



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

WHITE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

LPAS, UNOG

Introduction

1. By application filed on 17 July 2021, the Applicant, a former staff member of the United Nations, contested the decision of the Independent Investigative Mechanism for Myanmar (“IIMM”) to declare him ineligible as a candidate, on the basis of his age, for the position of Senior Legal Officer (P-5), advertised under Job Opening Number 136410 (“JO 136410”), and consequently to exclude him from the recruitment process.

Facts

2. The Applicant was born on 10 February 1957 and will reach the Organization’s mandatory retirement age of 65 years on 10 February 2022 pursuant to the Staff Regulations and Rules (ST/SGB/2018/1).

3. On 23 March 2019, the Applicant was separated from service after holding a fixed-term appointment as a Human Rights Officer (P-4) with the United Nations Mission in Afghanistan.

4. On 5 June 2020, the Applicant applied as an external candidate for JO 136410, which was published on Inspira on 4 June 2020. On 29 November 2020, the Applicant was shortlisted for JO 136410.

5. On 7 February 2021, the Applicant was invited to participate in a written test that he took on 12 February 2021. On 14 April 2021, the IIMM informed him that he passed the written test and was shortlisted for a competency-based interview initially scheduled for 20 April 2021. However, the interview could not take place as planned given a misunderstanding regarding the time of the meeting.

6. When reviewing the Applicant’s personal history profile prior to rescheduling his interview, the Panel realized that he would reach the mandatory age of retirement of 65 years in less than one year.

7. On 23 April 2021, the IIMM Senior Administrative Officer informed the Applicant by telephone that he would no longer be interviewed because of his age. By email of 1 May 2021, she confirmed to the Applicant that he was found ineligible for an appointment under a fixed-term contract with the United Nations Secretariat.

8. On 5 May 2021, the Applicant filed a request for management evaluation of the contested decision referred to in para. 1 above.

9. By letter of 4 June 2021, the Office of the Under-Secretary-General for Management Strategy, Policy and Compliance, informed the Applicant of the outcome of his request for management evaluation, which upheld the contested decision.

Consideration

10. Having reviewed the application and its supporting documents, the Tribunal considers that the issue at stake in the case at hand is the receivability of the related application.

11. In this respect, the Tribunal recalls the expectations of the General Assembly in resolutions 66/237 (Administration of justice at the United Nations), adopted on 24 December 2011, and 67/241 (Administration of justice at the United Nations), adopted on 24 December 2012, that effective measures be adopted to deal with frivolous and manifestly inadmissible applications (see *Sanchez Calero* UNDT/2015/074, para. 8).

12. Accordingly, the Tribunal has on numerous occasions considered matters of receivability on a priority basis without first serving the application on the Respondent or awaiting the Respondent's reply (see, e.g., *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masykanova* UNDT/2013/033, *Sanchez Calero* UNDT/2015/074, *Karambizi* UNDT/2018/001, *Morales* UNDT/2019/158, *Cherneva* UNDT/2020/074, *Prakash* UNDT/2021/083). Therefore, the Tribunal deems that the present matter can be determined on a priority basis without first

transmitting a copy of the application to the Respondent for a reply as provided for in art. 8.4 of the Tribunal's Rules of Procedure.

13. Moreover, the Tribunal has the competence to review an application's receivability even if the parties do not raise the issue, because "it constitutes a matter of law and the Statute prevents the [Tribunal] from receiving a case which is actually non-receivable" (see *Christensen* 2013-UNAT-335, para. 21). Accordingly, the Tribunal deems it appropriate to decide on the matter by way of summary judgment on its own initiative pursuant to art. 9 of its Rules of Procedure.

14. In his application, the Applicant indicates that he is a former staff member who was separated from service on 23 March 2019, and that he contests the Administration's decision of 23 April 2021 to declare him ineligible as a candidate for a position and exclude him from the related recruitment process.

15. In this respect, the Tribunal recalls that art. 3.1(b) of its Statute allows a former staff member to file an application under art. 2.1 concerning, *inter alia*, an administrative decision "that is alleged to be in non-compliance with the terms of appointment or the contract of employment" or "imposing a disciplinary measure". It follows that a former staff member has standing to contest an administrative decision before the Tribunal only if there is "a sufficient nexus between the former employment and the contested decision" and that "[a] sufficient nexus exists when a decision has bearing on an applicant's former status as a staff member, specifically when it affects his or her previous contractual rights" (see *Arango* 2021-UNAT-1120, para. 28; see also *Shkurtaj* 2011-UNAT-148, para. 29).

16. In the present case, the Applicant applied as an external candidate for JO 136410 more than a year after his separation from the Organization. At the time of the contested decision, he had been separated from service for more than two years. In his application, he does not assert any right acquired in terms of his previous contract of employment with the Organization. Instead, he challenges as an external candidate the Administration's decision to declare him ineligible for a position based on his age. This decision had no bearing on his former employment in the sense that it affected any contractual rights he had acquired under it. The

Tribunal is thus of the view that there is no nexus between the Applicant's former employment and the contested decision.

17. Further, the Tribunal recalls that its limited jurisdiction in relation to persons implies that it "ordinarily will not have authority to receive applications by *inter alia* job applicants alleging illegality, unfairness or discrimination in the recruitment process" (see *Arango* 2021-UNAT-1120, para. 28).

18. Accordingly, the Tribunal finds that the Applicant does not have standing and the application is not receivable *ratione personae*.

Conclusion

19. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 27th day of July 2021

Entered in the Register on this 27th day of July 2021

(Signed)

René M. Vargas M., Registrar, Geneva