



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1522

Sanjaya Bahel

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Katharine Mary Savage Judge Graeme Colgan
Case No.:	2024-1916
Date of Decision:	21 March 2025
Date of Publication:	23 April 2025
Registrar:	Juliet E. Johnson

Counsel for Mr. Bahel: Arjun Singh Bawa, Sahil Gupta

Counsel for Secretary-General: Agnieszka Martin

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Sanjaya Bahel (Mr. Bahel), a former staff member with the Procurement Division in the United Nations Secretariat, has filed an appeal of Judgment No. UNDT/2024/013 (impugned Judgment) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 7 March 2024.¹

2. In the impugned Judgment, the UNDT had dismissed as not receivable *ratione materiae* Mr. Bahel's application in which he sought "adjudication of the request for review dated 10.01.2007, which was transferred from the Joint Disciplinary Committee" (JDC) to the UNDT following the closure of the JDC and the establishment of the Dispute Tribunal in July 2009.

3. For the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) grants the appeal and reverses the impugned Judgment.

Facts and Procedure²

4. Mr. Bahel was "summarily dismissed for serious misconduct" effective 21 December 2006.

5. On 10 January 2007, Mr. Bahel submitted a memorandum to the Secretary-General requesting the Secretary-General to "vitate" his summary dismissal.

6. On 4 April 2007, the Chief of the Administrative Law Unit informed Mr. Bahel that his request for review was pending before the JDC.

7. On 1 April 2008, Mr. Bahel was sentenced to 97 months in prison by the United States District Court for the Southern District of New York based on his criminal conviction for accepting hundreds of thousands of dollars' worth of benefits from a United Nations vendor in return for helping the vendor secure United Nations contracts worth tens of millions of dollars.

¹ *Bahel v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/013.

² The facts are drawn from the impugned Judgment (paras. 6-14).

8. As of 1 July 2009, by resolution 63/253, the General Assembly introduced the new system of administration of justice, abolished the JDC, and decided to transfer all pending cases to the UNDT.

9. On 10 September 2019, Mr. Bahel sent a letter to the Director of the Administrative Law Division (ALD) in the Office of Human Resources (OHR), inquiring about the outcome of his request for review.

10. On 28 October 2019, Mr. Bahel was informed that the Organization considered his request for review closed due to his failure to pursue it for over 12 years.

11. On 12 May 2023, in response to Mr. Bahel's further inquiries, the Chief of the Disciplinary Accountability Service of ALD reiterated that the Organization considered Mr. Bahel's request for review closed. On 23 June 2023, in response to Mr. Bahel's continued insistence, the Assistant Secretary-General for Human Resources reiterated the Organization's position.

Procedure before the UNDT

12. On 15 January 2024, Mr. Bahel filed an application "seeking adjudication of the request for review dated 10.01.2007, which was transferred from the [JDC]" to the UNDT following the closure of the JDC and the establishment of the Dispute Tribunal in July 2009.

13. On the UNDT's instructions, the UNDT Registry notified Mr. Bahel by e-mail dated 15 January 2024 that his application could not be processed due to filing deficiencies and requested him to resubmit it in the proper format. On 25 January 2024 and 16 February 2024, the Registry sent e-mail reminders to Mr. Bahel and offered him technical assistance with the filing, if needed.

14. On 19 February 2024, Mr. Bahel properly refiled his application, which was served on the Respondent on the same day.

15. On 1 March 2024, the Respondent filed a motion stating that the application was "manifestly not receivable" and requesting the UNDT to suspend the deadline for the filing of his reply and to determine the receivability of the application as a preliminary matter.

UNDT Judgment

16. On 7 March 2024, the UNDT issued Judgment No. UNDT/2024/013 by which the UNDT dismissed Mr. Bahel's application as not receivable *ratione materiae*.³

17. The UNDT observed that Mr. Bahel had provided no evidence to support his assertion that his request for review had been pending before the Dispute Tribunal since July 2009. The Dispute Tribunal found that there was no record of any case filed by Mr. Bahel ever having been transferred to it from when the new system of internal justice at the United Nations took force in July 2009.⁴

18. Taking into consideration Mr. Bahel's subsequent failure to pursue the claim for over 12 years, and the absence of any record of a case transferred to it, the UNDT did not consider itself seized of the application filed in 2007 before the JDC, and concluded that the application was not receivable. Finally, since the UNDT found that the application was not receivable, there was no need for the Secretary-General to file a reply on the merits.⁵

Appeal and Answer

19. Mr. Bahel filed an appeal of the impugned Judgment on 6 May 2024, and the Secretary-General filed his answer on 5 July 2024.

