



Case No. 2011-264



Counsel for Appellant: Self-Represented

Counsel for Respondent: Rupa Mitra

JUDGE SOPHIA ADINYIRA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Enrico Muratore against Judgment No. UNDT/2011/129 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 14 July 2011 in the case of *Muratore v. Secretary-General of the United Nations*. Mr. Muratore appealed on 15 October 2011, and the Secretary-General answered on 5 December 2011.

Synopsis

2. Mr. Muratore, a staff member of the Office of the United Nations High Commissioner for Human Rights (OHCHR), does not challenge the findings of the UNDT that the selection process for the Geneva P-4 was flawed; that the selection process for the Geneva P-3s contained substantive errors; and that the selection process for the Yaoundé P-3 was also flawed. He, however, submits that the UNDT erred in appreciating the facts and the law and therefore its compensation awarded was insufficient.

3. Mr. Muratore merely repeats arguments already considered and accepted by the Dispute Tribunal, which is not the purpose of an appeal.

4. The UNDT concluded that Mr. Muratore “suffered significant material damages, as well as a high degree of moral damage since it has been established that he was a victim of bias”. In the light of these findings, the UNDT assessed his damages at seven months’ net base salary at the rate in effect on the date of his separation from OHCHR, in addition to the financial compensation in the amount of one month’s net base salary already authorized by the Secretary-General.

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the staff member would have had to be promoted or selected had the correct procedure been followed.²

6. Mr. Muratore has not met the burden of demonstrating that the UNDT erred in assessing the damages. The trial judge was in a better position to assess the damages and we find the sum adequate and the appeal therefore fails.

7. The appeal is dismissed and the Judgment of the UNDT is affirmed.

Facts and Procedure

8. Mr. Muratore joined OHCHR at the P-3 level on a short-term appointment on 19 July 2004. His contract was extended on several occasions until it expired on 30 June 2006.

9. In 2005, OHCHR conducted a regularization exercise for posts advertised through Galaxy to facilitate the recruitment of staff members who held short-term contracts sDO Tc(br195.9151)]T

13. On 8 January 2008, the JAB submitted its report in respect of the Geneva P-3 posts and the two Yaoundé posts. The JAB found that the appeal regarding the two Yaoundé posts was not receivable. However, with respect to the Geneva P-3 posts, the JAB found that the selection procedure had been flawed and recommended that Mr. Muratore be placed on the roster for similar posts for one year even though he was no longer an OHCHR staff member. On 11 April 2008, the Deputy Secretary-General endorsed the findings of the JAB with regard to the two Yaoundé posts, but regarding the Geneva P-3s decided to only award Mr. Muratore one month's net base salary as compensation.³

14. On 16 June 2008 and 28 July 2008, Mr. Muratore contested before the former Administrative Tribunal the Secretary-General's decisions not to select him for any of the posts that he had applied for. Upon the implementation of the new system of justice, Mr. Muratore's applications were transferred to the Dispute Tribunal on 1 January 2010.

15. On 14 July 2011, the Dispute Tribunal issued its Judgment No. UNDT/2011/129, which is currently under appeal. The UNDT concluded that a) there were no irregularities in the Yaoundé P-4 selection process; b) the selection process for the Geneva P-4 was flawed; c) the selection process for the Geneva P-3s contained substantive errors; and d) the selection process for the Yaoundé P-3 was flawed. As a result of its findings, the Dispute Tribunal awarded Mr. Muratore seven months' net base salary at the rate in effect on the date of his separation from OHCHR, in addition to one month's net base salary already authorized by the Secretary-General.

Submissions

Mr. Muratore's Appeal

16. Mr. Muratore submits that the UNDT Judgment erred in fact and in law resulting in a partially wrong analysis of the harm he had suffered and therefore an insufficient award of compensation.

³ The JAB issued another report on 4 February 2008 in respect of the Geneva P-4 post. It found that the selection procedure was flawed as the wording used in Mr. Muratore's evaluation was "selective" and contained a substantial error. It recommended that Mr. Muratore be placed on the roster for similar posts for one year, though he was no longer a staff member. The Secretary-General rejected the JAB's recommendation. Mr. Muratore appealed to the UNDT, whose Judgment No. UNDT/2011/125 is subject to another appeal by Mr. Muratore (See Judgment No. 2012-UNAT-241).

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Secretary-General's Answer

22. The Secretary-General submits that Mr. Muratore does not establish that the UNDT erred in its analysis of the Geneva P-4 post and merely repeats the arguments that he

26. The Secretary-General submits that while the Appeals Tribunal's Statute set forth the possibility for it to request the parties to produce documents that it may find relevant, it does not grant the parties the right to request that the Appeals Tribunal order such a document production. In addition to the above, the Secretary-General submits that the Appeals Tribunal's Statute does not provide it with the power to order, as Mr. Muratore requests, the reintegration of a staff member into the Organization.

Considerations

27. Mr. Muratore does not challenge the findings of the UNDT that the selection process for the Geneva P-4 post was flawed; that the selection process for the Geneva P-3 posts contained substantive errors; and that the selection process for the Yaoundé P-3 post was also flawed. He however submits that the UNDT erred in appreciating the facts and the law and therefore, its compensation awarded was insufficient.

28. Mr. Muratore also requests that we order the production of additional documents, which we reject as they are not necessary for the determination of this appeal.

29. Mr. Muratore requests this Tribunal to order his reinstatement as a Senior Human Rights Officer at the P-5 level, and also to award him a cumulative total of more than 14 years' net base salary, which ranges from USD 50,000 for discrimination to two years' net base salary and emoluments at the P-4 level and 12 years' net base salary and emoluments at the P-3 level for loss of career prospects.

30. We recall this Court's decision in *Abbassi* that some degree of deference should be given to the factual findings by the UNDT as the court of first instance.⁴ Here Mr. Muratore is asking us to review his case in order to enhance the award. He merely repeats arguments already considered and accepted by the Tribunal, which is not the purpose of an appeal.

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Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Courtial

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar