





5. On 13 October 2009, the then Under-Secretary-General, Department of Field

## Applicant's submissions

### *Prima facie unlawfulness*

- a. That the repetitive cancellation of vacancy announcements for similar posts to which he had applied are mere coincidence but shows that these administrative decisions were tainted with bias and bad faith and contravene applicable rules and regulations of the Organization;
- b. The failure by the Administration to give an explanation as to why the similar vacancy announcements of 2009 and 2012 were cancelled immediately after he was selected raise the issue of *prima facie* unlawfulness;
- c. The unlawfulness is obvious in "the contiguous activities subsequent to the cancellation of the recruitment process"; and
- d. Applicant had been denied procedural fairness and lack of respect for his legal rights as a result of bias towards him.

### *Urgency*

- a. The Applicant argued that he lost a promotion opportunity for several years and
- b. That the Administration must be held accountable for unlawful decisions and abuse of authority.

### *Irreparable harm*

- a. The Applicant submits that judicial action is required to reverse the irreparable harm committed against his reputation, integrity, good name and character.

11. The Applicant prays the Tribunal to ~~suspend~~ the decision to cancel the two vacancy announcements and to stay the selection process for the TVA pending the outcome of Management Evaluation.

#### Respondent's submissions

12. The Respondent submits that:

a. Any Application related to the ~~13~~ October 2009 decision to cancel the recruitment process for the post of Chief Property Management is not receivable because a Suspension ~~Action~~ cannot be granted where the contested decision has been implemented<sup>1</sup>;

b. Any Application related to the ~~26~~ September 2012 decision to cancel the recruitment process for the post of Chief Supply Officer is not receivable because the decision has been implemented and further there is no pending management evaluation in ~~resp~~ to the said decision;

c. The Applicant has failed to show the unlawfulness of the contested decisions, irreparable harm that would be caused him and urgency of the Application.

13. The Respondent prays the Tribunal to dismiss the Application.

#### Consideration

14. Article 2.2 of the Statute of the Tribunal provides:

The Dispute Tribunal shall be competent to hear and pass judgment 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

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<sup>1</sup> Nwuke UNDT/2012/002, Tiwathia UNDT/2012/109

*where its implementation would cause irreparable damage. ...*  
[Emphasis Added]

*Can the Tribunal suspend the cancellation of a Vacancy Announcement?*

15. The Applicant raises the issue of the cancellation of vacancy announcements for the posts of Chief Supply Officer (Chief of Supply Section) and Chief Contingent-Owned Equipment and Property Management Support Section on 26 September 2012.

16. Article 2.2 of the Tribunal's Statute read together with art. 13 of the Rules of Procedure clearly state that the Tribunal can only suspend the implementation of an administrative decision that is the subject of an ongoing management evaluation.<sup>2</sup>

17. In the instant case, cancellation of vacancy announcements are administrative decisions that have been implemented, therefore these decisions cannot be subject of a Suspension of Action application.

*Can the Tribunal properly suspend the process of the ongoing recruitment?*

18. The Applicant seeks the suspension of the ongoing recruitment against TVA for the post of Chief Supply Section.

19. The Respondent has argued that the Applicant has not sought Management Evaluation of the recruitment process.

20. A perusal of the Applicant's Management Evaluation request in this case shows that he sought evaluation of the decision of the former USG/DFS of 13 October 2009 to cancel the recruitment process for the position of Chief Contingent-Owned Equipment and Property Management Support Section (VA 08-LOG-DFS-419131-R-NEW YORK) at the P5 level within the Logistics Support Division of the DFS.

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<sup>2</sup> See *Caldarone* UNDT/2009/035

21. The above cancellation decision had been the subject of a previous management evaluation request and Suspension of Action Application in 2009 which was adjudicated upon by judgment UNDT/2009/061 of 29 October 2009.

22. This matter aside of being of being outtime, cannot be re-litigated by way of Suspension of Action.

23. It is clear from his request for Management Evaluation dated 23 October 202.0001rw [(23 .)T