

Introduction

1. The T+i4!#al is sei9ed of 8& a77licatio#s +elated to a challe#ge agai#st the +es!It of the co " 7+ehe#si,e sala+* scale s!+,e* fo+ local staff i# I#dia# co#d!cted i# !#e %&1(. The a77licatio#s i# ,ol ,e the U#ited Natio#s Sec+eta+iat# the Office of the U#ited Natio#s 3 igh Co " " issio#e+ fo+ Ref!gees# the U#ited Natio#s E#tit* fo+ -e#de+ E: !alit* a#d the E " 7o8e+ " e#t fo+ ; o " e#5 a#d th+ee U#ited Natio#s 2!#ds a#d P+og+a " " es <the U#ited Natio#s De ,elo7 " e#t P+og+a " <=UNDP>?# the U#ited Natio#s Po7!latio# 2!#d a#d the U#ited Natio#s Child+e#s 2!#d?.

%. This 6!dg " e#t co#ce+#s 1& a77licatio#s +elated to 1& A77lica#ts 4ased i# Ne8 Delhi 8o+Ai#g fo+ UNDP.

acts

(. The %&1(Co " 7+ehe#si,e Sala+* Scale S!+,e* fo+ local staff 4ased i# I#dia <=%&1(I#dia Sala+* S!+,e*>? 8as co#d!cted 7!+s!a#t to the " ethodolog* ado7ted 4* the I#te+#atio#al Ci ,il Se+,ice Co " " issio# <=ICSC>? <see ICSC\$B%\$R.115 Re ,ie8 of the " ethodolog* fo+ s!+,e*s of the 4est 7+e ,aili#g co#ditio#s of e " 7lo* " e#t at d!t* statio#s othe+ tha# head: !a+e+s a#d si " ila+ d!t* statio#s s!+,e* " ethodolog* II? a#d the) a#!al fo+ the co#d!ct of s!+,e*s of the 4est 7+e ,aili#g co#ditio#s of e " 7lo* " e#t at d!t* statio#s othe+ tha# 3ead: !a+e+s a#d si " ila+ d!t* statio#s C " ethodolog* II.

D. As 7e+ the a4o,e " ethodolog* a#d a.t. II of the)e " o+a#d!" of U#de+sta#di#g <=) OU>? 4et8ee# the U#ited Natio#s a#d the ; o+ld 3ealth O+ga#i9atio# <= ; 3O>? fo+ %&1%1%&1(5 ; 3O 8as desig#ated to co#ti#le to act as i# #hdiag fhe +es7o#si4le age#c* fo+ the coo+di#atio# of the local sala+* scale s!+,e* i# Ne8 " +e#hel %#diae 2 r +e+ #

<BBB? Re,ised allo8a#ces i# R!7ees #et 7e+ a##!" a+e as
follo8s:

<1? Child5 7e+ child5 s!4ect to "aJi " ! " of siJ child+e#

- a. % (5E11 a77lica4le to staff " e " 4e+s fo+ 8 ho " the
allo8a#ce 4eco " es 7a*a4le o# o+ afte+ o#e
No,e " 4e+ %&1D
4. %B51EF a77lica4le to staff " e " 4e+s fo+ 8 ho " the
allo8a#ce 4eco " es 7a*a4le 7+io+ to o#e
No,e " 4e+ %&1D

<%? 2i+st la#g!age

- a. % '5E(% a77lica4le to staff " e " 4e+s fo+ 8 ho " the
allo8a#ce 4eco " es 7a*a4le o# o+ afte+ o#e
No,e " 4e+ %&1D
4. (D51&D a77lica4le to staff " e " 4e+s fo+ 8 ho " the
allo8a#ce 4eco " es 7a*a4le 7+io+ to o#e
No,e " 4e+ %&1D

<(? Seco#d la#g!age

- a. 1D5BFF a77lica4le to staff " e " 4e+s fo+ 8 ho " the
allo8a#ce 4eco " es 7a*a4le o# o+ afte+ o#e
No,e " 4e+ %&1D
4. 1B5&E% a77lica4le to staff " e " 4e+s fo+ 8 ho " the
allo8a#ce 4eco " es 7a*a4le 7+io+ to o#e
No,e " 4e+ %&1D.

! rocedural " istory

1&.

Cases No. See attached list

!dg " e#t No. UNDT\$%&1 '\$1&1

sala+* scales a#d to +e,ie8 allo8a#ces do8#8a+d did #ot co#stit!te a#

7+o, ide legal +e7+ese#tatio# i# the 7+oceedi#gs. OSLA co#fi+ " ed that it 8o!ld taAe #ecessa+* actio# i# this +es7ect.

1B. B* O+de+ No. 11D <- / A\$%&1B? of 1B) a* %&1B5 the T+i4!#al5 inter alia5 o+de+ed the Res7o#de#t to " aAe additio#al s!4 " issio#s o# the iss!e of the a77licatio#s@ +ecei, a4ilit* <see 7a+as. 11 to 1E of the O+de+?. Additio#all*5 the T+i4!#al +e: !ested the A77lica#ts to i#fo+ " it if the* had 4ee# s!ccessf!! i# +etai#i#g OSLA +e7+ese#tatio# a#d 7+o, ided the " 8ith a deadli#e to file co " " e#ts o# the fo+thco " i#g Res7o#de#t@s additio#al s!4 " issio#.

%%. B* O+de+ No. ((E <%&18? of %(No,e " 4e+ %&18; the UNAT !dge P+eside#t +e " a#ded a 1&th case to the Dis7!te T+i4!#al; #a " el* Case No. UNDT\$ - / A\$%&1D\$8B <Cho!dh!+i?; 8ith di+ectio#s to add it =to the list of a77ella#ts #a " ed i# !dg " e#t No. %&1F!UNAT!F%8>. This A77lica#t +etai#ed OSLA@s se+, ices to +e7+ese#t he+.

%(. The a77licatio#s 8e+e i#itiall* assign#ed to !dge Ro8a# Do8#i#g; 8ho had set the " do8# fo+ a hea+i#g o# the " e+its o# 1(a#d 1D 2e4+!a+* %&1 ' . 2ollo8 i#g !dge Do8#i#g@s O+de+ No. % < - / A\$%&1 ' ? of 18 a#!a+* %&1 ' ; inter alia +et!+i#g the case files to the UNDT - e#e, a Regist+a+ =fo+ 7ossi4le +eassig# " e#t to a#othe+ 6!dge> the " atte+ 8as +eassig#ed to the !#de+sig#ed !dge.

%D. B* O+de+ No. F < - / A\$%&1 ' ?; the T+i4!#al ,acated the hea+i#g dates afte+ fi#di#g =that it is i# the i#te+ests of 6!stice to dete+ " i#e the +ecei,a4ilit* of the a77licatio#s as a 7+eli " i#a+* " atte+; 4efo+e e#te+i#g i#to a# eJa " i#atio# of thei+ " e+its>. 2!+the+ " o+e; #oti#g that s!ch a# iss!e is of a 7!+el* legal #at!+e o# 8hich the 7a+ties; the " a6o+it* of 8ho " 8as +e7+ese#ted 4* Co!#sel; had 4ee# gi,e# a " 7le o77o+t!#it* to " aAe co " " e#ts a#d file s!4 " issio#s; the T+i4!#al decided to ad6!dicate the " o# the 7a7e+s.

!arties# su\$%issions on Recei&a\$ility

%E. The A77lica#ts@ 7+i#ci7al co#te#tio#s a+e:

- a. A +e: !est fo+ " a#age " e#t e,al!atio# 8as #ot +e: !i+ed. Staff +!le 11.%<4? 7+o, ides that the Sec+eta+*1 - e#e+al " !st dete+ " i#e if a decisio#

a ? 2d &(s)ta 16.463 () - 13 3 .714(i) - 3 .66;23 (sa) - 3 .66;23 (o) - 0 .9;892(8) 7 .856;3 (t) 11.53 31()

Cases No. See attached list
!dg " e#t No. UNDT\$%&1 '\$1&1

C.

6. Re: !i+i#g that a doc! " e#t ide#tifies each staff " e " 4e+ 4* #a " e a#d is i#di, id!all* co " " !#icated to each staff " e " 4e+ is 7a+tic!la+l* 7+o4le " atic i# cases liAe the 7+ese#t o#es# 8he+e the Ad " i#ist+atio# has +ef+ai#ed f+o " s!4 " itti#g i#di, id!al #otificatio#s of the sala+* f+ee9e

A. The Res7o#de#t@s co#te#tio# that the A77lica#ts o!ght to ha,e challe#ged the " o#thl* sala+* 7a*sli7s " !st 4e dis " issed# inter alia# si#ce the* do #ot co#tai# o+ e, e# eJ7licitl* +efe+ to the i " 7!g#ed decisio# N 8hat is challe#ged i# this case is the sala+* f+ee9e# #ot the a " o!#t of +e " !#e+atio# f!+the# 7a*sli7s " a* +eflect the i " 7le " e#tatio# of the co#tested decisio# 4!t do #ot co#tai# the ad " i#ist+ati, e decisio# o+ the +easo#s fo+ it# it is #ot logic to asA the A77lica#ts to dis+ega+d a clea+ a#d !#e: !i, ocal #otificatio# of a sala+* f+ee9e a#d seeA to challe#ge the sa " e decisio# th+o!gh a doc! " e#t that does #ot s7ecificall* +efe+ to it# ti " e!li " its a+e t+igge+ed 4* #otificatio# #ot i " 7le " e#tatio# a#d

I. Co#ce+!i#g the Res7o#de#t@s +elia#ce o# Tintukasiri et al. i# s!77o+t of his a#g! " e#t that the co#tested decisio# is #ot +e, ie 8a4le# the A77lica#ts a+e of the ,ie 8 that the UNDT is =#ot 4o!#d 4* a 7a+tic!la+ 6!dg " e#t 4!t +athe+ 4* the UNAT 6!+is7+!de#ce as a 8hole>. Andati"Am#ayi %&'\$1&1UNAT1&E8 a#d Pedicelli %&'\$1E1UNAT1EEE a+e also +ele, a#t to the A77lica#ts# cases a#d sho!ld 4e gi, e# 7+ecede#ce o, e+ Tintukasiri et al..

%F. The Res7o#de#t@s 7+i#ci7al co#te#tio#s a+e:

a. The a77licatio#s a+e #ot +ecei, a4le rati#e materiae 4eca!se the A77lica#ts failed to +e: !est " a#age " e#t e, al!atio# 8hich 8as +e: !i+ed si#ce thei+ clai " s do #ot fall 8ithi# the eJce7tio# of staff +!le 11.%<4?# i.e.5 ad " i#ist+ati, e decisio#s taAe# 7!+s!a#t to ad, ice f+o " tech#ical 4odies. ; 3O did #ot ad, ise the U#ited Natio#s of the sala+* scales 4!t +athe+ i#fo+ " ed it of the " #

Cases No. See attached list

!dg " e#t No. UNDT\$%&1'\$1&1

a77lica#ts 8ith si " ila+ a77licatio#s a#d the sa " e deadli#e e: !all* faced tech#ical
7+o4le " s 8he# the* atte " 7ted to ti " el* file thei+ a77licatio#s.^F

(1. The T+i4!#al is of the ,ie8 that #o#lco " 7lia#ce 8ith the deadli#e fo+
tech#ical +easo#s a#d s!77o+ted 4* e,ide#ce falls o!tside the sco7e of a+t. 8.(5
8hich +e: !i+es a 8+iitte# +e: !est fo+ eJte#sio# f+o " a# A77lica#t. As s!ch5 the
T+i4!#al is satisfied that5 i# this case5 the A77lica#ts co#ce+#ed filed thei+

(F.) a#age " e#t e,al!atio# is a sine *ua non co#ditio# to ha,e access to the i#te+#al 6!stice s*ste ". Access to 6!stice is #ot a# a4sol!te +ight a#d 7+oced!+al li " itatio#s s!ch as this o#e# a+e co " 7ati4le 8ith the #at!+e a#d sco7e of access to 6!stice# 7+o, ided that the* a+e 7+esc+i4ed 4* la 8 a#d do #ot i " 7ai+ the ,e+* esse#ce of s!ch +ight.

(B. P!+s!a#t to staff +!le 11.%<4? the+e a+e o#l* t8o sit!atio#s 8he+e the +e: !i+e " e#t to +e: !est " a#age " e#t e,al!atio# does #ot a77l*: disci7li#a+* cases a#d decisio#s taAe# 7!+s!a#t to ad,ice o4tai#ed f+o " tech#ical 4odies as dete+ " i#ed 4* the Sec+eta+*1 - e#e+al.

