



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2012-356

**Tiwathia
(Appellant)**

v.

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

ORDER No. 103 (2012)

1. On 11 July 2012, Ms. Adarsh Tiwathia filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), seeking the suspension of the decision to select another candidate for the D-1 post of Deputy Director, Medical Services Division, she had applied for. On 18 July 2012, the Dispute Tribunal rendered Judgment No. UNDT/2012/109 denying Ms. Tiwathia's request. On 20 July 2012, Ms. Tiwathia filed before the Dispute Tribunal a request for the revision of the Judgment. On 31 July 2012, the Dispute Tribunal issued Judgment No. UNDT/2012/119 and dismissed Ms. Tiwathia's application, finding that no new decisive fact had been submitted pursuant to Article 12 of the Statute of the Dispute Tribunal.

2. On 31 July 2012, Ms. Tiwathia appealed Judgment No. UNDT/2012/109 before the United Nations Appeals Tribunal (Appeals Tribunal). That same day, she also filed a motion for temporary relief asking that the Appeals Tribunal prevent the implementation of the decision to make starting the appointment of the successful candidate on 1 August 2012, until her case has been fully adjudicated.

3. On 31 August 2012, the Secretary-General filed his observations on the motion. He requests that this Tribunal dismiss Ms. Tiwathia's motion in its entirety as the requirements of temporary relief set forth in Article 9(4) of the Statute of the Appeals Tribunal (Statute) are not satisfied.

4. Article 9(4) of the Statute provides that “[a]t any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal”.

5. The Appeals Tribunal previously held that it

[...] may make an interim order for temporary relief, pending the outcome of the appeal, on two conditions:

- i) It must be satisfied on a balance of probabilities that there is real likelihood of irreparable harm which can be prevented if temporary relief is granted; and
- ii) The temporary relief granted is consistent with the judgment of the Dispute Tribunal.¹

6. In the present case, Ms. Tiwathia does not seek an interim measure for temporary relief which is consistent with the Judgment of the Dispute Tribunal. She in fact seeks the exact opposite, namely the suspension of action which the UNDT did not grant her. Since therefore one of the two cumulative conditions under Article 9(4) of the Statute is not fulfilled, I need not further consider the second condition.

7. For the foregoing reason, Ms. Tiwathia’s request for interim injunctive relief is denied.

Original and Authoritative Version: English

Dated 24th day of September 2012 in Buenos Aires,
Argentina.

(Signed)
Judge Inés Weinberg de Roca,
Duty Judge

Entered in the Register on this 25th day of
September 2012 in New York, United States.

(Signed)
Weicheng Lin, Registrar

¹ *Koumoin v. Secretary-General of the United Nations*, Order No. 3 (2010).