

COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

RESEARCH TOOL II—CSAT JUDGMENTS: SUMMARIES

Introduction

These *Summaries* provide a one-paragraph synopsis of all Judgments issued by the Commonwealth Secretariat Arbitral Tribunal (CSAT) in a single-paragraph and references previous CSAT cases cited. By referring to the *Summaries*, a Tribunal-researcher may better determine whether to proceed to read an entire Judgment, which is linked from the *Summaries*. Tribunal-researchers may find Keywords attached to all Judgment, by referring to *Research Tool I—CSAT Judgments: Overview*.

NOTE: This document is issued and updated by the CSAT Executive Secretary only as an aid to Tribunal-researchers to access the Judgments of the Tribunal. This document does **not** constitute, nor substitute for, legal advice, nor does it in any way supersede or is it capable of amending Judgments issued by the Tribunal.

[\[44RB\] Dr Tawanda Hondora and The Commonwealth Secretariat](#)

Challenge to the Tribunal's Judgment at first-instance. Review Board dismisses in its entirety the challenge, instead affirming the first-instance Judgment under Article XI.10 CSAT Statute (2015). The Tribunal consolidates its jurisprudence on the limited scope of review under Article XI.5, namely: (i) Article XI.5 is the exhaustive basis for challenging a first-instance Judgment; (ii) The Review Board's role is to examine only the elements of the first-instance Judgment that have been specifically challenged, rather than reviewing it in its entirety or embarking on a retrial of the case; (iii) A challenge must pertain to a finding of fact or law established by the first-instance Judgment, and the Review Board cannot consider an issue that was not presented to the first-instance Tribunal; and (iv) The challenger bears the burden of proof to convince the Review Board that one or more of the grounds for challenge under Article XI.5 are made out. The Review Board also draws upon, with approval, the International Court of Justice's Advisory Opinion, *Application for Review of Judgment No. 158 of the UNAdT* (1973), in which the court addresses: (i) Deference to first-instance judgment; (ii) Failure to exercise jurisdiction; (iii) Error in procedure that has occasioned a failure of justice; and (vi) Adequacy of reasons.

Previous cases cited:

1. [CSAT APL/44 Dr Tawanda Hondora and The Commonwealth Secretariat](#)
2. [CSAT APL/43 REVIEW BOARD Venuprasad vs The Commonwealth Secretariat](#)
3. [CSAT APL/41 Ojiambo vs The Commonwealth Secretariat](#)
4. [CSAT APL/39 REVIEW BOARD Shah vs The Commonwealth Secretariat](#)
5. [CSAT APL/22\(2\) REVIEW BOARD Carmaline Bandara vs The Commonwealth Secretariat](#)

6. [CSAT APL/20\(2\) REVIEW BOARD Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)
 7. [CSAT APL/16\(3\) REVIEW BOARD Monica Oyas vs The Commonwealth Secretariat](#)
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[45] Dr Tawanda Hondora and The Commonwealth Secretariat

Applicant challenges the Respondent's alleged 'sham' investigation of conduct-related complaints against his supervisor, which he filed under the Respondent's Whistleblowing Policy, and the Respondent investigated exhaustively utilizing the services of an independent external investigator. The Applicant was informed that there was found to be 'no case to answer' in relation to any of his complaints on 13 October 2023, and was provided with the underlying Investigation Report, placing him in a position to vindicate his rights, on 18 October 2023. The Tribunal finds this to be a decision by the Respondent denying him relief, in the terms of CSAT Statute, Article II.3(b)(ii)). Consequently, the Tribunal finds the Applicant to have been entitled to file his Application within a period of 90 days after 18 October 2023. The 90-day time period ended on 16 January 2024. The Application was filed on 20 January 2024, four days out of time. The Tribunal finds that filing the Application within the deadline was 'reasonably practicable' and hence no exception arose. Accordingly, the Tribunal dismisses the Application as out-of-time.

Previous cases cited:

1. [APL/6 Philip Pooran vs The Commonwealth Secretariat](#)
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[44] Dr Tawanda Hondora and The Commonwealth Secretariat

Applicant challenges Respondent's decision not to renew his contract in his current position. Applicant argues, *inter alia*, that there was a breach of his legitimate expectation that his contract be renewed, that Respondent breached his contractual obligations by 'disapplying' the Rotation Policy, that Respondent's decision was tainted by conflict of interest and due process violations, and that this decision constituted victimization/retaliation towards him. Tribunal dismisses Application on multiple grounds, including: (i) Respondent's decision to offer Applicant new contract (same pay grade, different department) in view of his deteriorating relationship with his line manager was a proper exercise of Respondent's discretionary powers and in line with paragraph 2.5 of the Rotation Policy which provides that renewal of contract is subjected to 'needs' of Respondent; (ii) Applicant could not have any legitimate expectation for a renewal of the same role at the time of contract renewal; (iii) Respondent gave Applicant clear and sufficient reasons regarding this decision; (iv) non-renewal decision was not tainted by due process violations; (iv) Respondent's decision offering Applicant a new position was not 'victimisation' but an attempt to retain him while ensuring functioning of organization.

Previous cases cited:

8. [CSAT/12 \(No 1\) Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat](#)
 9. [CSAT APL/16 Monica Oyas vs The Commonwealth Secretariat](#)
 10. [CSAT APL/41 Ojiambo vs The Commonwealth Secretariat](#)
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[43] REVIEW BOARD Venuprasad vs The Commonwealth Secretariat

Challenges to Tribunal's [Interim](#) and [Compensation](#) Judgments at first-instance. Review Board dismisses challenge to the Interim Judgment, affirming it instead under Article XI.10 CSAT Statute (2015). Review Board partly allows challenge to Compensation Judgment, finding that Tribunal failed to consider Respondent's 'whistleblower' status which impacted his employment prospects, thus lowering (i) Applicant's loss of earnings before and after April 2018 by 15%; and (ii) reducing Applicant's moral injury damages by £10,000.

Previous cases cited:

1. [CSAT/1 Gurmeet Hans vs the Commonwealth Secretariat and Ms Seelawathi Ebert, Regional Director, Commonwealth Youth Programme](#)
 2. [CSAT/3 \(No 1\) Selina Mohsin vs the Commonwealth Secretariat](#)
 3. [CSAT/12 \(No 2\) Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat](#)
 4. [CSAT APL/16 \(No 3\) Monica Oyas vs The Commonwealth Secretariat](#)
 5. [CSAT/20 Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)
 6. [CSAT/20 \(No 2\) Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)
 7. [CSAT/21 Theodora Addo vs The Commonwealth Secretariat](#)
 8. [CSAT/22 \(No 2\) Carmaline Bandara vs The Commonwealth Secretariat](#)
 9. [CSAT APL/36 Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat](#)
 10. [CSAT/APL.39 Shah vs The Commonwealth Secretariat](#)
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[42] HH, HL & DW vs The Commonwealth Secretariat

Applicants' joint Application challenging Respondent's decision not to review or amend its current expatriate allowances: 14% gross annual salary and an education allowance of school fees up to £18,706 per child per scholastic year. Applicants rely on the UK Equality Act 2010 and principles of international administrative law to contend that this amounts to a breach of their contract, as well as to unlawful discrimination and unequal treatment. Tribunal dismisses Application on three grounds: (i) that Tribunal has no jurisdiction provided under Article II CSAT Statute (2015) as the policies relied upon by Applicants do not form part of the contractual terms between the parties; (ii) the UK Equality Act 2010 does not apply as Tribunal is bound only by principles of international administrative law in deciding cases relating to contracts of service, in accordance with Article XII CSAT Statute (2015); and (iii) the disputed policy, although discriminatory, is justified under principles of international administrative law.

Previous cases cited:

1. [CSAT APL/18 PH vs The Commonwealth Secretariat](#)
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[41(2)] Ojiambo vs The Commonwealth Secretariat

Compensation Judgment relating to [CSAT APL/41 Ojiambo vs The Commonwealth Secretariat](#). Applicant argues that she should be compensated for a full renewal of her employment (three years), future losses, moral and aggravated damages, and other losses. Respondent contends that Applicant should only be awarded for 3.5 months on the basis of a short-term extension as there was an ongoing structural change to her position. Tribunal awards: (i) loss of remuneration for seven months by considering the likely length of extension and loss of chance; (ii) moral damages; and (iii) some losses as claimed by Applicant. Tribunal rejects Applicant's claims for aggravated damages.

Previous cases cited:

1. [CSAT/3 \(No 2\) Selina Mohsin vs the Commonwealth Secretariat](#)
 2. [CSAT/12 \(No 2\) Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat](#)
 3. [CSAT/21 Theodora Addo vs The Commonwealth Secretariat](#)
 4. [CSAT/22 \(No 2\) Carmaline Bandara vs The Commonwealth Secretariat](#)
 5. [CSAT APL/27 Sunder Singh vs The Commonwealth Secretariat](#)
 6. [Csat.APL/40 \(No.2\) Venuprasad vs The Commonwealth Secretariat](#)
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[41] Ojiambo vs The Commonwealth Secretariat

Applicant challenges Respondent's decision not to renew her contract as Deputy Secretary-General ('DSG') for another term for financial reasons. Applicant argues, *inter alia*, that the renewal of her contract should be considered at the time it was due to end (mid to late 2017) instead of based on Respondent's 2016 policy decision and that she should be entitled to an unconditional offer of a short-term extension. Respondent argues that it did not make a decision as Applicant had no automatic right to renewal, excluding this case from Tribunal's jurisdiction. Tribunal finds that Respondent breached its contractual obligations based on two principal grounds: (i) Respondent did not consider whether there was good reason not to renew Applicant's contract at the time of the decision in 2017; and (ii) Respondent's offer of a short-term extension conditional upon Applicant giving up her rights to pursue grievance proceedings was a misuse of Respondent's power. Tribunal dismisses Applicant's claim arising out of other aspects of her treatment.

Previous cases cited:

1. [CSAT/5 \(No 1\) Rumman Faruqi vs the Commonwealth Secretariat](#)
2. [CSAT/5 \(No 2\) Rumman Faruqi vs the Commonwealth Secretariat](#)
3. [CSAT/12 \(No 1\) Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat](#)

4. [CSAT/12 \(No 2\) Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat](#)
 5. [CSAT APL/16 Monica Oyas vs The Commonwealth Secretariat](#)
 6. [CSAT APL/19 HK vs The Commonwealth Secretariat](#)
 7. [CSAT/21 Theodora Addo vs The Commonwealth Secretariat](#)
 8. [CSAT/22 \(No 2\) Carmaline Bandara vs The Commonwealth Secretariat](#)
 9. [CSAT APL/27 Sunder Singh vs The Commonwealth Secretariat](#)
 10. [CSAT APL.40 Venuprasad vs The Commonwealth Secretariat](#)
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[40(3)] Venuprasad vs The Commonwealth Secretariat

Respondent's Stay Application on related [Compensation Judgment](#) awarding Applicant £292,700, pending Respondent's Review Application of the Interim and Compensation Judgments. Respondent argues that where the Review Application is successful, Applicant may not have the financial means to repay, and that Respondent will face difficulties with bringing recovery proceedings in India due to the immunity it enjoys. Tribunal allows Application in part, ordering immediate payment of £150,000 be paid to Applicant in the interest of justice and grants a stay of the balance on the condition that Respondent undertakes to pay at the interest rate of 3% per annum should the review fail.

[40(2)] Venuprasad vs The Commonwealth Secretariat

Compensation Judgment relating to [CSAT APL.40 Venuprasad vs The Commonwealth Secretariat](#) where Tribunal found that Respondent breached their contractual obligations for, *inter alia*, suspending Applicant, failing to ensure procedural safeguards for the Disciplinary Board proceedings, dismissal of Applicant's internal appeal, and making adverse statements about Applicant to the media. Applicant claims, *inter alia*, for loss of earnings, loss of future earnings, loss of contractual benefits, medical costs, travel costs related to job-search and to London for Tribunal-related matters, moral injury, and harm to his health. The parties also disputed on how the net remuneration should be calculated, as per Article X.1 CSAT Statute (2015). Tribunal awards: (i) compensation for loss of earnings; (ii) moral injury and injury to health; (iii) certain medical costs; and (iv) partial travel costs. Tribunal rejects Applicant's claims for aggravated damages. In considering the ceiling for net remuneration under Article X.1, Tribunal finds that the amount must include all elements of remuneration, not just basic salary.

Previous cases cited:

1. [CSAT/3 \(No 2\) Selina Mohsin vs the Commonwealth Secretariat](#)
2. [CSAT/12 \(No 2\) Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat](#)
3. [CSAT/21 Theodora Addo vs The Commonwealth Secretariat](#)
4. [CSAT/22 \(No 2\) Carmaline Bandara vs The Commonwealth Secretariat](#)
5. [CSAT APL/27 Sunder Singh vs The Commonwealth Secretariat](#)

[40] Venuprasad vs The Commonwealth Secretariat

Applicant challenges Respondent's decisions to suspend him, subject him to a disciplinary procedure, issue him a final written warning, and to dismiss his appeal. Tribunal allows Application on the following grounds: (i) suspension was inconsistent with Applicant's contract of employment and was not reviewed by Respondent regularly as required by Part 5 Section 5 of the Staff Handbook; (ii) disciplinary procedure was procedurally defective as there were no "exceptional circumstances" to justify proceeding in Applicant's absence, Applicant should be given opportunity to respond, and Board should consider other procedural options for a fair hearing as "special measures" provided in Part 5, Section 6 of the Staff Handbook; (iii) final written warning did not serve any proper purpose and was disproportionate as Applicant's employment was due to terminate shortly after the outcome and it would only serve to significantly disadvantage him in future employment prospects; and (iv) internal appeal decision should be set aside in view of the procedural defects of the disciplinary procedure.

Previous cases cited:

1. [CSAT/3 \(No 1\) Selina Mohsin vs the Commonwealth Secretariat](#)
2. [CSAT/14 \(No 2\) AK vs The Commonwealth Secretariat](#)
3. [CSAT APL/19 HK vs The Commonwealth Secretariat](#)
4. [CSAT/20 Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)
5. [CSAT/20 \(No 2\) Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)
6. [CSAT/21 Theodora Addo vs The Commonwealth Secretariat](#)
7. [CSAT/22 \(No 2\) Carmaline Bandara vs The Commonwealth Secretariat](#)
8. [CSAT APL/27 Sunder Singh vs The Commonwealth Secretariat](#)

[39] REVIEW BOARD Shah vs The Commonwealth Secretariat

Review Application challenging related Tribunal's Judgment dismissing Applicant's claims relating to the termination of her employment on the grounds of redundancy. Applicant argues that Tribunal acted unreasonably in making certain findings. Review Board dismisses Review Application for lack of jurisdiction as Applicant failed to exhaust internal remedies on two grounds: (i) Applicant failed to exercise the special right of appeal provided by the Respondent in the context of the 2014 restructuring, which is a relevant internal remedy for the purposes of Article II.3(a) CSAT Statute (2015); and (ii) there was an ongoing grievance process concerning Applicant's complaint about unfair and unequal treatment.

[38] Kamuganga vs The Commonwealth Secretariat

Applicant challenges Respondent's decision to terminate his employment as an expert consultant rendering services to Southern African Development Corporation ('SADC'). Applicant alleges that his termination was contrary to the terms of his

contract and in breach of natural justice, and that the manner of termination infringed the implied term in international administrative law that employer must treat employee with dignity. Tribunal dismisses the Application on three grounds: (i) Applicant may be terminated as he was not performing his assignment “to the satisfaction” of the SADC as provided in Clause 19.1(c) of the Terms and Conditions for Trade Advisers which is incorporated into Applicant’s contract; (ii) there was a reasonable and proper basis for SADC’s dissatisfaction and the termination did not breach standard of fairness; and (iii) Respondent’s manner of dismissal did not breach its duty to treat its employees with dignity.

Previous cases cited:

1. [CSAT APL/27 Sunder Singh vs The Commonwealth Secretariat](#)
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[37(2)] Matus vs The Commonwealth Secretariat

Applicant challenges Respondent’s decision to accept the Respondent’s internal review and recommendation to terminate her employment after extended probation, dismiss Applicant’s appeal to this recommendation and her request for independent investigation. Applicant argues, *inter alia*, unfairness extending the period of probation; flawed internal review and failure to give Applicant a chance to respond to oral accounts; unlawful to place Applicant on administrative leave; escort from building infringed rights; and denial of independent investigation by Secretary-General. Excluding numerous and unsubstantiated grounds, the Tribunal allows Application partially, dismissing on grounds including: (i) claims of unfairness relating to extended probation not accepted as it is clear that Applicant’s performance was unsatisfactory; (ii) Applicant’s right to fair treatment was not infringed as the oral accounts were clarifications of fact and did not raise significant new material Applicant needs to address; (iii) administrative leave not unlawful as this was a decision Respondent could rationally take in exercise of its discretion; and (iv) escort from building was not a breach of implied obligation to treat staff with dignity and respect. However, Tribunal did find that Applicant possessed a right to have her request for investigation lawfully considered and Secretary-General misdirected himself in the way said request was refused.

Previous cases cited:

1. [CSAT/20 Julius Ndung’u Kaberere vs The Commonwealth Secretariat](#)
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[37(1)] Matus vs The Commonwealth Secretariat

Judgment providing summary for Tribunal’s reasons in granting Interlocutory Order on 20 October 2016, regarding Applicant’s challenge to Respondent’s decision to accept the recommendation of an internal review board to terminate her after extended probation, dismiss Applicant’s appeal to this recommendation and her request for independent investigation. The Tribunal orders: (i) oral procedure appropriate for the specific issue of Applicant being escorted from building; (ii) disclosure of the audio recordings of the first internal review board meeting to be

transcribed and produced as evidence; (iii) if there are no recordings of the internal review board meeting, disclosure of any notes or written records; and (iv) direction requiring Respondent to provide clarification to a document relied on in Annex XIII to the Answer.

[\[36\] REVIEW BOARD Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat](#)

Review Application challenging Tribunal's related [Second Judgment](#) dismissing Applicant impugning a Job Evaluation. Applicants' grounds for review are: Tribunal erred in law and fact in its findings relating to the propriety of the 2009 Job Evaluation, and Tribunal erred in law on Respondent's duty of good faith by not ensuring Applicants were not disadvantaged by non-implementation of the job evaluation and payment of backpay. Review Board dismisses Application on the ground that it does not have the power to review in accordance with Article XI.5 CSAT Statute (2015) as Applicants raised new arguments on both grounds of review.

[\[32, 34, 35\] Dadhwal, Angra and Singh vs The Commonwealth Secretariat](#)

Applicants challenge Respondent's decision to backdate their pay increase from 1 July 2011 following the 2013 review, and not earlier despite their many years of irregular employment. Tribunal dismisses the claims on four grounds: (i) there is no duty in international administrative law to backdate a pay increase, thus Respondent has discretion whether and when to backdate an increase; (ii) Respondent's "without prejudice" offers to settlements on non-salary benefits is not an admission of liability; (iii) Respondent's delay in regularizing Applicants' contractual position would not entitle them to further back-payment of salary; and (iv) there was no inequality, unfairness and injustice as Applicants were treated consistently with other employees in terms of the 2013 review.

Previous cases cited:

1. [CSAT APL/28 Kumar Chand Dogra vs The Commonwealth Secretariat](#)
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[\[33\] Derrick Akintade vs The Commonwealth Secretariat](#)

Applicant terminated from employment as his post was disestablished and entire section discontinued. Applicant challenges external Investigator's Report, Deputy Secretary-General's decision accepting Investigator's findings, and Secretary-General's decision dismissing his internal appeal. Tribunal finds that Article II CSAT Statute (2015) limits its jurisdiction to Secretary-General's decision. Tribunal dismisses the claims on five principal grounds: (i) Respondent's non-renewal of Applicant's third three-year contract was not a breach of its contractual obligations in Staff Rule 11 as renewal was subjected to the needs of the Respondent; (ii) Respondent breached Staff Rule 16 by not giving Applicant six months' notice on

non-renewal but this breach was remedied by a six-months extension as provided in the rule; (iii) Applicant had no legitimate expectation that his contract will be renewed; (iv) reasons given sufficient to satisfy Regulation 16(a); and (v) lack of consultation not a breach of obligation as no exchange with Applicant could have avoided decision to make him redundant.

Previous cases cited:

1. [CSAT APL/16 Monica Oyas vs The Commonwealth Secretariat](#)
 2. [CSAT APL/24/25/26 Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat](#)
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[\[30, 31\] Madonna Lynch vs The Commonwealth Secretariat](#)

Applicant filed two Applications simultaneously: firstly, Applicant invites Tribunal to investigate the two disciplinary allegations against her which she was acquitted; and secondly, the same is requested on the external Investigator's investigation which forms part of the grievance process initiated by Applicant. Tribunal dismisses the first Application on the ground that Article II CSAT Statute (2015) limits its jurisdiction to staff claims arising from alleged breach of contract and that it has no power to conduct investigations. In relation to the second Application, Tribunal considers two strands of Applicant's case as a matter of substance but dismisses these claims as: (i) informal action was not carried out before formal grievance process started because Applicant initiated the process and (ii) Applicant had no legal entitlement to the interim Grievance Report.

Previous cases cited:

1. [CSAT/21 Theodora Addo vs The Commonwealth Secretariat](#)
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[\[29\] Chandni Shah vs The Commonwealth Secretariat](#)

Applicant contests decision of Respondent to terminate her employment on grounds of redundancy. Applicant argues, *inter alia*, that her dismissal was unlawful as she had "indefinite tenure" until age 65 and her redundancy payment should reflect this right. Respondent argues that internal remedies were not exhausted as Applicant did not appeal her redeployment decision and she did not await the outcome of her grievance process. Tribunal dismisses Application on these grounds: (i) it could only consider Applicant's claim that her dismissal was a breach of contract, but did not have jurisdiction to hear matters concerning her redeployment and those in her grievance process; (ii) her dismissal was lawful and in line with Staff Regulation 16 (incorporated into her contract) despite her misunderstanding of "indefinite" contract as an "indefinite tenure" instead of the normal reference to a contract of uncertain duration; and (iii) she had no right to receive redundancy payment reflecting right to be employed to age 65.

[28] Kumar Chand Dogra vs The Commonwealth Secretariat

Applicant, an employee at Commonwealth Youth Centre Asia Centre, challenges Respondent's decision to grade and pay him lower than an Africa Centre colleague he deems to have a corresponding position. Tribunal dismisses Application on the ground that it was reasonably clear that this colleague held a senior management position and his duties were clearly of a higher level than the Applicant, thus there was no basis for an allegation of unfair treatment.

Previous cases cited:

1. [CSAT APL/22 \(No 1\) Carmaline Bandara vs The Commonwealth Secretariat](#)
 2. [CSAT APL/27 Sunder Singh vs The Commonwealth Secretariat](#)
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[27] Sunder Singh vs The Commonwealth Secretariat

Applicant challenges Respondent's decision not to give him a pay-rise following a pay evaluation and to not compensate him for the extra duties he undertook. Applicant argues that he should be compensated for the extra work whether by additional payment, responsibility allowance, re-grading or recalibration of salary. Tribunal allows Application partially on the ground that Respondent breached their implied obligation in international administrative law to treat staff members with dignity by delaying response to Applicant's request for additional payment, leading him to believe that an imminent job evaluation process would provide a remedy or answer to his claims. Tribunal dismisses Applicant's other claims, deciding that: (i) Respondent did not act unlawfully in fixing grade of Applicant's job; (ii) Respondent not obliged to increase Applicant's salary as assignment of salary levels to grades is a matter of employer discretion; (iii) Responsibility allowance is at Director's discretion and duties must be "greater" than those of staff members' own grade, which is not the case here; and (iv) there was no discriminatory treatment towards Applicant.

Previous cases cited:

1. [CSAT APL/16 Monica Oyas vs The Commonwealth Secretariat](#)
 2. [CSAT APL/19 HK vs The Commonwealth Secretariat](#)
 3. [CSAT/14 \(No 1\) Ann Keeling vs The Commonwealth Secretariat](#)
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[24/25/26(3)] Second Judgment - Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat

Judgment on Applicants' outstanding claim in [CSAT APL/24/25/26 Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat](#). Applicants argue that they should have been upgraded and paid at a higher grade following a job evaluation. Tribunal dismisses claims on the grounds that: (i) the job evaluation does not refer to the Applicants' positions and (ii) even if the Applicants regularly undertook tasks which were of higher level than their own jobs, they cannot be

treated as holding these positions. Tribunal dismisses Applicants' arguments on legitimate expectation, breach of good faith, breach of duty of fairness and equal treatment, breach of equal pay for equal work, and unjust enrichment.

Previous cases cited:

1. [CSAT APL/16 Monica Oyas vs The Commonwealth Secretariat](#)
2. [CSAT APL/16 \(No 3\) Monica Oyas vs The Commonwealth Secretariat](#)
3. [CSAT APL/27 Sunder Singh vs The Commonwealth Secretariat](#)

[\[24/25/26\(2\)\] Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat](#)

Three similar Applications heard jointly. Applicants argue that they have been wrongfully denied their “pension gratuities”, that they should have been upgraded and paid at a higher grade following a job evaluation, and that Respondent breached its duty under the grievance procedure as no substantive response was given. Tribunal considers that it had jurisdiction according to Article II CSAT Statute (2007): although internal remedies were not exhausted, this was an exceptional case where remedies available under the grievance procedure cannot adequately address the issues raised. Nonetheless, Tribunal dismisses claims on “pension gratuities” on the grounds that, *inter alia*, Applicants had no contractual claim or legitimate expectation to the pension gratuity. Tribunal considers Applicants' job evaluation claim in related [Second Judgment](#).

Previous cases cited:

1. [CSAT APL/16 Monica Oyas vs The Commonwealth Secretariat](#)

[\[24/25/26\(1\)\] Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat](#)

Procedural order made relating to [CSAT APL/24/25/26 Efe Ototahor, Gizela Erasmus & Olusola Aina vs The Commonwealth Secretariat](#). Tribunal ordered: (i) Respondent to deliver to Tribunal and Applicants the “attached document”; (ii) Respondent to serve further submissions in relation to the “attached document”; (iii) Applicant to serve response to Respondent's further submissions; and (iv) Respondent to serve reply to Applicant's response.

[\[23\] Madonna Lynch vs The Commonwealth Secretariat](#)

Applicant filed an application challenging the decision of the Disciplinary Board while awaiting her appeal to the Secretary-General. Tribunal dismisses Application for lack of jurisdiction as Applicant had not exhaust all internal remedies as per Article II.3 CSAT Statute (2007) at the time of her application. Tribunal emphasizes

significance of paragraph 17 of Annex 1 to the Staff Rules stating that only the Secretary-General's decision is "final".

[22(2)] REVIEW BOARD Carmaline Bandara vs The Commonwealth Secretariat

Review Application challenging [Tribunal's Judgment](#) on the grounds that Tribunal erred in law relating to Respondent's duty of good faith towards Applicant and its conduct in relation to the grievance process, and that Tribunal erred in law and fact relating to the propriety of the 2009 Job Evaluation. Review Board partly allows challenge on the ground that Respondent breached its obligations to conduct a timely and effective grievance process, thus substituting its own determination on this claim pursuant to Article XI.11 CSAT Statute (2007). Review Board dismisses other grounds of review.

Previous cases cited:

1. [CSAT/21 Theodora Addo vs The Commonwealth Secretariat](#)
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[22(1)] Carmaline Bandara vs The Commonwealth Secretariat

Applicant challenges Respondent's decision to uphold the discontinuation of her higher responsibility allowance (HRA) and to distribute her duties. Tribunal dismisses the Application on the following grounds: (i) HRA was lawfully withdrawn thus there was no basis for Applicant's arguments for legitimate expectation that HRA would not be withdrawn or that she was entitled to permanent promotion; (ii) no general principle of international administrative law that total pay can never be reduced; (iii) Job evaluation was a matter for the panel and Respondent can decide to implement as employer; and (iv) Respondent can redistribute duties as employer so long as they do not remove duties which reasonably pertain to Applicant's grade and post, and where such redistribution is not an abuse of power.

[21] Theodora Addo vs The Commonwealth Secretariat

Applicant identifies contested decisions as harassment, discrimination and bullying by managers, not appointing her as Acting Head of Library, divulging of her confidential information, not giving her a complete version of the Grievance Investigation Report, and not agreeing to her requests made on 1 February 2013 ('February Requests'). Tribunal partly allows the Application on these grounds: (i) Respondent breached its duty of care for the dignity and reputation of the employee in relation to the harassment and discrimination by its managers to Applicant, not addressing Applicant's February Requests, and further for not responding to Applicant; (ii) Respondent is vicariously responsible for divulging information through its managers; and (iii) while Respondent has discretion to decide form of answer to grievance, it cannot omit parts of a document without sufficient justification where it supplies it. Tribunal does not accept that Applicant should be

appointed as sole Acting Head of Library. Remedies: Respondent to provide complete and sign letters responding to Applicant's February Requests and as written apology, as specific performance pursuant to Article X CSAT Statute (2007), and compensation of £20,000 for moral injury.

[\[20\(2\)\] REVIEW BOARD Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)

Review Application challenging related [Tribunal's Judgment](#) on the ground that Tribunal erred in fact and law for, *inter alia*, not exercising its jurisdiction to stay the disciplinary proceedings, its findings on existence of discrimination and unequal treatment, gratuity, and suspension. Review Board dismisses Application and affirms Tribunal's first-instance judgment.

[\[20\(1\)\] Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)

Application (Ex Parte) to redact related [Tribunal's Judgment](#). Tribunal dismisses Application on the grounds that: (i) the principle of "open justice" must be adhered to in the absence of a general principle of international administrative law on this matter and (ii) possible effect of discouraging future employers to employ Applicant and a pending review process are not grounds for redaction.

[\[20\] Julius Ndung'u Kaberere vs The Commonwealth Secretariat](#)

Applicant claims, *inter alia*, for an order staying hearings of the disciplinary panel and a determination that the proceedings were unlawful, and financial remedy for his "constructive dismissal", suspension, and unfair discrimination and unequal treatment. Tribunal dismisses the Application on the following grounds, *inter alia*: (i) the disciplinary panel hearings were lawful as mere termination of employment does not render the subsequent process unlawful or ineffective; (ii) no basis for constructive dismissal or that his suspension was unlawful and led to discrimination and victimisation; and (iii) Applicant did not face unfair discrimination and unequal treatment.

[\[19\] HK vs The Commonwealth Secretariat](#)

Applicant challenges Respondents' decisions on compensation to be paid to him for additional duties and the award of an additional duties allowance to a colleague. Respondent argues that the Application is out of time and raises several jurisdictional objections. Tribunal partly allows the Application on the grounds that: (i) Application was not out of time as Applicant did not abuse the process and Respondent's decision serves as "notice" that relief sought by Applicant would not

be granted pursuant to Article II.2(ii)(b) CSAT Statute (2007); and (ii) Respondent's failure to pay Applicant for additional duties was a breach of its duty. Nonetheless, Tribunal finds that it did not have jurisdiction to decide on the award of the allowance to the Applicant's colleague as such colleague did not bring an Application before the Tribunal pursuant to Article II CSAT Statute (2007).

[\[18\] PH vs The Commonwealth Secretariat](#)

Applicant challenges Respondent's decisions not to treat him as an 'overseas recruited staff member' (ORSM) and to allocate him resulting benefits, to pay him an installation grant of 7% net salary rather than 9% for married ORSMs, and to not cover his repatriation allowances. The Tribunal dismisses the Application on the following grounds, *inter alia*: (i) Respondent did not breach the principle of equality or non-discrimination by allocating the ORSM benefits to those in need of special protections, i.e., those liable to expulsion from the UK should they be terminated by Respondent; (ii) there was no bad faith, mistake, or misrepresentation by Respondent on Applicant's repatriation benefits; and (iii) there was no breach of duty of equality or fairness.

[\[17\] CH vs The Commonwealth Secretariat](#)

Applicant challenges Respondent's procedural decisions in her grievance procedures and the harassment procedures against her instigated by a colleague, claiming that Respondent's actions amount to breach of contract and constructive dismissal. Tribunal dismisses Application on multiple grounds, *inter alia*: (i) implicit in contract and principle of good administration in international civil service that grievance procedures be interpreted and operated flexibly to meet needs of case, hence Respondent has management discretion to conduct one investigation on the grievance procedures before it, and to apply harassment procedures instead of discipline procedures on the grievance procedure brought by Applicant against a colleague; (ii) there was no inordinate delay based on the facts of the case; (iii) Respondent did not breach its health and safety obligations; and (iv) Respondent not guilty of bullying.

[\[16\(3\)\] REVIEW BOARD Monica Oyas vs The Commonwealth Secretariat](#)

Review Application challenging related [Tribunal Judgment](#) on, *inter alia*, the grounds that first-instance Tribunal erred in facts and law by not considering that Applicant's position and Director Human Resources role are similar, Tribunal erred in law by overlooking Applicant's unequal treatment and by leaving ambiguity in terms of Applicant's entitlement to be granted a further fixed term contract. Review Board dismisses Application and affirms Tribunal's Judgment, clarifying that there was no ambiguity to Tribunal's Judgment that Applicant has legitimate expectation to a further fixed term contract, but not a contractual right to such an extension.

[16(2)] Monica Oyas vs The Commonwealth Secretariat

Procedural order on the validity of the Review Application challenging related [Tribunal Judgment](#). Respondent argues that the Review Application was invalid because there was an absence of date or signature, and as the time limit for review under Article XI.5 CSAT Statute (2007) has elapsed, it is now too late for the Applicant to file a Review Application. CSAT President finds that the Review Application is valid on the grounds that: (i) in the absence of a specific provision, there are no requirements for the Review Application to be dated and signed; and (ii) Review Application fulfils all the requirements pursuant to Article XI.8 CSAT Statute (2007).

[16] Monica Oyas vs The Commonwealth Secretariat

Applicant challenges Respondent's decisions to advertise and fill by open competition the role of Director Human Resources (DHR), and to make no decision on renewal of her contract until DHR appointed. Applicant argues, *inter alia*, that she should be entitled to DHR position as her current position as Head of Human Resources is substantively the same except by name, that she should be designated to pay point C as per job evaluation, and that Respondent's decisions were unlawful. Tribunal dismisses Application on multiple grounds, including: (i) international administrative law provides that Respondent is not obliged to accept advice or recommendations from its advisers; (ii) Applicant not entitled to DHR as it is a more senior role; (iii) Respondent's decision to fill DHR role by open competition is in accordance with equal opportunity principle and Staff Rules and Regulations; and (iv) Applicant has no contractual right to insist on renewal and that imperfections in communication do not amount to a breach of international administrative law. Nonetheless, Tribunal agrees that Applicant had legitimate expectation for her contract to be renewed for another three-year term.

[16(1)] Monica Oyas vs The Commonwealth Secretariat

Application for interim injunction to order Respondent to suspend, *inter alia*, the recruitment process for the post of Director Human Resources and the making or implementation of any decisions relating to Applicant's employment contract. Tribunal allows interim application as it is satisfied that there are reasonable grounds to justify the injunction and pursuant to its power provided under Article X CSAT Statute (2007) and Rule 23 CSAT Rules (2006). Tribunal further orders Applicant's employment contract to be extended until 31 July 2011 or until Tribunal's Judgment whichever is sooner.

Previous cases cited:

1. [CSAT/5 \(No 1\) Rumman Faruqi vs the Commonwealth Secretariat](#)

[\[15\] MH vs The Commonwealth Secretariat](#)

Applicant contends that Respondent's mandatory retirement age policy is in breach of her right under international law not to be discriminated against on grounds of age. Applicant advances her argument relying on both international law (ICCPR, citing UNHRC) and United Kingdom national law. Tribunal dismisses Application on multiple grounds, including: (i) Respondent is an international organization, thus not bound by ICCPR; (ii) Tribunal bound by the principles of international administrative law which shall apply to the exclusion of national law (in this case, United Kingdom laws) pursuant to Article XII(1) CSAT Statute (2007); (iii) Tribunal not bound by the findings of UNHRC; and (iv) there is no universal agreement among international organizations on retirement age, it depends on the age that best suits its own requirements and circumstances.

[\[14\(2\)\] AK vs The Commonwealth Secretariat](#)

Applicant challenges Respondent's decisions, or lack of, relating to complaints made against her by her colleague. Applicant argues, *inter alia*, that she was discriminated on the ground of her colour, and that Respondent owed her duty of care for safety of work environment and implied terms of mutual trust and confidence. Tribunal allows Application partly on the ground that the Applicant was a victim of unequal treatment as she was entitled a regular and fair procedure as an international civil servant. However, Tribunal dismisses the remaining claims on the following grounds: (i) Applicant not a victim of discrimination based on her colour; and (ii) Respondent did not breach their general duty of care to Applicant.

[\[14\(1\)\] Ann Keeling vs The Commonwealth Secretariat](#)

Decision on jurisdiction (persons) prior to related [Tribunal's Judgment](#). Respondent challenges jurisdiction of Tribunal on the grounds that Applicant was at all times a secondee and that there was no contract of service between the parties. Tribunal allows Application on the ground that Respondent always intended to be Applicant's secondary employer as they hired her independently prior to the secondment agreement and were in a position to dismiss her (in consultation with her primary employer). Thus, Applicant entitled to bring complaint pursuant to Article II CSAT Statute (2007).

[12(2)] Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat

Compensation Judgment relating to [CSAT/12 \(No 1\) Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat](#). Applicant argues that he should be compensated, *inter alia*, for full renewal of his employment (three years); benefits such as home leave fares, gratuity, education allowance and repatriation costs; compensation for damage to professional reputation and injury to feelings; damage to intellectual property; and legal costs. Respondent contends that the amount claimed was manifestly in excess of the maximum award provided in Article X CSAT Statute (2007) and that the prospect of renewal of Applicant's contract was only 50%. Tribunal partly allows Application on multiple grounds, including: (i) three years pay as Tribunal does not need to consider whether Respondent may or may not have renewed contract; and (ii) benefits that are permanent or payable over a lengthy period of time that can be included in 'total net remuneration', including repatriation costs but not home leave fares, gratuity, and education allowance. Tribunal rejects: (i) Applicant's case was 'exceptional' as per Article X.1 CSAT Statute (2007), thus it should not exceed maximum award; (ii) claims relating to damage to professional reputation and injury to feelings, and damage to intellectual property.

