



UNITED NATIONS DISPUTE TRIBUNAL

Date:

23 June 2011

Original:

English

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Before: Judge Marilyn J. Kaman

Registry: New York

Registrar: Santiago Villalpando

SURVO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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JUDGMENT

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## Introduction

1. On 15 April 2011, the Applicant filed an application for suspension of action. In this application, he described the circumstances surrounding the contested administrative decision as follows:

... the Applicant has been ordered to return and report in a demoted position (P-4 Statistician) to the Statistics Division (8th floor B block of the ESCAP [Economic and Social Commission for Asia and the Pacific] secretariat building), where he had served as Section Chief (ESCAP/[Statistics Division]/[Statistical Information Services Section ("SISS")]) from June 2003 to September 2010. This was preceded by the reclassification of the SISS job post from P-4 to P-5 and the Applicant losing the position in a non-promotion case to another candidate in September 2011. The contested decision in the instant case is the Administration's attempt to identify the incumbent (Applicant) "a suitable post", which should have been done before the successful candidate assumed the duties on 13 September 2010.

2. The Applicant further informed that on 13 April 2011, he had "requested mediation from the Mediation Service[s]" of the Ombudsman.

3. In an email of 15 April 2011 to the parties, the Registry acknowledged receipt of the application, served on the Respondent instructing him to file and serve a reply by 18 April 2011, and called for a tentative hearing on 20 April 2011. The Registry further observed the following:

The Registry notes that the Applicant states that he is currently also intending to have the present ~~case~~ resolved amicably through the mediation services of the Ombudsman. However, the Registry has not received any written confirmation from the parties that they seek mediation in accordance with art. 1



my further understanding that he will be submitting to the Tribunal a request for withdrawal of the application for Suspension of Action.

#### Consideration

8. At the request of the parties, the Tribunal referred the case to mediation pursuant to art. 15 of the Rules of Procedure.

9. Under art. 15.6 of the Rules of Procedure, "It shall be the responsibility of the Mediation Division [here, the Regional Ombudsman in Bangkok] to apprise the Dispute Tribunal of the outcome of the mediation in a timely manner". The Regional Ombudsman in Bangkok did so on June 20, 2011, informing the Tribunal that the "particular issue" that was subject of the suspension of action has been resolved "successfully".

10. According to art. 8.2 of the Statute of the Dispute Tribunal, "An application shall not be receivable if the dispute arising from the contested decision had been resolved by an agreement reached through mediation".

11. With the matter of the suspension of action being resolved by a mediation agreement, the application is therefore no longer receivable.

12. The Tribunal finds that, in light of the mediation agreement between the parties, the application for suspension of action is not receivable under art. 8.2 of the Statute of the Dispute Tribunal. The Tribunal may therefore proceed to dismiss the application and close the case, without need for a formal withdrawal of the application by the Applicant.

CaseNo. UNDT/NY/2011/030

JudgmenNo. UNDT/2011/109