Case No.: UNDT/NY/2012/064
Judgment No.: UNDT/2012/109

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

**TIWATHIA** 

٧.

SECRETARY-GENERAL OF THE UNITED NATIONS

**JUDGMENT** 

ON APPLICATION FOR SUSPENSION OF ACTION

Counsel for Applicant: Self-represented

Counsel for Respondent: Alan Gutman, ALS/OHRM, UN Secretariat

### Introductio n

- 1. On 11 July 2012, the Applicant filed an application for suspension of action of the administrative decision to select fistamember other than her for the post of Deputy Director, Medical Streices Division ("MSD") at the D-1 level ("the D-1 post").
- 2. On 12 July 2012, the Registry of the Dispute Tribunal in New York served the application on the Respondent and ordered to file and serve a reply by 4:00 p.m., 13 July 2012.
- 3. On 12 July, 01:33 p.m., the Tribunasiued Order No. 139 (NY/2012) to the parties. In this Order, the Tribunal inacted the parties to file submissions by 4:00 p.m., 13 July 2012, with the Tribunaspæding whether the Applicant had filed a request for management evaluation and pifwhen she had done so and whether the contested decision had been implemented.
- 4. In response to Order No. 139 (NY/2012), on 13 July 2012, the Applicant filed her submission at 11:29 a.m. and the Respondent filed **brisisssion** 3:44 p.m. On 16 July 2012, at 9:12 a.m., the Applicant filed an additional submission, replying to the Respondent's submission dated 13 July 2012.

### Relevant background

- 5. The following factual chronology is based the submissions of the parties and the appended documents filed with the Tribunal.
- 6. On 12 January 2012, the Applicamptplied for the D-1 post.
- 7. On 8 March 2012, the Director of MSDformed the Applicant that she was to be Officer-in-Charge in her absence and that a former MSD staff member was

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the D-1 post was one appropriate as result of the fact that a female had been selected for the D-2 post;

- f. The improper consideration and settles of a candidate solely due to the fact he is a male is a clear without of ST/AI/1999/9 that requires that efforts be made to increase the number of emale candidates from developing nations and resulted in a decisionat is biased and prejudiced;
- g. In addition to being denied the **D**-post as a result of her gender, the selection of a male's candidatureer that of the Applicant's was done even though they had been deemed to be equally qualified, as acknowledged by the interview panel who rostered Applicant following the completion of the D-1 post selection process;
- h. Over the past 11 months, all senior management position in the MSD have been filed by males from tMEOG which reflects, as acknowledged by

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- e. There is no requirement that the Respondentake the Applicant's gender or country of origim to consideration as part its selection process;
- f. The Applicant's candidacy was reviewed objectively and there is no evidence that any of the acts of thespandent were not performed regularly, that relevant material waignored or that irrelevant material was taken into account, that would result in the pastection being prima facie unlawful;

## *Urgency*

- g. There is no urgency to the Applicant's request as the selection decision was implemented upon though communicated to the selected candidate on 10 July 2012;
- h. There is no imminent risk to the Applicant such as a loss of salary seeing that the implementation of the tested decision will not result in the Applicant losing her employment;

# *Irreparable damage*

- i. The Applicant has not demonstrated with the implementation of the contested decision will case her a harm that cannot repaired by an award of damages;
- j. There is no evidence to conclude that contested section process, in which she was recommended and thestered, would harm her reputation;
- k. The Applicant neither has standing, namoractual factual basis, to raise a potential harm to the Organization exputation as an valid argument.

### Consideration

The competence of the Dispute Tribunal

- 21. The United Nations Appeals Tribalhruled in its judgment in *Neill* 2011-UNAT-182 (affirming UNDT/2010/203) that "the JNDT is competent to review its own jurisdiction, whether or not has been raised by the parties". The Tribunal is therefore mandated to review its own initiative.
- 22. Regarding the jurisdiction of the Disput ribunal concerning an application for case on suspension of action, 2n2 of its Statute provides that:

The Dispute Tribunal shall be competted hear and pass judgment on an application filed by an individual equesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested admistrative decision that is the subject of an ongoing management evaluation ...

- 23. It follows from this that the following two complementary requirements must be satisfied for the Tribunal to be coeffent to hear and pass judgment on the application for suspension of action:
  - a. The management evaluation pess must be pending when the judgment on suspension of action is rendered; and
  - b. The contested administrative desion must not yet have been implemented.

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- 31. The Applicant refers to sec. 10.2 StT/Al/2010/3 (Staff selection system) which provides that "the earliest possibilizate on which [a] promotion may become effective shall be the first day of threonth following the decision, subject to the availability of the position and the assumptiof higher-level functions". In light of this, she contends that the contested administrative decision is only implemented at the time upon which the successful candidate assumes the D-1 post, which is 1 August 2012, since his selection amountated promotion. She submits that the selection decision has therefore yet been implemented.
- 32. In the online Oxford dictionary (reglish.oxforddictionaries.com) the word "implementation" is defined as "theorocessof putting a decision or plan into effect; execution."
- 33. In the present casethe successful candidate was informed by the ASG/OHRM on 10 July 2012 that he had been selected for the D-1 post. The successful candidate was also asked to confirm his continued interest and availability for the position within five bursess days of receiving the notification. On 10 July 2012, the Administration thereby present successful candidate with an offer for employment for the D-1 post. Ohl July 2012, the successful candidate responded that he was confirming his continueterest and availability in the D-1 post, thereby notifying the Administration of his unconditionalceptance of the conditions of the offer within the given time limit.
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