Judgment No. 2023-UNAT-1351

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| Before: | Judge Sabine Knierim, Presiding<br>Judge John Raymond Murphy<br>Judge Martha Halfeld |
| Case No.: | 2022-1711 |
| Date of Decision: | 30 June 2023 |
| Date of Publication: | 7 July 2023 |
| Registrar: | Juliet Johnson |

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| Counsel for Appellant: | Daniyal Hassan |
| Counsel for Respondent: | Sylvia Schaefer |

1. Mr. Imran Ahmad Shah, a staff member in the United Nations Military Observer Group in India and Pakistan (UNMOGIP) appeals the summary judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal)in In Jud Nat-1 (u)nNd[(.)27t.-4.8I2pDis

12. On 30 December 2021, the Management Evaluation Unit (MEU) rejected his request as not receivable. The MEU considered that the decision to change the reporting lines of all UNMOGIP staff members serving on the Indian side "was an operational decision within the scope of managerial discretion of the CMS" and did "not produce direct, adverse legal consequences on [his] terms of appointment". Accordingly, pursuant to Staff Rule 11.2(a), which limits the scope of the MEU's review to "administrative decision[s] alleging non-compliance with [a staff member's] contract of employment or terms of appointment", Mr. Shah's request was deemed not reviewable.[4]

13. On 18 March 2022, Mr. Shah filed an application with the UNDT. The Secretary-General responded with a motion to have receivability determined as a preliminary matter.

14. On 13 May 2022, the UNDT issued its summary judgment on receivability, finding that the application was not receivable *ratione materiae*. The UNDT found that the Inter-Office Memorandum was "nothing but an operational decision of general application that promoted a change in the reporting lines of all UNMOGIP staff members on the Indian side".[5]

15. Moreover, the UNDT held that "even if this change in the reporting lines did affect [Mr. Shah's] responsibilities, that does not mean that the [Inter-Office Memorandum] had a legal effect *per se* on his terms of appointment or contract of employment".[6] The UNDT noted that no staff member has the right to select his or her supervisor.

16. In light of the extensive of submissions by Mr. Shah related to alleged retaliation and workplace harassment, the UNDT advised him to follow the relevant procedures for such claims and stated that the Dispute Tribunal was not the place to lodge such complaints in the first instance.[7]

[4] Letter of 30 December 2021, Reference: MEU/592-21/R(AS).
[5] Impugned Judgment, para. 18.
[6] *Ibid*., para. 19.
[7] *Ibid*., para. 21.

24. Mr. Shah further contends that the UNDT erred on a question of fact when it failed to appreciate all the documents that he had submitted in which he explained the context of the "constant retaliation he has been facing in the [O]rganization since 2014".

25. Mr. Shah prays that the UNAT set aside the impugned Judgment, find that the Inter-Office Memorandum was issued unlawfully, with the *mala fide* intent to target him, and

realities”.