Submissions

Mr. Bahel's Appeal

20. Mr. Bahel submits that he received an e-mail on 4 April 2007 informing him that his case was pending before the JDC, that no decision from the JDC had ever been notified to him, and that therefore the case was still pending and had been transferred to the UNDT on 1 July 2009 following the General Assembly resolution 63/253 abolishing the JDC.

21. Mr. Bahel submits that it is uncontested that he filed an application for review before the JDC on 10 January 2007 and that there had been no communication between the JDC and Mr. Bahel since, which shows that no decision was made, and the case is still pending. It was thus not Mr. Bahel who failed to pursue the appropriate channels. Once his application was properly

³ Impugned Judgment, para. 21.

⁴ *Ibid.*

⁵ *Ibid.*

filed, it was the responsibility of the administrative staff to process and present it for review or adjudication before the relevant authority, in this instance, the JDC.

22. Mr. Bahel submits that he never received notice that the United Nations internal justice system underwent a reform, that the JDC was abolished and that all cases pending before the JDC were transferred to the UNDT as mandated by the General Assembly. Until today, Mr. Bahel has not received any notice from the JDC and as a result it is understood that his case is still pending.

23. Mr. Bahel claims that he was never communicated a case number assigned to his case following its transfer to the UNDT. It is the Administration's role to ensure that his case which had been properly filed and registered before the JDC is properly transferred to the UNDT. There had been no notification that required Mr. Bahel to ensure that the case that he had filed before the JDC was transferred to the UNDT. Hence, it was untenable and unreasonable on the part of the UNDT to cast the responsibility and liability upon Mr. Bahel to determine the case number and case details of his application upon transfer to the UNDT. The UNDT erred in finding that the burden to provide the necessary details of his case was upon Mr. Bahel.

24. ALD wrote an e-mail dated 12 May 2023 to Mr. Bahel, wherein it is categorically stated that in light of his criminal conviction for fraudulent and corrupt conduct involving his official functions as a United Nations Procurement Official and, further, since he did not pursue his request to vitiate dismissal from the service of the United Nations for his serious misconduct until 2020, the United Nations considered his matter as closed. However, proceedings in the United States Courts in no way absolve the United Nations from its own legal obligations, and further Mr. Bahel has not been granted the opportunity to present his defence before the concerned competent body of the United Nations.

25. Mr. Bahel contends that his application to the UNDT dated 15 January 2024 was well within the time limits prescribed under Article 8(4) of the Dispute Tribunal Statute (UNDT Statute). ALD's e-mail dated 12 May 2023 stated that pursuant to Article 8(4), an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision. The Administration's decision was officially confirmed on 23 June 2023 and as such, Mr. Bahel's application before the UNDT was timely.

26. Mr. Bahel claims that the UNDT failed to consider that it was an admitted fact that he filed an application before the JDC which has not been adjudicated; that there was no report submitted by the JDC to the Secretary-General with respect to his application; that the internal justice system was reformed and all the cases pending before the JDC were mandated to be transferred to the UNDT; and that Mr. Bahel has not been communicated a case number assigned to his case upon transfer to the UNDT. Mr. Bahel further contends that the UNDT failed to consider that he received the decision by e-mail dated 23 June 2023 and that accordingly his application before the UNDT was timely.

27. Mr. Bahel submits, citing jurisprudence of the Supreme Court of India, that the principle of “double jeopardy” protects Ms. Bahel against re-prosecution on the same allegations after being cleared of all allegations by OIOS, especially when the same authority had initially investigated the same allegations.

28. Mr. Bahel claims, again citing jurisprudence of the Supreme Court of India, that the UNDT overlooked the fact that if a law specifies a procedure for an authority to follow, that procedure must be followed exactly or the act is null and void. Mr. Bahel claims that the UNDT failed to consider that it is its duty to ensure the procedure prescribed in the UNDT Rules of Procedure is followed and that justice is administered accordingly, by providing Mr. Bahel with the opportunity to present his defense against the imposed disciplinary measures.

29. Mr. Bahel also claims that he has the right to be heard in accordance with the principles of “natural justice and fair play”, particularly the principle of *audi alteram partem*, which stipulates that no one should be judged without a fair hearing where each party has the opportunity to respond to the evidence against them.

30. Mr. Bahel requests that the Appeals Tribunal reverse the impugned Judgment and register and adjudicate his original application.

The Secretary-General’s Answer

31. The Secretary-General contends that the UNDT correctly found the application not receivable. The UNDT took into consideration the fact that Mr. Bahel requested the UNDT to adjudicate his application dated 10 January 2007, which he alleged to be pending before the Dispute Tribunal since July 2009, when JDC cases were transferred to the UNDT. The UNDT also took into account that Mr. Bahel was informed by ALD on 4 April 2007 that his case was pending

before the JDC. The UNDT also noted that Mr. Bahel wrote to the Administration for the first time since 2007 to inquire about his case on 10 September 2019. The UNDT finally noted that Mr. Bahel was informed by e-mail dated 28 October 2019, that the Organization considered his case closed in view of his failure to pursue the claim for over 12 years.

32. Even if the e-mail from ALD dated 28 October 2019 were to be considered an appealable administrative decision, Mr. Bahel's application would still be irreceivable because it was time-barred. Mr. Bahel submitted his application more than three years after receiving this e-mail, thus missing the three-year deadline for challenging administrative decisions, as stipulated by Article 8(4) of the UNDT Statute. The UNDT thus correctly concluded that the application was not receivable.

33. The Secretary-General submits that Mr. Bahel has not established any errors of fact warranting the reversal of the impugned Judgment. Contrary to Mr. Bahel's assertions that the UNDT failed to take into account important relevant factors, the impugned Judgment shows that the UNDT did consider most of these factors. Specifically, the UNDT noted that Mr. Bahel addressed a memorandum to the Secretary-General on 10 January 2007, requesting a review of his summary dismissal; that he considered his case still pending since no decision had been taken by the JDC and that his case was transferred to the UNDT; that he received an e-mail from the Chief of the ALD on 4 April 2007 informing him that his request was pending before the JDC; and that as of 1 July 2009, the JDC was abolished by the General Assembly and all the cases pending before the JDC were transferred to the UNDT.

34. Moreover, the factors mentioned by Mr. Bahel do not undermine the UNDT's conclusion that it had no record of his case. Additionally, these factors do not change the fact that even if the e-mail from ALD dated 28 October 2019 were to be considered as an appealable administrative decision, the application would still have been irreceivable because it was time-barred. In view of the foregoing, Mr. Bahel's assertions do not establish any factual error on the part of the UNDT that would warrant a reversal of the conclusion that his application was not receivable.

35. The Secretary-General contends that Mr. Bahel has failed to demonstrate that the UNDT made any procedural errors warranting a reversal of the impugned Judgment. When staff members engage in misconduct that may also constitute criminal conduct, the undertaking of an investigation by OIOS and the initiation of a disciplinary process does not preclude criminal prosecution by national authorities. The Secretary-General reiterates that Mr. Bahel was informed

on 28 October 2019 that the Administration had closed his case. Even if this communication were to be treated as an appealable administrative decision, the UNDT was precluded from considering this matter since Mr. Bahel filed his application more than three years after the notification of this e-mail. If an appellant is willing to appeal a decision and to be heard, they must still conform to the deadlines and file their application in a timely manner.

