



Administrative Tribunal

Distr.: Limited
31 January 2006

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1265

Case No. 1348

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Kevin Haugh, Vice-President, presiding; Ms. Brigitte Stern;
Mr. Dayendra Sena Wijewardane;

Whereas, on 23 March 2004 a staff member of the United Nations filed an
Application containing pleas which read as follows:

“II. PLEAS

...

8. ... [T]he Tribunal is respectfully requested] *to conduct oral proceedings*
... and *to find on the merits*:

A. That the decision by the Appointment and Promotion Board [(APB)] on 31 May 2001 not to select her for one of the two D-1 posts in the Office of Operations of [the Department for Peacekeeping Operations (DPKO)] was in violation of the Applicant's entitlement to due process and fair treatment and of the Organization's policies ...

B. That the Applicant was subjected to a prolonged period of improper, vindictive and discriminatory treatment by her supervisors and others in her Department ...

C. That the Applicant should have been accorded appropriate recognition/credit for her principled performance of her duties as Focal Point for Women for DPKO;

D. That the Applicant's service as DPKO Focal Point for Women was used against her when she was under consideration for promotion;

E. That DPKO contrived to sabotage the Applicant's career prospects and reputation as a political officer by not evaluating her performance for four years and by its mishandling of her performance appraisals for 1996-1998 and 1998-2000 ...

F. That the Applicant's right to full and fair consideration for promotion ... was violated ...

G. That the Selection Panel that decided not to select the Applicant violated her rights ...

H. That the Applicant's rights were further violated when ... an ineligible candidate was allowed exceptionally by [the Office of Human Resources Management (OHRM)] to apply ...; that the [APB] was deliberately misinformed about the seniority and qualifications of said candidate (...), about the fact that her ineligible application was received after the deadline for applications had passed, and that said candidate and another, male, candidate clearly much less qualified than the Applicant were selected (in violation of the criteria for promotion in ST/AI/1999/8 [of 17 August 1999, entitled 'Placement and promotion system'] ... as well as ST/AI/1999/9 on the Special Measures for Achievement of Gender Equality [of 21 September 1999]);

I. That DPKO's covert and overt actions to derail the Applicant's career, ... were tainted by prejudice and have prevented the Applicant from realizing her legitimate expectations of career development and from functioning to her full capacity and ability in the service of the Organization, and that she has suffered irreparable harm to her career, reputation and peace of mind;

J. That the retaliation against the Applicant for her principled service as DPKO Focal Point for Women has continued unabated since her initial request for administrative review in September 2000 to the present ...

K. That the Applicant's rights were further violated in September 2002 by the placement of [another female staff member] against the post of Principal Officer vacated with the retirement of [the incumbent], while the Applicant continued to fill the functions of the post ...

L. That the Applicant's rights were further violated by the delay caused by the ... decision ... not to recognize the unanimous conclusion of a ... suspension of action hearing ...

...

P. That her Department deliberately neglected to place her Performance Appraisals for 2001-2002 and 2002-2003 in her Official Status file ...

Q. That the Applicant is entitled to monetary compensation for each of the aspects of the damage she has suffered;

9. ... [And] ... *requested to order* ...:

(a) That ... the Applicant be given professional recognition for her continuing commendable and diligent performance as Senior

Political Affairs Officer despite the hostile environment in which she had to work and that she be given substantive credit for her long service as DPKO Focal Point for Women over and above those duties;

- (b) That the Applicant be promoted with retroactivity to January 1996 (...);
- (c) That she be granted additional compensation ... for each of the administrative and procedural errors and violations of United Nations rules and regulations committed against her:
- ...
- (d) That she be granted further compensation ...
- ...”

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 27 August 2004 and twice thereafter until 31 October;

Whereas the Respondent filed his Answer on 29 October 2004;

Whereas the Applicant filed Written Observations on 8 March 2005;

Whereas, on 2 November 2005, the Tribunal requested the Respondent to provide documentation and, on 9 November, the Respondent provided the requested documents;

Whereas, also on 9 November 2005, the Tribunal decided not to hold oral proceedings in the case;

Whereas the statement of facts, including the summary of the Applicant's employment history, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

“Employment history

... The [Applicant] is a staff member serving on a permanent appointment as a Senior Political Affairs Officer at the P-5 level in DPKO. She joined the Organization on 17 January 1977 at the P-2 level. The [Applicant] was the Focal Point for Women in ... DPKO from 1993 to June 2000 and DPKO Gender Focal Point until 12 March 2001, [the] date when she was relieved at her request from this function.

Summary of the facts

Appeal 1

... From 1994 to 1995 the [Applicant] was the most senior staff member (after the Acting Director), of the Asia and Middle East Division of DPKO.

During that period she had been designated Officer-in-Charge [(OiC)] of the Division during the absences of the Acting Director, sometimes for extended periods of three to four weeks.

...

... On 17 August 2000, ... [the Applicant's supervisor] sent an e-mail [addressed] to [the Applicant and a number of other staff members] informing them, inter alia, that: 'I shall be away from next Monday until 25 September. [The Assistant Secretary-General, DPKO,] will be in charge of the Division during my absence. ...'

[The decision not to designate the [Applicant OiC] of the Division in August 2000 was taken at a time when she was a candidate for the position of Principal Officer, Deputy Director of the Asia and Middle East Division.]

[On 15 September 2000, the Applicant filed with the Secretary-General a request for review of the administrative decision taken by DPKO on 17 August 2000 not to appoint her as OiC of the Asia and Middle East Division during the absence of her supervisor.]

[On 30 November and 20 December 2000, the Applicant lodged an appeal with the JAB in New York.]

Appeal 2

... On 7 February 2000, the vacancy announcement 00-P-DPK-000822-E-NY was generically issued for two posts: QSA-0211-T-D-1-001 and UNA-02112-E-D-1-003 (Senior Political Affairs Officer [sic]), for [the] Asia and Middle East, and Europe and Latin America Divisions, respectively, with a deadline for applications of 7 April 2000. The [Applicant] applied as a candidate to fill these vacant posts.

... On 27 September 2000, the Under-Secretary-General [, DPKO] decided with immediate effect to move laterally [a D-1 female staff member] from the Africa Division to the Asia and Middle East Division. Therefore, one of the two D-1 vacant posts (the one in Asia and Middle East) was filled by this lateral transfer and the D-1 post in the Africa Division became vacant.

... The [Applicant] was called for an interview for the two D-1 posts with ... [the] Directors of the Europe and Latin America Division, and the Africa Division, respectively.

...

... On 30 April 2001, a departmental panel was convened to review the candidates for the two vacant D-1 posts. The panel consisted of three men, one D-1 and two P-5. According to the [Applicant,] the departmental panel did not receive full information regarding her performance. ...

... In May 2001, the APB reviewed the candidacy of the [Applicant] in connection with the vacant D-1 posts ... On the basis of the overall review of all aspects of the candidates' qualifications and Department's views, the APB agreed with the Department's assessment that the individuals selected were the two best qualified candidates.

[On 4 June 2001, the Applicant filed with the Secretary-General a request for review of the administrative decision taken by the APB not to select her for either of the two D-1 positions in the Office of Operations of DPKO.]

... The two vacant D-1 posts were filled on 1 July 2001 ...”

On 13 September 2001, the Applicant lodged a second appeal with the JAB in New York.

On 21 June 2002, the Applicant filed a request for suspension of action to fill the two D-1 posts mentioned above, pursuant to staff rule 111.2 (c) (i). In its report dated 12 August 2002, the JAB recommended that the contested decision be suspended for two months through 11 October and that the two appeals filed by the Applicant be reviewed in full and brought to closure by that date. However, these recommendations were not accepted by the Secretary-General.

The JAB adopted its report on both appeals on 9 October 2003. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

39. ... [The] Panel considered the request made by the Appellant to join the two pending cases [and] ... agreed to consider them together.

...

46. The Panel then considered **Appeal 2**.

...

50. The Panel turned to consider the contention made by the Appellant that there were procedural irregularities with respect to filling of posts for which she had applied. ...

51. The Panel found that in the present case there was indeed a procedural irregularity, since the composition of the departmental panel was not in line with the provisions of administrative instruction ST/AI/1999/8 dated 17 August 1999 on ‘Placement and Promotion’. ...

...

57. The Panel considered all the remaining contentions of the Appellant ... but found no evidence to substantiate them.

Conclusions and recommendations

Appeal 1

58. The Panel concludes that no evidence has been produced which could be construed as a violation of the Appellant’s rights or a demonstration of

prejudice. As a result, the Appellant's contention that her non-selection as [OiC] of the Asia and Middle East Division for a five-week period during the absence of her supervisor was tainted by prejudice and extraneous considerations cannot be sustained.

59. Accordingly, the Panel unanimously decides to make no recommendation in support of Appeal 1.

Appeal 2

60. The Panel concludes that the Appellant's candidature for the two D-1 vacant posts at issue was not given due consideration in accordance with the basic procedural standards as outlined in ... ST/AI/1999/8 ... particularly regarding the composition of the departmental panel.

61. Accordingly, the Panel unanimously decides to recommend that, in view of the fact that the procedural error committed cannot be corrected otherwise, the Appellant be awarded a sum equivalent to two months' net base salary.

62. The Panel also recommends to include, in the Official Status File of the Appellant, the letter dated 12 March 2001 of the Under-Secretary-General[, DPKO] as a recognition and appreciation of the efforts made by the Appellant to advance the Organization's work in mainstreaming gender issues."

On 12 December 2003, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her as follows:

"The Secretary-General agrees with the JAB's conclusions concerning appeal 1, as well as with its finding that your other contentions were not substantiated. He also accepts the JAB's recommendation to include in your official status file the letter of commendation referred to above.

With respect to appeal 2, however, the Secretary-General does not share the JAB's conclusion that, having regard to the composition of the departmental panel, your candidature was not given due consideration. On the contrary, your right to due consideration was not compromised by the composition of the departmental panel. Mere speculation about motives of some members of the departmental panel does not suffice as evidence of prejudice. Moreover, the consideration of your candidature was not limited to the views of the departmental panel alone, as the [APB] subsequently undertook an in-depth review of your candidature. Accordingly, the JAB's conclusion that your candidature was not given due consideration as a result of the departmental panel's composition is not substantiated by the record nor supported by evidence of flaws or bias against you. ... In light of the above, the Secretary-General does not agree with the JAB's conclusion that, as a result of the composition of the departmental panel your candidature was not duly considered, as the facts do not support such a conclusion. He has accordingly decided not to accept the JAB's recommendation for compensation and to take no further action on this appeal.

..."

On 23 March 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. She fully met the criteria for promotion as provided in ST/AI/1999/8. She had applied three times to the post of Deputy Director at the D-1 level, but she was not selected for that post in spite of being the most senior P-5 Political Affairs Officer in the Department and despite her having taken on additional responsibilities of being the Departmental Focal Point for Women.

2. The Applicant contends that she was treated in a discriminatory and vindictive manner. When her role as advocate for the advancement of women compelled her to challenge proposals put forward by the management of DPKO, it was interpreted as a personal expression of her disloyalty to that management, which responded with animosity. This led to her systematic exclusion from serious consideration for promotion and eventually to her being marginalized in assignments that were not commensurate with her experience and ability.

3. The Applicant emphasizes that she was the subject of numerous unwarranted and unprofessional administrative decisions and other actions that rose to the level of a campaign of petty harassment.

4. The Applicant contends that the decision not to appoint her as OiC of the Division in the absence of her supervisor, disregarded past practice in the Division.

Whereas the Respondent's principal contentions are:

1. The decisions not to (i) select the Applicant for one of the two vacant D-1 positions and (ii) appoint her OiC were not tainted by any extraneous motive.

2. The Applicant was not entitled to a promotion to one of the vacant D-1 posts.

The Tribunal, having deliberated from 31 October to 23 November 2005, now pronounces the following Judgement:

I. These proceedings were commenced by way of two separate appeals brought by the Applicant to the JAB against (a) an administrative decision not to designate her as OiC of the Asia and Middle East Division, DPKO, during the absence of her supervisor on annual leave from 21 August until 25 September 2000 and (b) the

decision of the APB not to select the Applicant for a D-1 position in DPKO made in May 2001, with the consequence that she did not enjoy such a promotion.

II. The Applicant alleges that these two decisions were linked as she claims that they were part and parcel of a sustained campaign of discrimination and harassment being waged against her by DPKO in retaliation because she had undertaken duties as Focal Point for Women in DPKO and later as the officer responsible for the Department's gender mainstreaming portfolio, being duties which she had voluntarily assumed and undertaken within the Department for a prolonged period.

III. The Applicant claims that many within the Administration of the said Department were resistant to the Organization's policy for the advancement of women and that they had resented the Applicant's work which they considered as interference of the cozy arrangements and restrictive practices which she claims they had enjoyed prior to her said appointment. She accordingly claims that there was a common thread running through both cases so that they were joined at her request and without opposition from the Administration and they were considered together by the same panel of the JAB and were the subject matter of a single report and recommendation.

IV. The Applicant complains that the campaign of harassment and discrimination commenced against her in 1993 and she cites dozens of examples of incidents and occasions which she claims constituted vindictive acts or omissions, or acts of an improper or impermissible nature, which she claims establish the campaign of harassment and discrimination which she alleged was waged against her. In annexes attached to her various submissions she exhibits literally hundreds of documents which she says in one way or another support her contentions. Having considered the submissions and examined the various documents, the Tribunal would observe that the bulk thereof appear quite irrelevant to the issues raised and this has greatly added to the difficulties faced by the Tribunal in the consideration of these proceedings.

V. An examination of the long list of the Applicant's complaints, which she claims constitute or establish acts of discrimination or harassment, reveals that nearly all of them would be inadmissible or not receivable as complaints in their own right as the bulk of the decisions of which she complains were never the subject matter of a request for administrative review nor the subject matter of a JAB or other investigation. This being said, it has been the practice of the Tribunal to permit a

reasonable degree of latitude as to what will be considered by the Tribunal when matters before it are said to be part of a campaign of discrimination or harassment. It would indeed be unfair to view the activities and the decision or decisions in respect of which administrative review has been sought as isolated acts or one-off events when fairness requires that they be looked at as part of a larger picture to see if a pattern of conduct or victimization has been established or where it is necessary to view the acts leading to the decision which is being reviewed in a wider context to assess if such decision was fair or reasonable when considered in conjunction with the background facts.

The Tribunal is, however, unable to deal with or adjudicate upon each individual act of which the Applicant complains in the course of this Judgement for a variety of reasons. Not least of such reasons is because many of the acts of which the Applicant complains were matters for the discretion of the persons who made the various decisions and the context in which they were made is not known to the Tribunal. Very few of the matters have been the subject matter of an investigation by a JAB or other investigative body and the Tribunal is not equipped or resourced to engage in such investigations, nor was it envisaged by the Tribunal's Statute that the Tribunal would ordinarily be the body which would investigate contentious issues or determine primary facts (see Judgement No. 1009, *Makil* (2001)). Further, many of the matters of which she complains happened so long ago that an investigation thereof would now be impossible.

The Tribunal has, however, taken the broad picture into account in the consideration of the two issues central to these proceedings and has considered what relevance the general picture alleged by the Applicant may have towards determining the propriety of the two decisions which are the subject matter of these proceedings. The difficulties faced by the Tribunal are compounded by the effect which the far flung and prolix and repetitive nature of the Applicant's submissions have had on the JAB and on the Respondent in formulating his Answer to these proceedings. They are so cumbersome and unfocused that it would appear that the JAB and the Respondent have in effect been overwhelmed and, unsurprisingly, have presumably felt unable to deal with the bewildering number of allegations on an individual basis.

VI. Dealing now with the first issue, namely the failure of the Applicant's supervisor to designate her as OiC during the relevant period, the Tribunal, like the JAB, is not persuaded that the Applicant ever enjoyed the right to be so designated so that accordingly no right was impinged or wrong done to her by her non-appointment.

The Tribunal, like the JAB, is likewise not persuaded that the decision to designate someone other than the Applicant to discharge the duties of OiC was anything other than a lawful and valid exercise of the supervisor's discretion. Furthermore, the fact that the Applicant was so designated on a number of future occasions further belies the proposition that the decision not to do so on this occasion was vindictive or prejudiced. The Tribunal, like the JAB, is not satisfied that this decision, whether considered in isolation or against the background presented by the Applicant, establishes any *mala fides*, prejudice or ulterior motive. The Applicant failed to satisfy the JAB that there was a hard or fast practice that she should have been designated as OiC during the supervisor's absence and the Tribunal is not satisfied that the decision to designate another person on this occasion, even when viewed against the background alleged by the Applicant, was vindictive, discriminatory or otherwise infirm. Accordingly, this claim is rejected.

VII. With regard to the decision not to appoint the Applicant to a D-1 post, here again the Tribunal, like the JAB, is not persuaded that it was vindictive or discriminatory or that the Applicant has established that her candidacy was not given proper or reasonable consideration. With regard to the various allegations made by the Applicant in support of this proposition, save for the allegation that the departmental panel was not constituted in accordance with the appropriate Administrative Instruction, these were rejected by the JAB and the Tribunal sees no reason why it should not follow the JAB's findings made in relation thereto. As to the finding made in favour of the Applicant, that the departmental panel was not constituted in accordance with ST/AI/1999/8, this departure was correctly identified by the JAB as a "procedural irregularity" and "a procedural error" and there was not a scintilla of evidence to establish that the departmental panel as constituted bore any malice, ill-will or bias against the Applicant. Even when viewed against the background painted by the Applicant, there would have been no evidence to justify such a finding or from which such a finding might have been inferred. It should also be borne in mind that the report from the departmental panel was but one matter considered by the APB. The record would suggest that the APB went about its duties in a diligent and proper manner and, in the opinion of the Tribunal, there was no evidence which could establish that it was anything other than impartial and there is no evidence which would have established that it was corrupted or adversely influenced against the Applicant by any improper action on the part of the Administration of the said Department.

VIII. The JAB's finding that the departmental panel was not properly constituted in accordance with ST/AI/1999/8 did not by itself suggest that the procedure had been in any way biased against the Applicant or that the composition had been deliberately manipulated to the disadvantage of the Applicant. The JAB had recommended to the Respondent that the Applicant should be compensated for this "procedural irregularity" by payment to her of a sum equivalent to two months' net base salary. The JAB had, however, gone on to state in its conclusions that this irregularity had resulted in the Applicant's candidacy not being given due consideration in accordance with basic procedural standards as outlined in the relevant Administrative Instruction and it recommended that for "the procedural error" she be awarded a sum equivalent to two months' net base salary. It appears to the Tribunal that the Respondent misunderstood the nature of the JAB's said finding and recommendation for he declined to pay any compensation on the stated ground that he

"does not share the JAB's conclusion that, having regard to the composition of the departmental panel, your candidature was not given due consideration. On the contrary, your right to due consideration was not compromised by the composition of the departmental panel."

The JAB had said no such thing. The JAB was not saying that the departmental panel had not given proper consideration to the Applicant's candidacy. It confined itself to saying that the panel as constituted failed to comply with the appropriate Administrative Instruction so that the Applicant's candidacy had not been considered by a panel constituted in accordance with the standards required by the Administrative Instruction.

IX. Had the JAB wished to say that the Applicant's candidacy had not been properly considered by the departmental panel which dealt with this case, it could no doubt have done so but, had it done so, it is unlikely that it would then have gone on to describe this failure as a "procedural error" or a "procedural irregularity". Furthermore, had the JAB found that the departmental panel had not given the Applicant's candidacy proper consideration it is unlikely that it would have felt that such an omission would have been remedied by a modest payment of the type which it recommended should be paid.

X. The Tribunal accordingly considers that the reasons advanced by the Respondent for rejecting the JAB's reasonable and measured recommendation were

erroneous or mistaken. In the light of the passage of time and the upset caused by the rejection of this recommendation, the Tribunal finds it appropriate to increase the sum to be paid to a sum equivalent to four month's net base salary.

XI. The Tribunal agrees with the findings of the JAB in relation to the various other complaints of the Applicant which were dealt with in its report. The Tribunal is not persuaded that the Applicant's candidacy was not given proper consideration or that the APB was unfairly corrupted or influenced by the Administration of the Applicant's Department and accordingly this part of her claim, save for compensation for the irregular composition of the departmental panel, is also rejected.

XII. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant four months' net base salary, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and
2. Rejects all other pleas.

(Signatures)

Kevin Haugh
Vice-President, presiding

Brigitte Stern
Member

Dayendra Sena Wijewardane
Member

New York, 23 November 2005

Maritza Struyvenberg
Executive Secretary