



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1216

Case No. 1307: REDDY

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Brigitte Stern, Vice-President, presiding; Mr. Omer Yousif Bireedo; Mr. Dayendra Sena Wijewardane;

Whereas at the request of Rita Reddy, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 12 June 2003;

Whereas, on 27 May 2003, the Applicant filed an Application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 22 August 2003, the Applicant, after making the necessary corrections, again filed an Application, requesting the Tribunal, inter alia, to order:

“12. ...

- (a) that the Applicant's contract be extended for a further period of three years ...
- (b) that the Applicant be reinstated to her appointed post of Chief of Activities and Programmes Branch of the Office of the High Commissioner for Human Rights.
- (c) that the Applicant is entitled to have the benefit of her home leave or in the alternative be paid compensation for the loss of the entitlement of home leave.

- (d) that the Applicant is entitled to compensation for the mental and emotional stress suffered; loss of career prospects; damage to daughter's education; financial loss and loss of entitlements.
 - (e) compensation for losses and damages.
- or failing that in the alternative:
- [f] the payment of compensation for the abovementioned losses and damages; the loss of career prospects in the United Nations system to be computed until the retirement age since the Applicant has been unable to obtain similar employment in spite of repeated attempts within the [United Nations] system."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 January 2004;

Whereas the Respondent filed his Answer on 27 January 2004;

Whereas the Applicant filed Written Observations on 20 March 2004;

Whereas, on 15 November 2004, the Tribunal posed a question to the Respondent, who responded on 17 November;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

"[The Applicant's] Professional Record

...

... The [Applicant] entered the service of [the Office of the High Commissioner for Human Rights (OHCHR)], Geneva, on 15 June 1998, under a two-year fixed-term appointment as Chief, Activities and Programmes Branch, at the D-1 level. With effect from 1 December 1999, she was temporarily reassigned to Phnom Penh, Cambodia, as Chief of Office and Representative of the High Commissioner on Trafficking in Women and Children. Upon expiration of her contract on 14 June 2000, she was granted an extension up to 30 November 2000 ... [Following a period of certified sick leave, the Applicant officially separated from service on 30 November 2001.]

... In her annual Performance Appraisal System report (PAS) covering the period from 15 June 1998 to 14 June 1999, the [Applicant's] performance [was] rated as 'frequently exceeded expectations' by her supervisor. It was however specified that 'her obvious substantive strengths and contributions [were] hampered by the heavy burden of managing the largest Branch' of OHCHR. In the PAS covering the period from 14 June to 30 November 1999, the [Applicant] was considered as fully meeting expectations, although it was noted that [her] 'management skills [were] not adequate for [the] complex demands of [the] Branch'. However, it was also noted that 'her particular skills and knowledge' made it appropriate 'to designate her as Director of the

Cambodia Office and regional adviser on trafficking and violence against women and children’.

Summary of Facts

...

... By memorandum dated 22 September 1999 and under the subject ‘Temporary Assignment to Cambodia’, the High Commissioner for Human Rights informed the [Applicant] of her decision to assign her, ‘on a temporary basis’, to Phnom Penh, Cambodia, as her Representative on trafficking of women and children, as well as Head of OHCHR’s Cambodia Office ‘in order to achieve maximum efficiency’. The High Commissioner explained that she was ‘concerned about the proportions that phenomenon [i.e., trafficking of women and children] had taken in the Asia and Pacific region which, therefore, deserve[d] priority attention’ and that ‘[the Applicant’s] background uniquely qualifie[d] [her] for such functions. The High Commissioner added that:

‘I would like you to assume your duties in Phnom Penh on 1 December 1999, initially for a one-year period, i.e. through 30 November 2000. The formalities relating to the extension of your fixed-term appointment beyond its expiration date of 14 June 2000 will be handled in due time by OHCHR’s Administrative Section [...]’

... On 23 September 1999, the High Commissioner announced in an email addressed to a large number of OHCHR staff that the [Applicant] would ‘assume her duties on 1 December 1999, initially for a period of one year’. ...

... The [Applicant] sent a reply e-mail on the same date expressing her concern that ‘it [did] not reflect the discussions [they] had on this subject matter’. ...

... On 24 September 1999, the Chief of the Administrative Section, OHCHR, transmitted to the High Commissioner the draft job description for the D-1 position of Representative of the High Commissioner for Human Rights to be posted in Cambodia. The duration of the post was for one year initially (1 December 1999 – 30 November 2000).

... In November 1999, the project ‘Eliminating Trafficking and Protecting the Rights of Trafficked Persons’ was approved by the High Commissioner. The project was supposed to have a duration of two years, from 1 December 1999 to 30 November 2001, and a funding source of ‘voluntary fund for technical cooperation’.

...

... On 1 December 1999, the [Applicant] started working as Representative of the High Commissioner for Human Rights on Trafficking, and as Head of OHCHR’s Cambodia Office.

[According to the Applicant, in December 1999, she applied for home leave, but was asked to take it at a later date.]

... By facsimile of 30 March 2000, the [Applicant] requested [home leave] from 10 to 25 April 2000. [Her request was not approved.]

... By facsimile dated 12 May 2000, the High Commissioner ... informed the [Applicant] about the outcome of the discussion she had with the Deputy High Commissioner 'on the results of [his] visit to the Cambodia Office and about the issues [he] discussed with [the Applicant]'. [She referred to reports which had 'troubled' her, and 'recent difficulties' in the Cambodia Office, and addressed a 'press controversy' which had resulted in the Applicant having to write a letter of explanation to the Prime Minister of Cambodia, as well as concerns regarding the Applicant's 'operating style'.]

... On 1 June 2000, the [Applicant] reiterated her request for [home] leave ... [According to the Application, her request was refused on the basis of staff rule 105.3 (b) (ii) which requires staff members to continue in service for at least six months beyond the date of return from the proposed home leave.]

... By letter dated 13 June 2000, the High Commissioner ... wrote to the [Applicant] that ... she had decided to 'grant [her] an extension of appointment up to 30 November 2000'.

...

[On 20 August 2000, the Applicant requested the Secretary-General to review the administrative decision not to extend her fixed-term appointment beyond 30 November 2000.]

[On 26 September 2000, the Applicant submitted an appeal to the JAB in Geneva, requesting suspension of action of the decision not to renew her fixed-term appointment.]

...

... By memorandum dated 16 October 2000 to the Chief, Administrative Law Unit, [Office of Human Resources Management], New York, the High Commissioner for Human Rights wrote inter alia:

'... while in Cambodia, the staff member became embroiled in public controversy that was highly prejudicial to the Cambodia Office and the United Nations generally and would prove in the end to make her unviable in any capacity as a human rights officer at this stage.

Briefly summarized, the staff member is reported in a Cambodia newspaper to have said in an interview that violence in Cambodia is attributable to the genes of Cambodians. She wrote to the newspaper saying that she had been quoted out of context. Nevertheless, the public uproar in Cambodia was such that there was prolonged coverage in the Cambodian papers and many human rights [non-governmental organizations] protested vehemently in the country, in the region, and internationally. ...

Unfortunately, subsequent to this, the staff member again became embroiled in public controversy for remarks reported in the Cambodian press to the effect that the Cambodian Government had no real interest in human rights and only acted under pressure. This, combined with the earlier controversy and with serious internal difficulties in the Cambodia Office, made it inevitable that the staff member would have to separate from OHCHR.

...

While the staff member makes no mention of these serious facts in her letter, the reasons for her termination rest in those facts ...

... [I]t is my expressed view that it would no longer be appropriate to maintain her services in OHCHR. ...'

...

[On 10 November 2000, the JAB produced its report on the Applicant's request for suspension of action. It concluded that 'emotional stress imposed upon the [Applicant] from the process that had led to her reassignment to Cambodia' did not constitute irreparable damage within the precise meaning of staff rule 111.2 (c) (ii) and did not warrant suspension of action on the decision not to renew her fixed-term appointment. Thereafter, the Under-Secretary-General for Management advised the Applicant that the Secretary-General had accepted the JAB's recommendation.]

[On 15 November 2000, the Applicant lodged an appeal with the JAB against the decisions to assign her to Cambodia; not to renew her fixed-term appointment beyond 30 November 2000; and, not to permit home leave travel.]

... Effective 1 December 2000, the [Applicant] went on sick leave until 30 November 2001, [the] date of her official separation."

The JAB adopted its report on 3 September 2002. Its considerations, conclusions and recommendations read, in part, as follows:

"Considerations

...

Decision to transfer the Appellant to Cambodia

57. With regard to the lateral transfer of the Appellant to Cambodia and her reassignment as the High Commissioner's Representative on Trafficking and as Head of OHCHR's Cambodia Office, the Panel emphasized that the Appellant's transfer from OHCHR Geneva to Cambodia occurred in December 1999, that is to say almost one year prior to her filing an appeal to the JAB. ... The decision which initiated this process, namely the memorandum dated 22 September 1999 ..., could therefore not be contested before the JAB for the reason that it is time-barred. ...

...

Decision not to renew her fixed-term appointment as Chief of APB in Geneva

60. Regarding the decision taken by the High Commissioner not to renew the Appellant's appointment as Chief of [Activities and Programmes Branch] in Geneva, the Panel recalled that according to staff rule 104.12 (b) (ii), fixed-term appointments carry no expectancy of renewal and that, in addition, staff rule 109.7 provides that 'a temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment'. ...

...

63. It first noted that nothing in the letter of appointment could have made her think that she could be brought back to Geneva. Secondly, having examined the [relevant] documentation ..., the Panel noted that ... the Appellant was aware that her performance was not fully satisfactory and that her contract would not be renewed beyond the date specified by the High Commissioner in her letter dated 13 June 2000. The Panel therefore found no other elements tending to prove the existence of a legal expectancy of renewal of the Appellant's fixed-term appointment.

Conclusions and Recommendations

64. In view of the foregoing, the Panel **concludes** that no expectation of renewal was created, that the High Commissioner acted in accordance with relevant Staff Rules and Instructions, and that the Appellant's rights were fully respected.

65. The Panel therefore **recommends** to the Secretary General that the present appeal be **rejected**."

On 13 December 2002, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her that the Secretary-General had decided to accept the conclusions and recommendation of the JAB and to take no further action on her appeal.

On 22 August 2003, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant had a reasonable expectancy of renewal of her fixed-term contract.
2. The Applicant was unfairly prejudiced by the denial of her rights of due process and by the arbitrary decisions of the Respondent.
3. The Applicant is entitled to compensation for the damage she suffered, including compensation for the loss of her home leave entitlements.
4. The JAB erred in fact and law in rejecting the Applicant's appeal.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legitimate expectancy of continued employment with the Organization.
2. The appeal against the Applicant's transfer to Cambodia is time-barred.
3. The denial of the Applicant's requests for home leave did not violate her rights.

The Tribunal, having deliberated from 2 to 24 November 2004, now pronounces the following Judgement:

I. The Applicant was appointed as Chief, Activities and Programmes Branch, OHCHR, Geneva, on a two-year fixed-term contract at the D-1 level, effective 15 June 1998. With effect from 1 December 1999, the Applicant was reassigned to Cambodia, where she took up the D-1 level position of Chief of Office and Representative of the High Commissioner on Trafficking in Women and Children. The Applicant's appointment with OHCHR was extended for five and a half months until 30 November 2000 and, thereafter, she was granted a series of extensions of contract to cover certified sick leave. Her final contract ended on 30 November 2001, on which date she officially separated from service.

II. Essentially, the Applicant claims that the circumstances under which she was laterally transferred from Geneva to Phnom Penh were such that they created a reasonable legal expectancy that her fixed-term contract would be extended for a further period of three years. The Applicant does not explain why she expected to be retained for three years but the Tribunal surmises that she expected to serve an additional year in Cambodia, i.e., until 30 November 2001, and then return to Geneva for another period of two years as Chief, Activities and Programmes Branch. The Applicant contends that the circumstances of her transfer, together with the Respondent's failure to reinstate her in Geneva, reveal arbitrariness as well as personal bias and prejudice directed towards her by OHCHR. This, she contends, amounts to a denial of her rights of due process. The Applicant requests that she be reinstated in her post as Chief, Activities and Programmes Branch, and be awarded damages for the treatment she received. She also requests compensation for the denial of her home leave entitlement.

III. At the outset, it is worth recalling the legal principle, consistently applied by the Tribunal, that an employee serving under a fixed-term contract has no right to expect the routine renewal of his or her contract. In accordance with staff rule 109.7, and the express provisions of fixed-term contracts, such contracts expire automatically with the effluxion of time. Accordingly, a claim of legal expectancy of renewal must be evaluated by reference to the totality of the circumstances relied upon by an

Applicant. In this regard, the Tribunal recalls its Judgement No. 1057, *Da Silva* (2002):

“The Tribunal has consistently held that fixed-term contracts do not carry any right of renewal and that no notice of termination is necessary in such cases. Exceptions to this rule may be found in countervailing circumstances, such as an express promise or an abuse of discretion including bias, prejudice or other discrimination against the staff member, or any extraneous or improper motivation on the part of the Administration. (See Judgements No. 205, *El-Naggar* (1975); No. 614, *Hunde* (1993); and No. 885, *Handelsman* (1998).)”

The Tribunal, therefore, carefully considered the circumstances surrounding the Applicant’s transfer to Cambodia as well as the subsequent decision not to renew her appointment.

IV. After the Applicant had served in Geneva for some fifteen months of her two-year contract, a decision was made to appoint her to the position of Head of the Phnom Penh Office and the High Commissioner’s Representative in Cambodia overseeing all activities in that country including the combating of trafficking of women and children which was described as one of the highest priorities of the High Commissioner’s Office. In response to a request from the Applicant for clarification, on 22 September 1999 the High Commissioner wrote to her reiterating the importance to OHCHR of the tasks being entrusted to the Applicant in relation to the Asia and Pacific region. She made reference to the Applicant having agreed to undertake this important assignment and stated that “[t]he formalities relating to the extension of [her] fixed-term appointment beyond its expiration date of 14 June 2000 [would] be handled in due time by OHCHR’s Administrative Section”. According to an e-mail dated 23 September 1999 from the High Commissioner to the Applicant’s colleagues, the Applicant’s assignment was to commence on 1 December 1999, “initially for a period of one year”, and arrangements were to be made for her replacement “during her assignment to Cambodia”. The Applicant relocated from Geneva to Phnom Penh and took up her new duties effective 1 December 1999.

The Respondent asserts that the Applicant cannot appeal the validity of her transfer on the grounds that such a claim is now time-barred. The Tribunal agrees and thus sees no reason to examine whether the decision was *ultra vires*. Nonetheless, the Tribunal is of the view that the Applicant is entitled to rely on the evidential value of the circumstances in which the transfer took place to support her contentions that there was prejudice against her and/or that an expectation of renewal had been created.

Having examined the record, the Tribunal is satisfied that the evidence relating to the Applicant's transfer does not establish a case of prejudice or arbitrariness. It notes that the High Commissioner had prioritized operations in Cambodia as well as the seriousness of the problem of trafficking in the region. Indeed, in her Application, the Applicant demonstrates how well-qualified she was for this choice, referring to herself as "a woman, a lawyer, a gender expert and a human rights activist specializing in trafficking of human persons with over twenty years experience in this area". In the Applicant's PAS report for the period June through November 1999, the High Commissioner affirmed that the Applicant had "displayed particular skills and knowledge which made it appropriate to designate her as Director of the Cambodia Office and regional adviser on trafficking and violence against women and children, a position she took up on 1 December 1999 at D-1 level". When the Applicant signed her PAS in June 2000, she did not contradict or protest these observations.

There is, however, some ambivalence in the evidence relating to the discussions which took place in September 1999 between the Applicant and the High Commissioner regarding the former's reassignment. It is clear that the assignment was seen as a temporary move for an initial period of one year, but the Tribunal notes that the future of the Applicant's career thereafter may have been left vague. The Applicant's contract was extended to 30 November 2000, which enabled her to serve the one year that was clearly contemplated. In the absence of more concrete evidence, the Tribunal does not find any commitment on the part of the Respondent for an extension of contract beyond that date. The Tribunal is aware that the position in Cambodia which the Applicant occupied had project funding available for two years. However, there is simply no evidence as to whether the Applicant was to continue in the post for the duration of the project and was expected to return to her position in Geneva thereafter. The Tribunal finds that, at best, these matters were left up in the air, and whilst it is reasonable to assume that the Applicant left for Cambodia with hopes of continuing her career with the Organization, such hopes do not amount to a legal expectation originating from the circumstances of her transfer.

V. Once in Cambodia, the record reveals that difficulties arose. In the first quarter of 2000, a media controversy developed over comments attributed to the Applicant. As a result, she appears to have been compromised and was obliged to write a letter of explanation on this matter to the Prime Minister of Cambodia. It would appear that certain management concerns had also surfaced in the Office: a visit to Cambodia by the Deputy High Commissioner resulted in a letter to the Applicant

from the High Commissioner on 12 May 2000, in which the Applicant was requested, inter alia, to “make a conscious effort to develop a collegial approach to the management of the Office”. Thereafter, the Applicant was again involved in a public controversy over remarks attributed to her in the Cambodian press.

The Applicant acknowledges that human rights work is of a controversial, emotive, sensitive and subjective nature. The Tribunal appreciates these observations. For this very reason, the Tribunal is reluctant to interfere lightly in the discretion of the Respondent in managing this difficult branch of work. In any event, when arbitrariness, discrimination or other improper motivation is alleged, the burden of proof lies with the Applicant. (See Judgements No. 639, *Leung-Ki* (1994); No. 784, *Knowles* (1996); and, No. 870, *Choudhury* (1998).)

The Applicant contends that she was denied due process in that the Respondent failed to initiate a formal inquiry by an independent body into her difficulties in Cambodia, and she was thus denied an opportunity to put forward her explanations. The Tribunal has already referred to the mission of the Deputy High Commissioner in 2000, during which pertinent issues were discussed with the Applicant. The Tribunal is satisfied that these matters were well within the Applicant’s knowledge and were taken cognizance of by the Respondent, not as a matter of misconduct requiring a disciplinary inquiry and sanctions but as issues pertaining to the Applicant’s judgement and performance. The Tribunal finds that such evaluation was quite relevant to the Respondent’s discretionary decision on the renewal of the Applicant’s contract. The Tribunal refers to these facts only because they are relevant to the Applicant’s claim that the Respondent’s actions reveal prejudice and a lack of good faith. The Tribunal does not find any countervailing circumstances regarding the non-renewal of the Applicant’s fixed-term contract, and does not find the administrative decision to have been tainted by arbitrariness, prejudice or bias. In the circumstances, the Applicant has not carried the *onus probandi* which is on her to prove her case, and the Tribunal does not find a legal expectancy of renewal of her fixed-term contract. (See *Da Silva, ibid.*)

VI. Finally, there is the issue of the Applicant’s request to be granted home leave. She made this application in December 1999 and again in March 2000. On both occasions, the Administration required the leave to be postponed on account of exigencies of service. It is clear to the Tribunal that the Administration is fully entitled to take such decisions. However, when the Applicant applied a third time in June 2000, the Respondent refused the request, relying upon the provisions of staff rule 105.3 (b) (ii) which requires that service must continue for at least six months beyond

the proposed date of return from home leave. The Tribunal cannot accept that it is open to the Administration to frustrate a staff member's entitlement in this way. In the view of the Tribunal, the Administration ought to have agreed to timely home leave travel; deferred the Applicant's home leave entitlement; or, made a justified exception to the rule. Such a measure could have been taken whilst making it clear to the staff member that it was not intended to create an expectation of renewal of her contract. Accordingly, the Tribunal finds that the Applicant is entitled to compensation.

In order to quantify the level of compensation awarded, the Tribunal asked the Respondent to calculate the lump sum payment to which the Applicant would have been entitled had her request to travel on home leave in April 2000 been approved. The Respondent was unable to provide figures for April 2000 but was in a position to provide the Tribunal with the lump sum amount applicable as from 1 January 2001. The Applicant, whom the Tribunal must assume would have travelled with her husband and dependent daughter, would have had a lump sum entitlement of CHF 14,178, which amounts to US\$ 11,871 at the date of writing of this Judgement. The Tribunal has decided to increase this amount to US\$ 15,000 in order to take into account the inconvenience suffered by the Applicant.

VII. In view of the foregoing, the Tribunal:

1. Awards the Applicant compensation in the amount of US\$ 15,000;
and,
2. Rejects all other pleas.

(Signatures)

Brigitte **Stern**
Vice-President, presiding

Omer Yousif **Bireedo**
Member

Dayendra Sena **Wijewardane**
Member

New York, 24 November 2004

Maritza **Struyvenberg**
Executive Secretary