



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

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Judgment No. 2019-UNAT-907

**Koduru**  
**(Respondent/Appellant on Cross-Appeal)**  
**v.**  
**Secretary-General of the United Nations**  
**(Appellant/Respondent on Cross-Appeal)**

**JUDGMENT**

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Before: Judge Deborah Thomas-Felix, Presiding  
Judge Martha Halfeld  
Judge Richard Lussick

Case No.: 2018-1199

Date: 29 March 2019

Registrar: Weicheng Lin

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Counsel for Secretary-General: Francisca Lagos Pola  
Counsel for Ms. Koduru: George Irving

**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/079, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 31 July 2018, in the case of *Koduru v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 1 October 2018, Ms. Ratnanjali Venkata Koduru filed her answer and a cross-appeal on 8 November 2018, and the Secretary-General filed his answer to the cross-appeal on 7 January 2019.

**Facts and Procedure**

2. The following facts have been established by the UNDT:<sup>1</sup>

... [Ms. Koduru] entered service with the [United Nations Interim Force in Lebanon (UNIFIL)] on 1 July 2011 as a Budget Officer at the P-4 level. She worked in the Budget Section under the supervision of a Chief Budget Officer who was at the P-5 level.

... The General Assembly, in its resolution 66/264 (Cross-cutting issues) of 21 June 2012, emphasized the need for the Secretary-General to conduct a comprehensive review of the civilian staffing requirements for all peacekeeping operations to ensure that the civilian staffing was appropriate for implementing each mission's mandate.

... In his report 67/747, dated 25 February 2013, on UNIFIL's budget for 1 July 2013 to 30 June 2014, the Secretary-General proposed that the post of the Chief Budget Officer (P-5) be abolished and the Finance and Budget Sections be consolidated/merged into the new Budget and Finance Section/Financial Management Section. The Secretary-General indicated that changes in UNIFIL's staffing requirements would be achieved through "the abolishment, conversion, reassignment and redeployment of posts [...].

... Consequently, during the 2013/2014 budget year, the Budget and Finance Sections in UNIFIL were merged [...]. The organizational chart for the newly merged Budget and Finance Section included posts for one P-5 and two P-4 officers. One of the two P-4 posts was encumbered by [Ms. Koduru].

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<sup>1</sup> Impugned Judgment, paras. 8-32.

... In accordance with A/RES/66/264, United Nations Headquarters and UNIFIL conducted a Civilian Staffing Review (CSR) in September 2013 to review: excess capacity, nationalization of functions, outsourcing of operations and cooperation with the United Nations Country Team. At the time of the review, there was a vacant post of Finance and Budget Officer, P-4, in the Budget and Finance Section.

... Between 9 and 24 October 2013, UNIFIL advertised the position of Finance and Budget Officer, P-4, in the Budget and Finance Section/Financial Management Section (job opening 31064).

... On 24 January 2014, the Acting Director of the Field Personnel Division, Department of Field Support (FPD/DFS) sent a fax to all peacekeeping missions with guidelines on how to conduct comparative review processes during downsizing exercises. The Acting Director advised, in relevant part, that comparative review would be necessary where the number of posts by occupational group/functional title and level in the mission's new structure is less than the number of currently serving staff in the same occupational group/functional title in the former structure.

... The report of the Secretary-General on UNIFIL's budget for 1 July 2014 to 30 June 2015 [...], dated 18 February 2014, made only one recommendation with respect to the Finance and Budget Section/Financial Management Section. The Secretary-General proposed that one post of budget assistant, which was a national general service position, should be abolished. There was no mention of the P-4 positions.

... Mr. K.A. was recruited on 10 April 2014 for the vacant Finance and Budget Officer, P-4 position (job opening 31064).

... On 2 June 2014, Ms. Farley, who was [Ms. Koduru's] supervisor, recommended that [Ms. Koduru's] appointment be renewed for one year, until 30 June 2015, with a comment that the CSR had recommended the nationalization of her post in the next budget cycle.

... On 23 June 2014, [Ms. Koduru] wrote to Ms. Fraser to request clarification on and to protest Ms. Farley's comment regarding the nationalization of her post. By memorandum dated 24 June 2014, the Officer-in-Charge (OiC), HRMS, advised [Ms. Koduru] that Ms. Farley's comments were "irrelevant" and could be "disregarded" because the recommendation of the CSR for the 2015/2016 budget cycle was going to be discussed in the upcoming budget deliberations with all sections.

... The CSR, in its report dated 3 November 2014 noted, *inter alia*, that the UNIFIL Budget and Finance Section was one of the sections that required a reduction in staff and recommended the nationalization of one P-4 post during the 2014/2015 budget year.

... On 8 December 2014, the Field Budget and Finance Division of the Department of Field Support (FBFD/DFS) shared the proposed staffing changes for the 2015/2016 budget period with Ms. Farley and [Ms. Koduru]. DFS indicated that the CSR report had been used as a guide in determining the functional titles of the 24 posts to be nationalized and the 48 posts to be abolished. The document indicated that one post of P-4 Finance and Budget Officer from the Financial Management Section would be nationalized and converted into a National Professional Officer (NPO) post. [Ms. Koduru] forwarded the DFS document to Ms. Fraser on 9 December 2014 for a response.

... Sometime in 2014, UNIFIL established an Ad-Hoc Committee to oversee the retrenchment processes recommended by the CSR and ensure they were conducted in a fair and transparent manner. The Committee was comprised of representatives from the Office of the Head of Mission, Administration, the National Staff Union and the Field Staff Union (FSU).

... [...]

... In A/69/731 (Budget for the United Nations Interim Force in Lebanon for the period from 1 July 2015 to 30 June 2016), dated 19 January 2015, the Secretary-General proposed, *inter alia*, to the General Assembly that one post of Finance and Budget Officer, P-4, be converted to an NPO post.

... In April 2015, the UNIFIL Head of Mission sent a message to all UNIFIL personnel explaining the impact the CSR would have on the 2015/2016 budget and the Mission's approach in dealing with the upcoming nationalization of 26 international posts and abolishment of 10 international and 46 national posts.

... In the same month, UNIFIL initiated a comparative review exercise. The Chairman of the Ad-Hoc Committee signed off on the comparative review evaluation sheet for [Ms. Koduru] and Mr. K.A. on 15 April 2015. The sheet stated that [Ms. Koduru] had the lowest total points and therefore "would be the first candidate for consideration to non-renewal/separation due to a reduction of relevant posts."

... On 17 April 2015, [Ms. Koduru] was elected Vice President of the FSU.

... By memorandum dated 21 April 2015 but received by [Ms. Koduru] the next day, 22 April 2015, Ms. Fraser notified [Ms. Koduru] that she had not been successful in the comparative review process and that thus, her contract would not be renewed beyond 30 June 2015.

... [Ms. Koduru] sought management evaluation of the impugned decision on 21 May 2015.

... On 24 June 2015, [Ms. Koduru] received an email from the Chief, HRMS regarding her relocation to Brindisi, Italy, on 30 June 2015 to take up her new responsibility as Vice President of the FSU from 1 July 2015 with a one month extension while FPD/DFS identified a post for her. This was not implemented.

... The Secretary-General's proposals in A/69/731 were approved in resolution 69/302, which was adopted by the General Assembly on 25 June 2015.

... By memorandum dated 25 June 2015, the Under-Secretary-General for Management notified [Ms. Koduru] of the Secretary-General's decision to endorse the findings and recommendations of the Management Evaluation Unit [MEU] and to uphold the impugned decision.

... [Ms. Koduru] was separated from service with UNIFIL on 30 June 2015. On 14 August 2015, she was advised that she had been selected for a post with the United Nations Mission in Liberia (UNMIL) effective 23 August 2015.

3. Ms. Koduru contested the decision before the UNDT requesting reinstatement from 1 July 2015 and compensation for loss of earnings and for moral damages. In its Judgment, the UNDT found Ms. Koduru's claim that her rights as an elected staff representative were violated due to the non-extension of her contract not receivable because she had failed to submit this issue to the MEU. The UNDT further held that the decision to separate Ms. Koduru was unlawful as it was discriminatory and constituted an abuse of authority. In reaching this conclusion, the UNDT found Ms. Farley abused her authority when she recruited a new P-4 officer in disregard of the CSR review and when she proceeded to nationalize Ms. Koduru's post one year earlier than the date approved by the General Assembly.

4. The UNDT ordered that the decision not to renew Ms. Koduru's appointment and separate her from service be rescinded. The Secretary-General was ordered to reinstate Ms. Koduru in service for the seven-week period she was separated to ensure her continuity of

service should she be reviewed for eligibility for a continuing appointment and after-service health insurance, and to pay Ms. Koduru her net base salary and entitlements for this period.

### **Submissions**

#### **The Secretary-General's Appeal**

5. The Secretary-General argues that the UNDT erred in fact and law in concluding that Ms. Koduru's non-renewal and separation was unlawful. Based on the CSR recommendation to nationalize a P-4 post, Ms. Koduru was comparatively reviewed. The nationalization was genuine and grounded in operational requirements.

6. The Secretary-General further argues that the UNDT erred in fact and law in finding the decision was discriminatory and an abuse of authority per the actions of her supervisor, Ms. Farley, when she recruited Mr. K.A. to a vacant P-4 post knowing the CSR had recommended nationalization. There is no evidence of bad faith and the presumption of regularity of official acts is satisfied. The UNDT erred in fact in finding that Ms. Farley proceeded to nationalize the post a year early. Ms. Farley did not know of the CSR recommendation to nationalize the P-4 post until after commencing the recruitment exercise. In turn, there is no evidence to support that Ms. Farley acted in bad faith.

7. In addition, the Secretary-General argues that the UNDT erred in law by failing to set a compensation amount *in lieu* of rescission as required by Article 10(5) of the UNDT Statute. The Secretary-General also argues that the UNDT erred in ordering specific performance in addition to rescinding the separation from service as there is no legal basis to award both as Article 10(5) permits an order of rescission "or" specific performance, but not both.

#### **Ms. Koduru's Answer**

8. Ms. Koduru requests the Appeals Tribunal to reject the Secretary-General's appeal and award her USD 5,000 in costs. The Secretary-General has failed to establish an appealable ground and relitigates the same issues and facts already adjudicated. The Secretary-General alleges in the appeal that Ms. Farley was unaware of the CSR recommendations, however this is contrary to documentation and witness testimony. The CSR took place in September 2013 and

was signed off on 3 November 2013. The job opening took place in October 2013. Ms. Farley was part of the team that conducted the CSR and was therefore fully aware of its recommendations. The UNDT correctly established these facts in determining there was abuse of authority.

9. The Secretary-General continues to misstate the fact that the proposal for nationalization in the 2015/2016 budget was for Ms. Koduru's post. The post identified in all budget documents as the P-4 post to be abolished was the post advertised and filled by Mr. K.A., not Ms. Koduru's post. Ms. Koduru argues Ms. Farley's actions were not consistent with normal business practices as the Secretary-General reargues for the second time on appeal. The UNDT did not find Ms. Farley abused her authority by selecting Mr. K.A. for the vacant post but rather by ignoring the imperative to use attrition to effect downsizing.

10. The UNDT rightly concluded that the presumption of regularity did not apply when a review of the procedures revealed irregularity. The Secretary-General has not offered a further explanation for why Ms. Farley proceeded to recruit a P-4 into a vacant post knowing the CSR recommendations from 2013 to nationalize one vacant P-4 post, and at the same time notifying human resources of the intent to nationalize Ms. Koduru's post instead. The Secretary-General's rationalization for why Ms. Farley filled a post already intended to be nationalized is self-serving and misrepresents the facts. As documented in the application and affirmed by the UNDT, the CSR foresaw nationalization of one P-4 post in Budget and Finance Section; the proposal on nationalizing the Finance and Budget Officer post (not the title of Ms. Koduru's post) was proposed in December 2014 and reflected in the 2015/2016 budget. The UNDT did not err in law or fact in this regard. Documents submitted to the UNDT included a Human Resources master file with comments from the FPD/DFS questioning why there was a comparative review of two staff with different functional titles and asking which post had been abolished in the Budget proposal. No satisfactory answer was provided.

11. With regard to the Secretary-General's arguments on alternative compensation, Ms. Koduru contends they are misconstrued. The UNDT did not err in ordering rescission of her separation which was a refusal to consider her separation and re-employment seven weeks later as a reinstatement pursuant to Staff Rule 4.18 rather than a break in service and to include payment for loss of earning during this period as damages. Ms. Koduru had already been re-employed with the United Nations Mission in Liberia (UNMIL), and thus in her application before the UNDT, she did not request renewal of her fixed-term contract to UNIFIL but requested reinstatement. The remedy does not require a new appointment but an administrative

action to apply Staff Rule 4.18 on reinstatement, with compensation. Lastly, Ms. Koduru requests costs as the Secretary-General's appeal is merely an attempt to relitigate and therefore is an abuse of the appeals process, which has cost Ms. Koduru an additional USD 5,000 in legal fees and a delay bearing on the interest on the judgment award.

### **Ms. Koduru's Cross-Appeal**

12. Ms. Koduru cross-appeals the UNDT's denial of her request for moral damages. She firstly reiterates that her requested remedy was for reinstatement for the period between her appointments so that she could be laterally transferred to her new mission, with compensation for loss of earnings and moral damages. Should the Appeals Tribunal determine alternative compensation *in lieu* of rescission is appropriate, the alternative amount should be one year's net base salary in addition to the loss of earnings for seven weeks in view of her loss of entitlements owing to the unlawful break in service, seniority, eligibility for conversion to a continuing appointment and the after-service health insurance, and the interference in her staff representational functions.

13. In addition, Ms. Koduru argues the UNDT erred when finding as not receivable her claim that the impugned decision violated her elected staff representational rights when the Administration failed to implement her relocation to Brindisi to take up her responsibilities as this is evidence of the *animus* against her and speaks to her moral damages. While rejecting her testimony on the emotional impact of these actions for moral damages, the UNDT failed to assess this harm to her *dignitas*, which is supported by evidence. Accordingly, Ms. Koduru requests the Appeals Tribunal award her one year's net base pay as moral damages.

### **The Secretary-General's Answer to the Cross-Appeal**

14. The Secretary-General requests Ms. Koduru's cross-appeal be dismissed in its entirety as Ms. Koduru has failed to identify an error in fact or law by the UNDT in its decision not to award her moral damages. The UNDT correctly held there was a lack of supporting evidence to her claim. Ms. Koduru did not provide corroborating evidence to her testimony that she had suffered moral damages as is required by the Appeals Tribunal's jurisprudence. The UNDT evaluated Ms. Koduru's oral evidence of harm to her personality and *dignitas* and concluded it was general and did not give a clear picture of harm. As there was no other evidence beyond her testimony, the UNDT correctly rejected a claim for moral damages.



15. Lastly, the UNDT correctly dismissed as not receivable Ms. Koduru's claim that the non-extension of her appointment violated her rights as an elected representative because she did not first bring this forth to the MEU.

### Considerations

16. The facts in this matter are troubling. Apart from the myriad of issues surrounding the non-renewal of Ms. Koduru's contract and the nationalization of the post, which the UNDT deemed "premature and unnecessary", Ms. Koduru was elected Vice-President of the Staff Union on 17 April 2015 and some four days after that election, on 22 April 2015, she was notified that her post was nationalized.<sup>2</sup> She was also notified "that she was unsuccessful in a comparative review and would be separated from service on 30 June 2015".<sup>3</sup> Ms. Koduru was expected to assume duties as Vice-President of the Staff Union on 21 July 2015 and she received an e-mail on 24 June 2015 from the Chief HRMS that informed her of her relocation to Brindisi, Italy on 30 June 2015 to begin her responsibilities as Vice-President of the Staff Union on 1 July 2015 facilitated by a one-month extension of her contract while the FPD/DFS identified a post for her. This was never done.

17. Before the UNDT, the Secretary-General submitted that the claim that the Organization violated Ms. Koduru's staff representational rights was not receivable and the UNDT upheld this submission. However, the UNDT's main finding was a finding of bad faith and abuse of authority by Ms. Farley as the UNDT ruled that "due to the apparent bad faith on the part of Ms. Farley in initiating and concluding a new recruitment contrary to the CSR recommendation, and her unauthorized nationalization of the applicant's post one year before the approved date, the decision to separate [Ms. Koduru] was discriminatory, constitutes abuse of authority, and was therefore unlawful".<sup>4</sup>

18. Even if we were to accept that Ms. Farley did not see the CSR report and recommendations at the time she initiated the recruitment, as the UNDT noted, she was still aware of it "months before she completed that recruitment and could have then stopped the on-going recruitment she initiated".<sup>5</sup> Also, there is no proper explanation as to why Ms. Farley

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<sup>2</sup> Impugned Judgment, para. 72.

<sup>3</sup> *Ibid.*, para 27.

<sup>4</sup> *Ibid.*, para. 78.

<sup>5</sup> *Ibid.*, Para. 67.

ignored the recommendation and proceeded to make a new recruitment. We uphold the reasoning of the UNDT on these issues.

19. The Secretary-General has argued that the UNDT erred when it did not make an order of compensation in lieu of rescission as required by Article 10(5)(a) of the UNDT Statute. Article 10(5)(a) provides that compensation be set as an alternative to an order of rescission and/or specific performance when a decision touches on and concerns appointments, promotions and/or terminations. We do not accept the Secretary-General's argument, this is not a case of an appointment, promotion, or termination pursuant to Article 10(5)(a). In fact, Ms. Koduru, was in essence, given a lateral transfer, and in those circumstances the UNDT was not obliged to set an in-lieu compensation amount. Although the UNDT did not expressly use the term lateral transfer in its Judgment, we uphold the decision not to order in-lieu compensation since the issue at hand did not concern "appointments, promotions, or terminations", therefore, an order for compensation in lieu of rescission is not a statutory requirement in this circumstance.

20. On the issue of moral damages, the UNDT is entitled, on examination of all the evidence, to find that Ms. Koduru's testimony was "not compelling enough to serve as the evidentiary basis for an award of moral damages [...]".<sup>6</sup> We uphold that finding.

21. It is the finding of the Appeals Tribunal that the decision to separate Ms. Koduru was arbitrary, discriminatory, constituted an abuse of authority, and was unlawful. We uphold the reasoning of the UNDT in this regard.

22. The Appeals Tribunal further notes the findings of the UNDT that Ms. Koduru was the victim of abuse of authority and harassment on two occasions by Ms. Farley. These allegations are serious and troubling and warrant an investigation. The Appeals Tribunal, therefore, refers the matter to the Secretary-General for accountability pursuant to Article 9(5) of the Appeals Tribunal Statute for a review of Ms. Farley's conduct by the Secretary-General.

23. Lastly, we do not find that the Secretary-General manifestly abused the appeals process and, therefore, we reject Ms. Koduru's request for costs.

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<sup>6</sup> *Ibid.*, para. 90.

24. Based on the foregoing, the orders and findings of the Appeals Tribunal are as follows:
- (a) that the UNDT's order to rescind the decision not to renew Ms. Koduru's appointment is upheld;
  - (b) that Ms. Koduru's period of appointment and service with UNIFIL is with effect from 1 July 2011 to 22 August 2015 inclusive;
  - (c) that, the Secretary-General gives effect to this order to ensure that Ms. Koduru is administratively reinstated and any break in her service during the seven-week period, which is the subject of this appeal, be removed for all administrative purposes and determinations;
  - (d) further, that within six weeks from the date of this Judgment, the Secretary-General shall pay Ms. Koduru any outstanding salary and any accrual of entitlements for the seven-week period, to which she would have been entitled, had her contract not ended on 30 June 2015;
  - (e) that this matter is hereby referred for accountability to the Secretary-General pursuant to Article 9(5) of the Appeals Tribunal Statute for his review of Ms. Farley's conduct; and
  - (f) that, Ms. Koduru's request for costs is hereby denied.

**Judgment**

25. The appeal and cross-appeal are dismissed and Judgment No. UNDT/2018/079 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of March 2019 in New York, United States.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Halfeld

*(Signed)*

Judge Lussick

Entered in the Register on this 29<sup>th</sup> of May 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar