



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

TIWATHIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON APPLICATION FOR
SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 11 July 2012, the Applicant filed an application for suspension of action of the administrative decision to select ~~for~~ another member other than her for the post of Deputy Director, Medical Services Division (“MSD”) at the D-1 level (“the D-1 post”).
2. On 12 July 2012, the Registry of the Dispute Tribunal in New York served the application on the Respondent and ordered ~~ed to~~ to file and serve a reply by 4:00 p.m., 13 July 2012.
3. On 12 July, 01:33 p.m., the Tribunal issued Order No. 139 (NY/2012) to the parties. In this Order, the Tribunal instructed the parties to file submissions by 4:00 p.m., 13 July 2012, with the Tribunal regarding whether the Applicant had filed a request for management evaluation and, if when she had done so and whether the contested decision had been implemented.
4. In response to Order No. 139 (NY/2012), on 13 July 2012, the Applicant filed her submission at 11:29 a.m. and the Respondent filed ~~his~~ submission 3:44 p.m. On 16 July 2012, at 9:12 a.m., the Applicant filed an additional submission, replying to the Respondent’s submission dated 13 July 2012.

Relevant background

5. The following factual chronology is based ~~ed~~ on the submissions of the parties and the appended documents filed with the Tribunal.
6. On 12 January 2012, the Applicant ~~ap~~plied for the D-1 post.
7. On 8 March 2012, the Director of MSD ~~in~~formed the Applicant that she was to be Officer-in-Charge in her absence and that a former MSD staff member was

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the D-1 post was more appropriate as a result of the fact that a female had been selected for the D-2 post;

f. The improper consideration and selection of a candidate solely due to the fact he is a male is a clear violation of ST/AI/1999/9 that requires that efforts be made to increase the number of female candidates from developing nations and resulted in a decision that is biased and prejudiced;

g. In addition to being denied the D-post as a result of her gender, the selection of a male's candidature over that of the Applicant's was done even though they had been deemed to be equally qualified, as acknowledged by the interview panel who rostered the Applicant following the completion of the D-1 post selection process;

h. Over the past 11 months, all senior management position in the MSD have been filled by males from the EOG which reflects, as acknowledged by

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e. There is no requirement that the Respondent take the Applicant's gender or country of origin into consideration as part of its selection process;

f. The Applicant's candidacy was reviewed objectively and there is no evidence that any of the acts of the Respondent were not performed regularly, that relevant material was ignored or that irrelevant material was taken into account, that would result in the selection being prima facie unlawful;

Urgency

g. There is no urgency to the Applicant's request as the selection decision was implemented upon being communicated to the selected candidate on 10 July 2012;

h. There is no imminent risk to the Applicant such as a loss of salary seeing that the implementation of the contested decision will not result in the Applicant losing her employment;

Irreparable damage

i. The Applicant has not demonstrated how the implementation of the contested decision will cause her a harm that cannot be repaired by an award of damages;

j. There is no evidence to conclude that the contested selection process, in which she was recommended and contested, would harm her reputation;

k. The Applicant neither has standing, nor an actual factual basis, to raise a potential harm to the Organization's reputation as a valid argument.

Consideration

The competence of the Dispute Tribunal

21. The United Nations Appeals Tribunal ruled in its judgment in *O'Neill* 2011-UNAT-182 (affirming UNDT/2010/203) that “the UNDT is competent to review its own jurisdiction, whether or not has been raised by the parties”. The Tribunal is therefore mandated to review its competence at its own initiative.

22. Regarding the jurisdiction of the Dispute Tribunal concerning an application for case on suspension of action, 212 of its Statute provides that:

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 ...

23. It follows from this that the following two complementary requirements must be satisfied for the Tribunal to be competent to hear and pass judgment on the application for suspension of action:

- a. The management evaluation ~~pass~~ must be pending when the judgment on suspension of action is rendered; and
- b. The contested administrative ~~decision~~ must not yet have been implemented.

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