



Case No.: UNDT/GVA/2010/044
(UNAT 1667)

Judgment No.: UNDT/2011/160

Date: 15 September 2011

English

Introduction

1.

retained on the roster of candidates for employment by UNDOF Administration and that she should be given priority consideration for appointment to any future vacant post for which she was qualified.

6. On 29 April 1993, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General had directed that her name should be retained on the roster of candidates for employment by the UNDOF Administration and that she should be given priority consideration for appointment to any future vacant post for which she was qualified.

7. On 22 April 1997, the Applicant filed a complaint with the Joint Appeals Board, claiming that the UNDOF Administration had not carried out the Secretary-General's instructions as contained in the letter of 29 April 1993. On 24 July 1997, the Presiding Officer of the Joint Appeals Board advised the Applicant that her appeal was not receivable because the Secretary-General's instruction was not an appealable administrative decision within the meaning of Chapter XI of the Staff Rules in force at the time.

8. Following an appeal by the Applicant, in its Judgment No. 916, *Douaji* (1999), the former United Nations Administrative Tribunal found that the Board's Presiding Officer had improperly rejected the Applicant's appeal and remanded the case to the Joint Appeals Board for consideration on the merits.

9. On 4 March 2004, the Board recommended that the Applicant should be paid five months' net base salary as compensation for the delay in consideration of her appeal. In addition, the Board found that the decision of 29 April 1993 was still valid and therefore recommended that priority consideration should be given to the Applicant for appointment to any future vacancy for which she was qualified, within six months.

10. On 14 June 2004, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to accept the recommendations of the Joint Appeals Board.

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18. On 21 December 2004, Counsel for the Applicant wrote to UNDOF to express his concern that the Applicant had not yet been recruited.

19. On 25 February 2005, the Applicant sat a competitive examination for a Procurement Assistant (G-5) post announced on 22 December 2004. She received 27.50 marks out of 100, the lowest score among the four shortlisted candidates.

20. On 18 March 2005, she sat the competitive examination for a temporary post of General Services Clerk (G-4) announced on 7 March 2005 and scored 64 marks out of 100, the lowest score among the four shortlisted candidates.

21. By a letter dated 27 March 2005, Counsel for the Applicant once again expressed concern at the fact that the Applicant had not yet been recruited. He wrote to UNDOF again on 4 April 2005.

22. On 10 April 2005, the Applicant filed an application with the former Administrative Tribunal, claiming that the Administration had not implemented the Secretary-General's decision of 14 June 2004.

23. On 11 April 2005, the Applicant sat the competitive examination for a post as Administrative Assistant (G-5) in the Transportation Section, which was announced on 25 March 2005. Her score of 55 marks out of 100 was the lowest among the six shortlisted candidates.

24. In its Judgment No. 1316 (2006), pursuant to article 10.2 of its Statute, the former Administrative Tribunal remanded the case to the Joint Appeals Board in order for it to determine whether the Administration had given priority consideration to the Applicant's candidature, and awarded her compensation of three months' net base salary for the procedural delay.

25. On 13 March 2007, the Applicant filed an appeal with the Joint Appeals Board and on 20 May 2008, the Board issued its report. The Board decided that the Secretary-General's decision of 14 June 2004 had been implemented.

26. By a letter dated 25 November 2008, the Applicant was informed that the Secretary-General had rejected her appeal.

b. The decisions not to appoint the Applicant were not taken for improper reasons and it is for the Applicant to prove the irregularities that she alleges. The panels that conducted the three competitive examinations were all different, which counteracts any notion that there was a scheme to deliberately prevent the Applicant

decision, the UNDOF Administration should give her priority consideration for appointment to any future vacancy in UNDOF for which she was found to be qualified.

38. Thus, the Secretary-General's decision of 14 June 2004, which is the only one contested in the present application, is, despite the fact that it was taken when the Applicant was no longer a staff member, an administrative decision directly linked to the Applicant's termination of employment and therefore meets the criteria for an administrative decision that is appealable to the Tribunal.

39. In the present appeal, the Applicant challenges the Administration's failure to comply with an administrative decision: the Secretary-General's promise to give priority consideration to her candidature for vacancies at UNDOF. Thus, the Applicant claims that the Administration failed to respect her rights under her original contract. The present Tribunal must therefore declare itself competent, as the former Administrative Tribunal did in its Judgment No. 916, *Douaji* (1999), wherein it ruled on its competence to rule in a dispute analogous to the present case.

Merits

40. Given that the Administration is accountable for its failure to keep its promises to staff members, the Tribunal must first assess the precise scope of the

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42. The Tribunal must now consider whether the Administration respected the Secretary-General's promise to give the Applicant priority consideration for appointment to vacancies at UNDOF for a period of six months beginning on 14 June 2004.

43. The Respondent claims, without any serious refutation by the Applicant, that between 6 August 2004 and 11 April 2005, she was shortlisted and considered for four vacancies. On 6 August 2004, she was invited to sit for an examination for a Procurement Assistant post at the G-5 level. The Applicant declined the invitation and requested that she should be given specific training for the post or that the post should be offered to a staff member with qualifications in the area of procurement, whose post would then be offered to the Applicant. Following the announcement of another vacancy for a similar post, on 22 December 2004, the Applicant sat the competitive examination but obtained the lowest score. On 18 March 2005, the Applicant sat another competitive examination for a General Services Clerk at the G-4 level and again scored the lowest among the four shortlisted candidates. Lastly, following a vacancy announced for an Administrative Assistant post, issued on 25 March 2005, the Applicant scored the lowest of the six candidates shortlisted for the post.

44. In view of the foregoing, the Applicant is not justified in claiming that the Administration did not keep its promise of 14 June 2004. The application must therefore be rejected in its entirety.

Conclusion

45. For these reasons, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 15th day of September 2011

Translated from French

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Entered in the Register on this 15th day of September 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry