

Lead of the UNODC @u'!eg"ona# Off"&e "n A'u D%a'" (as a o"nted\$ and t%at t%e!eafte! %e (ou#d 'e t!ansfe!!ed to a P03 ost "n V"enna.

7. B* ema"# dated - De&em'e! 2009\$ t%e C%"ef of t%e 1uman)esou!&es / anagement @e!+"&e &onf"!med to t%e A #"&ant t%e de&"s"ons t%at %ad 'een &ommu"&ated to %"m du!"ng t%e meet"ng on 1 De&em'e!. On 21 De&em'e! 2009\$ t%e A #"&ant !e7uested a management e+a#uat"on of t%e de&"s"on to no #onge! #ate!a##* !eass"gn %"m to A'u D%a'"\$ and on 23 De&em'e!\$ %e f"#ed an A #"&at"on !e7uest"ng t%"s T!"'una# to sus end "m #ementat"on of t%at de&"s"on. T%e a #"&at"on (as !eg"ste!ed unde! t%e num'e! UNDT/GVA/2009/109 and (as fo##o(ed on - / a* 2010 '* an a #"&at"on on t%e me!"ts. T%e !e7uest fo! sus ens"on of a&t"on (as !e,e&t&ed '* O!de! No. 1 ?GVA/2010A of < Janua!* 2010.

Parties' submissions

17. The Applicant's contentions are

a. The UNDT and the Applicant's memorandum did not note that the memo of - De&em'e! 2009 (ou#d not 'e &"ted fa&tua##* and a&&e ted "n "ts ent"!et* "n &onne&t"on ("t% %'s a #"&at"on fo! !e+"s"on of 21 De&em'e! 2009\$ to (%&%%e !e&e"+ed a !e #* f!om t%e /anagement 4+a#uat"on Un"t on 3 Fe' !ua!* 2010H "n t%at !e #*\$ no ment"on "s "ndeed made of t%e memo of - De&em'e! 2009. St "s t%e d"s&o+e!* of t%"s fa&t t%at &onst"tutes t%e 'as"s fo! %'s !e7uest fo! !e+"s"onH

'. The respondent's facts after a hearing (of the documentation of %'s &ase "n 3 / a!&%;\$ (%en "t st!u&2 %"m t%at t%e statements '* t%e)es ondent "n %'s !e #* of 2- Fe' !ua!* 2012 &ont!ad&ted t%e)es ondent's !e+"ous statementsH

&. Indeed, in case UNDT/2011/10, the respondent demonstrated that the Applicant's management e+a#uat"on of t%e de&"s"on to 3demote: %"m. No (\$ "n %'s !e #* of 2- Fe' !ua!* 2012 "n &ase UNDT/2012/0- . \$ t%e su',e&t of t%"s a #"&at"on fo! !e+"s"on\$ t%e)es ondent e= !ess#* ment"oned t%e memo of - De&em'e! 2009 !e+"e (ed "n &onne&t"on ("t% anot%e! !e7uest '* t%e A #"&ant fo! management e+a#uat"on\$ to (%&%%e %ad !e&e"+ed a !e #* on 21 @e tem'e! 2011. T%us\$ t%e)es ondent a##eget#* adm"tted t%at t%e memo of - De&em'e! 2009 a#so add!essed t%e A #"&ant's demot"on. T%at amounted to t%e d"s&o+e!* of a ne (fa&t t%at t%e T!"' una# %ad not 2no (n a 'out (%en "t !ende!ed "ts ,udgmentH

d. The UNDT (2012/00- . Al-Mulla ,udgment s%ou#d 'e !e+"sed\$ 'ea!"ng "n m"nd f!om no (on t%at\$ (%en %e su'm"tted %'s !e7uest fo! management e+a#uat"on on 21 De&em'e! 2009\$ t%e A #"&ant %ad as2ed fo! a !e+"e (of t%e ent"!e memo sent to %"m on - De&em'e! 2009\$ "n&#ud"ng t%e de&"s"on to demote %"m f!om P0- to P03.

1;. The)es ondent's &ontent"ons a!eD

a. On 3 Fe'!ua!* 2010\$ t%e A #"&ant !e&e"+ed t%e !e #* of t%e / anagement 4+a#uat"on Un"t to %"s !e7uest fo! management e+a#uat"on of 21 De&em'e! 2009H t%e #atte! (as t%e!efo!e 2no(n to 'ot% t%e A #"&ant and t%e T!"'una# (%en\$ on . A !"# 2012\$ t%e T!"'una# !ende!ed "ts UNDT/2012/0- . ,udgment\$ a !e+"s"on of (%"&% "s !e7uested. T%e A #"&ant &annot t%e!efo!e &a"m t%at %e on#* as&e!ta"ned t%e &ontents of t%e / anagement 4+a#uat"on Un"t's !e #* mo!e t%an t%e!e *ea!s afte! t%at !e #*H

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&. T%e A #"&ant (as t%us a (a!e of t%e ne(fa&t %e %"g%#%g%tsh t%e!efo!e t%e &ond"tions !e7u"led unde! A!t"&e 12 of t%e @tatute of t%e Un"ted Nat"ons D"s ute T!"'una# fo! an a #"&at"on fo! !e+"s"on of ,udgment a!e not metH

d. 4+en su os"ng t%at "t (e!e a ne(fa&t\$ "t d'd not affe&t t%e UNDT/2012/0- . ,udgmentH

e. 5n add"t"on\$ t%e)es ondent ma"nta"ns t%at t%e #ast a!ag!a % of t%e ema"#0memo of - De&em'e! 2009 "s not an adm"n"st!at"+e de&"s"on aga"nst (%"&% an a ea# ma* 'e #odged 'ut so#e#* a !em"nde! of t%e te!ms of t%e A #"&ant's &ont!a&t of 21 / a* 2007H "n fa&t\$ t%e A #"&ant %ad 'een a (a!e s"n&e 2007 t%at\$ at t%e end of %"s a o"ntment at t%e P0- #e+e#\$ %e (ou#d !etu!n to t%e P03 #e+e#\$ and %e d'd not &ontest t%ose te!msH

f. T%e A #"&ant "s a&t"ng "n 'ad fa2ur 05 ' (f0 / R 19 12 T9 #5 &# (') -0.488.1679' %

Consideration

19. In this case, the Tribunal is called upon to determine whether the Tribunal's decision of 17 April 2013, which granted the applicant's request for a revision of its judgment No. UNDT/2012/0- of 12 April 2012, is valid. The Tribunal has already ruled in its decision of 19 December 2011 that the applicant had not established a defect in the Tribunal's decision of 12 April 2010 to assign the applicant to a P30 grade post after the applicant had been assigned to a P0- post.

20. Article 12(1)A of the Statute of the Tribunal is applicable to the present case.

The applicant's main argument is that the Tribunal's decision is invalid because it is based on an erroneous assessment of the facts and the law. The applicant claims that the Tribunal's decision is based on a number of errors of fact and law, including the Tribunal's failure to take into account the applicant's previous service record and the fact that the applicant was not assigned to a P30 grade post after the applicant had been assigned to a P0- post. The applicant also claims that the Tribunal's decision is based on a number of errors of law, including the Tribunal's failure to apply the correct legal provisions and its failure to provide reasons for its decision.

21. The Tribunal is called upon to determine whether the Tribunal's decision is valid.

1. The applicant's main argument is that the Tribunal's decision is invalid because it is based on an erroneous assessment of the facts and the law. The applicant claims that the Tribunal's decision is based on a number of errors of fact and law, including the Tribunal's failure to take into account the applicant's previous service record and the fact that the applicant was not assigned to a P30 grade post after the applicant had been assigned to a P0- post. The applicant also claims that the Tribunal's decision is based on a number of errors of law, including the Tribunal's failure to apply the correct legal provisions and its failure to provide reasons for its decision.

23. The Tribunal cannot fail to point out that the Administrative Tribunal's decision of 19 December 2011, the subject of the judgment of the Tribunal of 12 December 2012, that the respondent's actions were "not in conformity with the memorandum of 17 December 2009 and the request for management evaluation of 21 December 2009. Consequently, the respondent is liable in the circumstances" is not in itself a violation of the law (as a result of the

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(Signed)

Judge Jean0F!anJo"s Cous"n

Dated t%"s 23^{t%} da* of August 2013

4nte!ed "n t%e)eg"ste! on t%"s 23^{t%} da* of August 2013

(Signed)

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