not diligent in actively pursuing his case. The Dispute Tribunal found that the application was an abuse of process and rejected the application in its entirety.

7. Sethia filed an appeal against the Dispute Tribunal's Judgment on 12 April 2010. After receiving the appeal on 13 April 2010, the Secretary-General filed an answer to the appeal on 28 May 2010. On 17 June 2010, Sethia submitted a reply to the Secretary-General's answer and additional documentary evidence.

² *Rosca v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/052.

Submissions

Sethia's Appeal

8. Sethia submits that the Dispute Tribunal erred on a question of fact, resulting in a manifestly unreasonable decision. Sethia argues that certain facts were overlooked, in particular that a large number of staff members were not satisfied with their entry levels and the matter was taken up with the Registrar of ICTR by the Staff Association. The Registrar and the Chief of Personnel assured the Staff Association that the cases would be reconsidered. Some 23 cases were accepted for review by the Chief of Human Resources in February 2002, including Sethia's case. Sethia argues that there was no reason to believe that the Registrar and the Chief of Human Resources were not aware of the time limit for challenging administrative decisions under former Staff Rule 111.2, but they nevertheless accepted the cases for reconsideration.

9. Sethia argues that the reviews of his case by the Registrar in October 2006 and the Chief of Human Resources in December 2006, together with the Registrar's assurance in March 2007 that an impartial review would be carried out establishes that his case was still alive and pending a decision.

10. Sethia submits that at no time between 10 February 2002 and 6 February 2008 was he informed that his case was time-barred. He sent 19 reminders over this period seeking a decision, and the Staff Association regularly followed up on the matter with the Registrar. The relevant administrative decision was only conveyed to him on 7 February 2008 by the Chief of Administration, and his appeal from this decision was filed within the time limit set out in former Staff Rule 111.2.

11. Sethia requests that the Appeals Tribunal reverse the Judgment of the Dispute Tribunal and hold that his application is receivable.

Secretary-General's Answer

12. The Secretary-General submits that the Dispute Tribunal correctly dismissed Sethia's application as not receivable. The jurisprudence of the former Administrative Tribunal emphasized the importance of complying with mandatory time limits under the Staff Rules. Sethia questioned his entry level nine months after he joined ICTR, well after the two-month

time limit set out in former Staff Rule 111.2 to challenge the decision. Sethia was notified on 9 February 2001 that the determination of his entry level was properly made. Even accepting 9 February 2001 as the relevant date of the contested decision, Sethia waited until March 2008 to submit his request for administrative review, over seven years after the expiry of the applicable time limit.

13. As argued before the Appeals Tribunal in the *Costa* appeal, the Secretary-General contends that the Dispute Tribunal does not have the power to suspend or waive the deadlines for requesting administrative review of a contested decision under the old system of internal justice. In the event that the Appeals Tribunal holds that the Dispute Tribunal can suspend or waive the deadlines, the Secretary-General contends that the Dispute Tribunal correctly found that there were no exceptional circumstances justifying a waiver of the time limit to submit a request for administrative review.

14. The Secretary-General submits that the jurisprudence of the former Administrative Tribunal clearly established that the time for initiating the appeals process begins to run once the administrative decision is made. Repeatedly challenging the decision does not constitute a new administrative decision and thus restart the time period in which to submit a request for administrative review. Sethia failed to follow the procedure for challenging the administrative decision and his repeated requests for review of his entry level did not extend the deadline for submitting a request for administrative review.

15. The Secretary-General requests that the Appeals Tribunal make a number of findings, affirm the Judgment and dismiss the appeal in its entirety.

Considerations

16. As a preliminary matter, the request by Sethia to file a reply is denied by this Tribunal as there is no provision under the Statute and the Rules of Procedure of the Appeals Tribunal (Statute and Rules, respectively) for an appellant to submit a reply, and there are no exceptional circumstances identified by Sethia to justify the submission of the additional pleading.³

³ See *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 27, and *Solanki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-046, paras. 12-13.

17. Secondly, we do not consider that the additional documentary evidence which Sethia seeks to submit before this Tribunal is relevant to the determination of this case. Without addressing the issue of whether there are exceptional circumstances justifying the receipt of the evidence, we consider that there is no basis for exercising our discretion under Article 2(5) of the Statute and Article 10 of the Rules to receive the evidence.

18. The issue raised in this appeal is whether the Dispute Tribunal made an error in finding that Sethia's application is time-barred and not receivable. The Dispute Tribunal found that the contested decision regarding Sethia's entry level upon his appointment was communicated to him on 9 February 2001. Under Staff Rule 111.2(a) then in force, Sethia was obliged to make his request to the Secretary-General for administrative review within two months. However, he made his request approximately seven years later, in March 2008.

19. In his appeal, Sethia argues that the Dispute Tribunal erred in fact as the administrative decision was made on 7 February 2008 and his request for review of this decision was made within the time limit under former Staff Rule 111.2(a). We do not accept this argument. As found by the Dispute Tribunal, the decision confirming Sethia's entry level was communicated to him in writing in February 2001. Sethia did not pursue the procedure available under the former Staff Rules to seek redress, but rather made repeated demands over a period of seven years to the management of ICTR for a correction of his entry level.

20. We consider the repeated submission by Sethia for a correction of his entry level to be a mere restatement of his original claim, which did not stop the deadline for contesting the decision from running or give rise to a new administrative decision thereby restarting the time period in which to contest his entry level.⁴

21. The Dispute Tribunal went on to consider whether Sethia's case was an exceptional case under Article 8(3) of the UNDT Statute which justified the waiver or suspension of the time limit prescribed by former Staff Rule 111.2(a). The Dispute Tribunal found that it was not an exceptional case. In the *Costa* Judgment, this Tribunal held that the Dispute Tribunal does not have the power under Article 8(3) of the UNDT Statute to suspend or waive the deadlines for requesting administrative review under the old system of internal justice.

⁴ See UNAT Judgment No. 1211, *Muigai* (2004) and UNAT Judgment No. 1311, *Burbridge et al* (2006) of the former Administrative Tribunal.

Therefore the Dispute Tribunal erred in law in applying its decision in *Rosca*, which found that the Dispute Tribunal does have this power. The Judgment of the Dispute Tribunal in *Rosca* was disapproved by this Tribunal in *Costa*. This error does not affect the outcome in this case.

22. We hold that Sethia's application is time-barred and not receivable as he did not make a request for administrative review of the contested decision within the two-month time limit set out under former Staff Rule 111.2(a). Therefore, there is no merit in this appeal.

Judgment

23. The appeal is dismissed and the UNDT Judgment is affirmed.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Boyko

(Signed)

Judge Simón

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar