



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

GURUDUTTA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Carolina Maidorn, UN-Women

## **Introduction**

1. By application filed on 11 August 2016, the Applicant, a locally recruited staff member of the United Nations Entity for Gender Equality and the Empowerment of Women (“UN-Women”) 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 4 November 2016, the Respondent filed his reply to the application *inter alia* arguing that the Applicant’s case was manifestly inadmissible.

## **Facts**

3. The Applicant had previously contested the exact above-mentioned decision before the United Nations Dispute Tribunal (“UNDT”) by application filed in 2014. It was considered together with four other cases<sup>1</sup> and disposed of in Judgment UNDT/2015/028, where the Judge found that the cases were not receivable *ratione materiae* and rejected all five applications. It is worth noting that the UNDT issued six other judgments in 2015 concerning a challenge against the above-mentioned decision by 199 locally recruited Applicants based in India, namely Judgments UNDT/2015/022 to 027, equally finding the cases not receivable *ratione materiae* and rejecting all applications.

4. Appeals against six out of the seven UNDT judgments<sup>2</sup> were filed before the United Nations Appeals Tribunal (“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.

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<sup>1</sup> *Mullick, Jaishankar, Varghese, and Berry.*

<sup>2</sup> UNDT/2015/022, 023, 024, 025, 026 and 028.

5. In view that the Applicant's name was not amongst the Appellants whose cases UNAT had remanded to UNDT, this Tribunal, by Order No. 167 (GVA/2016) of 23 August 2016, requested the Applicant to produce precise details on whether she had filed an appeal against Judgement UNDT/2015/028 and, if in the affirmative, to provide the date of the filing as well as the outcome of her appeal. The Applicant had until 9 September 2016 to provide this information.

6. In the absence of a reply from the Applicant by the above deadline, 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/2015/028.

7. 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 on 22 May 2015, namely within the 60 statutory days to do so. However, in her appeal the Applicant cited that she was appealing three different Judgments, i.e., UNDT/2015/022, UNDT/2015/026 and UNDT/2015/028, and, also, did not attach the annexes in support of her appeal.

8. By email of 19 July 2015, the Appeals Tribunal Registry confirmed receipt of the Applicant's case, registered under case number UNAT-2015-829, while informing her that her application was incomplete and requesting her to specifically identify the UNDT Judgment that she sought to appeal, as well as to submit the five annexes in support of her application by 21 July 2015.

9. Additionally, the Appeals Tribunal Registry advised the Applicant that it "[would] not be able to process the appeal if it [was] incomplete".

10. The Appeals Tribunal Registry did not receive any further communication and or filing from the Applicant. Consequently, the Applicant's appeal was considered "abandoned", on 15 December 2015 as part of the UNAT Registry's end of year docket review.

11. According to the Appeals Tribunal, the Applicant failed to comply with the instructions of the Registry to file a corrected and complete appeal. 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**

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

### **Consideration**

13. 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.

14. As noted above, Judgment UNDT/2015/028 addressed the applications of five staff members. Only two of them, however, sought to appeal the judgment in question, i.e., the Applicant and Mrs. Jaishankar, and only the latter received an outcome from the Appeals Tribunal by means of Judgment Jaishankar 2016-UNAT-632. 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 four other staff members, including the Applicant, cannot rely on the outcome of Mrs. Jaishankar's appeal to their benefit.

15. 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 28 March 2015 thus bringing the Applicant's case to a close. Consequently, this Tribunal became *functus officio*.

16. The Dispute Tribunal ceased to have any jurisdiction over the Applicant's case once Judgment UNDT/2015/028 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**

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

The application is not receivable and is rejected.

*(Signed)*

Judge Teresa Bravo

Dated this 16<sup>th</sup> day of August 2017

Entered in the Register on this 16<sup>th</sup> day of August 2017

*(Signed)*

René M. Vargas M., Registrar, Geneva