36. Finally, the Secretary-General avers that Mr. Bahel has failed to demonstrate that the UNDT made any error of law warranting a reversal of the impugned Judgment. Mr. Bahel's claim that the UNDT failed to consider that he was notified of the confirmation of the administrative decision on 23 June 2023 and that therefore he filed his application within the three years' timeline, pursuant to Article 8(4) of the UNDT Statute, is misguided. At the outset, his argument regarding the 23 June 2023 communication constitutes a new argument that he cannot raise for the first time on appeal, and this aspect of the appeal should be dismissed for this reason alone. Should the Appeals Tribunal wish to consider the merits of this argument, the Secretary-General recalls that on 10 September 2019, Mr. Bahel sent a letter to the Director of ALD inquiring about the outcome of his application, and on 28 October 2019, ALD responded that it considered the case closed. On 27 January 2020, 10 June 2022, 11 May 2023 and 22 May 2023, Mr. Bahel sent further correspondences to the Secretary-General, the Chef de Cabinet, the Under-Secretary-General for Management Strategy, Policy and Compliance, and the Permanent Mission of India to the United Nations contesting his summary dismissal and asserting that the Organization had never replied to him. On 12 May 2023, ALD reiterated that the Organization considered his case closed in light of his criminal conviction and given the fact that he had not pursued his request for over 12 years. On 23 June 2023, the Assistant Secretary-General for Human Resources reiterated the Organization's position.

37. The Secretary-General contends that the application challenged an administrative decision dated 21 December 2006 that is, Mr. Bahel's summary dismissal. Even if it were accepted that the Administration's communication on 28 October 2019 constituted an appealable administrative decision, the reiterations of the same decision on 12 May 2023, and 23 June 2023 do not reset the 90-day deadline for challenging an administrative decision. The confirmation of an original administrative decision does not reset the clock with respect to statutory timelines and time starts to run from the date on which the original decision was rendered.

38. The Secretary-General asks that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

Considerations

Mr. Bahel's request for an oral hearing

39. On 5 August 2024, Mr. Bahel filed a motion requesting an oral hearing before the UNAT. He explained that due to an inadvertent error, he mistakenly neglected to include this request in his appeal. Mr. Bahel argues that an oral hearing is indispensable because there has been no adjudication on his case since 2007. Mr. Bahel submits that an oral hearing is necessary to ensure a thorough and fair consideration of his claims. In order to address the prolonged denial of justice in his case, an oral hearing is of paramount importance.

40. On 6 August 2024, the Secretary-General filed his comments arguing that the UNAT should deny the request. The Secretary-General submits that Mr. Bahel seeks to argue the merits of his case, whereas the impugned Judgment was rendered on the grounds of receivability. Accordingly, an oral hearing would not assist in the expeditious and fair disposal of his case.

41. Normally, the Appeals Tribunal decides appeals based on the written pleadings and record. However, pursuant to Article 8 of the Appeals Tribunal Statute and Article 18(1) of its Rules of Procedure, the Appeals Tribunal may hold an oral hearing “if such hearings would assist in the expeditious and fair disposal of the case”. When the issue on appeal is one of receivability, and the appellant seeks to argue the merits of his claims in an oral hearing, the oral hearing would not assist in the resolution of his case.⁶ We consider that we may fully address all the arguments by reference to the record; therefore, Mr. Bahel's request for an oral hearing is denied.

Merits of appeal

42. The issue to be considered in this case is whether the UNDT erred in dismissing Mr. Bahel's application as not receivable *ratione materiae*.

43. In Part V of the UNDT Application Form dated 17 February 2024, Mr. Bahel identified the contested decision as the 21 December 2006 Letter from the Acting Under-Secretary-General for Management in which he was summarily dismissed from the Organization. In Part IX of this

⁶ *Majook v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1408, para. 23.

Application Form, Mr. Bahel stated that he was seeking “the UNDT to consider and adjudicate upon the Request for Review dated 10.01.2007 which has remained pending before the UNDT, as it was adjourned ‘*sine die*’ on the dissolution of the JDC, which was latter replaced by the UNDT, and [his] Request for Review dated 10.01.2007 therefore, transferred from the JDC to the UNDT, for the purpose of adjudication”. Therefore, the contested administrative decision in this case was the disciplinary decision of 21 December 2006.

44. On a strict interpretation and application of Article 8(4) of the UNDT Statute and Article 7(6) of the UNDT Rules of Procedure, an application cannot be received by the UNDT if it is filed more than three years after the staff member’s receipt of the contested administrative decision.

45. However, from the chronological facts, we find that Mr. Bahel submitted a memorandum to the Secretary-General requesting the Secretary-General to “vitate” his summary dismissal on 10 January 2007. The Chief of the Administrative Law Unit informed Mr. Bahel that his request for review was pending before the JDC on 4 April 2007. Therefore, Mr. Bahel challenged the contested decision for the first time on 10 January 2007 and the Organization affirmed that this case was pending before the JDC. Before Mr. Bahel sent a letter to the Director of the ALD inquiring about the outcome of his request for review on 10 September 2019, there was no communication between the JDC and Mr. Bahel. Obviously, the appeal was never determined by the JDC.

46. The JDC was part of the internal justice system of the United Nations before the establishment of the UNDT on 1 July 2009. According to the Resolution adopted by the General Assembly on 24 December 2008, the General Assembly decided to “abolish, as of 1 July 2009, the joint appeals boards, the joint disciplinary committees and the disciplinary committees of the separately administered funds and programmes”,⁷ and further decided “that all cases pending before the joint appeals boards, the joint disciplinary committees and the disciplinary committees shall be transferred, as from the abolishment of those bodies, to the United Nations Dispute Tribunal”.⁸

47. Article 2(7) of the UNDT Statute provides clearly as follows:

⁷ General Assembly resolution 63/253, para. 38.

⁸ *Ibid.* para. 44.

7. As a transitional measure, the Dispute Tribunal shall be competent to hear and pass judgement on:

(a) A case transferred to it from a joint appeals board or a joint disciplinary committee established by the United Nations, or from another similar body established by a separately administered fund or programme;

...

48. The result was that cases pending before the JDC were required to be transferred to the UNDT after 1 July 2009. The Dispute Tribunal found that there was no record of any case filed by Mr. Bahel ever having been transferred to it from the JDC when the new system of internal justice came into force in July 2009. If there were any shortcomings in or between the old and new institutions in effecting the transfer of the case, these were not attributable to the parties. Such shortcomings should therefore not disadvantage the parties and, in this case, Mr. Bahel. The UNDT observed that Mr. Bahel had provided no evidence to support his assertion that his request for review had been pending before the Dispute Tribunal since July 2009. We conclude that the UNDT erred in suggesting that there was a burden on Mr. Bahel to provide evidence to support his assertion that his request for review had been pending before the Dispute Tribunal since July 2009 and to produce a record of his case having been transferred to it from the JDC in July 2009. It was apparent from the material before the UNDT that there was no dispute that there had been a referral to the JDC by Mr. Bahel. This was apparent from the Organization's response to him in April 2007 and the Organization's response to him regarding the matter on 28 October 2019.

49. We consider that what Mr. Bahel filed with the UNDT on 15 January 2024 was a request to progress to judgment his challenge of the decision to summarily dismiss him. He filed a timely appeal in 2007, which should properly have been transferred from the JDC to UNDT in July 2009. The true nature of Mr. Bahel's "application" to the UNDT was therefore to seek that his transferred case progress in circumstances where the case was, or ought to have been, already before the UNDT.

50. On 28 October 2019, Mr. Bahel was informed that the Organization considered his request for review closed due to his failure to pursue it for over 12 years. This information was confirmed by ALD's e-mails of 12 May 2023 and 23 June 2023. This response was neither an administrative decision, nor was it the Administration's decision to make regarding Mr. Bahel's judicial proceeding. Those communications about the status of his proceeding only set out the

Organization's view of the case. Determinations about the status of a judicial proceeding are for the relevant judicial body to make, here, the UNDT, and not the Administration. The Organization's opinion that the matter was closed was not a decision of the UNDT and did not have the effect of closing the matter before the UNDT.

51. Even though Mr. Bahel failed to pursue his claim for over 12 years, his claim cannot be rejected on the basis that it is not receivable when he filed it with the JCD timeously and in the manner required. In such circumstances, he should not be denied access to justice for the reasons adopted by the UNDT. It follows that the UNDT erred in finding Mr. Bahel's claim to be unreceivable. Since Mr. Bahel's claim had already been referred to the JDC and was required to have been transferred to the UNDT, it could not properly be rejected on the basis that it was not receivable given Mr. Bahel's delay in prosecuting the matter. For these reasons, the judgment of the UNDT cannot stand and must be set aside, with Mr. Bahel's case progressed in that forum. We express no views about how that progress should be achieved or what the outcome of it should be.

52. The UNDT erred in finding that Mr. Bahel's application was not receivable *ratione materiae*.

Judgment

53. Mr. Bahel's appeal is granted, and Judgment No. UNDT/2024/013 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Savage

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 23rd day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar