



IN THE MATTER OF:

D.C., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Yared SIYUM, Esq.

FOR RESPONDENT: Hajer GUELDICH, Legal Counsel, African Union Commission

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 25 November 2023

JUDGMENT

Procedural and Factual History

1. On 02 January 2023, Applicant, an Administrative Assistant (GSA5) within the Directorate of Conference Management and Printing (DCMP) filed an application contesting his exclusion from the Skills Audit and Competency Assessment (SACA) and for failing to pay him salary in accordance with work performed, and unlawful conversion of his appointment category from fixed-term appointment (FTA) to special service appointment (SSA).
2. The application was transmitted to Respondent on 14 February 2023. Respondent filed his answer on 17 April 2023. Applicant submitted his written Observations on 19 June 2023. On reviewing the parties and considering the matter on 25 November 2023, the Tribunal is satisfied that this matter is suitable for determination on the written record without the need for an oral hearing.
3. Applicant joined the organization in May 2011 as an administrative assistant (GSA5) within the Strategic Policy Planning, Monitoring, Evaluation and Resources Mobilization Department (SPPMERM). In January 2018, arrangements were made by SPPMERM to assign Applicant the role of department planner, in which he served until December 2020.
4. In March 2021, his appointment was extended until 30 September 2021. Applicant believes that he performed on a higher-graded (P-3) from January 2018 to December 2020. On that assumption, he requested HRM on 12 April 2021 to pay him the difference between his own salary grade of GSA5 and that of department planner (P-3). HRM refused the request on 23 July 2021.
5. His appointment expired on 30 September 2021, and no further extension was issued by HRM on the basis of a request not to extend received from Applicant's department. Following a series of correspondences by Applicant, on 8 June 2022 Applicant was offered a special service appointment (SSA) valid for three months, which he counter-signed on 1 September 2022.
6. In his letter of appeal to the Chairperson dated 2 November 2022, Applicant argued the SSA appointment was unlawful as it was done in breach of procedure. Moreover, Applicant claimed that the delays in issuing SSA contract resulted in his exclusion from the SACA and SACA related redundancy benefits. He asked the Chairperson to reinstate him in his fixed-term appointment, to permit his participation in SACA at the level of P-3 and to pay him salary arrears effective 1 October 2021 to August 2022. The Chairperson did not respond.

7. In his application filed on 02 January 2023, Applicant presented the same request as his prayers to the Tribunal. Respondent opposes the application on the grounds of receivability. On the merits, Respondent contends that Applicant's claims are unfounded.

Discussion

8. For an application to be receivable, a staff member must seek review by the Chairperson within thirty (30) days of the contested administrative decision.¹ The Chairperson has thirty (30) days to complete the review, failing which the request will be deemed constructively denied.²
9. The staff member then has additional thirty (30) days to file an application with the Tribunal, reckoned thirty (30) days after the filing of administrative review request or from the date of receipt of a decision on the administrative review request, whichever comes first.³ Staff members must strictly comply with these mandatory timelines.⁴
10. In the application, Applicant contests two distinct administrative decisions. The first contested decision is the refusal of his request for payment of \$161,487 which he claims represents the difference between his GSA-5 salary and the salary of a department planner (at the P-3 level) – the functions he allegedly discharged effective January 2018 - December 2020. The record indicates that HRM refused the request on 23 July 2021.
11. The second contested decision included in the present application is the issuance of a special service appointment in June 2022, which Applicant decries as unlawful change of appointment category and the basis of his exclusion from SACA and related benefits. Unfortunately, in respect to both contested decisions, Applicant failed to timely seek review by the Chairperson as required under Staff rule 62.1. His request for review filed on 2 November 2022 was out of time. The application is time-barred in its entirety.
12. There being no need to reach other issues in the case, the Tribunal DISMISSES the application.

Date: 26 February 2024

/signed/

SYLVESTER MAINGA, PRESIDENT
JAMILA B. SEDQI
PAULO D. COMOANE

Secretary: _____



¹ Staff rule 62.1.

² *Id.*

³ Staff rule 62.1; AUAT Statute art.13(iv).

⁴ *M.Z.L.*, AUAT/2018/001, para. 13.