



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1476

Case No. 1501

Against: The Secretary-General
of the United Nations

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

Whereas, on 7 September 2006, staff members and former staff members of the United Nations, filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 October 2006, after making the necessary corrections, the Applicants filed an Application, requesting the Tribunal, inter alia:

“II. PLEAS

2. ...

(a) to find and rule that the Respondent by refusing to consider the Applicants' candidature for career conversion, is violating their contractual rights;

(b) to rescind the Respondent's decisions to suspend the Applicants' right to conversion;

(c) to declare obsolete and without current legal substance and validity bulletin ST/SGB/280;

....

(e) to order ... that [the] Respondent gives full and fair consideration to the Applicants' candidature for career conversion;

....

(g) to award the Applicant[s] appropriate and adequate 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 20 March 2007, and once thereafter until 20 July;

Whereas the Respondent filed his Answer on 20 July 2007;

Whereas the Applicants filed Written Observations on 28 January 2008;

Whereas the Respondent filed additional documentation on 14 March 2008;

Whereas the Applicants filed additional documentation on 8 May 2008;

Whereas the Respondent filed additional documentation on 25 August 2008;

Whereas, on 31 July 2009, the Tribunal decided to postpone consideration of this case until its next session;

Whereas on 22 September 2009, the Respondent filed additional comments;

Whereas on 18 October 2009, the Applicant filed additional comments.

Whereas the facts of the case are as follows:

The Applicants are all serving on fixed-term appointments, with an entry on duty date prior to 1995.

ST/SGB/280 of 9 November 1995, entitled “Suspension of the granting of permanent and probationary appointments”, informed all staff of the Secretary-General’s decision to suspend the granting of permanent and probationary appointments, effective 13 November 1995. On 9 September 2004, the Secretary-General submitted his definitive proposals on new contractual arrangements in an addendum to his report on human resources reform. It listed a number of transitional measures which would ensure the protection of acquired rights of staff in service when the amended regulations and rules would come into force. Such proposed transitional measures included a one-time review for all the staff members appointed under the 100 series who met the condition for conversion to permanent appointments set out in staff rule 104.13 (b) (iii) and section V, paragraph 3 of the General Assembly resolution 51/226, as agreed at Staff-Management Coordination Committee (SMCC) XXVI in 2002. The General Assembly took note of the Secretary-General’s report in Part IX of its resolution 59/226 of 23 December 2004, and decided to revert to the issue at its sixtieth session in the context of its consideration of the report of the International Civil Service Commission on contractual arrangements, with a view to taking a decision on the matter.

Between 10 November 2003 and 9 March 2004, the Respondent received separate requests from the Applicants for review of the “current decision to keep in force the freeze on the granting of permanent appointments”. The Respondent replied to all such requests for administrative review by advising the Applicants that:

“the issue of consideration for permanent appointment is under review. In connection with the agreement on introducing continuing contracts for eligible staff, SMCC-XXVI recommended, and the Secretary [General] approved, a one-time review of all staff who may have met the

requirements to be considered for conversion to permanent appointment. The results of this review, together with the proposals, will be considered by the SMCC. Accordingly, should you meet the criteria, your case will be considered in this exercise, along with all other staff who may qualify.”

Following the replies, the Applicants filed separate appeals with the JAB, asking the JAB to recommend to the Secretary-General that the Applicants (a) be given full, fair, and immediate consideration for permanent appointment, under the existing Rules, free of any retroactive rules or criteria, and (b) be awarded compensation in the sum of two years’ net base salary for delays in being considered for a career appointment. Pleas for the reimbursement of the costs of the appeal incurred by the Staff Union were also made. The Applicants and the Respondent agreed that the appeal is to be directly submitted to UNAT pursuant to article 7 (1) of the Tribunal’s Statute, subject to the terms and conditions contained in an Agreement signed by the parties on 16 June 2006.

On 17 October 2006, the Applicants filed the above-referenced Application with the Tribunal.

Whereas the Applicants’ principal contentions are:

1. The Application is receivable.
2. In refusing to consider their candidacy for career conversion, the Respondent violated their rights.
3. The Respondent abused his authority in taking the decision to suspend the granting of permanent appointments and this violation warrants compensation.
4. Their request for career conversion should be considered as approved by the Respondent.
5. They suffered actual, consequential, and moral damages to their careers and should be compensated.
6. ST/SGB/280 should be declared obsolete and without legal substance.

Whereas the Respondent’s principal contentions are:

1. The applications of staff members ineligible to be considered for conversion of their appointment when their appeals proceedings were initiated are not receivable.
2. The claims that the Applicants suffered actual, consequential, and moral damages and harm to their careers is not receivable as it falls outside of the issue agreed on between the parties for direct submission to the Tribunal.
3. The Respondent has the authority to establish and maintain the suspension on granting permanent appointments and such authority was accurately exercised in the Applicants’ case.
4. The Tribunal is not competent to “declare obsolete and without current legal substance and validity the bulletin ST/SGB/280”.

5. The Applicants who were eligible to be considered for conversion to permanent appointments but who have since acquired such a right will be considered for conversion and thus their pleas are moot.

6. The Applicants who were not eligible to be considered for conversion to permanent appointments but who have since acquired such right will be considered for conversion.

7. The Applicants who have separated from service since initiating appeals proceedings can no longer be considered for conversions and therefore, their pleas are moot.

The Tribunal, having deliberated from 13 to 25 November 2009, now pronounces the following Judgement:

I. Article 101(1) of the Charter of the United Nations provides: “The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.”

II. Pursuant to Article 101(1) above, the Secretary-General promulgated the Staff Regulations. Staff regulation 4.5(b) provides:

“The Secretary-General shall prescribe which staff members are eligible for permanent appointments. The probationary period for granting or confirming a permanent appointment shall normally not exceed two years, provided that in individual cases the Secretary-General may extend the probationary period for not more than one additional year.”

III. In 1982, the General Assembly, in Resolution 37/126, paragraph IV(5), decided that “staff members on fixed-term appointment upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment.”

IV. The resolution of the General Assembly was implemented as of 1 January 1993 in staff rule 104.12(b)(iii) as follows:

“... [U]pon completion of five years of continuous service on fixed-term appointments, a staff member who has fully met the criteria of Staff Regulation 4.2, and who is under the age of fifty-three years, will be given every reasonable consideration for a permanent appointment, taking into account all the interests of the Organization.”

V. In reporting the implementation of, *inter alia*, General Assembly Resolution 37/126, the Secretary-General, in paragraph 2 of A/C.5/47/43 noted that:

“[R]ecommendations of the General Assembly in resolutions 37/126, ... concerning the application of the Secretary-General’s discretion to evaluate the eligibility for permanent appointments of staff members on fixed-term appointments and to waive, totally or partially, the requirement of a period of probationary service, taking into account previous uninterrupted service on fixed-term appointments and the needs of the Organization. ... The amendments relating to temporary and permanent appointments are without prejudice to the temporary suspension, in the light of the

financial crisis and the reorganization measures, of the grant of new appointments, which remains in effect.”

VI. The Tribunal has long recognized the considerable latitude of discretion enjoyed by the Secretary-General in matters of appointments, promotions, and conversions. (See Judgements No. 362, *Williamson* (1986) and No. 958, *Draz* (2000), citing Judgement No. 411, *Al-Ali* (1988)). “The Tribunal’s jurisprudence recognizes the broad discretion enjoyed by the Secretary-General in matters of personnel, including the decision of whether to maintain a staff member in the employ of the United Nations.” (Judgement No. 1231, (2005)).

VII. In 1995, the Organization faced financial adversity due to unpaid assessed contributions by Member States amounting to US\$3.1 billion as of 31 August 1995. Responding to the crisis, the Secretary-General promulgated on 14 September 1995 emergency measures in ST/SGB/278.

VIII. On 9 November 1995, in ST/SGB/280 the Secretary-General promulgated the “suspension of the granting of permanent and probationary appointments.”

IX. On 22 December 1995, in ST/SGB/280/Amend.1, amending ST/SGB/280, the Secretary-General promulgated as follows:

“In response to the deep concern expressed by Member States in respect of staff on probationary appointments and pending review of all aspects of the issue of career appointments and pending review of all aspects of the issue of career appointments by the General Assembly at its fifty-first session, I have decided to repeal the provisions of ST/SGB/280 concerning the granting of probationary appointments on initial recruitment and the review of probationary appointments for conversion to permanent status. Staff serving on probationary appointments will therefore remain eligible for consideration for conversion to permanent status, in accordance with the applicable staff rules.”

X. The applicable rule is staff rule 104.12(b)(iii) which provides:

“... [U]pon completion of five years of continuous service on fixed-term appointments, a staff member who has fully met the criteria of Staff Regulation 4.2, and who is under the age of fifty-three years, will be given every reasonable consideration for a permanent appointment, taking into account all the interests of the Organization.”

XI. For completeness, the provisions of staff regulation 4.2 are set out hereunder:

“The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.”

XII. On 22 November 1996, the Secretary-General issued a report A/C.5/51/34 recommending in paragraph 33 thereof an approach whereby “a dual track system of appointments would be introduced, with

one track normally leading to a career with the Organization, while the other would not". The report proposed that:

"Resolution 37/126 could be clarified to specify that staff members will be entitled to consideration for conversion to career appointment not only when staff members have completed five years of continuing good service, as now provided, but also when the work and functions to be performed are of a continuing nature. ..."

XIII. On 25 April 1997, the General Assembly by resolution 51/226 reiterated "its full support for the Secretary-General as the chief administrative officer of the Organization and underlines its full respect for his prerogatives and responsibilities under the Charter of the United Nations". In Part V on the "Ratio Between Career and Fixed-Term Appointments", the General Assembly at paragraph 2 requested "the Secretary-General to make efforts to achieve the level of 70 per cent of permanent appointments in posts subject to geographical distribution ...". Paragraph 3 promulgated the decision of the General Assembly "that five years of continuing service as stipulated in its resolution 37/126 of 17 December 1982 do not confer the automatic right to a permanent appointment, and also decides that other considerations, such as outstanding performance, the operational realities of the organizations and the core functions of the post, should be duly taken into account".

XIV. The Agreed Statement of Facts and the events recounted above show that the General Assembly had been considering proposals to replace the existing types of contractual arrangements, including placing long serving staff on "continuing appointment" instead of permanent appointments. Pending creation of a clear policy, the General Assembly on 1 May 2003 by resolution 57/305, paragraph 58 "[r]eaffirms section III paragraph 2, of resolution 55/258 [...] and reiterates its request to the Secretary-General to submit definitive and concrete proposals on new contractual arrangements, specifying the differences between existing and proposed types of appointments, for consideration by the General Assembly as soon as possible, *and requests the Secretary-General in the meantime, to continue current contractual arrangements in accordance with existing mandates.*" (Emphasis added). This required maintaining the suspension on granting permanent appointments and maintaining the status quo conferred by existing mandates.

XV. The Tribunal is therefore of the view that the Secretary-General is entitled to refuse consideration of the Applicants for conversion of their contractual status to permanent appointments based on ST/SGB/280/Amend.1, entitled "Suspension of the Granting of Permanent and Probationary Appointments" in light of all circumstances, including subsequent General Assembly resolutions on the matter. "Applicants" in the context of this Application are those who satisfied the requirements of staff rule 104.12(b) (iii) read with staff regulation 4.2, the provisions of which are set out in paragraphs 10 and 11 above. That is, they must have completed five years of continuous service on fixed-term appointments

serving with the highest standards of efficiency, competence, and integrity. In addition, they must be under the age of fifty-three years as of 13 November 1995 vide ST/SGB/2006/9, Section I of which reads:

“The staff members who will be eligible for consideration for conversion to permanent appointment under the present bulletin are staff members currently in active service who were eligible to be considered when the granting of permanent appointments was suspended by Secretary-General’s bulletin ST/SGB/280. In order to be eligible, a staff member must, as at 13 November 1995, have completed five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules and have been under the age of 53 years on that date.”

XVI. On 23 June 2009, the Secretary-General extended the eligibility date to 30 June 2009 by ST/SGB/2009/10 section which reads:

“Section 1

Eligibility

To be eligible for consideration for conversion to a permanent appointment under the present bulletin, a staff member must by 30 June 2009:

Have completed, or complete, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules; and

Be under the age of 53 years on the date such staff member has completed or completes the five years of qualifying service.”

XVII. Satisfying the eligibility requirement only qualifies the staff member to be considered for a permanent appointment and not entitle him or her to one. Section 2 of ST/SGB/2009/10 makes this clear:

“In accordance with staff rules 104.12(b) (iii) and 104.13, a permanent appointment may be granted, taking into account all the interests of the Organization, to eligible staff members who, by their qualification, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the highest standards of efficiency, competence and integrity established in the Charter.”

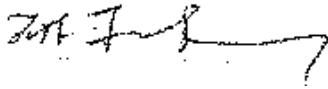
XVIII. In light of the above, any delay in consideration being given to the Applications herein was justified, especially with assurance that the acquired rights of the Applicants would be respected vide Section 3 of ST/SGB/2009/10 which reads: “Every eligible staff member [in terms of Section 1] shall be reviewed ...”

XIX. By letter of 13 October 2009, the Respondent confirmed the implementation of ST/SGB/2009/10 and that all staff members eligible to be considered would be considered.

XX. In the light of the above, the Tribunal:

1. Finds that the Secretary-General was entitled to refuse consideration of the Applicants for conversion of their contractual status to permanent appointments based on ST/SGB/280, entitled "Suspension of the granting of permanent and probationary appointments", in light of all circumstances, including subsequent General Assembly resolutions on the matter. The Applications for consequential relief are, therefore, dismissed.
2. Rejects all other pleas.

(Signatures)



Goh Joon Seng
Second Vice-President



Jacqueline R. Scott
Member



Brigitte Stern
Member

New York, 25 November 2009



Tamara Shockley
Executive Secretary

