



Case No.: UNDT/NY/2012/068

Judgment No.: UNDT/2012/119

Date: 31 July 2012

Introduction

1. On 20 July 2012, the Applicant filed a request for the revision of Judgment UNDT/2012/109, which rejected her application for suspension of action on the decision to select a staff member other than herself for the D-1 post of Deputy Director, Medical Services Division (“MSD”).

Relevant background

2. On 11 July 2012, the Applicant filed an application for suspension of action of the administrative decision to select a staff member other than her for the D-1 post. In her application, the Applicant stated that the decision may not have yet been implemented and that, should the selection process proceed, it will result in irreparable damages to the Applicant’s professional reputation, career prospects as well as a loss of income.

3. On 12 July 2012, the Registry of the Dispute Tribunal in New York served the application on the Respondent and ordered him to file and serve a reply by 4:00 p.m., 13 July 2012.

4. On 12 July, the Tribunal issued Order No. 139 (NY/2012) instructing the parties to file submissions by 4:00 p.m., 13 July 2012, with the Tribunal regarding whether the Applicant had filed a request for management evaluation and, if so, when she had done so and whether the contested decision had been implemented.

5. The Applicant filed her submission in response to Order No. 139 (NY/2012) on 13 July 2012 at 11:29 a.m. stating that according to ST/AI/2010/3 (Staff selection system) the decision would not be implemented until 1 August 2012. The Respondent filed his submission at 3:44 p.m. On 16 July 2012, at 9:12 a.m., the Applicant filed an additional submission, replying to the Respondent’s 13 July 2012 submission.

6. On 18 July 2012, the Tribunal rendered Judgment No. UNDT/2012/109 denying the Applicant's request for suspension of action of the selection process. The Tribunal, in paras. 35–37, determined that the contested decision had already been implemented, thereby rendering the Tribunal not competent to adjudicate on the merits of the matter.

7. On 20 July 2012, the Applicant filed a request for the revision of Judgment No. UNDT/2012/109 on suspension of action which was served on the Respondent on 24 July 2012. On 27 July 2012, the Tribunal, considering the urgency of the matter and pursuant to art. 35 of the Rules of Procedure, requested that the Respondent file his reply by 11:00 a.m. on 31 July 2012.

8. On 27 July 2012, the Applicant filed an additional submission highlighting the relevance of *Wang* UNDT/2012/080 as well as a range of contentions regarding the receivability of her request.

9. On 31 July 2012, at 9:43 a.m., the Respondent filed his reply to the Applicant's request for a revision of Judgment No. UNDT/2010/109 on suspension of action. The Applicant was provided with the opportunity to file comments on the Respondent's reply, by 3:00 p.m. on 31 July 2012. The Applicant duly filed her comments.

Applicant's submissions

10. The Applicant's principal contentions may be summarized as follows:

- a. The Tribunal did not take into account relevant jurisprudence from a case whose facts closely parallel the ones in the present case. "The discovery of a new judicial decision, *Wang* UNDT/2012/080, which is a prevailing judicial authority" constitutes a new decisive fact which renders this application receivable;

b. In *Wang*, the Tribunal has distinguished between the selection decision, the notification of this decision, and the implementation of this decision as mentioned in the ST/AI/2012/03.

c. The contested selection process is not going to be implemented until the first of the following month, namely on 1 August 2012 resulting in the urgency of this request;

Respondent's submissions

11. The Respondent's principal contentions may be summarized as follows:

a. The application for revision is not receivable *ratione materiae* as suspensions of action are not executable judgments and can only be appealed on jurisdictional grounds;

b. The Applicant has not identified a new decisive fact which was unknown to either her or the Tribunal at the time the Judgment was issued. Consequently, the legal criteria enabling the Tribunal to revise a judgment under art 12.1 of the Dispute Tribunal Statute are not met;

Consideration

12. Article 12.1 of the Statute of the Dispute Tribunal states as follows:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. ...

Article 29.1 of the Rules of Procedure of the Dispute Tribunal states as follows:

Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Dispute

Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

13. It follows from the aforementioned