



JUDGE MARY FAHERTY, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Enrico Muratore against Judgment No. UNDT/2010/139 rendered by the United Nations Dispute Tribunal (UNDT or Disput

4. The Appeals Tribunal upholds in any event the reasoning of the UNDT for its dismissal of Mr. Muratore's application on the basis that it did not find that exceptional circumstances existed.

Facts and Procedure

5. Mr. Muratore joined the Office of the United Nations High Commissioner for Human Rights (OHCHR) at the P-3 Level on a short-term appointment in June 2004. His contract was extended on several occasions until it expired on 30 June 2006.

6. In 2005, in order to avoid the extended use of temporary and short term appointments for staff members performing core functions, OHCHR initiated a Post Regularization Exercise. As part of the procedures established for this exercise, in a document entitled "OHCHR Post Regularization Exercise – Guidelines" (Guidelines), it was decided that temporary staff members with at least two years of service at OHCHR would, similarly to internal candidates, be eligible for consideration at the 30-day mark rather than the 60-day mark. Between 22 June 2005 and 5 August 2005, Mr. Muratore applied to 21 posts being regularized.

7. On 9 December 2005, Mr. Muratore, in response to his request for information regarding the distinction between 30-day and 60-day candidates as applied during the Regularization Exercise, was sent a copy of the Guidelines as well as ST/AI/2002 by the Chairperson of the Steering Committee on Post Regularization (Chairperson).

8. On 6 February 2006, the Senior Adviser to the Deputy High Commissioner informed Mr. Muratore that the post regularization exercise had been completed and that it had not been possible to accommodate any of his 21 candidatures.

9. On 10 April 2006, Mr. Muratore was advised, in response to his new request for the agreement between the Office of Human Resources Management (OHRM) and OHCHR, that while the post regularization process had been extensively discussed with OHRM "there was in fact no one document called OHCHR-OHRM agreement". On 24 May 2006, Mr. Muratore requested administrative review of the decision not to consider any of his 21 applications during the post regularization process.

presumption of regularity ... of what has actually occurred”³ is further evidence of exceptional circumstances supporting the waiver of the applicable time limits.

16. Mr. Muratore also submits that in the interest of due process he “is not required to prove [his] case beyond reasonable doubt. [He] has only to present adequate evidence in support”⁴ of his contention for the waiver of the time limits.

17. As part of his motion for the submission of additional evidence, Mr. Muratore requests that Judgment No. UNDT/2011/129, which is a separate judgment that found in his favour but is not part of the current appeal, be considered by the Appeals Tribunal as Mr. Muratore contends that it is based on a similar set of facts. Mr. Muratore further submits that the UNDT should have considered whether his application met the criteria that it itself had set in Morsy⁵ regarding the waiver of time limits such as “the degree of lateness, the explanation therefore, the prospects of success on the merits, prejudice to either party and the importance of the case”.

18. Mr. Muratore, in his motion for the submission of additional evidence, also requests that the Appeals Tribunal take into account the fact that he is appealing the Judgment of a separate case⁶ in which he claims to have been retaliated upon by OHCHR for reporting misconduct within that organization.

19. Mr. Muratore requests that the Appeals Tribunal find that the Organization’s recruitment process was flawed and that he be awarded compensation and damages as a result of the contested decisions. Furthermore, Mr. Muratore requests that the irregular recruitment process be cancelled and an inquiry be conducted by external auditors.

Secretary-General’s Answer

20. The Secretary-General submits that the UNDT correctly concluded that Mr. Muratore did not file his request within the prescribed two-month time limit and did not show any exceptional circumstances that would justify a waiver.

³ Former Administrative Tribunal Judgment No. 1302, Hammond (2006).

⁴ Former Administrative Tribunal Judgment No. 1023, Sergienko (2001).

⁵ Morsy v. Secretary-General of the United Nations, Judgment No. UNDT/2009/036.

⁶ Gehr v. Secretary-General of the United Nations, Judgment No. UNDT/2011/125.

made by a different entity”. Furthermore, aside from lacking relevancy and probative value, all the information contained in that separate application was known to Mr. Muratore at the time of his application in the present appeal.

27. The Secretary-General requests that the Appeals Tribunal deny Mr. Muratore’s application for the submission of additional evidence and to find that the Dispute Tribunal correctly concluded that Mr. Muratore’s application was time-barred.

submissions to the JAB, the UNDT and this Tribunal, maintained that the time limit for the purposes of his case should only run from 10 April 2006.

32. The background to Mr. Muratore's contentions in this regard is as follows:

33. On 9 December 2005, and prior to any decision having been issued to Mr. Muratore regarding his candidature for the 21 posts, he emailed the Chairperson requesting clarification of the criteria for the distinction between 30-day candidates and 60-day candidates in the context of the then ongoing post regularisation exercise. On that same day the Chairperson replied, *inter alia*, as follows:

...[the] 30 day status is recognised to "temporary staff members who have been continuously employed by OHCHR since 30 November 2003, regardless of whether they joined OHCHR under a UN or UNOPS letter of appointment", in addition of course to OHCHR regular staff who already enjoy such status based on the Staff Selection System rules.

Mr. Muratore was also advised that he was being sent a copy of the "Information Guidelines on the Post Regularization Exercise" issued at the commencement of the regularisation process together with a copy of the Staff Selection System rules (ST/AI/2002). Mr. Muratore was further advised that if he remained in doubt about his status he could write to a given e-mail address.

34. On 10 April 2006, some two months or so after receiving written confirmation on 6 February 2006 that his candidature for posts to which he had applied was not being considered, Mr. Muratore wrote again to the Chairperson with reference to the re

39. To the extent that the UNDT did so, we observe as follows:

40. In the course of its considerations on the issue of whether the challenge to the Administration's decision on Mr. Muratore's candidature was time-barred, the UNDT reiterated the approach of the Appeals Tribunal in *El-Khatib*¹¹ which followed the jurisprudence of the former Administrative Tribunal according to which only circumstances "beyond his or her control that prevented the applicant from timely exercising the right of appeal" may be considered "exceptional circumstances" justifying a waiver of the statutory time limit. The Dispute Tribunal observed as follows: "The fact that the applicant initially thought that the decisions he is now contesting were lawful cannot be deemed to constitute such a circumstance, especially as he had every means of obtaining information from the Administration." Mr. Muratore takes issue with the UNDT's observation in this regard. However, this Tribunal is not persuaded by his arguments and we do not find any error in law or in fact in the Dispute Tribunal's finding that the information communicated to the Appellant on 10 April 2006 did not constitute an "exceptional circumstance" which would have allowed for the waiver of the two-month time limit as provided for by former Staff Rule 111.2(f). On the basis of the documentary evidence available to it, this Tribunal is satisfied that there was nothing which prevented Mr. Muratore, given his desire to know more about how the post regularization guidelines were agreed to, from making such an enquiry in the immediate aftermath of the communication of the decision of 6 February 2006.

41. Mr. Muratore further contends that it was "wrong and unacceptable" for the Dispute Tribunal to reject his pleas as not constituting "exceptional circumstances" on the basis that "candidates for public employment are presumed to know the rules applicable to the employing public corporation". The Appeals Tribunal is however satisfied that the UNDT pronouncement in this regard is in accordance with the established case law as set out in *El-Khatib*, *Diagne et al.*,¹² and the jurisprudence of the former Administrative Tribunal.

¹¹ *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine*

42. The Appeals Tribunal upholds the reasoning of the UNDT for its dismissal of Mr. Muratore's application and concludes that in any event it was not open to the Dispute Tribunal as a matter of law to admit the application.

Judgment

43. The appeal is dismissed. The UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Simón

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar