



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1267

Case No. 1350

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, Vice-President, presiding; Ms. Jacqueline R. Scott; Mr. Dayendra Sena Wijewardane;

Whereas, on 3 February 2004, a former staff member of the United Nations filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 7 April 2004, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal, inter alia, to order that:

- “1. The [decision] of the Administrator, United Nations Development Programme (UNDP), ... be quashed.
2. The Applicant be reinstated ... with retrospective effect from the date of separation ...
3. [The Applicant be compensated] for moral damages, defamation and legal costs.”

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 10 August 2004 and once thereafter until 31 October;

Whereas the Respondent filed his Answer on 29 October 2004;

Whereas the Applicant filed Written Observations on 12 April 2005;

Whereas the statement of facts, including the employment record, contained in the report of the UNDP/United Nations Population Fund/United Nations Office for Project Services Disciplinary Committee (DC) read, in part, as follows:

“II      EMPLOYMENT HISTORY

... [The Applicant] ... joined [the United Nations International Drug Control Programme (UNDCP)] in April 1994 as a Secretary, at the ND-4 level. She was promoted to level G-6 (Management Assistant) in October 2001. She remained at that post until 6 September 2002 ... [when she was summarily dismissed from service for serious misconduct].

III.      EVENTS LEADING TO DISCIPLINARY CHARGES

... On 4 March 2002, the UNDCP Regional Representative ... received a cheque for Rs. 13,195 from the car service company ‘Har Hari Automobiles’ together with a letter indicating that six bills numbered 181, 183, 192, 193 212 and 222 had been improperly charged to UNDCP. She had previously been informed by ... [the] Manager of the Precursor Project, that while reviewing some inter-office vouchers (IOVs) in October and November 2001, he had noticed that car 5UN2 had been suspiciously serviced or repaired ‘several times’. Upon checking with the driver of that car, he learnt that the car had not in fact been taken for repairs ‘on the days indicated on the bills’.

... On 5 March 2002, during the course of an interview that [the Applicant in Judgement No. 1260, rendered by the Tribunal at this session] was having with [the Manager of the Precursor Project], he named [the Applicant] as the person who had ‘inserted’ UNDCP car numbers on the personal bills submitted to the UNDCP office for payment. In a separate conversation ... held on the same day, [the Applicant] reportedly ‘confessed’ to having authorized ‘... payments that were not legitimate, specifically bills relating to her and [the Applicant in Judgement No. 1260’s] personal cars’.

[On 6 March 2002, the Applicant was notified by the Assistant Administrator and Director of Bureau of Management at UNDP that she would be suspended from service pending investigation of the irregularities reported by UNDCP.]

... The UNDP Resident Representative then constituted a three-member panel on 11 March 2002 to ‘investigate certain inconsistencies/irregularities relating to UNDCP, and to establish the facts of these inconsistencies alleged to have been committed by [the Applicant] ...’ The Panel conducted its enquiry in accordance with the guidelines of circular UNDP/ADM/97/17[, dated 12 March 1997, entitled] ‘Accountability, Disciplinary Measures and Procedures’. The panel interviewed a total of nine persons ..., including the owner of the Har Hari Garage ... the official UNDCP driver of vehicle No. 5UN2, as well as [the Applicant in Judgement No. 1260 and the Applicant].

... In her testimony before the investigation panel [the Applicant] reportedly ‘admitted’ that she wrote the registration numbers of UNDCP cars on ‘4 out of 6 bills’, and directed [another staff member at UNDCP] to change

the car numbers from 5UN2 to 5UN3 for the other two bills. This was done, she reportedly explained, when it was discovered that car No. 5UN2 had not in fact been repaired or serviced on the dates indicated in the IOV statement. In her defense, [the Applicant] explained to the panel that she had entered the 'wrong car numbers' on the bills because of 'lack of training and administrative inexperience'. The panel did not find her explanation credible because she had reportedly 'admitted' in a telephone conversation with [UNDP] on 5 March 2002, that 'she had not made the wrong payments by mistake, but was fully aware of the fact that she had authorized payments that were not legitimate'. The panel reasoned that as it was unusual for repair bills to be received without the corresponding car numbers, [the Applicant] must have known of [the Applicant in Judgement No. 1260's] scheme before filling in the numbers and certifying them for payment. The panel therefore found that [the Applicant] 'knowingly' entered UNDCP car numbers in the private blank bills pertaining to [the Applicant in Judgement No. 1260's] car and thereby caused 'wrongful loss to the Organization'.

... In regard to the second allegation of personal use of official cars and the submission of improper bills for taxi services as well as overtime for the office driver, the panel reported that [the Applicant] 'admitted' to having so acted. In her defense, [the Applicant] explained that she used the office car for personal purposes to 'convince her husband that her travel pertained to official business'. The certification of personal taxi charges and overtime of the driver, she attributed to 'oversight'. The panel rejected [the Applicant's] explanations on the grounds that they would have been credible if she had notified her supervisor beforehand, or at the 'earliest opportunity'; or recorded a note to cover her actions. The panel consequently found that [the Applicant] 'was not authorized to use office vehicles on these journeys and she also wrongly certified the taxi claim and overtime of driver ...'

... On the third allegation, the panel reported that [the Applicant] 'admitted' that she got a stamp made for her husband's private firm (Perceptions), 'which was paid from UNDCP funds'. In her defense, [the Applicant] denied any knowledge of official payment for pre-inked stamp prepared by M/S Ideal Enterprises for a company called 'Connections'. The panel also claimed to have established from official records that the stamp for Connections was ordered by UNDCP in October 2001, and was 'duly received' by [the Applicant]. That stamp was covered by the invoice of M/S Ideal Enterprises, and was allegedly 'verified and certified for payment' by [the Applicant].

... The panel consequently found that [the Applicant] did order a private stamp which she subsequently 'certified' for payment 'from official funds'. However the panel could not establish a 'link' between [the Applicant] and M/S Connections.

... The fourth allegation is about the alleged payment of services and furniture ordered by [the Applicant] for UNDCP, in a manner contrary to prescribed procurement procedures. The Panel found that [the Applicant] made full payment in the amount of Rs. 69,801 to M/S Bhupinder Singh Bhatia and Sons for furniture and allied services before the goods were

received by the UNDCP office. In her defense, [the Applicant] asserted that she was given telephonic permission by the Regional Representative of UNDCP to make the payment even though 'the work was still underway'. The panel therefore checked with the Regional Representative who denied she had given any such permission to [the Applicant]; nor did [the Applicant] make any attempt to obtain ex-post facto approval for her conduct, despite the fact that she allegedly used the Regional Representative's 'signature stamp to authorize payment'.

... The panel also learnt from ... the proprietor of [M/S Bhupinder Singh Bhatia and Sons], that the three quotations that [the Applicant] solicited on behalf of UNDCP were all supplied by firms that he owned. The panel found this limited bidding practice to be contrary to official procurement procedures. In her defense, [the Applicant] asserted that she understood her actions to be in accord with 'the prevailing practice in the [United Nations] system'. The Panel concluded that [the Applicant] did indeed make full payment of [Rs] 69,801 to the Bhupinder Singh Bhatia [and Sons] firm before the requested 'work was fully completed'. The panel also formed the opinion that it was unnecessary for [the Applicant] to have made unauthorized use of the Regional Representative's stamp because the 'officiating person', - i.e. the number two in command - could have given the required permission for payment.

...

In her testimony before the panel, [a UNDCP employee] stated that she entered the account codes on bills No. 181 and 183, and then gave them to [the Applicant] for her 'endorsement (certification)', and subsequent approval by ... the Regional Representative. She further testified that she was 'asked' by [the Applicant] in 'early March/late February 2002 to make a notation' on bill No. 212 (...) indicating that it related to 'car No. 5UN3', because it had been wrongly assigned to car 5UN2.

...

... [T]he driver of car No. 5UN3, was also summoned to testify. He stated that he was asked 'sometime in December' to pick up [the Applicant] from her home and drop her at the Nizamuddin railway station. This was a one-time request from [the Applicant], which he duly complied with."

On 22 May 2002, the Applicant was provided with a copy of the investigation panel report and was instructed to provide in writing any response she wished to make to the report and charges therein or any further submissions prior to a decision on the case. On 6 June, the Applicant responded with her comments on the report. On 26 June, she was informed by the Bureau of Management, UNDP, that she had failed to refute the allegations of the investigation panel. Therefore, UNDP was satisfied that a *prima facie* case of misconduct existed and would refer the case to the DC in

accordance with staff rule 110.4 (b) for advice as to what, if any, disciplinary sanction should be applied.

On 31 July 2002, the Applicant wrote to the UNDP, submitting a number of additional points. On 27 August, the Administrator, UNDP, informed the Applicant that, in accordance with the second paragraph of staff regulation 10.2, he had decided to summarily dismiss her based on a thorough review of all the evidence on the record.

On 16 September 2002, Counsel for the Applicant responded to the Administrator, requesting him to reconsider and withdraw the decision of summary dismissal. Counsel argued that any decision on sanctions against the Applicant should only have been taken after its referral to and advice of the DC: as the DC had not yet met to discuss the Applicant's case, the Administrator's decision of summary dismissal was premature.

On 20 October 2002, the Applicant wrote to the Administrator, UNDP, requesting that her case and the case of the Applicant in Judgement No. 1260 be referred to the DC. On 5 March 2003, her case was submitted to the DC for review.

On 10 September 2003, the DC in New York submitted its report. Its considerations, conclusions and recommendation read as follows:

“V. *CONSIDERATIONS*

18. At the outset, the Committee noted that the extreme distance between New York and India - situs of [the] Appellant and her Counsel - made oral presentation ... impossible. Thus it settled for an *in camera* consideration of written submissions previously submitted by counsel on both sides. The Committee noted at this juncture, that by an e-mail message dated 5 May 2003 ... Counsel for the Appellant had decided to withdraw his representation of [the Appellant] to obviate a potential conflict of interest situation. [His] e-mail contained his last submission on behalf of [the Appellant]. The Committee made the submission a part of the case record and took due note of its contents. Thus in view of the fact that the Appellant was not represented ... and could not be present at the hearing, the Chairman requested the Respondent's Counsel not to attend the hearing in order for an equilibrium in representation to be maintained.

...

VII. *CONCLUSIONS AND RECOMMENDATIONS*

47. The [DC] concluded that although [the Appellant] should be exonerated from complicity in [the Applicant in Judgement No. 1260's] scheme to defraud the Organization, she nevertheless deserved to be

sanctioned for her conduct on [the] charges [of personal use of official cars and the alleged payment of services and furniture ordered by the Appellant for UNDCP, in a manner contrary to prescribed procurement procedures]. The Committee sought to send the message that a staff member who willfully defrauds the Organization should not be allowed to remain with the Organization. However, the level of sanction meted out should be commensurate with the severity of the staff member's conduct. The Committee recognized certain extenuating circumstances in [the Appellant's] case and allowed that the ultimate sanction agreed upon should be moderated accordingly; for example, it was noted that she was thrust into a post whose delicate duties she had not been specifically trained for; she was also required to make snap decisions on occasions when the Regional Representative was away from the office, and generally felt pressured by multitask duties which devolved on her in a relatively small office.

48. *IN CONCLUSION, the Committee unanimously finds that the Administrator's decision to summarily dismiss [the Appellant] is extreme and instead recommends that she be 'separated with notice'.*

On 4 November 2003, the Administrator, UNDP, transmitted the report of the DC to the Applicant and informed her as follows:

"I accept the recommendation of the [DC] and you are hereby separated from service with notice. Consequently, you will receive 30 days pay in lieu of notice, retain all benefits earned, such as accrued leave, if any, and overtime payment, if any, but receive no termination indemnity. Your date of separation will remain the date you were summarily dismissed."

On 7 April 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Administrator had no legal authority to unilaterally convert a *prima facie* case of misconduct slated for the DC to one of serious misconduct so as to evoke summary dismissal.
2. The investigation panel was improperly constituted because of the inclusion of the Manager of the Precursor Project who was pre-disposed to be biased.
3. The witnesses who appeared before the panel were interviewed in the Applicant's absence so that she was denied the opportunity to cross-examine them.
4. She was not advised of her right to counsel during the investigation and was therefore denied due process.

5. The Applicant's erroneous assumption that the car bills that were received by the office automatically related to office cars occurred because of a "lack of procedural knowledge or ... guidance from" the UNDCP management. Besides, the service company had a long-standing relationship with the office.

6. The official payment for stamps privately ordered by the Applicant was due to an acknowledged mix-up and mistaken delivery by the supplier firm; thus the panel's unwillingness to accept the firm's own explanation showed bias.

7. The Applicant used the office car for personal errands because she "understood" that she had been given permission and she did not intend to cheat the Organization for the payment of overtime bills of the driver. Besides, the Organization could have simply asked for reimbursement.

8. The payment for the furniture prior to delivery did not contravene procurement procedure because it was done as a simple matter of administrative convenience and was telephonically authorized by the Regional Representative.

Whereas the Respondent's principal contentions are:

1. It is within the discretionary power of the Secretary-General to determine what behaviour constitutes misconduct or serious misconduct, as well as the disciplinary measures cited in staff rule 110.3 to be imposed.

2. The Applicant failed to meet the standards of integrity required of staff members as international civil servants, and this action amounted to serious misconduct.

3. The decision to separate the Applicant from service was a necessary and valid exercise of the Administrator's discretion.

4. The Applicant was accorded due process.

5. The decision to separate the Applicant from service for misconduct was not vitiated by bias, improper motivation, or other extraneous factors.

6. The penalty imposed was not disproportionate to the offence.

The Tribunal, having deliberated from 2 to 23 November 2005, now pronounces the following Judgement:

I. The Applicant joined UNDCP, New Delhi, in April 1994, and worked as a Grade G-6 level Senior Management Assistant, since October 2001. She was

summarily dismissed from service effective 6 September 2002 on the grounds of serious misconduct. Later, on the recommendation of the DC that there were extenuating circumstances, this decision was modified to one of separation from service with notice.

II. The Applicant's dismissal occurred in connection with the dismissal for fraud of a colleague who had his private vehicle serviced and repaired on six different occasions at the same garage where the UNDCP Office sent its vehicles for repair (Har Hari Automobiles in New Delhi) and who had the repairs paid for as if they related to official vehicles. The fraud consisted of an arrangement whereby the invoices for the private repairs were sent to UNDCP without indicating the registration number of the vehicle concerned. On receipt of the invoice, an official vehicle number was inserted and the invoice passed for payment. There were also other charges levied against the Applicant, including wrongful certification of taxi refunds from which the Applicant benefited.

III. On 11 March 2002, the UNDP Resident Representative established a three-member panel of investigation to establish facts in connection with the alleged irregularities in accordance with the pertinent circular UNDP/ADM/97/17. The panel of investigation completed its work on 17 May having heard a number of witnesses, obtained clarifications and recorded statements of various persons including the Applicant herself. On 22 May, the panel report and the entire record of the investigation were made available to the Applicant for her review so that she could make any answer she wished to the report or make any further submissions she would want to, prior to a decision in the case.

IV. The Applicant's response was examined and the Officer-in-Charge, Bureau of Management, UNDP, wrote to the Applicant on 26 June, stating that a *prima facie* case of misconduct had been established, which would be referred to the DC in accordance with staff rule 110.4 (b) for advice as to what disciplinary sanction should be applied in her case. The Applicant was provided with a copy of circular UNDP/ADM/97/17, and advised of her rights thereunder. The Applicant replied to this letter on 31 July.

However, on 27 August, after considering all evidence before it, the Administrator, UNDP, concluded that the facts should be categorized as amounting to



serious misconduct, warranting summary dismissal under staff regulation 10.2, with the Applicant having a right to submit the decision to the DC for review.

V. The DC reviewed the case on 10 September 2003 and found that the Applicant had been guilty of negligence rather than actual fraud in wrongly attributing the repairs of her colleague's private vehicle to the official account and, despite a finding of her wilfully defrauding the Organization on another count, considered that there were extenuating circumstances which justified a modification of the decision taken in respect of the Applicant to one of separation with notice. This recommendation was accepted and the sanction changed accordingly.

VI. The Applicant raised similar issues to those that have been raised by the Applicant in Judgement No. 1260 (rendered at this session), who had been summarily dismissed for fraud and who also appealed to this Tribunal. In that case, the Tribunal held that the Administrator has the power to make a decision for summary dismissal without prior referral to the DC. That power remains in place even if there is a subsequent modification of the decision as a result of a later recommendation of a DC.

VII. There were two other objections which have also been asserted by the Applicant. The first of these objections related to a Note for the File dated 5 March 2002 which pertained primarily to an admission made by the Applicant in Judgement No. 1260 who also implicated the Applicant in the first charge which has been brought against her in this case. The objection was to the reliance on the Note as evidence, because one of the signatories was a member of the panel of investigation. But it is not relevant to the Applicant's case as the DC did not rely on that Note for any finding against the Applicant in this case.

The Applicant herself had allegedly made an incriminatory statement to a UNDP staff member, who was later appointed to the investigation panel. Thus, this staff member's presence on the panel could be perceived as a conflict of interest, even though the Applicant did not specifically object to her presence on the panel. For this perceived conflict of interest, the Tribunal awards compensation. (See Judgement No. 1175, *Ikegame* (2004).)

VIII. The second objection relates to the right of confrontation of witnesses who made statements to the investigation panel. This does not affect the findings against the Applicant on the second charge of fraud on which she was, indeed, found guilty, as her culpability was essentially premised on her own statements and not on witness testimony. The Tribunal does not see any grounds to interfere with the decision made against the Applicant on the recommendation of the DC.

Nevertheless, throughout the proceedings, the Applicant was under suspicion of having participated in a conspiracy to defraud in respect of which the statements of witnesses were taken and apparently considered relevant. The Tribunal notes that, despite her request to confront these witnesses, she was not afforded the opportunity. In recognition of her due process rights which were thus impinged and for the reasons set out in Judgement No. 1260 (*ibid.*), the Tribunal finds that she should be compensated.

IX. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant the sum of US\$ 3,000 as compensation, 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)

Spyridon **Flogaitis**  
Vice-President, presiding

Jacqueline R. **Scott**  
Member

Dayendra Sena **Wijewardane**  
Member

New York, 23 November 2005

Maritza **Struyvenberg**  
Executive Secretary