



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1288

Case No. 1370

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Mr. Julio Barboza;
Mr. Goh Joon Seng;

Whereas, on 16 August 2004, a staff member of the United Nations filed an
Application containing pleas which read, in part, as follows:

“II Pleas

3. (a) ... [T]he Applicant requests the Tribunal to order a hearing
...

...

*The Applicant also requests the Tribunal ... to order the production in extenso
of the original report to the Director of the Conference Services Division by ... a
consultant who was housed temporarily in the Copy Preparation and Proofreading
Unit.*

...

3. (b) Decisions contested: specifically, the administrative decision
concerning post No. 500699 (...) (Chief, Copy Preparation and Proofreading Unit, P-
4).

...

3. (c) ... [T]he Applicant requests the performance of the following obligations:

Promotion to P-4, step 15

...

Compensation for the effort and time expended while carrying out the responsibilities of de jure Interim Chief of the Unit

...

Written apologies ...

...

A printed, original and in extenso copy of : (1) the discussions that took place in the Appointment and Promotion Committee concerning the Applicant's candidacy, and (2) the agreement reached by its joint members

...

3. (d) Amount of compensation ...

...

... [T]he Applicant has decided to leave it to the Tribunal to determine, should it so deem appropriate, the amount of compensation to be paid to him ...

3. (e) ... [T]he amount of compensation ... should in this case be calculated retroactively as from 6 April 2000. ...

...”

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 March 2005 and twice thereafter until 31 May;

Whereas the Respondent filed his Answer on 3 May 2005;

Whereas the Applicant filed Written Observations on 10 April 2006;

Whereas, on 30 June 2006, the Tribunal decided not to hold oral proceedings in the case;

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

Employment history of the [Applicant]

... The [Applicant] joined [the United Nations Office at Geneva (UNOG)] on 10 May 1989 as a Proofreader in the Division of Conference Services at the level of P-2, step VI, under a two-year fixed-term contract. This contract was extended a number of times up to 30 September 1991 ...

... On 1 October 1992 the [Applicant's] contract was made into a permanent one and on 1 July 1993 he was promoted to the P-3 level.

Summary of facts

... On 7 May 2001, vacancy announcement 01-R-UNG-400652-I-GE was posted for the position of Chief of the Copy Preparation and Proofreading Section ... [The Applicant] applied ... before the deadline of 28 May 2001.

[From 11 October until 15 December 2001, the Applicant went on home leave.]

... On 23 November 2001 ... information circular (ST/IC/2001/91), ('Placement and promotion list for staff in the Professional category and above') [was issued, announcing] that another candidate had been selected for the post.

... On 14 January 2002, the [Applicant] wrote to ... [the] Human Resources Management Service, UNOG, [(HRMS)], stating] that he 'was unaware of the procedure followed when one of the applicants was absent when the decision was taken' and '[that] so far [he had] still received no official information on the subject'.

... [On] ... 28 January 2002 ... the [Applicant was advised] that the procedure followed was governed by administrative instruction ST/AI/1999/8 of 17 August 1999[, entitled 'Placement and Promotion System' and] that, pursuant to section 9.2 of that administrative instruction, only the selected candidate is notified personally, the other candidates being informed by internal circular. ...

...

... By a letter dated 24 April 2002, the [Applicant] forwarded a request to the Secretary-General for the administrative decision to be reviewed ...

...

... On 24 July 2002, the [Applicant] sent the Secretary-General a further request for the administrative decision to be reviewed, attaching his letter of 24 April.

... In a letter dated 19 August 2002, the Chief of the Administrative Law Unit (ALU), [Office of Human Resources Management (OHRM)], New York, acknowledged receipt of the request for review dated 24 July ... together with the attached request for review of 24 April ... [and] informed the [Applicant] that [as his request for review of 24 April had not been received by the ALU,] the 'Secretary-General reserved his right to raise the matter of receivability and competence'.

...

... On 17 October 2002 ... the [Applicant] ... requested a copy of the departmental panel's recommendation regarding post No. 500699 (UNB50752EP-4001)."

On 6 November 2002, the Applicant lodged an appeal with the Geneva JAB. The JAB adopted its report on 15 June 2004. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

33. With regard to the receivability of the appeal *ratione materiae*, the Panel considered that the Appellant could not legitimately claim not to have been notified or not to have been aware of the decision to appoint another candidate to the post for which he had applied. ...

34. The Panel further noted that information about the candidate selected for the post appeared in information circular ST/IC/2001/91 of 23 November 2001. This, therefore, is the appealable administrative decision.

35. Although the Appellant contended that he was on home leave from 11 October to 15 December 2001, and therefore could not have known about the circular in question, the Panel did not deem this a valid argument: in order to safeguard legal security, and to avoid random circumstances leading to unfair treatment, it was of the opinion that the aforementioned circular contained the appealable administrative decision for *all* the candidates for that post. Furthermore, it held that all staff members have access to the circulars and that this staff member had every opportunity to learn of it on his return.

36. With respect to receivability *ratione temporis*, the Panel noted that the Appellant returned from leave on 15 December 2001, and that ... according to staff rule 111.2 (a), he had until 23 January 2002 to request the Secretary-General to review the decision. Instead of complying with the appeal procedure, the Appellant wrote to [HRMS] on 14 January 2002, pointing out that the post in question was no longer vacant, and that he had not been officially notified of this. The Panel noted in passing that this implied that the Appellant was aware that another candidate had been selected.

37. The Panel further noted that the Appellant did not write to the Secretary-General until 24 April 2002, five months after the contested administrative decision had been taken. Then, instead of contacting the JAB secretariat, he sent a further letter to the Secretary-General on 24 July ..., attaching a copy of his [earlier 24 April] request for review ... The Panel pointed out that neither of the requests for review had been made within the statutory time limit and that the appeal was not receivable *ratione temporis*. It also noted that the Appellant had adduced no argument showing that exceptional circumstances had prevented him from filing his request within the statutory time limit.

...

Conclusions and recommendations

39. The Panel **concludes** that the appeal is not receivable since the time limit prescribed for the submission of a request for review to the Secretary-General has not been observed.

40. The Panel therefore **rules** that there are no valid grounds for considering the merits of the appeal.”

On 16 August 2004, the Applicant, having not received any decision from the Secretary-General regarding his appeal to the JAB, filed the above-referenced Application with the Tribunal.

On 22 November 2004, the Officer-in-Charge, Department of Management, informed the Applicant that the Secretary-General had accepted the JAB's findings and conclusion and had accordingly decided to take no further action on this appeal.

Whereas the Applicant's principal contentions are:

1. The Applicant received no notification of the final decision, which was a violation of staff rule 111.2 (a) and left him without any possibility of defence.
2. According to the Applicant, the person who signed the selected candidate's recommendation had "forcibly evicted" him from his post as acting Chief of Section on 6 April 2000 and "replaced him with one of her compatriots". Therefore this person could not have been impartial when evaluating and recommending candidates in 2001.
3. The Applicant argues that the person chosen as Chief, Copy Preparation and Proofreading Unit, was administratively ineligible under the Staff Regulations and Rules to be so appointed, having never passed the United Nations copy-preparation/proofreading competitive examinations.
4. The selection process lacked transparency.

Whereas the Respondent's principal contentions are:

1. The appeal is time-barred and there are no exceptional circumstances justifying waiver of the time-limit in the present case.
2. The Secretary-General's decision accepting the JAB's recommendation to consider the appeal time-barred was objective and reasonable, and did not constitute an abuse of discretion.
3. The Applicant's additional pleas are not receivable

The Tribunal, having deliberated from 26 June to 28 July 2006, now pronounces the following Judgement:

I. The JAB found that the Application was not receivable *ratione temporis*. The Tribunal is satisfied that, in effect, the Application is time-barred and that there are, in the present case, no exceptional circumstances warranting a waiver. It notes, in this regard, that staff rule 111.2 (a) provides

"[a] staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting

that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing”

and that staff rule 111.2 (f) provides that “an appeal shall not be receivable unless the time limits ... have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal”.

II. On 23 November 2001, information circular ST/IC/2001/91 was issued, announcing that another candidate had been selected for the post for which the Applicant had applied. According to the Respondent, this is the way all candidates, except the successful ones, are informed of the outcome of promotion exercises. The procedure followed was governed by administrative instruction ST/AI/1999/8 and, pursuant to section 9.2 of that administrative instruction, “only the selected candidate is notified personally, the other candidates being informed by internal circular”.

The Applicant was on home leave on that date, and the Tribunal is ready to accept that he had no means of learning of the contents of the said circular while away from his Unit and that this situation continued until 15 December, when he returned to work. Starting from that date, the Applicant cannot argue that the information had not reached him. Moreover, the Applicant could not possibly have ignored the facts in question after 28 January 2002, on which date he received the memorandum from the Deputy Human Resources Officer, HRMS, UNOG, advising him of the notification procedure in ST/AI/1999/8.

III. However, the Applicant wrote a letter to the Secretary-General only on 24 April 2002, that is, five months from the date of his return from home leave, and almost three months from the date of the memorandum of 28 January.

IV. As regards the condition required for a waiver of the time limit, namely, exceptional circumstances beyond the Applicant’s control which would have prevented him from presenting his letter on time, the Applicant does not even mention such circumstances. As the JAB stated in its report, “the Appellant had adduced no argument showing that exceptional circumstances had prevented him from filing his request within the statutory time limit”.

V. The Tribunal has repeatedly expressed the importance it assigns to procedural requisites, as they respond to a need for order and legal security. This is clearly set out in its Judgement No. 1112, *Lascu* (2001), where it expressed its position that

“legal rules establishing time limitations are as obligatory to the Tribunal as any other legal rule. Time limits exist in every legal system and respond to important legal values which have to be respected, such as order, legal security, and dispatch. The law

has considered it necessary to establish such limitations and it is not for the Tribunal to change a clear legal policy.”

Furthermore, as it noted in its Judgement No. 1155, *Thiam* (2003),

“The ... Applicant’s case is a perfect example of why time limits exist, and why, barring exceptional circumstances, they are not to be extended. With respect to the Applicant’s claims for reimbursement of medical expenses, the Applicant makes claims for expenses that are, in some cases, more than ten years old. With respect to some of those expenses, the Applicant is unable to provide evidence of having incurred them, because too much time has elapsed. In at least two instances where the Applicant sought to obtain duplicate records to demonstrate those expenses, the record holders explained that they were unable to provide such duplicates, having previously destroyed their records, due to the great length of time that had elapsed since service was provided to the Applicant. In one case, the record holder was only required to maintain its records for ten years.”

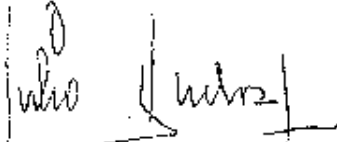
As a consequence, the Tribunal it will not enter at all into considering the merits of the present case.

VI. For the foregoing reasons, the Application is rejected in its entirety.

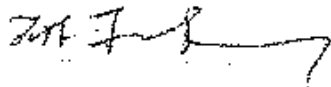
(Signatures)



Jacqueline Scott
Vice-President, presiding

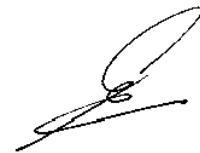


Julio Barboza
Member



Goh Joon Seng
Member

Geneva, 28 July 2006



Maritza Struyvenberg
Executive Secretary