

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. On 25 January 2018, the Applicant, a Chief at the P-5 level in the Transport Section with the African Union United Nations Hybrid Operation in Darfur, was found by the United Nations Dispute Tribunal (UNDT) to be ineligible for attendance and participation at the United Nations Leaders Programme. The Applicant alleged that he was discriminated against as two other staff members in like situation were nevertheless allowed to attend. As relief, he seeks an apology from

reinstatement of his nomination to the UN Leaders Programme, and financial remedy for stress, including reimbursement of travel expenses.

2. On 14 January 2019, the Dispute Tribunal rendered its judgment on liability in *Younis* UNDT/2019/004, in which the Dispute Tribunal found the application receivable and the contested decision unlawful for reasons set out therein and summarised further below. The Tribunal thereafter directed the parties to attempt to resolve the issue of appropriate relief, but the parties reported to the Tribunal that their attempt to resolve the issue of appropriate relief has been unsuccessful. The instant judgment therefore concerns issue of relief only.

Facts and findings

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particular circumstances, and had to exercise such discretion reasonably, fairly and flexibly. The particular circumstances in this case being, *inter alia*, that the Applicant had satisfied every other nomination criteria, that the SOP was only provisional and not set in stone, that another ineligible staff member had been accorded the benefit to participate, that the Applicant had already been nominated, approved and endorsed even beyond the date of expiry of his temporary D-1 assignment, and in light of the last minute and late notification of refusal, the Tribunal finds that a strong expectation of the training benefit was created for the Applicant. Therefore, the Tribunal finds that the discretion, if indeed OHRM had any power thereof, was not exercised properly. Even if a staff member has no contractual right to receive an entitlement, or for that matter a benefit, he does have an expectation that the discretion will be exercised properly in all the circumstances.

35. In addition, the Tribunal also finds that as the SOP was not mandatory nor obligatory, and possibly only directory, that an all the particular circumstances of this case (see *Hastings* UNDT/2009/030, paras. 22-26).

36. The Tribunal notes that the Respondent also contends that he found to be in error, but does not argue that he committed an error by accepting the Applicant to the training program in Cape Town, which it was entitled to rectify. Considering the non-binding nature of the SOP and the specific proviso of the SOP which clearly states that not required in this case, the Tribunal finds that this is not the case where the Respondent committed an error and later rectified it. However, for the sake of completeness, the Tribunal will deal with this issue as well.

Consideration

6. The fundamental purpose of a judicial remedy is to attempt, to the extent possible, to place the aggrieved party in the position she or he would have been in, but for the breach (*Warren* 2010-UNAT-059, *Castelli* 2010-UNAT-

10. Primarily, the Applicant seeks a reinstatement of his approved nomination to the UN Leaders Programme. the Tribunal can order rescission of the contested administrative decision or specific performance. In the circumstances of the present case, the Tribunal finds that the rescission of the contested decision would not fully restore the *status quo ante* and would not provide adequate relief to the Applicant as the UN Leaders Programme in Cape Town, South Africa, which the Applicant was registered for participation at, was presumably already held in ti27(/2)-4a5cld Pel6JETs e

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