(8. The case at ha#d is #ot of a disci7li#a+* #at!+e# lea, i#g the T+i4!#al to assess 8hethe+ the co#tested decisio#s taAe# !7o# the ad,ice of the LSSC a#d Sala+* S!+,e* s7ecialists# 8as taAe# !7o# the ad,ice of a tech#ical 4od*. Rele ,a#tl*#s staff +!le 11.%<4? does #ot 7+o, ide fo+ a 7a+tic!la+ 8a*#s e.g.5 ad " i#ist+ati,e i#st+!ctio# o+ othe+ 8ise# fo+ the Sec+eta+*1 - e#e+al to dete+ " i#e tech#ical 4odies.

('. The T+i4!#al #otes that at the ti " e of O3R) @s ca4le <see 7a+a. ' a4o,e# the Sec+eta+*1 - e#e+al had #ot *et iss!ed a# ad " i#ist+ati,e i#st+!ctio# dete+ " i#i#g 8hat 4odies co#stit!te tech#ical o#es fo+ the 7!+7ose of staff +!le 11.%<4?. The +ele,a#t ad " i#ist+ati,e i#st+!ctio# <ST\$A!\$%&18\$B? 8as iss!ed o#l* o# 18) a* %&18. P+io+ to this# staff " e " 4e+s had little i#fo+ " atio#s if #o#e at all# co#ce+i#g 8hat co#stit!ted a tech#ical 4od*.

D&. It is the T+i4!#al@s ,ie8 that #ot +e: !esti#g " a#age " e#t e,al!atio# is a# eJce7tio# to the ge#e+al +!le a#d# as a co#se: !e#ce# it is i#c! " 4e#t o# the A77lica#ts to sho 8 that the* fall !#de+ it.

D1. I# the 7+ese#t case# the A77lica#ts a#g!e that# at the ti " e the* filed thei+ a77licatio#s# the* +elied o# a 7+e,iol#s 7ositio# 4* the Ad " i#ist+atio# i# Tintukasiri et al. 8he+e4* =+e: !ests fo+ " a#age " e#t e,al!atio# 8e+e #ot +ecei ,a4le lsi#ce the decisio# 8as taAe# 7!+s!a#t to the ad,ice f+o " the GLocal Sala+* S!+,e* Co " " ittee <=LSCC>?H i# co#6!#ctio# 8ith sala+* s!+,e* s7ecialists# a#d as s!ch of a tech#ical 4od* !#de+ the te+ " s of staff +!le 11.%<4?> <4+acAets i# the origi#a!#.

Cases No. See attached list
!dg " e#t No. UNDT\$%&1 '\$1&1

(%. As fo+ all eJce7tio#s these sit!atio#s " !st 4e i#te+7+eted
+est+icti,el*. The 7+o, isio#s " a* #ot 4e i#te+7+eted 4+oadl* s!ch as
to co#cl!de5 fo+ eJa " 7le5 that a#* tech#ical 4od* co!ld 4e e: !ated
to a =tech#ical 4odG*H5 as dete+ " i#ed 4* the Sec+eta+*1 - e#e+al>
8 ithi# the " ea#i#g of Staff R!le 11.%<4?. Si " ila+l*5 #ot e,e+* fo+ " al
7a#el ca# 4e liAe#ed to a =tech#ical 4od*>. The+efo+e5 a# a#alog*
ca##ot 4e d+a 8# to dete+ " i#e 8 hethe+ the i#, estigatio# 7a#el i# this
case co#stit!tes a =tech#ical 4od*>. <foot#ote o " itted?

((.) s. 2a!st a#g!es that she 8as eJe " 7t f+o " the +e: !i+e " e#t
of s!4 " itti#g a +e: !est fo+ " a#age " e#t e,al!atio# as a 7+e+e: !isite
to i#,oAi#g the 6!+isdictio# of the UNDT. She clai"s that the
dete+ " i#atio# 4* the Sec+eta+*1 - e#e+al !#de+ Staff R!le 11.%<4? is
i++ele,a#t. She also co#te#ds that i# the a4se#ce of s!ch
dete+ " i#atio# 4* the Sec+eta+*1 - e#e+al5 the +e " ai#i#g =a " 4ig!it*>

