
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/027

Judgment No.: UNDT/2017/015

Date: 8 March 2017

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MUHSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Introduction and procedural history

16. On 17 June 2015, the Office of the Deputy High Commissioner informed the Applicant by email that his request for management evaluation was still under consideration. The Applicant was also informed that he had the right to file an appeal with the UNDT and his attention was drawn to the time limit for such filing in accordance with art. 8 of the UNDT Statute (reply on receivability, Annex 6).

17. By memorandum dated 4 September 2015, the Deputy High Commissioner responded to the Applicant's management evaluation request. In her memorandum, the Deputy High Commissioner stated that the recourse minutes did not provide sufficient evidence that the recourse panel had fully considered the circumstances of the Applicant's case with regard to the unavailability of his performance appraisals covering the period from June 2013 to April 2014 and thus he may not have received full and fair consideration during the recourse session. Therefore, the Deputy High Commissioner rescinded the decision not to promote the Applicant and informed him that his candidacy for promotion to the P-4 level would be reviewed anew (reply on receivability, Annex 7).

18. The Applicant was also informed that for reasons of efficiency the review would be conducted after the finalization of all management evaluations of non-promotion decisions taken as a result of the 2013 promotions and recourse sessions and that he would be contacted regarding the outcome of the reassessment of his candidacy for promotion.

19. By email dated 27 November 2015, the Applicant was informed that the Office of the Deputy High Commissioner had completed the management evaluations relating to the 2013 promotions session and that his candidacy for promotion as well as that of other staff members in a similar situation would be reassessed by an independent body specifically established for that purpose (r

decision alleged to be in non-compliance with a staff member's contract of employment or terms of appointment. Similarly, staff rule 11.2(a) provides that a staff member wishing to formally contest such an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision. Decisions concerning promotion do not fall under the statutory exemption from this requirement.

27. In accordance with staff rule 11.2(c), a request for management evaluation shall not be receivable unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

28. The Applicant complied with these requirements following the first negative decision on the merits of 3 March 2015, subsequently, however, this decision was not submitted for judicial review within the deadlines from UNDT Statute art. 8.1(d). Moreover, following its rescission that decision stopped producing any consequences for the Applicant's terms of appointment. Therefore, for reasons noted by the Respondent, the decision of 3 March 2015 cannot be reviewed by the Tribunal. Given, however, that the Applicant, who is self-represented, apparently does not distinguish that decision from the following ones, the Tribunal considered it appropriate to make a distinction as each decision falls under a different rubric for review.

29. With this in view, the Tribunal has also considered the second negative decision on the merits communicated to the Applicant on 5 January 2016 by the Director of the Division of Human Resources Management. That decision was

of control in which the Deputy High Commissioner rescinds decisions of the High Commissioner subverts the hierarchy and represents, in the legal sense, reconsideration by the same organ rather than hierarchical administrative control. In the case at hand, it obscured, especially from the point of view of a staff member, the moment when the management evaluation ended and the new decision-making took place.

31. Moreover, whereas the communications coming out of the Deputy High Commissioner's Executive Office were informative and precise, including instruction on the available remedy, the communication sent by the Director of the Division of Human Resources Management may have been confusing in that, despite the previous decision having been rescinded, it informed of "confirmation" of the non-promotion decision. Furthermore, instead of a review of the case *de novo*, as announced by the Deputy High Commissioner, an advisory board which had been convened as a result of the rescission of the previous decision embarked on a limited review only, whereupon it concluded "that there was no reasonable likelihood that the Applicant would have been recommended for promotion had he rece a f `

by confusing information received from the Administration. As provided in staff rule 11.2(c), the deadline for requesting management evaluation may only be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General, which is not the case here.

Judgment

33. In view of its considerations above, the Tribunal finds that the application