Introduction

1.   ！" a##$%&at%on f%$ed on 1   'e()ua)" 2014* t+e A##$%&ant &ontests t+e de&%s%on to se§e&t t , o ot+e) a##$%&ants to t+e t , o #osts of -en%o) .nte)#)ete) /0ng$%s+1 at t+e .nte)#)etat%on -e)2%&e /3.-41* De#a)tment of

sent an e7mai$ to t+e 6.C* .-* DC5 * indicating* inter alia* t+at a mo)e detai$ed &om#a)ati2e ana$"sis of a$$ &onside)ed)oste)ed &andidates , as needed.

. T+e D71 #ost of C+ief* .-* DC5 = 2a&ant sin&e 1 August 2013= , as t)ansfe))ed on $oan to t+e De#a)tment fo) Gene)a$ Assem($" and Confe)en&e 5anagement /3DGAC541* u#on)e;uest of t+e Unde) -e&)eta)"7Gene)a$* DGAC5 * effe&ti2e 2 -e#tem(e) 2013 t+)oug+ 30 June 2014. -in&e (eginning of 2013* t+e D71 #ost of C+ief* .-* DC5 * +as (een ad2e)tised t+)ee times› a fi)st time unde) J6 26430* , it+ a &$osing date of 12 5a)&+ 2013* , it+out gene)ating a su&&essfu$ &andidate? su(se;uent$"* unde) J6 28846* , +i&+ , as &an&e$$ed u#on t+e tem#o)a)" $oan of t+e #ost to DGAC5? fina$$"* unde) J6 32:08* , it+ a &$osing date of 23 5a)&+ 2014.

8. !" a 3Note de se)2i&e4 dated 3 6&to(e) 2013)efe))ing to t+e $oan of t+e #ost of C+ief* .-* to DGAC5 unti$ 30 June 2014* t+e D)e&to)* DC5 * announ&ed t+at t+e)es#onsi(i$it" fo) t+e .nte)#)etation -e)2i&e f)om 4 6&to(e) 2013 t+)oug+ 30 June 2014 , ou$d (e assigned to fi2e C+iefs of -e&tion* .-* fo) #e)iods of a##)o@imate$" t,o mont+s ea&+. T+e)efo)e* fo) t+e fi)st #e)iod= f)om 4 6&to(e) 2013 t+)oug+ : De&em(e) 2013= t+e)es#onsi(i$it" , as assigned to one of t+e C+iefs of -e&tion* .-* DC5 . 6n 3 De&em(e) 2013* t+e D)e&to)* DC5 * de&ided t+at said C+ief of -e&tion , ou$d &ontinue to se)2e as 36.C of t+e A.-B unti$ t+e se$e&tion of t+e ne, C+ief of -e)2i&e4.

C. !" memo)andum of 2C No2em(e) 2013 add)essed to t+e -e&to)a$ Assem($" of UN6G -taff .nte)#)ete)s* DC5 * t+e Unde) -e&)eta)"7Gene)a$* DGAC5 * &on2e"ed t+e)easons fo) t+e de&ision to tem#o)a)i$" $oan t+e D71 #ost of C+ief* .-* DC5 * to DGAC5 . <e fu)t+e) noted t+at in 2ie, of t+e &on&e)ns e@#)essed (" staff to ensu)e &ontinuit"* it +ad (een ag)eed to a##oint one 6.C* .-* UN6G* fo) t+e , +o$e du)ation of t+e $oan and stated t+at a$$ C+iefs of -e&tion* .-* DC5 * , e)e &om#etent to a&t as 6.Cs du)ing t+at #e)iod.

10. 6n C De&em(e) 2013* t+e C+ief of -e&tion* e@#$i&it$" a&ting as 36ff&e)7in7 C+a)ge .nte)#)etation -e)2i&e* DC54* sent a memo)andum to <95 -* UN6G*

se§e&ted &and%date and a fema§e &and%date ot+e) t+an t+e A##$%&ant* fo) se§e&t%on to t+e t , o #osts o#ened unde) sa%d J6.

11.   6n 10 De&em(e) 2013* t+e D%)e&to) of Adm%n%st)at%on* UN6G* t)ansm%tted t+e)e&ommendat%on fo) t+e t , o #osts o#ened unde) J6 1378AN7UN6G72 6 7 97G0N0VA /81* %n&$ud%ng t+e $%st of t+e)oste)ed &and%dates* to t+e A&t%ng D%)e&to)7Gene)a$* fo) t+e f%na$ se§e&t%on de&%s%on. T+e a(o2e7ment%oned memo)andum of C De&em(e) 2013 , as an %nteg)a$ #a)t of t+e su(m%ss%on to t+e A&t%ng D%)e&to)7Gene)a$.

12.   6n 12 De&em(e) 2013* t+e A&t%ng D%)e&to)7Gene)a$ se§e&ted t+e t , o)e&ommended &and%dates fo) t+e t , o #osts. T+e" , e)e not%f%ed of t+e%) se§e&t%on on 13 De&em(e) 2013. T+e A##$%&ant (e&ame a , a)e of t+%s de&%s%on , +en s+e $ogged %nto +e) .N-P.9A a&&ount on 13 De&em(e) 2013.

13.   6n 20 De&em(e) 2013* t+e A##$%&ant su(m%tted a)e;uest fo) management e2a$uat%on of t+e de&%s%on to se§e&t t , o ot+e) &and%dates fo) t+e t , o #osts o#ened unde) t+e a(o2e7efe)en&ed J6.

14.   A$so on 20 De&em(e) 2013* t+e A##$%&ant f%$ed a)e;uest fo) sus#ens%on of a&t%on of t+e se§e&t%on de&%s%on %n fa2ou) of t+e se§e&ted &and%date. T+e T)%(una$* (" 6)de) No. 200 /GVA/2013l of 31 De&em(e) 2013* o)de)ed t+at t+e de&%s%on %n ;uest%on (e sus#ended* #end%ng t+e out&ome of t+e A##$%&antDs)e;uest fo) management e2a$uat%on. !" memo)andum of 4 'e()ua" 2014* t+e Unde)7 -e&)eta)"7Gene)a$ fo) 5 anagement %nfo)med t+e A##$%&ant t+at t+e -e&)eta)"7

a negat%2e %m#a&t on +e) mot%2at%on to , o)F and &aused +e) s$ee#$ess n%g+ts and &ons%de)a($e st)ess.

1C. T+e 9es#ondentDs #)%n&%#a$)e$e2ant &ontent%ons a)e›

a. Ne%t+e) t+e fa&t t+at a #)e2%ous de&%s%on , as)e2e)sed (" t+e Adm%n%st)at%on* no) t+at t+e T)%(una$ o)de)ed sus#ens%on of t+e &ontested se$e&t%on de&%s%on #end%ng management e2a$uat%on &onst%tute #)oof of t+e una , funess of t+at se$e&t%on de&%s%on? t+e standa)d fo) g)ant%ng a sus#ens%on of a&t%on %s mu&+ $o , e) t+an t+e one to (e a##$%ed %n a &ons%de)at%on of t+e &ase on t+e me)%ts?

(. T+e de&%s%on to tem#o)a)%$" $oan t+e D71 #ost to DGAC 5 %s not an adm%n%st)at%2e de&%s%on , +%&+ &ou$d +a2e (een o) , as t+e su(Ee&t of t+e A##$%&antDs)e;uest fo) management e2a$uat%on? %t %s t+e)efo)e not #)o#e)$" (efo)e t+e T)%(una$? %n t+e same $%ne* t+e de&%s%on to a##o%nt t+e C+%ef of -e&t%on as 6.C does not +a2e an" d%)e&t ega effe&ts on t+e A##$%&ant , +o t+e)efo)e +as no stand%ng to &ontest sa%d de&%s%on. .n an" e2ent* t+e a##o%ntment of t+e C+%ef of -e&t%on as <%)%ng 5 anage) , as %n a&&o)dan&e , %t+ staff)u$e 3.10/a1 , +%&+ #)o2%des t+at staff mem(e)s 3s+a$$ (e e@#e&ted to assume tem#o)a)%$"* as a no)ma$ #a)t of t+e%) &ustoma)" , o)F and , %t+out e@t)a &om#ensat%on* t+e dut%es and)es#ons%(%$%t%es of +%g+e) $e2e$ #osts4? fu)t+e)* t+e f%na$ de&%s%on , as made (" t+e A&t%ng D%)e&to)7Gene)a$* , %t+%n +%s de$egated aut+o)%t"?

&. T+e A##ea$s T)%(una$ +e$d t+at 3At+e -e&)eta)"7Gene)a$ en%o"s ()oad d%s&)et%on %n se$e&t%on matte)s and %t %s not t+e fun&t%on of t+e UNDT o) At+e A##ea$s T)%(una$B* %n t+e a(sen&e of e2%den&e of (%as* d%s&)%m%nato)" #)a&t%&es o) ma$a f%des* to su(st%tute %ts Eudgment fo) t+at of t+e -e&)eta)"7Gene)a$4 /Bof%ll 20137UNAT73831?

d. T+e)efo)e* t+e T)%(una$ %s $%m%ted to e@am%ne , +et+e) t+e #)o&edu)e , as #)o#e)$" fo$$o , ed and , +et+e) t+e A##$%&ant , as g%2en fa%) and ade;uate &ons%de)at%on? a se$e&t%on de&%s%on 3s+ou$d (e u#+e$d , +en &and%dates +a2e)e&e%2ed fu$$ and fa%) &ons%de)at%on* , +en d%s&)%m%nat%on

t+e)e , e)e s%@ ot+e))oste)ed and)e&ommended &and%dates = %n&$ud%ng t+)ee fema$e &and%dates = t+e ;uest%on , +et+e) t+e A##$%&ant , ou$d +a2e (een se$e&ted %nstead of t+e se$e&ted &and%date %s s#e&u$at%2e?

E.   T+e 9es#ondent met t+e standa)d set (" t+e A##ea$s T)%(una$ %n Eudgment Rolland /20117UNAT71221 to maFe a m%n%ma$ s+o , %ng t+at t+e A##$%&antDs &and%datu)e , as g%2en fu$$ and fa%) &ons%de)at%on? t+e #)esum#t%on of)egu$a)%t" s+ou$d stand and t+e a##$%&at%on (e)eEe&ted %n %ts ent%)et".

20.   T+e su&&essfu$ &and%date* , +o , as Eo%ned to t+e a##$%&at%on unde) a)t. 11 of t+e T)%(una$Ds 9u$es of P)o&edu)e* a$$eges t+at +%s ;ua$%f%&at%ons and e@#e)%en&e a)e su#e)%o) to t+ose of t+e ot+e))oste)ed &and%dates and t+at +e fu$f%$$s a$$ t+e)e;u%)ements of t+e #ost.

Consideration

21.   T+e T)%(una$)e&a$$s t+e Eu)%s#)uden&e of t+e A##ea$s T)%(una$ %n a##o%ntment and #)omot%on matte)s* , +e)e(" a se$e&t%on de&%s%on s+ou$d (e u#+e$d , +en &and%dates +a2e)e&e%2ed fu$$ and fa%) &ons%de)at%on* , +en d%s&)%m%nat%on and (%as a)e a(sent* , +en #)o#e) #)o&edu)es +a2e (een fo$$o , ed and , +en a$$)e$e2ant mate)%a$ +as (een taFen %nto a&&ount /Rolland 20117UNAT7 122? Charles 20137UNAT72861. .n add%t%on* t+e A##ea$s T)%(una$ +as &$a)%f%ed t+at t+e 3d)e&t effe&t of an %))egu$a)%t" , %$$ on$")esu$t %n t+e)es&%ss%on of t+e de&%s%on not to #)omote a staff mem(e) , +en +e o) s+e , ou$d +a2e +ad a s%gn%f%&ant &+an&e fo) #)omot%on. G+e)e t+e %))egu$a)%t" +as no %m#a&t on t+e status of a staff mem(e)* (e&ause +e o) s+e +ad no fo)eseea($e &+an&e fo) #)omot%on* +e o) s+e %s not ent%t$ed to)es&%ss%on o) &om#ensat%on4 2.213(#)-0.48820.839844(15 (t)-2.16797(%)-2.16797(o)

OIC, IS and Hiring Manager

23.   G⸝t+)es#e&t to t+e #e)son , +o a&ted as <⸝)⸝ng 5 anage)⸝ t+e 9es#ondent a)gues t+at a C+⸝ef of -e&t⸝on &ou$d $eg⸝t⸝mate$⸝ (e a##o⸝nted as 6.C⸝ .-⸝ ⸝n a&&o)dan&e , ⸝t+ staff)u$e 3.10/a1⸝ and f)om t+e)e de)⸝2e +⸝s &a#a&⸝t⸝ to a&t as <⸝)⸝ng 5 anage) ⸝n t+e se$e&t⸝on #)o&ess fo) t+e &ontested #ost? +e fu)t+e) notes t+at ⸝n an⸝ e2ent⸝ t+e f⸝na$ se$e&t⸝on de&⸝s⸝on , as taFen (⸝ t+e A&t⸝ng D⸝)e&to)7Gene)a$⸝ UN6G⸝ , o⸝ unde) t+e te)ms of -T/A./2010/3/Amend.1⸝ &ou$d +a2e &+osen an⸝ of t+e f⸝2e)ema⸝n⸝ng)oste)ed &and⸝dates = ⸝n&$ud⸝ng t+e A##$⸝&ant = , +o , e)e not)e&ommended fo) se$e&t⸝on (⸝ t+e <⸝)⸝ng 5 anage).

24.   T+e T)⸝(una$, ⸝s+es to em#+as⸝He t+at ⸝t)esu$ts f)om 2a)⸝ous #)o2⸝s⸝ons of -T/A./2010/3/Amend. 1 t+at t+e <⸝)⸝ng 5 anage) #$a⸝s an ⸝m#o)tant)o$e at a$$ t+e

6 .C* . - = d⸳d ⸳n fa&t +a2

duties be clearly defined against an existing post. In other words, where there is no post, the position of an OiC lacks its essential fundament.

30.   As a matter of fact, upon the transfer of the post of Chief, IS, to DGACM at the end of September 2013, IS, as deprived of the D-1 post, though the Respondent noted and admitted that the need of service for that post continued to exist. In that situation, the Administration of UNOG acted as if the D-1 post had not been transferred, to the extent that it appointed an OiC to whom it extended, de facto, the same authority vested on the Chief, IS, that is, inter alia, to act as Hiring Manager for the contested post.

31.   The Tribunal notes that the Administration cannot have it both ways: either the D-1 post of Chief, IS, was still available, and the need of service continued to exist or, as it was the case, the D-1 post was temporarily loaned to DGACM. Under the former scenario, pending the regular recruitment of the D-1 post, the Administration should have published a temporary vacancy announcement for it, in accordance with sec. 3 of ST/AI/2010/4/Rev.1 (Temporary appointments)[1] and could have therefore appointed someone as OiC, IS, who could have legally acted on and finalised the selection process initiated by the former Chief, IS, as Hiring Manager. Under the latter scenario, the temporary loan of the D-1 post created a vacuum at the IS, which was deprived of a Chief for almost one year. This decision, which is a question of organisation of service, certainly falls within the discretion of the Administration. However, by choosing to transfer the post, the Administration was precluded from acting as if the post was still available at UNOG.

32.   In view of these considerations, the Tribunal concludes that in the present case, in the absence of a D-1 post against which an OiC, IS, could have been legally appointed, the Chief of Section lacked the legal authority to act as Hiring

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[1]   Sec. 3 of ST/AI/2010/4/Rev.1 provides: Temporary Job opening, selection and appointment process, Temporary Job opening: 3.1 When a need for service for more than three months but less than one year is anticipated, a temporary job opening shall be issued by the programme manager. 3.2 While the decision to issue a temporary job opening for a need for service for three months or less is made at the discretion of the programme manager, any extension beyond three months shall require the issuance of a temporary job opening.4

Мanageг foг tнe сontested #ost. Оn tнat gгound aloneᵗ tнe seлeсtіon deсіsіon іs іllegal.

Gender equality under ST/ I/*!""""/"

33.   Tнe Tгібunal noʷ tuгns to tнe questіon of ʷнetнeг tнe seлeсtіon deсіsіon ʷas taқen іn 2іolatіon of tнe teгms of ᵔST/AІ/1CCC/C /-#eсіal measuгes foг tнe aсніe2ement of gendeг eɋualіtyˮ1. Tнe Rеs#ondent сonсeded at tнe нeaгіng tнat tніs admіnіstгatі2e іnstгuсtіon a##líed to tнe сase at нand. Мoгe іm#oгtantlyᵗ tнe Tгібunal notes tнat tнe memoгandum of 10 Deсemбeг 2013 of tнe Dігeсtoгᵗ Dі2ísіon of Admіnіstгatíonᵗ to tнe Aсtіng Dігeсtoг7Geneгalᵗ states tнat ᴣᴀᴀᴃs of 18 Осtoбeг 2013ᵗ tнe гe#гesentatіon of ʷomen іn alл сategoгіes at UNОG іs ᴣКᵗ and tнe гeггesentatіon of ʷomen іn senіoг Pгofessíonal #osіtíons іs 41.:К4. Іt folлoʷs tнat tнe :0К гeггesentatíon of ʷomen ín tнe Pгofessíonal сategoгyᵗ ʷнíсн іs tнe goaл set doʷn (" ᵔST/AІ/1CCC/Cᵗ нas not бeen attaínedᵗ neítнeг ʷítнín tнe .-ᵗ noг ʷítнín UNОG.

34.   Tнeгefoгeᵗ tнe Tгíбunal нas to e@amíne ʷнetнeг tнe гeлe2ant seсtíons of tнat admínіstгatí2e ínstгuсtíon нa2e бeen сoггeсtлy a##líed to tнe сase at нand. Ѕeсtíon 1.8/a1 of admіnіstгatі2e ínstгuсtíon ᵔST/AІ/1CCC/C #гo2ídes tнatˏ

> 1.8 /a1 Vaсanсíes ín tнe Pгofessíonal сategoгy" and aбo2e sнaлл бe
> fíлled* ʷнen tнeгe aгe one oг moгe10(ne)3.8476 6 ( )-anс

36.   T+e T)%(una$ notes t+at t+e ;ua$%f%&at%ons of t+e A##$%&ant* ,+o , as a)oste)ed &and%date* 3mat&+ed℔ t+e)e;u%)ements fo) t+e 2a&ant #ost4 +en&e* ,+en

3C.   G%t+)es#e&t to t+e)e;u%)ement of 3su##o)t%ng do&umentat%on4* t+e 9es#ondent &onf%)med t+at on$" t+e P<Ps of t+e &and%dates)e&ommended fo) se$e&t%on , e)e atta&+ed* %n add%t%on to some fo)ma$ do&uments* su&+ as t+e J6. .n fo$$o , s t+at e.g. t+e P<P of t+e A##$%&ant , as not su(m%tted to t+e A&t%ng D%)e&to)7Gene)a$.

40.   .n t+ese &%)&umstan&es* and %n t+e a(sen&e of a ,)%tten ana$"s%s , %t+ a##)o#)%ate su##o)t%ng do&umentat%on as)e;u%)ed unde) se&. 1.8/d1 of -T/A./1CCC/C* t+e T)%(una$ &annot (ut &on&$ude t+at t+e Adm%n%st)at%on fa%$ed to)es#e&t sa%d #)o2%s%on. .t fu)t+e) notes t+at t+%s 2%o$at%on ma" +a2e %nf$uen&ed t+e f%na$ se$e&t%on de&%s%on of t+e A&t%ng D%)e&to)7Gene)a$, +%&+* f%)st$"* , as (ased on t+e)e&ommendat%on of a #e)son , +o , as not du$" aut+o)%Hed to a&t as <%)%ng 5anage)* and* se&ond$"* , as taFen on t+e (as%s of %n&om#$ete %nfo)mat%on and , %t+out suff%&%ent do&umentat%on.

41.   .n 2%e , of t+ese t , o #)o&edu)a$ %))egu$a)%t%es* %t %s not ne&essa)" fo) t+e T)%(una$ to assess , +et+e) t+e)e a)e add%t%ona$ &ont)a2ent%ons)ega)d%ng se&. 1.8/a1 of -T/A./1CCC/C. .t %s suff%&%ent to a&Fno , $edge t+at t+e A##$%&ant* (e%ng a)oste)ed &and%date* +ad a s%gn%f%&ant &+an&e to (e se$e&ted fo) t+e #ost. T+e)efo)e* t+e &ontested de&%s%on +as to (e)es&%nded* as)e;uested (" t+e A##$%&ant.

Consequences of the rescission

42.   -%n&e t+e)es&%nded de&%s%on &on&e)ns a #)omot%on* a)t. 10.:/a1* of t+e T)%(una$Ds -tatute a##$%es* , +%&+ #)o2%des t+at , +e)e t+e T)%(una$ o)de)s t+e)es&%ss%on of a #)omot%on de&%s%on* t+e Judge s+a$$ set an amount of &om#ensat%on t+at t+e 9es#ondent ma" e$e&t to #a" as an a$te)nat%2e to t+e)es&%ss%on of t+e &ontested de&%s%on.

43.   As #e) t+e Eu)%s#)uden&e of t+e A##ea$s T)%(una$* %n dete)m%n%ng t+e amount fo) &om#ensat%on unde) a)t. 10.: of %ts -tatute %n non7#)omot%on &ases* t+e de&%s%on must taFe %nto a&&ount t , o fa&to)s* name$" t+e natu)e of t+e %))egu$a)%t%es on , +%&+ t+e)es&%ss%on of t+e &ontested de&%s%on , as (ased and t+e &+an&e t+at t+e staff mem(e) , ou$d +a2e +ad to (e #)omoted +ad t+ose %))egu$a)%t%es not (een

&omm%tted /SoIan#i 20107UNAT7044? see. a$so Me$oui 20127UNAT7220 and %%leton 20137UNAT734 1. T+e A##ea$s T)%(una$ a$so +e$d t+at , +en &a$&u$at%ng su&+ &om#ensat%on* on t+e (as%s of t+e #)o(a(%$%t" fo) an A##$%&ant to (e #)omoted (ut fo) t+e #)o&edu)a$ ()ea&+* t+e #e)%od of t+e d%ffe)en&e %n sa$a)" (et,een an A##$%&antDs g)ade and t+at of t+e &ontested #ost t+at &an (e taFen %nto a&&ount s+ou$d (e $%m%ted to a ma@%mum of t,o "ea)s /Hastings 20117UNAT7 10C1.

44. .n t+e &ase at +and* t+e T)%(una$ +as de&%ded to)es&%nd t+e se$e&t%on de&%s%on on t+e (as%s of t,o #)o&edu)a$ %))egu$a)%t%es* to ,%t* t+e fa&t t+at t+e <%)%ng 5 anage) $a&Fed t+e aut+o)%t" to a&t as su&+* and t+at no ,)%tten ana$"s%s and a##)o#)%ate su##o)t%ng do&umentat%on ,e)e su(m%tted to t+e A&t%ng

Justifying an award of moral damages in the amount of USD4,000 (cf. Malmstrom et al. 2013-UNAT-357; Sedagic et al. 2013-UNAT-357).

Conclusion

46.   In view of the foregoing, the Tribunal DECIDES:

   a.   The decision to select the selected candidate for one of the posts advertised under Job ... AN/UN-OG/... GENEVA /.../P... Level ... is rescinded;

   b.   In case the Respondent elects to pay compensation instead of the rescission, the amount of compensation to be paid to the Applicant is set at USD2,000;

   c.   In addition, the Administration shall pay the Applicant the equivalent of USD4,000 for moral damages;

   d.   The aforementioned compensation shall bear interest at the United States prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable;

   e.   All other claims are rejected.

(Signed)

Judge Thomas Laker

Dated this 16th day of June 2014