
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1446



Ashok Kumar Nigam
(Appellant)

v.

Secretary-General (p)- tl

Counsel for Appellant: Pattola Niroop

Counsel for Respondent: Patricia C. Aragonés

JUDGE GRAEME COLGAN, PRESIDING.

1. Ashok Kumar Nigam, a former United Nations staff mem.ns

15. Article 2(1) of the UNAT Statute provides for appeals against “judgments” of the UNDT. Our longstanding jurisprudence confirms and interprets this to mean that, with narrowly-based and rare exceptions, appeals can only be brought against final judgments of the UNDT. While appeals against interlocutory orders of the UNDT may be entertained in exceptional cases — such as where there is a claimed exercise of a jurisdiction not possessed by the Dispute Tribunal or there has been a similar fundamental jurisdictional error, or where the first instance tribunal has acted irremediably — this is not such a case. Mr. Nigam based this appeal on alleged errors of fact and law by the Judge President, with no allegation of the UNDT acting extra-jurisdictionally or similarly in excess of its jurisdiction.

16. Nor is it analogous to the other exceptional category where the UNDT’s order is effectively irremediable if allowed to stand pending the final and substantive judgment on the merits.¹⁰ There is likewise no suggestion in the grounds of appeal advanced by Mr. Nigam that his complaint about Judge Belle’s participation — essentially alleging bias against him — will be effectively irremediable should he have to wait for a final judgment before getting a right of appeal in which he may include his current complaint about Judge Belle.

17. This not being such an exceptional case as described above, it is not receivable by the Appeals Tribunal. Generally, case management decisions by the UNDT, including the subject of this appeal, are not appealable until the proceeding before the UNDT has been finalised.¹¹ Mr. Nigam’s case is not an exception to this rule.

18. For the foregoing reasons we conclude that Mr. Nigam’s appeal is not receivable by the UNAT.

19. However, even if it could be claimed that the Judge President acted extra-jurisdictionally by permitting a case to be decided by a judge allegedly biased in law, we have concluded that there is no merit to this argument. It is for the UNDT, not for litigants before it, to assign judges to cases. Even if proper grounds exist to disqualify a particular judge, a litigant has only the right to apply for disqualification: the decision to do so, although ultimately appealable, rests with the Judge President. The mere fact that a judge has erred previously, even in the same case, is not alone a ground to disqualify that same judge from

¹⁰ *Olexandr Maruschak v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1282, para. 17.

¹¹ *Reilly v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-975.

deciding other issues in or the remainder of the case. UNDT Judges take an oath of office to execute their judicial duties “without fear, favour, or prejudice in all matters they adjudicate”.¹² There is no evidence to indicate that, although the 2021 UNDT Judgment was overturned by the UNAT, Judge Belle would now be biased against Mr. Nigam and so should not preside now over his case.

20. As to Mr. Nigam’s submission that the UNDT both overlooked and indeed breached one of the tests of propriety under the Judges1 (.)7S/MCID 6 13 1.826 0 Td[(As (ri)2.5 (e)(u)1-9.1 (e)-12.m)]TJC

24. We are not persuaded that the Judge President erred in her Order declining to require Judge Belle to recuse himself further from Mr. Nigam's case. We are satisfied that an objective observer, properly informed of all relevant circumstances, would not conclude that Judge Belle was biased against Mr. Nigam or should be disqualified from adjudicating the case on its merits.

T