

# UNITED NATIONS APPEALS T

Case No. 2023-1854

1. On 14 August 2023, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2023/085 (impugned Judgment) in the case of [REDACTED] in which it dismissed the application contesting a disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity for serious misconduct, consisting of Mr. Surendra Bista's (Appellant) failure to disclose in his 2015 and 2018 United Nations job applications that his half-brother, Mr. SRB, was working for the United Nations.

2. On 12 September 2023, Mr. Bista filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), to which the Secretary-General filed an answer on 24 November 2023.

3. On 26 January 2024, Mr. Bista filed a motion for production of evidence, entitled "Motion for the production of documents and witness testimony by the Respondent" (Motion). He requests the Appeals Tribunal to order that:

(a) the Secretary-General produce the complete employment history of Mr. SRB, including all the engagements with the United Nations, whether as a United Nations volunteer (UNV) or a staff member (employment history);

(b) Mr. SRB be required to provide a statement from him to the Appeals Tribunal as to the extent of his own knowledge and discussions with the Appellant; and

(c) Mr. SRB be required to be available to the Appeals Tribunal for examination by the Appellant's Counsel on his knowledge of the following:

- (i) the Appellant's the state of mind and knowledge, specifically whether the Appellant had or should have had the required knowledge of Mr. SRB's status with the United Nations Secretariat; and
- (ii) filial relationships in Nepal.

4. Mr. Bista submits that he was recently informed that Mr. SRB was engaged as a UNV by the United Nations Mission in Nepal (UNMIN), originally mandated under United Nations Security Council resolution 1740 from 1997 until it ceased operations on 15 January 2011. Mr. Bista states that while he previously understood that Mr. SRB joined the United Nations Secretariat as a staff member in September 2011, it now appears that Mr. SRB was engaged as a UNV with UNMIN well before that date and possibly as far back as 2010. Mr. Bista argues that Mr. SRB's statement is required to elucidate the extent of their conversations and knowledge of each other's employment with the United Nations Secretariat.

5. On 8 February 2024, the Secretary-General filed a response to the Motion. The Secretary-General requests the Appeals Tribunal to dismiss the Motion in its entirety.

6. The Secretary-General contends that the UNAT's role is not to be the instance of first impression for evidence that could have been produced before the UNDT.<sup>1</sup> The Secretary-General argues that the additional evidence is not new, and its existence was not unknown to Mr. Bista when the case was adjudicated before the UNDT. The Secretary-General submits that, because he had the opportunity to request all of the additional evidence at the trial stage before the UNDT and did not, the Motion fails to meet the legal threshold for the admission of additional evidence.

7. The Secretary-General asserts that, furthermore, Mr. Bista failed to address, let alone show, that the admission of the additional evidence on appeal is warranted by exceptional circumstances, would likely establish facts in the instant case, and be in the interest of justice and the efficient and expeditious resolution of the proceedings.<sup>2</sup> The Secretary-General

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<sup>1</sup> The Secretary-General cites

, Judgment of 912 O 612 792 reW\*



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the exercise of its jurisdiction to ensure that relevant and admissible evidential material is available.

14. In a similar vein,