
Case No.: UNDT/GVA/2009/61

Judgment No.: UNDT/2010/050

Date: 30 March 2010

English



she was awarded a one-year fixed-term appointment as Administrative Assistant at the G-5 level in the Office of the Executive Secretary. On 1 December 2003, she was promoted to the G-6 level and her contract was renewed for two years. On 1 December 2005, her contract was again renewed for two years.

5. With effect from 19 July 2006 she was awarded a special post allowance at the P-2 level (Associate Administrative Officer) to take on temporarily the obligations and responsibilities of a P-3 Administrative

b.

20. The respondent's contentions are:
- a. The decision to reassign the applicant within ESCWA was taken in accordance with Staff Regulation 1.2 and section 2.4 of administrative instruction ST/AI/2006/3/Rev.1 ("Staff selection system");
 - b. The decision was made by the proper authority. The Deputy Executive Secretary had the authority to take decisions in the absence of the Executive Secretary. The question of the nature of the Deputy Executive Secretary's contract is irrelevant;
 - c. The decision was taken after a review of functions within the Office of the Executive Secretary showed that the a

became vacant there following the resignation of another staff member in March 2007;

- h. The applicant does not substantiate her allegations of harassment by the Deputy Executive Secretary and other senior ESCWA officials.

Judgment

21. The applicant seeks the rescission of the decision of 8 August 2007 whereby the Deputy Executive Secretary of ESCWA transferred her from the Office of the Executive Secretary to the Facilities Management Unit, Administrative Services Division.

22. The applicant disputes the legality of that decision on the ground first of all that the decision was taken by an incompetent authority inasmuch as, the new Executive Secretary having taken office, the Deputy Executive Secretary, who had been serving as Acting Executive Secretary, no longer had the requisite power.

23. It appears from the above and from the respondent's reply as registered on 4 April 2008 that the new Executive Secretary officially took office on 1 August 2007 and that hs

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24. The applicant further contends that the Deputy Executive Secretary's decision was taken not in the interests of the Organization but for improper motives and in particular that it was a reprisal against her for having

28. It follows from the above that, by confirming his deputy's decision, the Executive Secretary made it and, in particular, the reasons it was taken his own and hence that the applicant's pleas against the rescinded decision must also be taken as pleas against the confirmatory decision.

29. In the circumstances, the first thing to be said is that all of the applicant's arguments to the effect that the contested decision constituted retaliation by the Deputy Executive Secretary for her reporting of irregularities she had discovered at ESCWA are invalid because the decision now under review was taken not by the Deputy Executive Secretary but by the new Executive Secretary, who, having entered office on 1 August 2007, cannot be held to have had anything to do with such retaliation.

30. The Tribunal must therefore examine the reasons for the Executive Secretary's decision to confirm the decision to transfer the applicant to the Administrative Services Division. Those reasons appear very clearly from the new Executive Secretary's memorandums of 20 and 28 September 2007 to the Chief, Administrative Services Division, which show that the new Executive Secretary wanted, a few days after taking up his duties, to restructure his Office by assigning to the Administrative Services Division a number of administrative tasks previously dealt with by his Office and, in particular, by the applicant.

31. While the applicant contends that she was replaced in the functions she had discharged in the Office of the Executive Secretary, the respondent categorically denies that contention and the applicant provides no proof of it.

32. It is beyond dispute that such restructuring of his Office was within the sole competence of the Executive Secretary and that it was undertaken solely in the interests of the Organization.

33. It follows that the application for the rescission of the Executive Secretary's decision of 16 August 2007 must be rejected.

34. Accordingly, the Tribunal finds that the applicant is entitled to payment of the special post allowance pertaining to her post up until the date of 16 August 2007 on which she was lawfully transferred to her new post and that the respondent must pay her the sum in question.

35. The applicant's other pleas must be rejected since