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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/094

Judgment No.: UNDT/2020/212

Date: 18 December 2020

Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha



7. On 27 May 2018, the Applicant applied for the Post.
8. On 8 June 2018, UNJSPF offered the three positions, namely Training Officer, Outreach Officer, and Programme Officer at the P-4 level, to the Applicant in recommendation.
9. By email dated 11 June 2018, the Applicant rejected these three positions on the ground that these positions were dead-end jobs that had little or no effect on the operations of the Fund. The Applicant reiterated her interest in the Post.
10. On 13 June 2019, the Acting Chief Executive Officer of UNJSPF approved the request for cancellation of JO 95597.
11. On 20 June 2019, the Applicant received a notification that the job opening for the Post was cancelled.
12. On 25 July 2019, UNJSPF requested the reclassification of the Post as Benefits Officer (Chief of the Participations Unit) based on the following reasons:
  - 1.

things have been functioning much better with the 3 Benefit Officers and other team members continue to step up to lead projects. Also, there has been a shift of some of the functions the Deputy role would have been responsible for completing to the Operations Support Unit

13. On 19 August 2019, the Applicant filed a request for management evaluation of the decision to cancel the JO for the Post.

14. On 26 August 2019, \_\_\_\_\_ was approved by the Office of Human Resources \_\_\_\_\_ following a review of the organizational setting and the proposed description of the functions to be attached to the post.

15. On 5 September 2019, the acting Chief Executive Officer, UNJSPF, offered the Applicant the newly established position of Benefits Officer (Chief of the Participations Unit).

16. On 13 September 2019, based on the management evaluation, the contested decision was upheld.

17. On 15 September 2019, the Applicant rejected the offer of placement as the Chief of the Participations Unit.

18. On 19 September 2019, the Acting Chief Executive Officer, UNJSPF, \_\_\_\_\_ the offer and informed the Applicant that the Post, which was classified on 26 August 2019, would be advertised.

## **Consideration**

### *Receivability*

19. The Respondent argues that the application is not receivable since the cancellation of the job opening was not a final administrative decision and carried no \_\_\_\_\_ employment contract. The Respondent cites *Kawamleh* 2018-UNAT-818, para. 14, in which the \_\_\_\_\_ was no decision for

20. In *Kawamleh*, a first written test in the selection exercise was cancelled after questions were raised about it and then a second written test was administered. Since the first written test was cancelled, the Appeals Tribunal held that any challenge in this regard should be dismissed.

21. To reach this conclusion, the Appeals Tribunal cited *Ishak* 2011-UNAT-152, in which the Appeals Tribunal rejected the application as not receivable on the ground that the Applicant challenged an earlier non-promotion decision, which became moot due to his promotion three months thereafter through a recourse session. In this context, [a] selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the [Dispute Tribunal]

22. The case at hand is distinguishable from *Kawamleh* and *Ishak*. The cancellation of JO for the Post was not one of a series of preliminary steps leading to the final administrative decision. Rather, the Administration decided to abolish and reclassify the Post and therefore cancelled the JO in question. Therefore, this was a final administrative decision with regard to the Post and therefore can be reviewed by the Tribunal.

23. Accordingly, the Tribunal finds that the application is receivable.

*The applicable legal framework and the issues of the case*

24. The Applicant argues that she

25. The Respondent submits that the JO was lawfully cancelled following a restructuring exercise directed at achieving greater efficiency and was not tainted by extraneous considerations.

26. It is well settled jurisprudence that an international organization necessarily has power to restructure some or all of its departments or units, including through the abolition of posts. The Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, like with any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members (see *Hersh* 2014-UNAT-433, *Bali* 2014-UNAT-450, *Matadi et al.* 2015-UNAT-592). As the Appeals Tribunal stated in *Sanwidi* 2010-UNAT-084, at para. 40, when judging the validity of the exercise of discretionary authority,

the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

27. Under the jurisprudence of the Appeals Tribunal, if the applicant claims that the decision was ill-motivated or based on improper motives, the burden of proving any such allegations rests with the applicant (see, for instance, *Azzouni* 2010-UNAT-081, para. 35; *Obdeijn* 2012-UNAT-201, para. 38).

28. applicable legal framework, the Tribunal finds that the issue in this case is whether the Administration exercised its discretion appropriately when it cancelled the JO or whether the Administration unlawfully cancelled the JO in order to deprive the Applicant of an opportunity to be considered for the Post on a preferred or non-competitive basis.

29. The record shows that UNJSPF cancelled the JO for the Post about one year after publishing the vacancy announcement and thereafter submitted a request for reclassification of the Post to OHR. In its request, UNJSPF explained that at the time of publishing the JO, the post as Chief of PES at the [redacted] level was under recruitment and two of the three Benefits Officer posts at the [redacted] level under PES were also unfilled. UNJSPF further explained that since then the Chief of PES has been recruited and the two [redacted] level posts also filled, and the Chief of PES, after managing the team without the Deputy Chief for one year, decided that the Deputy Chief was no longer needed and instead could be repurposed as a Chief of Participations Unit, a newly established team within the same Service. Based on the information provided by UNJSPF, OHR approved the reclassification request.

30. The Applicant alleges that a restructuring exercise is a pretext for the cancellation of JO and it was a continued retaliatory act against her, but there is no evidence to conclude that the reclassification of the Post was not a genuine restructuring exercise. UNJSPF appropriately provided detailed reasons for its request for the reclassification and OHR approved it.

31. Furthermore, the Applicant, who bears the burden to prove any ill-motivation, fails to produce any evidence to support her argument that the decision was made in violation of the Secretary-

[redacted]. In fact, UNJSPF offered the reclassified Post (i.e. Benefits Officer (Chief of the Participations Unit)) to the Applicant to fulfil its [redacted]. Applicant rejected the offer.

32. Therefore, the Tribunal finds that the cancellation of the JO for the Post was lawful and there is no evidence that the decision was ill-motivated.



**Conclusion**

33. In light of the foregoing, the application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 18<sup>th</sup> day of December 2020

Entered in the Register on this 18<sup>th</sup> day of December 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York