Case No.:

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant, a former Security Officer with the former International Criminal T
contesting the decision not to initiate an investigation into his allegations of harassment and abuse of authority. In response, the Respondent submits that the application is without merit.

2. For the reasons stated below, the Tribunal rejects the application.

Facts and procedural history

3. On 26 October 2016, the Applicant submitted to the Registrar of the ICTY a complaint of harassment and abuse of authority in application of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and, abuse of authority) concerning Chief
ICTY.

4. On 16 December 2016, the ICTY Registrar informed the Applicant that he did not find sufficient grounds to warrant a formal investigation into his allegations.

5. The Applicant filed his application in the Geneva Registry and the case was initially assigned to Judge Rowan Downing. On 23 November 2018, the case was transferred to the New York Registry and assigned to Judge Alessandra Greceanu.

reassigned to the undersigned Judge on 21 November 2019.

11. The Appeals Tribunal found that an investigation may only be undertaken when there are sufficient

engaged in unsatisfactory conduct for which a disciplinary measure may be

that the

Administration is not allowed to initiate an investigation because such an investigation can have a negative impact on the staff member concerned.

12. The Appeals Tribunal has also recalled that in examining the validity of the

e of review is

limited to determining whether the exercise of such discretion is legal, rational, reasonable and procedurally correct, so that it does not lend to unfairness, unlawfulness or arbitrariness (see for instance *Abusondous* 2018-UNAT-812, para. 12). In this regard, The [Dispute] Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness ct on t34f.00000912 0 612 792 re W BT/F1 12hoiceceltsciplr161(BTt)-231(the)-2

Performance improvement plan February 2011

18. The Applicant had complained that after he had left his weapon belt in an unauthorized area, on 14 February 2011, his supervisor placed him on a performance improve an initial duration of six months and cautioned him against challenging this decision. The Applicant claimed that the PIP disproportionately impacted his career advancement. The Deputy Registrar reviewed the documentation provided by the Applicant and concluded that the PIP was based on four performance-related issues, including the weapon belt incident. The Deputy Registrar concluded that the PIP was an appropriate way to address the issues identified and appreciated no abuse of authority in the handling of this matter.

Extension of the February 2011 PIP

19. In the complaint, the Applicant alleged that the PIP was extended after he expressed dissent with the SSS management at a meeting. After the PIP was successfully completed, the Applicant claimed that the SSS Chief used this as a reason to deny him career advancement opportunities such as training and deployment to field missions.

20. The Deputy Registrar reviewed the documentation submitted by the Applicant in support of his complaint and observed that only one of the allegations of denied opportunities for career advancement required further inquiry. She then requested the SSS SSS Chief explained that while not a written policy, it was a practice in SSS not to deploy officers who had recently been on a PIP. She added that going on missions is not a core function or an entitlement and that the Applicant was eventually allowed to go on mission in early 2012.

21. The Deputy Registrar concluded that while there was no indication of abuse of authority, it would be advisable to reflect this practice in a written policy to ensure transparency.

Non-selection for training

22. The Applicant complained that he was denied enrollment in a training in September 2013 despite being qualified. After consulting with the SSS Chief, the

by the secti t for the training because he had been involved in several incidents during previous trainings, to the embarrassment of the Organization.

23. The Applicant had raised this matter with the ICTY Chief Administrative CAO advised the Chief SSS that because the Applican s PIP had been completed several years prior and he had since had good performance appraisals, he should be permitted to attend the training. The SSS Chief heeded the ning in Vienna in August 2014.

24. The Deputy Registrar found that the SSS Chief initial refusal to allow the

direct supervisors and found no indication of arbitrariness or abuse of authority. Moreover, the disagreement had eventually been resolved .

September 2014 Note to File and second PIP

25. The Applicant complained that following a deployment to the Sarajevo office, the SSS Officer who took over the functions complained about Applica performance while on deployment. The Deputy SSS Chief investigated the

regarding the remaining allegations. The Applicant suspected that this complaint was encouraged and orchestrated by the SSS Chief. The Applicant further alleged that this incident caused him emotional distress which lead him to post an emotional comment online social media platform. This posting was management and the Applicant was placed on a second PIP.

26. Following her review of these allegations, the Deputy Registrar came to the SSS the events following the Sarajevo deployment was not supported by any evidence. Indeed, the SSS Chief was not even involved in this matter, which was directly handled by the Deputy SSS Chief. Concerning the online posting, the SSS Chief informed the Deputy Registrar that the contents of the posting were accusatory and unprofessional. The Deputy Registrar concluded that the actions taken by SSS management were justified.

Inappropriate interference

27. The Applicant complained that the SSS Chief attempted to negatively influence his career when, while he was in deployed with the Finance Section of the

of senior officers of the ICTY be restricted.

28. The SSS Chief informed the Deputy Registrar that, in consultation with the CAO, it had been decided to restrict the number of to restrict th

of authority or harassment. She also found that some of the alleged disputes had already been resolved and saw no ther recommended that the practice of not sending security officers on mission after a PIP be articulated in a written policy.

30. The Applicant argues that the Registrar applied an incorrect evidentiary standard. He contends that the role of the responsible official under ST/SGB/2008/5

found no grounds to believe that the

the

Conclusion

40. In light of the above, the application is rejected.

(Signed)

Judge Joelle Adda

Dated this 20th day of February 2020

Entered in the Register on this 20th day of February 2020

(Signed)

Nerea Suero Fontecha, Registrar