



AUAdministrativeTribunal@africa-union.org

CASE NO.: BC/OLC/2.1
JUDGMENT NO.: AUAT/2015/005

G.L., APPLICANT

v.

CHAIRPERSON OF THE AFRICAN UNION COMMISSION

JUDGMENT

Counsel for Applicant:
DEMISSIE MAMO

Counsel for Respondent:
ALIMAMY SESAY
ESTHER UWAZIE

This matter was first initiated on 24 January 2000 against the Secretary-General of the Organization of African Unity, now the Chairperson of the African Union Commission. The Tribunal notes, with regret, that the application could only be heard when the Tribunal convened at its September 2014 Session after a long period of inactivity.

JUDGMENT

BEFORE: Hon. Andrew NYIRENDA, Shaheda PEEROO and Aliou BA
DELIVERED BY: Hon. S. PEEROO

The applicant, an Ethiopian national, was employed in the OAU as telex operator on 1 November 1968. After having served continuously for 30 years he was retired from the service on 1 November 1998 pursuant to Article 51 (a) (ii) of the OAU Staff Rules. He appealed to the Secretary General on 17 February 1998 for an extension of his services by a contract for the duration of three years following 30 years of service. By letter dated 23 June 1998, he obtained a Short-Term Contract for a period of one year effective from 1 December 1998. According to the terms and conditions of service the temporary appointment was neither pensionable nor gratuity earning and was non-renewable. The applicant accepted the offer of employment and the conditions specified therein, promise to abide by them and signed the contract on 26 June 1998.

On 26 November 1999, a few days before the expiry of the one year contract, the applicant submitted a petition to the Secretary General asking for further extension of service in accordance with Article 51 (a) (ii) of the current staff rules. The letter is entitled "*Request for further extension of service in accordance with article 51 (a) (ii) of the current staff rules*". After referring to the fact that the applicant was given a one-year contract in accordance with Article 51 (a) (ii) of the Staff Rules, the letter went on to say the following:

Recalling the discretionary power bestowed upon you in Article 51 (a)(ii) and in furtherance of the decision passed by the Administrative Tribunal on November 12, 1999 that the extension of service after 30 years of continuous service should be made in line with Article 51 (a)(ii), i.e for three years.

I humbly request you to extend my service in the organization for further two years.

I hope favourable decision will be given, as was the case to my appeal of the 17th February 1998.

According to the applicant, the petition was served on the Secretary-General on 29 November 1999. The latter did not respond within 30 days of receipt of that

petition. Consequently, the applicant submitted the present application to the Tribunal on 24 January 2000, within the following 30 days.

The applicant's case before the Tribunal is that the respondent is in violation of Article 51 (a) (ii) of the Staff Rules, [CM/1745 (LVII) Annex II Rev. I]. He asserts that he had asked the respondent for a Short-Term Contract of three years following his compulsory retirement but was only granted a one-year contract. As a result, the respondent has forced the applicant to separate from the service although the latter had a right to remain in service until 30 November 2001. The applicant prays in aid two decisions of the Ad Hoc Administrative Tribunal dated 12 November 1999, namely **Tezera Sahle v. Secretary General [Case No 3 of 1998]** and **Alemu Ferede v. Secretary General of the OAU [case No 1 of 1997]** to submit that after his compulsory retirement the decision to extend his services by a Short-Term Contract should have been for a term of three years. The applicant further contends that this violation of the Staff Rules by the respondent has resulted in loss of salary, benefits and other entitlements at least for two years, severe emotional distress, humiliation, and embarrassment.

The applicant is praying the Tribunal to make an order directing the respondent:

- (1) to pay to the applicant at least two years salary benefits and entitlements, or in the alternative to direct the respondent to reinstated the applicant with back pay;
- (2) to pay to applicant's attorney's fees and costs with interest;
- (3) in respect of such other relief as the Tribunal deem equitable and just.

At the hearing the applicant tried to press through his Counsel for a prayer that the Tribunal should order the respondent to pay to him 165 days of annual leave. The Tribunal observes that this did not form part of the prayers of the applicant in his application to the Tribunal. The matter before the Tribunal concerns essentially the Short-Term Contract and the Tribunal cannot allow any other matter that did not form part of the prayers in the application to be ushered in for consideration at a later stage. In any case, the Tribunal is not in a position to deal with the belated prayer as it has not been properly canvassed before it.

The respondent has put in a preliminary objection on the ground of non-compliance with the Rules of Procedure. Regarding non-compliance by the applicant with the provisions of Article 11, paragraph 4, 4(i) and 5 (i) of the Rules of Procedure of the Administrative Tribunal, the Tribunal has held that Article 11 of the Rules of Procedure deals with requirements of a formal nature in relation to the filing of an application. Further, that Article 11 in its subsection (9) makes provisions, in case the formalities required when lodging a complaint have not been properly done or completed, for the Secretary to give an opportunity to the applicant to make the necessary corrections and amendments - vide **B.W. v. Chairperson of the African Union Commission [Judgment No. AUAT/2015/008]** and **M. M. v. Chairperson of the African Union Commission [Judgment No. AUAT/2015/006]**. The Tribunal therefore does not agree that the application has to be rejected on the ground of nullity for failure by the applicant to have complied strictly with the provisions of Article 11 of the Rules of Procedure. However, the Tribunal may not be too lenient where it is shown that despite the opportunity given to an applicant to complete the formal requirements, there has been non-compliance causing undue delay and prejudice to the respondent and inconvenience to the Tribunal.

The point of time-bar raised by the respondent is well taken and valid. The applicant should have entailed the procedure provided in Chapter XII of the Staff Rules, under the heading "Appeals", Article 62 (a) to challenge the original decision giving him a contract of one year only when he had asked for a contract of three years. A staff member wishing to appeal against an administrative decision should within thirty days from the contested decision apply in writing to the Secretary General/Chairperson for a review of the administrative decision in issue. If the Chairperson confirms the decision against the staff member or if the staff member does not receive a reply within thirty days, he may within a further thirty days file an appeal with the Administrative Tribunal as prescribed in the Tribunal Rules of Procedure.

In the instant case, the decision challenged by the applicant dates back to 23 June 1998 when he was given a non renewable Short-Term Contract of one year. It is significant that the applicant accepted the terms and conditions of that contract

which he signed on 26 June 1998. Had the applicant been minded to challenge the decision of 23 June 1998 in respect of the duration of the term, he should within thirty days from that decision have written to the Secretary General as the first step provided under Article 62 (a) of the Staff Rules and then proceeded to entail the appeal procedure. As he did not do so he is taken to have accepted the shorter term offered to him and to have waived his right to seek a longer duration of that contract.

The procedure that the applicant entailed on 26 November 1999, years later, by submitting a petition to the Secretary General asking for a further extension of service does not cure his failure to have complied with Article 62 (a) of the Staff Rules. The applicant did not send a petition within 30 days of the decision taken by the Secretary General on 23 June 1998 to ask for a review.

Further, an applicant cannot contest the terms of an appointment, which has become final, and to which the applicant did not object at the relevant time - vide the decision in a complaint made against the ILO in 1974 of the Administrative Tribunal at the Thirty-Third Ordinary Session ***In re ELLOUZE - Judgment No. 244.***

It appears that it was following the Tribunal decision of 12 November 1999 in the cases of **Tezera Sahle v. Secretary-General [Case No 3 of 1998]** and **Alemu Ferede v. Secretary-General of the OAU [case No 1 of 1997]** that the applicant applied for the respondent to give him a two-year contract. Regarding the interpretation of Article 51 (a) (ii), this Tribunal has said in **B.W. v. Chairperson of the African Union Commission** (*supra*) and **M. M. v. Chairperson of the African Union Commission** (*supra*) that it is not bound by the decisions rendered by the Tribunal in **Tezera Sahle** and **Alemu Ferede** which decided that

*once an employee has been retired under Article 51 (a) (ii) of the Staff Rules under the 30 – year rule, and the defendant has made a determination that the service of such an employee is not **essential**, that is the end of the road for all intents and purposes. But if he decides that the service of such an employee is essential and that he should be given a contract, he can only give him a 3- year contract renewable only **once** for the same period. He has no discretion to grant a shorter or longer contract and, for the avoidance of doubt, he cannot do so on compassionate grounds.*

After having considered the relevant part of Article 51, which provides as follows:

“Article 51 – Retirement

(a) Compulsory Retirement:

- (i)
- (ii) *Staff members who have continuously served the Organization for 30 years shall be required to retire. However, the Secretary-General may decide to retain them in service on contract of not more than two terms of three years duration each if their services are deemed essential and satisfactory.*

The Tribunal has given its interpretation of the above Article in the cases of **B. W. v. Chairperson of the African Union Commission** (*supra*) and **M. M. v. Chairperson of the African Union Commission** (*supra*). The Tribunal reiterates that interpretation as follows:

This Tribunal considers that the whole purpose of the above provision is to ensure the smooth and efficient running of the organization. It gives discretion only to the Secretary General, now the Chairperson, to decide whether to retain a staff member in service in certain circumstances. The criteria prescribed for exercising the discretion are where it is considered essential for the running of the organization that the staff member whose services are satisfactory be retained in service. The idea behind the bestowing of this discretion is for it to be exercised when the need arises in the interest of the organization as well as the employee and is restrictive only as regards the number of times the contract can be extended and as to the maximum duration of each contract. The set criteria for exercising the discretion will depend on how long the services of the staff member will be essential for the running of the organisation and for how long the staff member is prepared to continue to be in the service. He might be seeking just a short extension. The overall construction of the provision and its application have to be balanced in respect of both parties, not just one of them, especially in the context of human rights. A rigid and restrictive interpretation will defeat the purpose of the provision, which must have been thought of in a spirit of fairness to both parties as it will depend on whether and for how long each one will need the other. We consider that the language of Article 51(a)(ii) is mandatory to the extent that the staff member can only be

retained on contract for a maximum of two terms but there is no mandatory provision in respect of the duration of a term except that it cannot exceed three years. This means that the duration of the contract can be less but not more than three years. If the criteria are met for the Chairperson to retain a staff member in service on the second and last contract, again the duration of that contract can be less but not more than three years.”

For the reasons given, the Tribunal rejects the applicant’s prayers.

The application is accordingly dismissed. In view of all the circumstances, we make no order as to costs.

PRONOUNCED this 26th day of October 2015 in Addis Ababa, Ethiopia.

/s/

HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT

/s/

HONORABLE JUSTICE SHAHEDA PEEROO

/s/

HONORABLE JUSTICE ALIOU BA