



Case No. UNDT/NY/2015/021

Order No. 50 (NY/2015)



the Administrative instruction: Staff selection system, (ST/AI/2010/3); 2) paragraphs 4 and 5 of Section VIII of GA Resolution (A/RES/68/247 B); 3) Art. IV, Regulation 4.2 of the Staff Regulations and Rules, (ST/SGB/2011/4), and 4) Art. 101(3) of the U.N. Charter;

4. Reimbursement of expenses including attorney's fees as a result of the egregious conduct by the Administration in this case, and the fact that the Applicant had no choice but to seek outside, private counsel, to vindicate his rights.

#### Procedural History

4. The JO for the D-2 post of Director, IM, was posted on Inspira on 30 January 2015 with a closing date for application of 31 March 2015.

5. On 3 February 2015, the Applicant sent email to the Office of Human Resources Management ("OHRM") expressing his concerns over the decision to include the CFA certification as a requirement to be eligible for consideration for the post of Director, D-2, IM.

6. In an e-mail dated 20 February 2015, OHRM informed the Applicant that it approved the JO and that no further action would be taken.

7. On 2 March 2015, the Applicant filed an application for suspension of action pending management evaluation. By Order No. 36 (NY/2015), dated 3 March 2015, the Tribunal held that "there being no pending management evaluation, the application for suspension of action is fatally defective and stands to be dismissed."

8. On 3 March 2015, the Applicant filed a request for management evaluation wherein the Applicant requested: (a) suspension of the job posting; (b) review of the job requirement by both the "IC" and the Chief Executive Officer of the Pension Fund; and (c) republishing the job posting so that the eligibility requirements are lawful and fair to all candidates.

9. The Management Evaluation Unit (“MEU”) replied by email dated 6 March 2015, that “the MEU only has the authority to suspend administrative decisions related to determinations of appointment and separations from service”.

10. On 6 March 2015, the Applicant filed a second request for suspension of

15. By email dated 24 March 2015, Ms. Cho e







(2) the reimbursement of expenses incurred as a result of the publication of an unlawful JO.

26. Whether the Tribunal would grant the remaining reliefs sought is not at point. However, the Tribunal does not consider that Applicant's requests in that respect have been automatically rendered moot by the cancellation of the JO, as notified by OHRM to ALU on 24 March 2015 and after filing of the motion for interim relief.

27. Furthermore, the cancellation of the JO does not cover the full extent of the Applicant's motion and the central issues of the case as set out in para. 25 below. It certainly does not render it moot. The fact and timing of the cancellation of the JO does not negate the alleged violations of the Applicant's rights. Moreover the Respondent has denied the Applicant's allegations indicating that there are still live issues which need to be addressed.

28. The Respondent contends that the Tribunal does not have jurisdiction pursuant to art. 10.2 of its Statute, under the relief sought by the Applicant on the grounds that it is a case of appointment and promotion since the Applicant "challenges a selection process for an appointment at the D-2 level" and "seeks to challenge a requirement within the j

rendered which precludes the Applicant from applying for the position and excludes him entirely for consideration. Further, contrary to the Respondent's contention, the Applicant's claim is not limited solely to either the issue of appointment or promotion. The Respondent has misinterpreted the subject-matter of the motion for interim relief and disregards, briefly in four paragraphs, the central issues in this case which are (1) whether it is di



private counsel. The Tribunal is not aware of the great costs the Applicant has incurred, but trusts that common sense will prevail, and that the parties will explore all possibilities to informally resolve the case, including by way of the Mediation Division in the Office of the Ombudsman, and the Respondent may tender costs in a sum to be agreed between the parties, failing which the matter shall be reserved to be dealt with as a remaining claim for the Applicant in the context of judicial review of his application on the merits.

### Conclusion

37. As the Administration cancelled the DO on 24 March 2015, the first and second reliefs sought by the Applicant, as set out in para. 3 of this Order, have been *de facto* granted. The motion for interim relief is therefore dismissed in that respect.

38. The remaining reliefs sought by the Applicant are inter-related to matters which will be under judicial review in the context of the application on the merits and are hereby reserved.

39. The Tribunal encourages the parties to explore all possibilities to informally resolve the case, including by way of the Mediation Division in the Office of the Ombudsman and to inform the Tribunal without delay should they choose to seek suspension of the proceedings on the merits pending mediation.

(Signed)

Judge Ebrahim-Carstens

Dated this 30<sup>th</sup> day of March 2015