



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/015/
JAB/2008/018
Judgment No.: UNDT/2010/200
Date: 19 November 2010
Original: English

Before: Judge Marilyn J. Kaman
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

ALAUDDIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Duke Danquah, OSLA

Counsel for Respondent:
Peri Johnson, UNDP

Introduction

1. In *Alauddin* UNDT/2010/114, his Honour Judge Adams found for the Applicant, concluding:

11. The respondent was in breach of contractual obligations to the applicant in refusing to renew his contract as agreed whilst his performance was satisfactory. He should have been entitled to successive renewals in accordance with the general policy of UNDP in respect of contracts of the type involved with the applicant.

2. On the matter of compensation, his Honour stated:

12. Primarily, the proper order to make is for the applicant's reinstatement upon the same basis that

Background

4. The Applicant was appointed as ~~Asst~~ Resident Representative/Chief, Environment Unit (National Officer), ~~the~~ United Nations Development Programme (“UNDP”) Pakistan Country Office on 21 ~~November~~ 2003 for an initial period of three months. His contract thereafter ~~was~~ extended each year until 31 December 2007.

5. The Applicant appealed the decision ~~of~~ 17 September 2007 advising him that his contract would not be extended beyond ~~its~~ expiry on 31 December 2007, alleging it to be a retaliatory measure taken ~~aga~~ against him for having raised the issue of wrongdoing in the Respondent’s Country Office in Pakistan.

6. The Applicant’s contractual status from ~~January~~ 2008 until he was placed on special leave without pay (“SLWOP”) has ai

9. On 12 June 2009, UNDP sought clarification from the Government of Pakistan regarding the deputation rules for civil servants who wished to work outside the Government on deputation, stating *inter alia*, that “UNDP is looking into the possibility of rehiring [the Applicant]. In that regard, we would much appreciate your formal advice on the Government’s position with the granting of deputation to [the Applicant] for a second time”. On 16 June 2009, UNDP was informed that “an officer cannot be sent on deputation for a second time unless he has completed three years of service in his parent department after return from an earlier deputation, as per their deputation policy”.

10. On 5 August 2009, the Applicant was informed by the UNDP Office of Human Resources (“OHR”) that in order to return to UNDP, they needed him to resign from his Government.

11. On 1 September 2009, Counsel for the Applicant informed UNDP that the Applicant had started the process of securing his resignation from the service of his Government with a view to being reintegrated into UNDP.

12. On 3 December 2009, OHR extended the deadline for the Applicant’s resignation from his government and return to UNDP to 31 January 2010, a deadline which the Applicant did not meet.

13. On 7 January 2010, the Applicant was informed by OHR that he was required to return to his office on 1 February 2010 with the required governmental acceptance of his resignation or he would be separated effective 31 January 2010.

Applicant’s submissions

14. The Applicant requested the Tribunal to enforce the terms of his original contract and order reinstatement or reintegration by UNDP under the terms of which he went on SLWOP, as he was entitled to remain in his post as long as the condition of satisfactory performance has been met, as required by the Respondent.

the date of joining, subject to ... clearanceThe individual in question is said to have availed four years of probation from FAO from 1995 to 1999.

Respondent's submissions

17. The Respondent submitted that the Applicant was separated from service effective 1 February 2010 and that it did not consider reinstatement an option and recalled that it had been prepared to reinstate the Applicant on a one-year fixed-term

In particular, based on information provided by the Government, such “deputations”, as referred to by the Government are normally limited to three years and exceptionally extended another two years. Further, before a second deputation, the official must serve again in the Government for another period of three years (see letter from [the Section Officer], Cabinet Secretariat Establishment Division, dated 16 June 2009 at tab 14, on page 202, as tab 12, pages 194-200 of the bundle). In addition to what the Section Officer [the Section Officer] represented to UNDP, the fact is that from June 2009 through January 2010, UNDP had several exchanges with the Applicant with a view to his returning to UNDP, as recommended by the UN Ethics Office. However, during that seven-month period, the Applicant was not able to obtain his release from the Government. The Respondent has thus, little confidence that the Government would have released the Applicant for a one-year appointment with UNDP.

21. The probable period of the Applicant's appointment could not exceed one-year at the NOC level, subject to evidence that his Government would have released him for such period.

22. Overpayment of salary to the Applicant from the Respondent for the period 16–30 June 2008, as the period which corresponded to the period of SLWOP, should be recovered.

23. The salary and emoluments that the Applicant has received from the Government for a period of one year must be deducted from any compensation that UNDP may be ordered to pay.

24. The terms of the SLWOP arrangements were not properly before the Dispute Tribunal and were not challenged at any point of the proceedings. If the Applicant had lucrative job offers, it was incumbent upon him to choose whether resigning from UNDP was in his best interest instead of pursuing reintegration following the SLWOP. This was conveyed to the Applicant by OHR.

25. The Applicant has sought compensation for “pain and suffering” and “insult and injury”. It is not entirely clear to what specific pain, suffering, insult or injury the Applicant refers or how these elements differ from one another. As recently reiterated by the Tribunal in *Applicant* UNDT/2010/148, “the burden is on the

Applicant to substantiate his claim for compensation or damages”, in which case the Tribunal also references *Grichlow* UNDT/2009/028 where it was established that “the award of compensation to the Applicant must be limited to the effects on her of the breach of duty towards her by the Organization”.

26. The Applicant was not engaged in five years of active service with the Respondent to warrant pension or to be considered for an agreed separation, therefore the Applicant is not eligible for the benefits as outlined in the policy entitled UNDP Agreed Separation Arrangements as of 1 July 2009.

27. The Respondent also notes that FAO is a separate international organization known as a specialised agency which has its own regulations, rules, policies and procedures which have no bearing on UNDP policies relating to the secondment of Government nationals.

Issues

28. The Tribunal has considered the following issues:

- a. whether it would be appropriate to order the reinstatement of the Applicant;
- b. the probable period of appointment if the Applicant had been renewed;
- c. the loss of salary and emoluments for the probable period of appointment; and
- d. whether the Applicant has proven, on a balance of probabilities, that he would have been in a position to take up the appointment, including obtaining release from his government; and
- e. whether non-economic loss should be compensated.

Considerations

