



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/068

Order No.: 327 (NY/2014)

Date: 28 November 2014

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

WILSON

v.

SECRETARY-GENERA8a

Introduction

1. The Applicant is a Senior Investigator at the P-5 level, in the Office of Internal Oversight Services (“OIOS”). On 26 November 2014, he filed an application for suspension of action of the decision made on 17 November 2014 by Ms. Carole Wamuyu Wainaina, Assistant-Secretary-General, Office of Human Resources Management (“ASG/OHRM”), who refused to grant an exception to sec. 6.1 of ST/AI/2010/3 (Staff selection system) so as to enable the Applicant to apply for a position at the D-2 level. The Applicant

7. On 26 November 2014, the Applicant submitted a request for management evaluation.

Consideration

8. Applications for suspension of action are to be decided in accordance with art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal's Rules of Procedure.

9. Article 13 of the Rules of Procedure (Suspension of action during a management evaluation) provides (emphasis added):

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the *decision appears prima facie to be unlawful*, in cases of *particular urgency* and where its implementation would cause *irreparable damage*.

2. The Registrar shall transmit the application to the respondent.

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

10. It is clear that the Tribunal is under a duty to transmit a copy of the suspension of action application to the Respondent and to issue a decision within five days thereof. There is no requirement, either under art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for there to be a respondent's response before the applicant's request is considered.

11. The procedures governing applications for suspension of action should not, as the Tribunal has pointed out in *Applicant* UNDT/2011/158 at para. 8(e), be regarded,

Applicable law

16. Section 6.1 of ST/AI/2010/3 states that:

Staff members holding a permanent, continuing, probationary or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade...[footnote omitted].

17. Staff rule 12.3 (b) of ST/SGB/2013/3 (Staff Rules and Staff Regulations of the United Nations) provides that:

Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member

the relevant administrative issuances before she decided not to grant an exception to the eligibility requirements set out in