



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/009
Judgment No.: UNDT/2025/030
Date: 30 May 2025
Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: Liliana Lopez Bello

AKHTAB

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-Represented

Counsel for Respondent:

Jan Schrankel, UNHCR

Marrietta Hristovski, UNHCR

Introduction

1. The Applicant, a former Assistant Child Protection Officer working with the United Nations High Commissioner for Refugees (“UNHCR”), filed an application contesting the decision to discontinue the position that she encumbered, effective 1 January 2024.

2. For the reasons set forth below, the application is dismissed as not receivable.

Factual background

3. The Applicant joined UNHCR on 5 April 1998 as a Protection Assistant at G-6 level, based in Bangladesh.

4. On 27 May 2005, she resigned and separated from UNHCR.

5. On 18 January 2018, the Applicant rejoined UNHCR on a fixed-term appointment (“FTA”) as an Assistant Child Protection Officer based in Bangladesh.

6. By email dated 19 June 2023, the High Commissioner informed all UNHCR staff about measures being undertaken to rebalance the office expenditure.

7. In August 2023, UNHCR conducted the annual staffing exercise review in Bangladesh. As a result of the review, some positions were impacted and earmarked for eventual discontinuation.

8. By email dated 18 September 2023, UNHCR sent to the Applicant a letter dated 1 September 2023, notifying her of the intention to discontinue her position effective 1 January 2024.

9. On 30 September 2023, UNHCR sent to the Applicant another email with an attached letter dated 28 September 2023, notifying her of the decision to discontinue her position as of 1 January 2024 (the “contested decision”).

10. On 28 November 2023, the Applicant requested management evaluation of the contested decision.

11. On 4 December 2023, the Applicant filed a complaint with UNHCR's Inspector General's Office ("IGO"), alleging mistreatment and abuse of authority by her former supervisors, namely Ms. JR, Ms. HP and Mr. JPM. In her complaint, the Applicant further indicated that she strongly felt that the decision to discontinue her position was tainted by bias and ill-motive, was retaliatory and constituted an abuse of authority. This complaint is part of another case currently undergoing judicial review before this Tribunal, registered as Case No. UNDT/GVA/2024/066 (Akhtab).

12. On 23 December 2023, the Deputy High Commissioner, in response to the management evaluation request, decided to uphold the contested decision.

13. On 22 December 2023, the Applicant filed an application for suspension of action ("SOA"), pending management evaluation, of the decision to discontinue the position.

14. By Order No. 171 (GVA/2023), issued on 28 December 2023, the Tribunal rejected the SOA.

15. The Applicant separated from UNHCR on 31 December 2023.

Procedural background

16. On 23 March 2024, the Applicant filed the present application.

17. On 24 April 2024, the Respondent filed a reply.

18. By Order No. 69 (GVA/2024) of 21 June 2024, the Tribunal directed the Applicant to file a rejoinder, and the parties to explore resolving the issue amicably.

19. The Applicant filed her rejoinder on 25 July 2024, and, on 5 August 2024, the Respondent submitted that it had no interest to enter into informal dispute resolution in this case.

20. The case was assigned to the undersigned Judge on 1 February 2025.

21. By Order No. 11 (GVA/2025), the Tribunal, having examined the evidence on record, found that the matter could be determined without holding a hearing and invited the parties to file their closing submissions, which they did on 28 February 2025.

Submissions

Applicant's submissions

22. The Applicant submits that her application is receivable because the decision to discontinue her position and the subsequent separation notification are interrelated administrative decisions. Thus, addressing one inherently involves addressing the other. Through the second notification, the Administration merely confirmed or restated an earlier decision. Therefore, in the case of the latter, a new and separate administrative decision did not arise. Relying on *Saeed* (2016-UNAT-617, paras, 10-11), the Applicant posts that, when a directive or a decision is merely a consequence, confirmation, and execution of an earlier decision, this directive or decision cannot be impugned independently.

23. The Applicant's position is that the Tribunal has jurisdiction to review the application challenging the decision to discontinue her position. This decision was not merely an administrative step but a direct consequence of prolonged abuse and harassment, which led to significant adverse effects on her employment terms. The discontinuation of her post was made unilaterally by her supervisor, under the direction of Ms. JR and was aimed specifically at targeting the Applicant.

24. Furthermore, the decision carries direct legal consequences, affecting the Applicant's eligibility for continued employment, termination benefits, comparative reviews, and opportunities for other UNHCR assignments. These implications underscore the decision's direct effect on the Applicant's terms and conditions of employment.

25. The Applicant maintains that contested decision satisfies the criteria of being a unilateral decision made by an administrative authority, that had direct legal consequences over an individual. It, thus, clearly falls within the jurisdiction of the

Dispute Tribunal for review, as supported by the parameters outlined by the Appeals Tribunal in *Andronov* (UNAdT Judgment No. 1157, Andronov (2003)).

26. On the merits, the Applicant claims that during the same time her post was discontinued, an announcement was made for the Child Protection Unit, which carried out the same tasks of her post, reflecting her responsibilities. She, therefore, contests the decision to terminate her position, which was the one terminated out of 300 places. She further submits that this decision was not justified, notably considering the peak in Rohingya refugees in that period, 55% of whom were children.

27. In this connection, the Applicant submits that the discontinuation of her position was improperly motivated and was a calculated scheme to remove her, influenced by her supervisor's actions and under the pretext of strategic operational and budgetary reasons.

28. The Applicant maintains that the discontinuation of her post has no linkage with the restructuring as claimed by UNHCR. She further asserts that said decision was arbitrary, retaliatory, and procedurally flawed, violating essential UNHCR policies and staff rights. It was not merely an administrative measure, but rather the direct result of prolonged abuse and harassment.

29. As remedies, the Applicant requests:

- a. Reimbursement of medical expenses incurred;
- b. Thorough investigation of her complaint regarding harassment and abuse of authority by her supervisors;
- c. Removal from her staff file of what she terms as flawed performance appraisal submitted by Mr. JP; and
- d. Referral of her three supervisors and the IGO Chief of Investigations to the High Commissioner of UNHCR, in accordance with art. 10.8 of the Dispute Tribunal's Statute, for their deliberate violation of the fundamental principles of the Organization.

Respondent's submissions

30. The Respondent claims that the application is not receivable because the discontinuation of a position is not a reviewable administrative decision as it has no impact on the staff member's terms of appointment or contract of employment, pursuant to art. 8.1(a) of the Tribunal's Statute.

31. Rather, it is merely an act leading to or preceding an administrative decision that did produce direct legal consequences to a staff member's appointment. Relying on the jurisprudence of the United Nations Appeals Tribunal ("UNAT") (*Loeber* 2018-UNAT-844; *Nguyen-Kropp and Postica* 2015-UNAT-509, paras. 31-33; and *Gnassou* 2018-UNAT-865, para 31), the Respondent maintains that such steps or actions can only be reviewed by the Tribunal in the context of an appeal against a final decision of the Administration that has direct legal consequences in the individual's terms of employment.

32. Secondly, the Applicant's FTA, which was scheduled to expire on 31 December 2023, was not renewed, and she was separated on that date. The Applicant clearly only contests the decision to discontinue her position. In this connection, even if the application was to be interpreted to be also contesting the non-renewal decision, it would nevertheless not be receivable *ratione materiae*, as the Applicant failed to seek management evaluation of this decision.

33. That is, since the Applicant only requested management evaluation of the decision to discontinue her position, and not the non-renewal of her appointment and subsequent separation, the Tribunal is barred from considering these other allegations in the context of the current exercise of judicial review.

34. On the merits, the Respondent submits that the decision to discontinue the Applicant's position was lawful and made as part of a genuine organizational restructuring. The position was abolished in the context of a staff reduction and realignment exercise triggered by an important budgetary reduction which is affecting Bangladesh, as well as UNHCR globally. Within Bangladesh operation, 24 positions were discontinued, including 14 local staff. As such, the

discontinuation of the Applicant's position was made as part of a genuine organizational restructuring, and not in an arbitrary manner.

35. The Respondent further submits that the Applicant has not substantiated her allegations with evidence of failure to follow applicable procedures, the presence of bias in the decision-making process or of consideration of irrelevant material or extraneous factors.

36. With respect to the non-renewal decision, the Respondent contends that, pursuant to staff regulation 4.5(c) and staff rule 4.13(c), an FTA does not carry any expectancy of renewal. Relying on *Toure* (2016-UNAT-660, para. 25), the Respondent argues that even the renewal of the appointment of a staff member on successive appointments does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended.

37. Since the Applicant's FTA expired on 31 December 2023, no notice of non-renewal was required to be given to her. Moreover, the Applicant has not alleged any impropriety with the applicable procedures. Therefore, as the Applicant has not shown that the decision not to renew her appointment beyond 31 December 2023 was tainted by improper motive or bias, the decision was a lawful and permissible exercise of discretion by the Administration.

Consideration.

38. The application is not receivable.

39. The Tribunal preliminarily notes that in this case the Applicant does not contest the decision to not renew her FTA or to separate her from service upon its expiry, but only the discontinuation of the position she was encumbering.

40. The Tribunal finds also necessary to distinguish between the profile of the suppression of the position and the profile of the expiry of the fixed-term contract which have different nature and legal features.

41. First, the suppression of a position is a decision which is not specifically related to the work relationship of a staff member. It is aimed at responding to the discretionary evaluation of the Administration about its structure and organization. The Applicant cannot challenge directly this decision, but only incidentally for its effects on the work relationship.

42. Indeed, an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff. The decision to discontinue the position is not reviewable as it does not have, in itself, a direct impact on the Applicant's terms of appointment or contract of employment. It merely constitutes an act which may lead to the final decision to not renew the fixed-term appointment related to the position (see *Lee* 2014-UNAT-481, para. 49; *Andati-Amwayi* 2010-UNAT-058, para. 17).

43. Of course, the two decisions under challenged may be interconnected when a restructuring leads to the termination of employment on grounds of operational requirements. The abolition of a post resulting from a reorganization or effectuated on the grounds of operational requirements usually constitutes a substantive reason for the non-renewal or non-extension of an appointment (see *Nastase* 2023-UNAT-1367, para 24).

44. The Appeals Tribunal stressed in a similar case (*Loeber* 2018-UNAT-844, para. 25) that a decision on abolition of post is not reviewable as it had no direct impact on the staff member's terms of appointment or contract of employment, as it merely constituted an act leading up to the final decision not to renew his fixed-term appointment.

45. In general, when the non-renewal of the contract is a mere consequence of the abolition of the post, a staff member can challenge the non-renewal together with the abolition of the post, recalling incidentally any profile that renders unlawful the abolition of the post.

46. In the present case, however, the Applicant has never challenged the non-renewal of her fixed-term appointment following the abolition of the position

through a request for management evaluation, and that the scope of the application is explicitly limited to the discontinuation of the position.

47. Even requalifying the claim towards the abolition of her post as a challenge to the non-renewal, since the manager evaluation assessment goes into the merits of her claims, the application is inadmissible because the Applicant did not file any management evaluation request towards the non-renewal of her contract.

48. In said situation, staff rule 9.4 provides that “[a] temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment”. As the Applicant’s FTA expired on 31 December 2023, and she had been informed since September 2023 that her position would be discontinued, no notice of non-renewal was required to be given to her.

Conclusion

49. In view of the foregoing, the application is not receivable.

(Signed)

Judge Francesco Buffa

Dated this 30th day of May 2025

Entered in the Register on this 30th day of May 2025

(Signed)

Liliana Lopez. Bello, Registrar, Geneva