



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/039
Order No.: 126 (NBI/2014)
Date: 23 May 2014
Original: English

Be e: Judge Nkemdir2(1)-1(:)] TJ ET Q 46287 Tf An7 .9981 0 .TJ ET Q q BT 0 0 lemdN9emd5.52

Introduction

1. The Applicant is the Chief, Conduct and Discipline Unit at the P-4 level in the United Nations Assistance Mission for Afghanistan (UNAMA). On 16 May 2014, she filed an Application for suspension of the decision dated 15 May 2014 not to renew her appointment as a Conduct and Discipline Officer (CDO) at UNAMA.

2. The Respondent filed a Reply to the Application on 19 May 2014.

Facts

3. On 15 December 2013, the Applicant filed two Applications:

a. An application on the merits contesting a decision taken by the UNAMA Chief Civilian Personnel Officer (C

7. On 15 May 2014, the Applicant received a memorandum from the UNAMA Chief Civilian Personnel Officer (CCPO), Niramol Jirapokakul, informing her as follows

1. As you have been previously informed, the post formerly used to finance your appointment as a P-4 Conduct and Discipline Officer has been reclassified to Chief Conduct and Discipline Officer at the P-5 level, in accordance with ST/AI/1998/9.
2. The position of P-5 Chief Conduct and Discipline Officer will be filled from the roster, once the selection exercise of the Generic Job Opening (GJO) of P-5 Chief Conduct and Discipline Officer has been completed. We note that you have applied for the GJO and that your application is currently under consideration.
3. Given that the budget no longer includes a P-4 Conduct and Discipline Officer post, please be informed that your current fixed-term appointment will not be renewed when it expires on 30 June 2014. However, in view of the UNDT Order No. 264 (NBI/2013) ... your separation will not be implemented while the Order remains in force.

8. The Applicant requested management evaluation of the decision on 16 May 2014.

9. The Applicant filed the present Application on 16 May 2014. The Respondent filed a Reply on 19 May 2014. The Tribunal heard the case on the same day.

Applicant's submissions

10. The Applicant's case may be summarized as follows:

Prima facie unlawfulness

a. The UNAMA Administration has acted in breach of her appointment and contractual terms as well as ST/AI/1998/9 (System for the classification of posts).

b. Her general and employment rights as a UN staff member have been violated, namely, protection from retaliation, harassment and discrimination.

c. The Applicant reiterates the submissions she made in Case Number UNDT/NBI/2014/037. These submissions are specified in the Order issued in relation to that case.

Urgency

d. If the Management Evaluation Unit (MEU) extends its deadline, then the contested decision will take effect on 30 June 2014.

e. The contested decision impacts negatively on her chances to be nominated and selected for the SMART training of which submission for nomination is due on 20 May 2014. Her failure to attend the training will be detrimental to her professional development and her career future.

Irreparable damage

f. She will lose opportunities for professional growth and career advancement and suffer economic damage due to no further job placement and recruitment opportunities.

g. She has been placed on a “black list” because of filing requests for management evaluation and for arguing her cases before the Tribunal.

h. She has suffered damage to her professional reputation and career as well as moral and emotional injuries and physical stress. The decisions have had a negative impact on her social status and have unnecessarily damaged her relations with her colleagues.

Respondent’s submissions

11. The Respondent’s case may be summarized as follows:

Prima facie unlawfulness

a. The decision not to renew the Applicant’s appointment was lawful. A fixed-term appointment does not carry any expectancy of renewal, irrespective of length of service.

The Applicant, together with other applicants, will be given full and fair consideration for the position.

f. The Applicant alleges that her rights have been violated, including a violation of her rights to protection from retaliation, harassment and discrimination but has not substantiated any of these claims.

g. The Applicant has provided no concrete evidence of any form of retaliatory behavior directed towards her nor has she provided any evidence to suggest that she may have engaged in any “protected activity” under ST/SGB/2005/21 (Protection against retaliation for reporting misconduct).

h. There is no link between the Applicant’s applications to the Dispute Tribunal and the reclassification exercise and non-renewal of her appointment. On 10 April 2014, the Applicant complained to the Special Representative of the Secretary-

Consideration

applicable rule on classification. The Applicant has failed to adduce any evidence of the alleged retaliation, harassment and discrimination. Moreover, the Applicant's P-4 post has ceased to exist following the reclassification exercise.

17. The Applicant will not suffer irreparable harm since, in accordance with section 4.2 and 4.3 of ST/AI/1998/9, the classification of her post has not negatively affected her existing contractual status and she is currently being considered for promotion to the upgraded P-5 post.

Conclusion

18. In view of the foregoing, the Tribunal rejects the Application for suspension of action.

(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of May 2014

Entered in the Register on this 23rd day of May 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi