UNDT/2022/057, Lapper

UNAT Held or UNDT Pronouncements

Whether the application is receivable in its entirety Although the Applicant questioned the legality of the threshold to qualify for a single parent allowance, contained in sec. 4.4 of ST/AI/2018/6, it must be understood as part of his legal reasoning or arguments and cannot be considered as the “contested decision” as suggested by the Respondent. Indeed, the Applicant does not claim in the abstract that the requirement contained in sec. 4.4 of ST/AI/2018/6 is unlawful but rather seeks to challenge the direct and individual application of the specific requirement to his case as it adversely affects his terms of appointment. In light of this and considering that the legal arguments raised by the Applicant cannot be interpreted or considered as the “impugned decision”, the Tribunal finds that the application is receivable in its entirety. To hold otherwise would represent an unacceptable limitation of the Applicant’s right to access to justice and a serious limitation of the Tribunal’s scope of judicial review. Lawfulness of the contested decision Whether the new requirement in sec. 4.4 of ST/AI/2018/6 exceeds the Secretary General’s discretion in implementing General Assembly resolution 70/244 First, the General Assembly approved the amendments to the Staff Regulations and Rules by its resolution 71/263 of 23 December 2016. In so doing, the General Assembly conferred upon the Secretary-General the power to establish conditions concerning the granting of the single parent allowance. Therefore, by establishing the threshold in sec. 4.4 of ST/AI/2018/6, the Secretary-General acted in accordance with the General Assembly resolutions 70/244 and 71/263, and exercised his discretion in setting forth conditions pursuant to staff regulation 3.5 and staff rule 3.6(b). As such, there is no normative conflict between the acts of the General Assembly and their execution by the Secretary-General. Second, it falls within the Secretary-General’s discretion to introduce a new eligibility criterion in ST/AI/2018/6. In this respect, the Tribunal notes that the evidence on record shows that the eligibility requirements for single parent allowance contained in ST/AI/2016/8 were temporary in nature. Indeed, the broadcast message of 25 September 2017 clearly shows that the single parent allowance was “a new entitlement that [had] not yet been established”. Accordingly,

the Secretary-General has not gone beyond the powers conferred upon him by resolutions 70/244 and 71/263 when setting forth conditions to receive the single parent allowance in sec. 4.4 of ST/AI/2018/6. Whether the requirement established by sec. 4.4 of ST/AI/2018/6 is proper The underlying rationale for the creation of single parent allowance was to protect a certain category of staff members, namely those who were carrying the burden of raising a child on their own or being the sole providers, from the negative impact of the reduction of child dependency benefits. Thus, paragraph 19 of General Assembly resolution 70/244 clearly limits the beneficiaries to “staff members who are single parents and who provide main and continuous support”. As such, the mere marital status of “non married” (e.g., single, widowed or separated) was insufficient for a staff member to be eligible for a single parent allowance. Additional requirements were to be met to ensure that the staff member “provide[s] main and continuous support”. Therefore, the requirements established by sec. 4.4 of ST/AI/2018/6 in relation to the single parent allowance is in line with its object and purpose and in accordance with the relevant text in General Assembly resolution 70/244. The Applicant argues that the thresholds adopted by the Respondent de facto eviscerates a benefit for a group of staff members, including the Applicant, who formerly benefited from it. However, ST/AI/2016/8 was temporary in nature. The fact that a group of staff members formerly benefited from the single parent allowance pursuant to ST/AI/2016/8 does not create an acquired right to be carried over to ST/AI/2018/6. The Applicant also calls on the principle of equality and non-discrimination. Such principle is only applicable when staff members in similar situations are treated differently. In the present case, the Applicant falls into one of two groups under ST/AI/2018/6—namely staff members whose children do not reside with them—and failed to demonstrate any difference in treatment within that group. The Tribunal also recalls that there is no discrimination when different treatment of staff members “comes from a general consideration of a category of staff members, in comparison to another category” (see Tabari 2011-UNAT-177, para. 26). In light of the above, the threshold established in sec. 4.4 of ST/AI/2018/6 in relation to the granting of single parent allowance is proper. Whether sec. 4.4 of ST/AI/2018/6 was properly applied to the Applicant’s situation The Applicant does not claim that the Administration incorrectly applied ST/AI/2018/6 to his case. Moreover, upon the issuance of the ST/AI/2018/6 on 1 May 2018, the Applicant no longer met the requirement under sec. 4 to receive the single parent allowance. In this respect, the Applicant does not dispute that the amount of financial support he provided for his children is below the threshold indicated in sec. 4.4 of ST/AI/2018/6. However, the Applicant received undue payment until 30 April

2021. Nevertheless, considering that the Applicant was unaware or could not reasonably have been expected to be aware of the overpayment, the Administration limited the recovery of overpayment to the amounts paid during the two-year period prior to the notification pursuant to sec. 3.1 of ST/AI/2009/1. Therefore, the Organization’s decision to discontinue the payment of the single parent allowance and to recover the amount unduly received by the Applicant is lawful.

Decision Contested or Judgment/Order Appealed

The Applicant contests the “[r]evocation of single parent allowance and retroactive recovery thereof”.

Legal Principle(s)

It falls under the Tribunal's competence “to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review” (see Massabni 2012- UNAT-238, para. 26). Therefore, “[i]t is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties’ contentions” (see, e.g., Fasanella 2017-UNAT-765, para. 20; Cardwell 2018-UNAT-876, para. 23). In cases where the implementation of a regulatory decision involves the Administration’s exercise of discretion, including the interpretation of an ambiguous regulatory decision, compliance with procedures, or the application of criteria, such exercise of discretion is subject to judicial review (see Lloret Alcañiz et al., 2018-UNAT-840, para. 59). The Administration has a duty and is entitled to rectify its own error and the “interests of justice require that the Secretary-General should retain the discretion to correct erroneous decisions” (see Kauf 2019- UNAT-934, para. 22; Cranfield 2013-UNAT-367, para. 36).

Outcome

Dismissed on merits

Outcome Extra Text

Full judgment

Full judgment

Applicants/Appellants

Lapper

Entity

OHCHR

Case Number(s)

UNDT/GVA/2021/065

Tribunal

UNDT

Registry

Geneva

Date of Judgement

14 Jun 2022

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dependency benefits
Subject matter (ratione materiae)
Benefits and entitlements-45
Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/2009/1
- ST/AI/2016/8
- ST/AI/2018/6

GA Resolutions

- A/RES/70/244
- A/RES/71/263

UNDT Statute

- Article 2

Staff Rules

- Rule 3.6(b)

Staff Regulations

- Regulation 3.5

Related Judgments and Orders

2012-UNAT-238
2017-UNAT-765
2018-UNAT-876
2018-UNAT-840
2011-UNAT-177
2019-UNAT-934

2013-UNAT-367