

# **UNDT/2020/159, Khane**

## **UNAT Held or UNDT Pronouncements**

Under Sanwidi, it is not for the Tribunal to review the wisdom of the USG/DGACM's decision among other all viable options, but rather to assess the legality by which the decision was reached. In the given circumstances, the Tribunal finds that the decision to transfer the Applicant was not "arbitrary or capricious, motivated by prejudice or extraneous factors" with reference to Chemingui, or that "relevant matters [were] ignored and irrelevant matters considered" or the decision was "absurd or perverse" as per Sanwidi. By itself, the Tribunal therefore finds no issue in the transfer decision. Also, the Tribunal finds that the transfer decision is not a disguised disciplinary sanction, which would typically require that misconduct, or allegations or suspicions thereof, was somehow involved (see, for instance, Kallon 2017-UNAT-742). Nowhere is it stated or implied that the Applicant was suspected of any type of misconduct, or even indicated that his performance was considered to be substandard. Rather, as convincingly argued by the Respondent in the closing statement, the transfer decision was solely grounded in operational circumstances (or described in other places as "political" considerations), and the fact that the Applicant clearly disapproved of the transfer decision does not by itself make it a disguised disciplinary sanction. In terms of due process, the Tribunal finally notes that as follows from the agreed facts, the USG/DGACM actually informed the Applicant about the possibility of a reassignment at a meeting of 21 November 2018 before she decided to do so on 5 December 2018. The Applicant was therefore, in principle, consulted about the decision before it was taken. The Tribunal is convinced by the Respondent's arguments and that the transfer of the Applicant to the post of Senior Programme Management Officer was appropriate with the standards set by the Appeals Tribunal in Chemingui, as quoted in the above. Also, there is no indication that by doing so, the USG/DGACM improperly intended to set the Applicant up to failure or otherwise did not have the best interest of the Organization in mind. Instead, the Tribunal finds that similar to the decision to transfer the Applicant away from the post of Senior Political Officer, reassigning him to the Senior Programme Management Officer post was not "arbitrary or capricious,

motivated by prejudice or extraneous factors” (see Chemingui) or that when taking the decision, “relevant matters [were] ignored and irrelevant matters considered” or the decision was “absurd or perverse” (see Sanwidi). Related

## Decision Contested or Judgment/Order Appealed

The decision to transfer the Applicant “from his post of Senior Political Affairs Officer/Secretary of a Main Committee of the General Assembly to Senior Programme Management Officer, Central Planning and Coordination Division/[Department of General Assembly and Conference Management (“DGACM”).

## Legal Principle(s)

The Secretary-General enjoys a broad discretion in assigning, as well as reassigning (or transferring), staff members to undertake certain functions under staff rule 1.2(c), which provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”. The Secretary-General’s authority to transfer staff members is, however, not unfettered. The principle of good faith and fair dealings still applies. A reassignment decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures. It can then be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law. The Appeals Tribunal in Chemingui 2019-UNAT-930 held that “an accepted method for determining whether the reassignment of a staff member to another position was proper” is to assess “whether the new post was at the staff member’s grade whether the responsibilities involved corresponded to his or her level whether the functions to be performed were commensurate with the staff member’s competence and skills and, whether he or she had substantial experience in the field” (see para. 40).

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Khane

## Entity

DGACM

## Case Number(s)

UNDT/NY/2019/040

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

31 Aug 2020

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

## Applicable Law

### Staff Rules

- Rule 1.2(c)

## Related Judgments and Orders

2010-UNAT-084

2019-UNAT-930

2017-UNAT-742