



Administrative Tribunal

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28 September 2007

Original: French

ADMINISTRATIVE TRIBUNAL

Judgement No. 1324

Case No. 1398

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Mr. Julio Barboza; Ms. Brigitte Stern;

Whereas, on 18 March and 28 June 2004, a staff member of the United Nations, filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 September 2004, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read as follows:

“I wish to request that in the interest of justice, the ... Tribunal should meet its obligations under international law. ...

1. My grievance date goes back ... nearly two decades, beginning in 1984, when I was downgraded to GS-4. ... I submit that my post and grade are incompatible with my qualification[s]. ...

2. My reassignment to the Registry Unit that denied me the opportunity for a higher-level and at least GS-7 grade or Mission Assignment could have been made as a compromise. ...

...

... I submit that the provisions of the [United Nations Staff Regulations and Rules] should be allowed to apply in [their] totality ... In doing so, I trust that the ... Administrative Tribunal will pay ... attention to:

- the fact that, despite my impeccable integrity, seniority, professional qualifications, responsibilities and very good record of service, no consideration [was] given to my promotion prospects until my first appeal [dated] 18 March and 8 June 2000;
- [no] training [or] appropriate career placement were ever granted;

- ... refusal to become involved in my case for this long period and negligence to correctly apply the relevant provisions of the [United Nations Staff Regulations and Rules] in so far as my case was concerned;
- ... repeated and excessive delays in resolving the issues involved in this case, a fact that has certainly impacted negatively on my psychological position *vis-à-vis* my undivided attention to my work: I have been unfairly disadvantaged and unfairly treated in respect of my career aspirations and opportunities for promotion; and,
- [I request that the Tribunal award me damages and full compensation for the detriment to my career prospects.]”

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 August 2005 and once thereafter until 30 September;

Whereas the Respondent filed his Answer on 30 September 2005;

Whereas, on 30 November 2005, the Applicant filed Written Observations, amending his pleas as follows;

“Contested administrative decision

3. The Applicant ... submits that the decision that is contested is the entrance level as stated in the letter ... to the ... Secretary-General for his review ... Since 1984, the Applicant has continuously complained to [the Economic Commission for Africa (ECA)] Administration to review his entrance level without much success.

4. Thus, the Applicant ... submits that the administrative decision contested is clearly stated as ‘Request for Proper Grading’.

Injury caused

5. The Applicant ... requests the Tribunal to find that the decision to place him below GS-6[, step 7 level (grade and step when leaving International Labor Organisation (ILO))] caused sufferings and injuries financially and morally. The Tribunal is ... requested to find that the ECA Administration did not act in good faith. ...

6. ... [T]he post encumbered by the Applicant was reclassified at GS-6 just [a] few months before his retirement [an exercise that took years and prevented him from retiring at the GS-6 level].

...

Time-barred for appeal

8. The Applicant ... requests the Tribunal to find that he had continuously argued with the ECA Administration to correct his entrance level ...

9. The Tribunal ... is requested to find that [six years after he filed his appeal, the Respondent is still playing games to delay consideration of his case arguing non-receivability.]

...

Conclusion and pleas

12. ... [T]he Applicant ... requests the Tribunal to find that the Application is receivable.

...”

Whereas, on 21 November 2006, the Tribunal decided to postpone consideration of this case until its next session;

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] served with the ...ILO, at the Regional Office for Africa in Addis Ababa, from 1969 to 1970 and again from 1973 to 1984. When he left ILO, he was serving at the GS-6, step V level. In March 1984, the [Applicant] joined ... ECA in Addis Ababa at the GS-4 level, as a Filing Clerk in the Registry Unit. In April 1992, the [Applicant] was assigned to the Procurement Unit as a Local Purchasing Officer. From November 1993 to October 1994, he was assigned to the Local Transport Unit as Supervisor, a post classified at the GS-6 level. He was promoted to the GS-5 level effective 1 January 2001 ...

Summary of the facts

... On 3 October 1986, ... the [Applicant] wrote to the Chairman of the Appointment and Promotion Panel [(APP)] at ECA in connection with the 1985 Promotion Register to draw his attention to the fact that he had ‘served in [ECA] for over 30 months at a GS-4 Grade as compared to [his] previous Grade of GS-6/7 with the sister organization ILO ...’ He recalled that he had first joined ILO at the GS-5, step V level and that he hoped that ‘the [APP would] reconsider [his] case’ since he felt he ‘deserve[d] promotion because of past experience and seniority’.

... On 22 February 1994, the [Applicant] wrote to [the] President of the ECA Staff Union Committee, requesting ‘a review of Appointment Status and Proper Grading’ with copies to the Chairperson and Vice-Chairperson of the [APP].

... On 2 November 1994, the [Applicant] sent a memorandum to [the] Chief of the Administration and Conference Services Division, requesting a Special Post Allowance [(SPA)] to GS-5 for the period from November 1993 to October 1994 when he acted as Supervisor of the Transport Unit, classified at the GS-6 level.

... On 30 September 1998 and on 12 April 2000, the [Applicant] submitted a request for review ... entitled ‘Request for proper grading’ ...

... On 18 October 1999, [a] Human Resources Officer, wrote to [the] Human Resources Services Section, to recommend that the [Applicant] be given, ‘on an exceptional basis, a [SPA] to GS-5’ for the period the [Applicant] acted as Supervisor of the Transport Unit.

... On 18 May 2000, the [Applicant] submitted his Statement of Appeal [to the JAB in New York] against an ‘administrative decision which has been withheld and delayed for reason[s] which I don’t know’. However, in ... his Statement of Appeal, the [Applicant] stated that ‘the decision not to reply or reassign [him] on the post he has requested [i.e. post of Supervisor of the ... Transport Unit] is unjust, discriminatory, and at variance with the [United Nations] rules and principles of human resources management’.

...

... In a memorandum dated 31 October 2000, the Respondent drew attention to the fact that the [Applicant] had not specified any administrative decision against which a request for review could be submitted and an appeal could be filed. ...”

The JAB adopted its report on 6 January 2004. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

16. The Panel considered first the preliminary issue of receivability. The Panel noted that neither in the Appellant’s Request for Administrative Review, nor in his Statement of Appeal, nor in the Appeals form that the Appellant completed does the Appellant refer to a specific administrative decision against which he might appeal. ... The ... requirements of staff regulation 11.1 having not been met, the Panel concluded that the appeal was not receivable. ...

17. With regard to the Appellant’s reiterated requests for ‘proper grading’ which are outside the purview of the JAB, the Panel drew attention to the following factual statements made by the Respondent that addressed the Appellant’s substantive concerns: (a) career advancement is governed by applicable Staff Regulations and Rules, procedures and administrative instructions; (b) the Appellant’s GS-4 post was reclassified as Registry Assistant at the GS-6 level as a result of a recent classification review of ECA regular budget posts; (c) the Appellant was retroactively promoted to the GS-5 level effective 1 January 2001; and (d) the reclassified GS-6 post will be advertised and the Appellant may apply and be considered for promotion against it ...

Conclusions and recommendations

18. In light of the foregoing, the Panel *unanimously* agreed that the subject matter of the Appellant’s Request for Administrative Review and Statement of Appeal does not constitute an administrative decision injurious to the Appellant’s terms of appointment and as such does not meet the requirements of staff regulation 11.1. The appeal is thus not receivable. ...”

On 26 July 2004, the Officer-in-Charge, Department of Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General accepted the JAB’s findings and conclusions and had accordingly decided to take no further action on his appeal.

On 21 September 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. Prior to joining ECA, he had worked for ILO and had reached the GS-6 step V level, however, when he joined ECA in 1984, he was offered a post at the GS-4 level. He maintains that he was unfairly downgraded.

2. From November 1993 to October 1994, he acted as Supervisor of the Transport Unit to the satisfaction of his supervisors, but on 1 November 1994, he was unexpectedly transferred to the position of Procurement Assistant in the Procurement Unit. When the post of Supervisor in the Transport Unit became vacant, he should have been given precedence over any other internal or external candidate with equal qualifications and experience, but he was not.

3. Having worked for ECA from 1984 to 2003 to the full satisfaction of his supervisors as evidenced by his impeccable and unblemished record, he was entitled to job security and reasonable career advancement. He received neither.

4. His pleas for justice were seldom acknowledged or replied to, and his requests for promotion were routinely ignored.

Whereas the Respondent's principal contentions are:

1. The Application is not receivable as the Applicant has not identified an administrative decision on which he sought a review by the Secretary-General.

2. The Applicant has not demonstrated that he has suffered any injury as a consequence of the violation of his terms of employment manifested through a contested decision.

3. The general allegations provided by the Applicant in his Application relate to events in the distant past and as such would be time-barred for appeal.

The Tribunal, having deliberated from 8 November to 22 November 2006, in New York, and from 26 June to 27 July 2007, in Geneva, now pronounces the following judgement:

I. The Applicant entered the service of the Organization in 1984 as a staff member of ECA at the GS-4 level, although he had previously served at ILO, where he had reached the GS-6, step VII level. The Applicant was disappointed at having been recruited to the United Nations at a grade lower than that of the post he had previously held and therefore expected a promotion that would upgrade him to the same level. Accordingly, beginning in 1994 the Applicant submitted multiple requests to the Administration in the hope of securing a promotion.

II. On 30 September 1998 and on 12 April 2000, the Applicant submitted a request for review entitled "Request for proper grading" to the Secretary-General, in which he cites a failure to respond to one of his requests for promotion. As this document does not specify which request he is referring to, the Administration considered that the request concerned was the one dated 2 November 1994, in which the Applicant had sought the post of Supervisor of the Transport Unit at the GS-6 level.

III. On 18 May 2000 the Applicant submitted claims concerning an "administrative decision which has been withheld and delayed for reason(s) which I don't know" to the JAB. The Board adopted its report on 6 January 2004. It concluded that the appeal submitted to it was irreceivable because it did not identify any specific administrative decision against which the staff member was appealing and thus did not meet the receivability requirements of staff regulation 11.1. The Board also considered the facts indicating that the staff member had recently been promoted, first when he had been retroactively promoted to the GS-5 level effective 1 January 2001 and again when his post had been reclassified from GS-4 to GS-6 in December 2003. The Secretary-General accepted the conclusions of the JAB's report on 26 July 2004.

IV. On 21 September 2004, the Applicant filed an application with the Tribunal without specifying the amount of compensation being sought. The Applicant requested “compensation for lost or deprived opportunities and career prospects and advancement that I never enjoyed; and adequate remuneration for the years of underpayment and under-valuation of my skills (...)”, as well as reparation for the moral injury sustained. In support of this request, the Applicant invokes inter alia his high-level university qualifications and his excellent service record, and alleges that the Administration has deliberately ignored his claims, as shown by its failure to respond to his eight consecutive requests for review.

V. The Tribunal remains uncertain as to the exact subject matter of the application before it. The Applicant never expressly states which decision he means to contest. There are thus two possibilities: the Applicant is contesting either his appointment at a grade lower than the grade of his previous post at ILO or a more recent administrative decision resulting in a violation of his rights in the consideration of his application for a promotion.

VI. With respect to the first possibility, it should be noted that the Applicant’s appointment at the GS-4 level took place in 1984. Leaving aside the issue of whether that appointment was challenged before the JAB, the Tribunal cannot but note that his Application to the Tribunal was filed in 2004, i.e. 20 years after that decision.

VII. With respect to the second possibility, the Tribunal agrees with the JAB that the Applicant never contests a specific administrative decision that has violated his rights. The Applicant’s observations in this regard are vague and imprecise. He claims to contest the 1984 decision to recruit him to ECA at the GS-4 level through his request for review addressed to the Secretary-General on 12 April 2000, entitled “Request for proper grading”. It appears that this same decision is now being challenged before the Tribunal, which is bound to make the following observations. First, the decision entitled “Request for proper grading” is in no way a directive issued by the Administration, but is one of the many complaints addressed by the Applicant to the Secretary-General and cannot, therefore, be contested before the Tribunal. Further, the Tribunal affirms that the Applicant should be clear and precise in his allegations and that it is not the Tribunal’s role to interpret the applications submitted to it in order to discover, if not guess, which decision is being contested. In the present case, the Applicant has manifestly confused the Administration’s decisions with the complaints addressed to it by him. Accordingly, no decision taken by the Administration has been effectively identified in the present case, and the application must, in consequence, be declared irreceivable.

VIII. Nonetheless, even if a specific decision were being contested, the Tribunal has consistently held that when it considers a request for review of an administrative decision it can in no case substitute its own judgement for that of the Organization. Its role consists of ascertaining whether all of the Applicant’s rights have been duly respected; this entails, inter alia, establishing that the case of the person concerned has been given full and fair consideration, that the decision was not improperly motivated or discriminatory and that no procedural rule has been neglected. In its judgement No. 1088, *Khader* (2002), para. III, the Tribunal described its role as follows:

“The primary purpose and objective of an Administrative Tribunal in reviewing the propriety and efficacy of a challenged administrative decision, is to determine if it was supported by adequate credible evidence and establish that it was made *intra vires* and in accordance with such Rules or Regulations as might apply and that the due process rights of the challenger (...) and his rights to fair procedures were vindicated in relation to the entire process”.

This rule is reaffirmed in judgement No. 1110, *Sha'ban* (2003), para. IV, in which the Tribunal states:

“The discretion to be exercised is the discretion of the Respondent or those to whom he delegates same, and not that of a JAB, the Tribunal or other such body as may be asked to review the decision made. On such a review, the review body would review the contested decision and ask: was it reached on reasonable and rational grounds; was it within the scope of the authority of the person or the body which made it, and, was it fair and free from prejudice”.

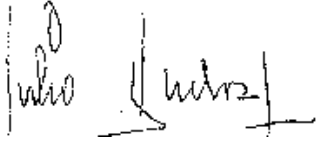
This stance is reiterated in judgement No. 1296, (2006), which concerns promotion and upgrading procedures. It is by now particularly well established in the Tribunal’s jurisprudence that in no case does a staff member of the Organization have a right to be promoted, but only the right to receive full and fair consideration of his or her application in accordance with the relevant rules and established procedures. This is the issue that concerns the Tribunal, and it cannot exceed this strict limit. Thus, according to the Tribunal’s jurisprudence, even if the present application had been directed against a specific administrative decision, the Tribunal could not have taken any action on the Applicant’s request because he never demonstrates or even invokes any violation of his rights, but merely tries to convince the Tribunal of his suitability for promotion to a grade higher than the one he has occupied. Were the Tribunal to proceed along the lines requested by the Applicant, it would be led to form the type of assessment which, as shown by the jurisprudence referred to above, the Tribunal has always refused to make. It is clear that this application as a whole was prompted by the Applicant’s frustration at being unable to achieve, within the Organization, the grade he had obtained after a number of years in the service of ILO, but the consideration of such subjective factors, in the absence of an objective violation of the rules governing the Administration’s conduct towards the Applicant, is outside the scope of the Tribunal’s jurisdiction.

IX. For the foregoing reasons, the application is declared irreceivable and is rejected in its entirety.

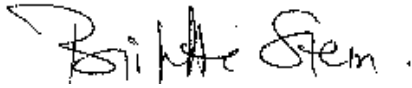
(Signatures)

A handwritten signature in black ink, appearing to read 'Spyridon Flogaitis', written in a cursive style.

Spyridon **Flogaitis**
President

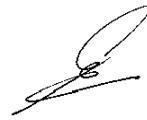


Julio Barboza
Member



Brigitte Stern
Member

Geneva, 27 July 2007



Maritza Struyvenberg
Executive Secretary