



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1292

Case No. 1374

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 24 March and 22 April 2004, a staff member of the United Nations Children's Fund (hereinafter referred to as UNICEF) filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 24 July 2004, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read, in part, as follows:

“II. Pleas:

(a) Victimization/discrimination on the basis of personal liking/disliking in [abolition] of [the] Applicant's post during the 1995 Pakistan Restructuring Process.

(b) Complete departure from the rules and regulations of the Organization and mala fide intention on the part of management in maneuvering to secure decisions detrimental to the conditions of service and to the interest of the staff and the Organization, with [a] wrong charge of 'questionable integrity' which is unfair, unjust, prejudicial and on the basis of personal liking/disliking.

(c) With series of acts of violation of recruitment policy, I have lost career development with UNICEF due to personal liking/disliking, prejudicial and discriminatory behavior of the Country Management on the basis of [a] wrong charge of 'questionable integrity'.

(d) ... [S]eries of acts of violations of rules/regulations by the country management for the last ... eight years caused damage to Applicant's personality, morale and serious mental and physical health problems.

The case is not time-barred as claimed by Respondent: if there was any delay, it was on the part of the management of UNICEF's Country Office and [Headquarters].

Seek proper compensation from UNAT, at this stage in financial terms for:

1. Total loss of career development with the Organization ...
2. Damages to physical and mental health as well as morale ...”

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 2005 and twice thereafter until 31 March;

Whereas the Respondent filed his Answer on 31 March 2005;

Whereas the Applicant filed Written Observations on 29 May 2005;

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

... The [Applicant] entered the service of ... UNICEF on 4 November 1984, as a Secretary, at the GS-5 level, on a short-term appointment of one month and 27 days, with the Lahore, Pakistan Office, Islamabad, Pakistan, and East Asia & Pakistan Division. He served on a series of short-term appointments until 31 December 1989, when he received a fixed-term appointment. Thereafter he ... served on a series of fixed-term appointments. On 31 December 1994, he was granted a fixed-term appointment for three years. Effective 6 June 1996, following the abolition of his post, he was placed on special leave with full pay (SLWFP) until 11 November 1996, when he was appointed as Secretary, at the GS-4 level, on a fixed-term appointment, at the UNICEF Office in Lahore, Pakistan.

Summary of the facts

... By letter dated 7 March 1996 ... [the] UNICEF Representative, Islamabad, Pakistan, informed the [Applicant] that his post had been abolished as a result of the 1 February 1996 Budget Planning and Review Committee review. [He] was advised [of his entitlements during] the notice period ...

...

... By memorandum dated 19 March 1996, the [Applicant] applied for ten (10) posts in the Karachi Office. By memorandum dated 20 March ..., [he] applied for one more post ...

... By letter dated 4 June 1996, [the UNICEF Representative, Islamabad,] informed the [Applicant] that his ‘application[s] to vacant posts as part of the Pakistan Country Office (PCO) restructuring process had been unsuccessful’, and that the ‘[Appointment and Promotion Committee (APC) had] also been unable to recommend

[his] appointment to another vacant post to which [his] qualifications and experience could be applied'. ... The [Applicant] was advised ... to consider [a number of options, including early separation from UNICEF; to proceed immediately on SLWFP for the remainder of his notice period; or, to report for duty during the notice period].

... By memorandum dated 24 June 1996, to ... [the Personnel Office,] UNICEF, Islamabad, the [Applicant] applied for seven (7) more posts.

... By fax dated 17 July 1996, to ... [the Officer-in-Charge,] Personnel, Islamabad, Pakistan, the [Applicant] requested copies of the [APC] minutes for the 11 posts for which he had previously applied ...

... By memorandum dated 28 July 1996, ... the [Applicant was provided] with the 'relevant portions of the APC recommendations ... regarding his [11] applications to the vacant posts'. With respect to six (6) posts [the APC stated that review of the Applicant's files had raised questions regarding his integrity and that hence his applications were not reviewed further].

...

... By letter dated 31 July 1996, to ... [the] Executive Director, UNICEF ..., the [Applicant] requested administrative review [of the decision to abolish his post, having resulted in his separation from service] ... He also alleged that the minutes of the APC ... questioned his integrity and negatively affected his candidature for these posts. He further alleged that this negative assessment was based on 'personal likes and dislikes' toward [him]. ...

... On 22 August 1996, the [Applicant] submitted to the [JAB in New York] his request for suspension of action, on his separation effective 8 September 1996. ... [O]n 6 September ... [t]he majority of the Panel recommended that the ... request for suspension of action be rejected [and on] 19 September ..., [the Applicant was informed] that ... the Secretary-General had decided not to grant his request for suspension of action. ...

... By memorandum dated 23 October 1996 ... [the] UNICEF Representative, Islamabad, informed the [Applicant] that he had been selected for one of the posts [for] which he had applied in June 1996 ... He was also advised that he could retain his GS-5 grade level in this [GS-4] post. Effective 11 November 1996, the [Applicant] was granted a fixed-term appointment in his new position.

... By memorandum dated 3 December 1996 ... the [Applicant] requested copies of the [APC] minutes for the six (6) posts applied for on 24 June 1996.

... [On 21 January 1998, the Applicant was provided] with the relevant portions of the APC recommendations ... [Again, the APC review of his file had raised questions as to his integrity.]

[On 18 June 1999, the Applicant's attention was drawn to a memorandum dated 17 November 1991 in his Official Status file, which was actually a letter of reprimand.]

... [On] 25 October 1999 ... the [Applicant] requested that the letter [in question] ... be removed from his file along with three other letters ...

[On 2 June 2000, the Applicant wrote to the Secretary-General, requesting administrative review of UNICEF's discrimination against him which had resulted in damaging his career with the Organization]."

On 5 April and 20 July 2001, the Applicant lodged an appeal with the JAB on the merits of his case. The JAB adopted its report on 20 November 2003. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

28. The Panel [noted] that the Appellant failed to file his appeal within 30 days after the expiration of the two-month period for the Secretary-General to respond [to his request for review]. The Panel also noted the Appellant’s ... reasons for his delay of several years ... ‘I thought it would be a futile exercise to pursue further my appeal dated 31 July 1996 to [the] Executive Director, when the decision on the posts selection [could not] be reverted. ...’ The Panel concluded that the Appellant was well versed in the procedures leading to an appeal, and the reasons given for a five year delay did not amount to exceptional circumstances. Therefore, the Panel found that the present Appeal was time-barred and thus non-receivable ...

29. The Panel next noted that the Appellant failed to file an appeal of an administrative decision regarding his subsequent applications within the time period stipulated in staff rule 111.2 (a) ... [but] that the Appellant waited approximately three years before requesting administrative review. His appeal was therefore non-receivable since it was time-barred.

30. Lastly, the Panel examined the Appellant’s submission of additional material in his present appeal, regarding the [abolition] of his present post. The Panel concluded that as this was the first time this claim had been presented, the Appellant must request administrative review of this decision so as to give the Respondent an opportunity to consider this action. Therefore, the Panel determined [that] the Appellant’s new claim was ... non-receivable.

Recommendations

31. Accordingly, as the claims of the Appellant are time-barred, consideration of the merits of the case are unnecessary. Therefore, the Panel *unanimously* decides to make no recommendation in support of the appeal.”

On 12 December 2003, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him that the Secretary-General agreed with the JAB’s conclusions and had accordingly decided to take no further action on his appeal.

On 24 July 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The appeal to the JAB was not time-barred as it is linked to a similar series of wrong-doing on the part of the Administration during the second round of the recruitment process.

2. UNICEF used delay tactics to keep him away from justice.
3. The charge that his integrity was questionable has no ground in reality and violated his rights.

Whereas the Respondent's principal contention is:

The appeal to the JAB was time-barred and no exceptional circumstances existed as would warrant the waiver of the time-limits.

The Tribunal, having deliberated from 30 June to 28 July 2006, now pronounces the following Judgement:

- I. The Applicant's claim for compensation arose out of:
 - (a) the Organization's decision to abolish the Applicant's post conveyed to him by letter on 7 March 1996;
 - (b) the decision not to select him for any of the eleven posts he applied for in March 1996; and,
 - (c) the decision not to select him for any of the seven posts he applied for in June 1996.
- II. On 11 July 1996, the Applicant requested administrative review of the decision to abolish his post and the decision not to select him for any of the eleven posts he had unsuccessfully applied for at the time.
- III. The Applicant, however, did not pursue his appeal to the JAB until 20 July 2001.
- IV. With respect to the decision not to select him for any of the seven posts he applied for in June 1996, the Applicant contends before the Tribunal that time should run from 21 January 1998 when he received the APC minutes.
- V. Staff rule 111.2 (f) provides:

"An appeal [to the JAB] shall not be receivable unless the time-limits specified in paragraph (a) above have been met or have been waived, in *exceptional circumstances*, by the panel constituted for the appeal".

The time limit for the Applicant to appeal to the JAB is 30 days following the expiration of the two months' period for the Secretary-General to respond.

VI. The Applicant's appeal to the JAB was accordingly well out of time at least by three years, if not five. It should, therefore, not be entertained unless there were "exceptional circumstances", which must be "circumstances beyond the control of the Applicant which prevented [him] from submitting a request for review and filing of an appeal in time". (See Judgements No. 372, *Kayigamba* (1986) and No. 713, *Piquilloud* (1995).)

VII. The JAB, having reviewed the facts, found that there were no exceptional circumstances justifying extension of time to entertain the appeal. The Tribunal has not been persuaded otherwise. The burden of proof rested on the Applicant. As the Tribunal held in its Judgement No. 1046, *Gharsellaoui* (2001),

"[b]ased on the Applicant's delay in prosecuting the matter and the lack of any credible evidence presented by the Applicant that such delay was due to exceptional circumstances, the Tribunal finds that the Application is time-barred. Therefore, the Applicant's claims are not receivable."

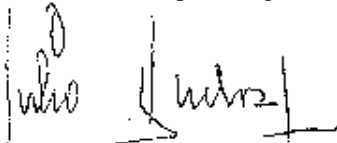
The Tribunal finds that the JAB was perfectly correct in declaring the Application not receivable on the grounds that it was not filed within the time limit and in concluding that there were no exceptional circumstances justifying the delay.

VIII. The Application is accordingly rejected in its entirety.

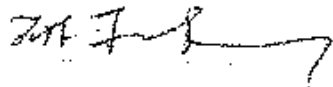
(Signatures)



Jacqueline R. **Scott**
Vice-President, presiding



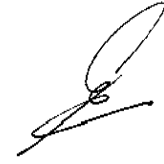
Julio **Barboza**
Member



Goh Joon Seng

Member

Geneva, 28 July 2006



Maritza **Struyvenberg**
Executive Secretary