

2023-UNAT-1378, Prakash Neupane

UNAT Held or UNDT Pronouncements

The UNAT dismissed Mr. Neupane's contention that the UNDT erred when it found that he was contesting the reassignment decision when in fact he was contesting the lack of his Field Central Review Board clearance and roster membership for the reassigned post. The application was quite unclear, and focused mainly on the question of regularity of the reassignment decision which was in line with Mr. Neupane's request for management evaluation challenging directly and clearly his reassignment. The issue of rostering was raised only as an argument to prove the alleged procedural irregularity of Mr. Neupane's reassignment, as he had not been cleared by the Field Central Review Body for the position to which he was reassigned. The UNAT therefore found that it was not unreasonable for the UNDT to determine the contested administrative decision as the decision of Mr. Neupane's reassignment.

Decision Contested or Judgment/Order Appealed

Mr. Neupane contested before the Dispute Tribunal the decision to reassign him from the position of Chief of Engineering Section, at the P-5 level, with MINUSCA to the position of Chief of Section, Centralized Warehouse, P-5 within MINUSCA's Mission Support Division.

By Judgment on Receivability No. UNDT/2022/101, the Dispute Tribunal dismissed Mr. Neupane's application as not receivable *ratione materiae* on grounds that his request for management evaluation was untimely.

Mr. Neupane appealed.

Legal Principle(s)

An administrative decision is defined as a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences.

The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions.

The authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

The Dispute Tribunal is not limited to a staff member's description of the contested or impugned decision; it may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed.

The UNDT enjoys a wide discretionary power to evaluate the different elements provided by an applicant in his application for judicial review and subsequently to identify the impugned decision(s). The UNAT shall not intervene lightly in this exercise as far as the UNDT's determination is supported by a primary legal or factual basis from which such determination emanates.

It is an individual's burden to establish that an administrative decision is in non-compliance with the terms of his or her appointment or contract of employment. Such a burden cannot be met where he or she fails to identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on his or her contractual rights.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Prakash Neupane

Entity

MINUSCA

Case Number(s)

2022-1760

Tribunal

UNAT

Registry

New York

Date of Judgement

6 Nov 2023

President Judge

Judge Colgan

Judge Gao

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Jurisdiction / receivability (UNDT or first instance)

Subject matter (*ratione materiae*)

Applicable Law

UNAT Statute

- Article 2.1(a)

UNDT Statute

Related Judgments and Orders

2018-UNAT-840

2012-UNAT-238

2020-UNAT-1022

2019-UNAT-917

2019-UNAT-970