



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2023/045

Order No.: 114 (GVA/2023)

Date: 31 August 2023

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

KHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Shubha Suresh Naik, OSLA

Counsel for Respondent:

Jenny Kim, AS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 23 August 2023, the Applicant, a staff member of the United Nations Military Observer Group in India and Pakistan (“UNMOGIP”), requests suspension of action, pending management evaluation, of the decision not to “shortlist and select [her] for the post of Supply Assistant Transport Section” in UNMOGIP in Islamabad.
2. On the next day, the application for suspension of action was served on the Respondent instructing him to:
 - a. Refrain from taking any further steps regarding the contested recruitment until the determination of the application for suspension of action; and
 - b. File his reply by Monday, 28 August 2023.
3. On 28 August 2023, the Respondent filed his reply, *inter alia*, challenging the receivability of the application for suspension of action.
4. For the reasons set out below, the application for suspension of action is rejected.

Facts

5. The Applicant joined UNMOGIP in 2010 and is currently serving as an Inventory and Property Control Assistant, at the G-4 level in Islamabad.
6. On 21 May 2023, the post of Supply Assistant Transport, UNMOGIP was advertised.
7. On 6 June 2023, the Applicant applied for the advertised position.

8. According to the Applicant, on 6 July 2023, she met with the hiring manager and raised questions concerning the mandatory educational requirement of holding a “certificate in vehicle technology”, which, in her view, excluded female candidates. The Applicant alleges, *inter alia*, that the hiring manager told her that “he did not want a female on the post and [...] that she would not be convoked for the next stage of the recruitment”. She then learned that there were interviews for the post, to which she was not invited.

Consideration

9. Under art. 2.2 of the Tribunal’s Statute and art. 13.1 of its Rules of Procedure, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative; in other words, they must all be met in order for a suspension of action to be granted.

10. In the present case, the Respondent submits that the application is not receivable *ratione materiae* because there is no final decision to suspend. In support of his submission, he argues that the recruitment process for the advertised position is still ongoing and that no final decision has been made.

11. The Tribunal will thus proceed to address the receivability of the application.

Receivability

12. The Tribunal considers it appropriate to recall that “the key characteristics of an administrative decision subject to judicial review [are] that the decision must ‘produce direct legal consequences’ affecting a staff member’s terms or conditions of appointment. However, “[w]hat constitutes an administrative decision will depend on the *nature of the decision*, the legal framework under which the decision was made, and the consequences of the decision” (emphasis added) (see *Gianotti* 2022-UNAT-1209, para. 33).

13. The Appeals Tribunal ruled in *Nguyen-Kropp and Postica* 2015-UNAT-509 at para. 33 that:

[C]ertain administrative processes, such as a selection process in *Ishak*, and the Administration's proposal for an alternative rebuttal panel in an ongoing performance appraisal rebuttal process in *Gehr*, are preparatory decisions or one of a series of steps which lead to an administrative decision. Such steps are preliminary in nature and may only be challenged in the context of an appeal against the final decision of the Administration that has direct legal consequences.

14. The Appeals Tribunal further held in *Abdellaoui* 2019-UNAT-928, at para. 17, that:

As the decision not to short-list Ms. Abdellaoui is an internal step within the selection process, it is not an administrative decision. The only appealable decision in the present case is the decision not to select [her] for the position in question. Only this decision is final and bears direct legal consequences. The UNDT, consequently, should have only received Ms. Abdellaoui's application against the selection decision, but not against the decision not to short-list her. The decision not to short-list Ms. Abdellaoui will be examined as a part of the final non-selection decision.

15. Concerning the decision not to short-list the Applicant for the advertised position, the Tribunal finds, in line with *Abdellaoui*, that it is preliminary in nature as it refers to an internal step in the selection process. Like in *Abdellaoui*, the Applicant in the present case was not short-listed as she did not meet a mandatory requirement.

16. Therefore, the Tribunal finds that the decision not to short-list the Applicant is not an administrative decision that can be contested at this stage. The Tribunal also notes that the selection process is still ongoing, which renders the instant application for suspension of action premature. Consequently, the application is not receivable *ratione materiae*.

17. Nevertheless, the Applicant retains the right to contest the final decision upon completion of the selection process.

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Conclusion

18. In view of the foregoing, the application for suspension of action pending management evaluation is rejected.

(Signed)

Judge Sun Xiangzhuang

Dated this 31st day of August 2023

Entered in the Register on this 31st day of August 2023

(Signed)

René M. Vargas M., Registrar, Geneva