



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/008
(UNAT 1546)
Judgment No.: UNDT/2010/111
Date: 24 June 2010
English
Original: French

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Víctor Rodríguez

ELASOUD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Winston Sims

Counsel for respondent:
Linda Starodub, UNOV

Introduction

1. The applicant seeks the rescission of the decision of 11 April 2007 whereby the Secretary-General rejected his appeal against the recommendations made by the Chief, United Nations Safety and Security Section (SSS), to the Human Resources Management Section in connection with vacancy announcements VA99-66-UNSSS, VA00-16-UNSSS and VA-032-UNSSS and other posts for which he applied.

2. He requests that he be given an equivalent post to those for which he applied, be compensated for the injury resulting from the decisions in question and receive an apology from the United Nations Office at Vienna (UNOV).

Facts

3. The applicant joined the United Nations Safety and Security Service on 18 November 1985 as a Security Officer at the G-3 level on a short-term that was converted to a fixed-term appointment on 18 May 1986. On 18 March 1991, he was given a probationary appointment.

4. Effective 1 November 1988, he was promoted to the G-4 level. On 1 February 1992, he was granted a permanent appointment. Between May 1992 and February 2000, he was assigned to several missions. From 6 October 2000 until 3 September 2001, he was assigned to the Security Control Centre, SSS.

5. In the year 2000, he applied unsuccessfully for several posts (VA99-66-UNSSS, VA00-16-UNSSS and VA-032-UNSSS).

6. On 11 February 2005, he petitioned the Secretary-General for administrative review of the recommendations made by the Chief, SSS, concerning his applications for posts VA99-66-UNSSS, VA00-16-UNSSS and VA-032-UNSSS. The Secretary-General did not respond to the request.

7. On 12 February 2004, he left the Organization for health reasons after having been granted a disability pension.

8. On 2 June 2005, the Vienna Joint Appeals Board (JAB) received his appeal. JAB found in its report of 9 November 2006 that the appeal was irreceivable.

9. On 11 April 2007, the Under-Secretary-General, Department of Management, transmitted the JAB report to the applicant and advised him of the Secretary-General's decision to reject his appeal.

10. On 1 July 2007, he filed an application with the former United Nations Administrative Tribunal (UNAT), which received it on 16 July 2007.

11. Pursuant to General Assembly resolution 63/253, the application was transferred to the United Nations Dispute Tribunal (UNDT) on 1 January 2010.

Parties' contentions

12. The applicant's principal contentions are:

- a. The recommendations by the Chief, SSS, contain several administrative decisions. His application is therefore receivable;
- b. His application is not time-barred because he only became aware of the recommendations by the Chief, SSS, on 19 January 2005;
- c. The contested recommendations are administrative decisions that affected him because such documents are essential for obtaining a promotion; they misrepresent his situation and contain numerous errors;
- d. The procedure followed by JAB was improper.

13. The respondent's principal contentions are:

- a. The contested recommendations by the Chief, SSS, are not administrative decisions as defined by former UN Administrative Tribunal in *Andronov* and the application is therefore irreceivable. The making of recommendations is a preliminary to decisions on the choice between candidates;

- b. The applicant makes a number of allegations that he has already raised in previous applications to the former. UN Administrative Tribunal has already ruled on them in its Judgement No. 1307, *Elasoud* (2007);
- c. The delay in communicating the recommendations to the applicant did no cause him any harm;
- d. The applicant fails to prove that the procedure followed by JAB was improper.

Judgment

14. The applicant contests the decision of 11 April 2007 whereby the Secretary-General rejected on the ground of irreceivability his request for the rescission of the recommendations made by the Chief, United Nations Safety and Security Section (SSS) to the Human Resources Management Section in connection with his applications for posts under vacancy announcements VA99-66-UNSSS, VA00-16-UNSSS and VA-032-UNSSS. He contends that, contrary to the opinion of the Secretary-General, the contested decisions are appealable administrative decisions.

15. Article 2 of the statute of the United Nations Dispute Tribunal provides that “The ... Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations: (a) To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment...”.

16. In its judgement No. 1157, *Andronov* (2003), the former UN Administrative Tribunal held as follows on the question what constitutes an administrative decision:

“There is no dispute as to what an “administrative decision” is. It is acceptable by all administrative law systems, that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual

administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. They are not necessarily written, as otherwise the legal protection of the employees would risk being weakened in instances where the Administration takes decisions without resorting to written formalities. These unwritten decisions are commonly referred to, within administrative law systems, as *implied administrative decisions*”.

17. The present Tribunal has applied that definition in several of its judgments (see Judgment UNDT/2009/086, *Planas*, and Judgment UNDT/2009/077, *Hocking, Jarvis and McIntyre*).

18. It is an established fact that the contested recommendations are opinions that the staff member who will supervise the vacant posts expresses in accordance with the criteria set forth in administrative instruction ST/AI/1999/8 concerning the placement and promotion system when a staff member applies for a post. While staff members are entitled to request the quashing of decisions not to appoint them to a post for which they have applied and, at that time, to criticise the future supervisor’s recommendation, that recommendation is only a preliminary to the administrative decision not to appoint them and therefore has no direct legal consequence for their terms of appointment. The Secretary-General was therefore justified in considering that the contested recommendations were not appealable administrative decisions and, accordingly, in rejecting the appeal.

Decision

19. In view of the foregoing, the Tribunal DECIDES:
The application is rejected.

(signed)

Judge Jean-François Cousin

Dated this 24th day of June 2010

Entered in the Register on this 24th day of June 2010

(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva