
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2017/021
Order No.: 103 (GVA/2017)
Date: 28 April 2017
Original: English

B or , Judge Rowan Downing

stry . Geneva

strar, René M. Vargas M.

ABDUL GHAFOOR

v.

**SECRETARY-GENERAL
OF THE UNITED NATIONS**

**DE NATIONA ICA I N
P EN I N FAC I N**

Couns or App ant
Robbie Leighton, OSLA

Couns or spon nt
Nicole Wynn, ALS/OHRM, UN Secretariat
Nusrat Chgtai, ALS/OHRM, UN Secretariat

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21. In this respect, the Tribunal notes that it was for the Respondent, who was given the opportunity to respond to the application for suspension of action and claimed that the decision has already been implemen

an occupational group and/or with similar functions (emphasis added).

30. Finally, a “selection decision” is defined in sec. 1(x) of ST/AI/2010/3 as a:

decision by a head of department/office to select a preferred candidate for a particular position up to and including the D-1 level from a list of qualified candidates who have been reviewed by a central review body taking into account the Organization’s human resources objectives and targets as reflected in the departmental

33. The Applicant has expressed serious concerns that his current position as Finance and Budget Assistant in UNMOGIP will be abolished imminently, which is likely to result in his separation from service, based on the following:

- a. Code cable no. 2230 of 31 October 2016 informing field missions that a project of Global Service Delivery Module, which would entail consolidation of administrative services—including

35. The Tribunal finds no evidence that the Applicant's current position is subject to abolition but rather that the Organization has given him assurances that his position is not currently the subject of consideration for abolition. The Tribunal is thus unable to find that there has been a prima facie establishment that the Chief Military Observer ought to have given preference to the Applicant over an external candidate, although this may be seen as a good managerial practice. Obviously, any incorrect information or misrepresentation made to the Applicant in respect of the status of his current post would be seen as a very serious matter that puts into question the legality of the contested decision.

36. Furthermore, the Tribunal finds that it has not been established prima facie that the Applicant was recommended by the hiring manager and endorsed by the Mission Review Panel as the preferred candidate, and that the Chief Military Observer overruled this recommendation by selecting an external candidate. The Tribunal notes that there is no indication in the application of the source of this information, nor is this assertion supported by any of the documents that the Applicant submitted in support of his application. Rather, this allegation by Counsel appears to be contradicted by an email of 21 April 2017 sent by the Applicant to the Chief, Asia and Middle East Section, Field Personnel Division Services, FPD, where he stated that he did not challenge the fact of not having been identified as the most suitable candidate by the hiring manager but claimed that he had to be given preference over an external candidate given his particular situation as a staff member whose position was subject to abolition.

37. The Tribunal acknowledges that the threshold of evidence is low at the stage of an application for suspension of action, and that it is reasonable to assume that the Applicant does not have access to the selection documents. However, the mere assertion by Counsel in the present circumstances is not sufficient to reach this threshold.

38. In view of the foregoing, the Tribunal finds that it has not been established that the contested decision is prima facie unlawful. As the first condition to grant an application for suspension of action is not met, the Tribunal does not need to address the two other cumulative conditions.

Con, us on

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