[12(1)] Professor Victor Ohiometa Ayeni vs The Commonwealth Secretariat

Applicant challenges Respondent's decision not to renew his contract as Director. Applicant claims that the decision was unlawful and against the Rules and Procedures of the Secretariat and that he was discriminated on his race and nationality. Tribunal allows Application on the grounds that: (i) Applicant has legitimate expectations that his contract would be renewed and (ii) Respondent did not provide reasons on the exercise of this discretion of non-renewal. Nonetheless, Tribunal did not address the discrimination point as they found that this has been sufficiently addressed by an investigation panel and the Disciplinary Board.

[11] John Saddington vs the Commonwealth Secretariat

Applicant challenges Respondent's decision not to renew his contract. Applicant argues, *inter alia*, that Respondent contractually obligated to renew his contract until retirement age and Respondent unilaterally varied his contract by subjecting him to the Rotation Policy. Tribunal dismisses Application on grounds including: (i) Respondent's oral assurance regarding security of tenure did not form a term of the contract as there was lack of intention, assurance not substantive and there was a change in position of law; (ii) variation of Rotation Policy was done based on mutual consent following consultations and clear that Applicant knew of it; and (iii)

Respondent not obligated to renew Applicant's contract as they were bound to follow Rotation Policy.

[\[9\] Simmons and others vs the Commonwealth Secretariat](#)

Applicants challenge Respondent's decision relating to payment of Cost-of-Living Allowance (COLA). Applicants argue that the decision was incompatible with the [Tribunal's Judgment in CSAT/7 Commonwealth Secretariat Staff Association vs the Commonwealth Secretariat](#). Tribunal dismisses Application on the ground that Respondent's decision on how to pay COLA is a proper exercise of their discretion and was not unreasonable.

[\[8\(3\)\] SERVICES Sumukan Ltd vs the Commonwealth Secretariat](#)

Compensation Judgment relating to [CSAT/8 \(No 2\) Sumukan Ltd vs the Commonwealth Secretariat](#). Tribunal orders only nominal damages of £100 to be paid to Applicant as no evidence to suggest malice or deliberate refusal of Respondent to pay travel claims, and to pay estimated financial loss based on the interest a trading bank would charge for the outstanding amount or interest a similar amount in a trading bank would yield. No order on costs.

[\[8\(2\)\] SERVICES Sumukan Ltd vs the Commonwealth Secretariat](#)

Applicant alleges breach of contract for services by Respondent. Applicant argues, *inter alia*, that they owned the intellectual property rights to the software and website, and claims damages for breach of contract and delayed payment of contractual fees and related costs of recovery. Tribunal allows only one of Applicant's claims, on the delayed payment of their travel expenses claim, on the ground that Respondent's delay was breach of an implied term. Tribunal rejects all other claims, on multiple grounds, including: (i) collective ownership of the software and website and all intellectual property rights belonged to the Respondent according to the approach laid down in the *Investors Compensation Scheme Limited v the West Bromwich Building Society and others* case (which is applicable pursuant to Article XIV.3 of CSAT Statute (2004)); (ii) as there was legitimate dispute on whether Applicant completed contractual obligations, Respondent's act of withholding payment was reasonable and was not a breach of contract; and (iii) Applicant had no basis to claim for additional expenses for developing the website as there was no prior written agreement to expand the Terms of Reference in the contract.

[8(1)] SERVICES Sumukan Ltd vs the Commonwealth Secretariat

Interlocutory Application by Respondent relating to [CSAT/8 \(No 2\) Sumukan Ltd vs the Commonwealth Secretariat](#). Respondent contends Application filed out of time and is Statute-barred pursuant to Article II CSAT Statute (1999). Tribunal rejects Interlocutory Application on the ground that attempts at settling dispute amicably was still ongoing between parties on 27 February 2003, hence Application filed by Applicant on 28 April 2003 well within 3-month limitation period.

[7] Commonwealth Secretariat Staff Association vs the Commonwealth Secretariat

Applicants challenge Respondent's decision not to pay staff Cost-of-Living Allowance (COLA) for the year 2002/2003. Applicants argue that this action was a breach of their contracts, or alternatively, that Respondent had exercised its discretionary powers unlawfully and its decision was procedurally unfair and/or disproportionate. Tribunal allows Application partly on the ground that while COLA was not a contractual entitlement for the Applicants, Respondent had exercised its discretionary powers unlawfully in this case. Tribunal orders rescission of decision and moral damages of £100 to be paid to Applicants.

[6] Philip Pooran vs the Commonwealth Secretariat

Applicant challenges Respondent's decision to make him redundant. Respondent argues that the Application is out of time and that Applicant had not exhausted internal remedies regarding his new allegations of victimization. Tribunal allows the Application on the grounds that: (i) the Application was in time, as the date from which the deadline should be computed is from the date of his termination; and (ii) the internal remedy to that ground could not be required to be exhausted as Applicant was only told of it after his termination.

[5(2)] Rumman Faruqi vs the Commonwealth Secretariat

Applicant challenges Respondent's decision not to renew his contract after the implementation of the Rotation Policy, by applying it to him and disregarding his break in service. Applicant argues that Respondent breached their contractual obligations by failing to renew his contract even after the investigator for his grievance procedure found that his complaint was sustained and that the Director

of Administration failed to act in accordance with the grievance procedure. Tribunal dismisses the Application on the grounds, *inter alia*, that: (i) there was no basis for a common assumption of a break in Applicant's contract as per the grievance procedure findings; (ii) Director of Administration's referral of the Applicant's case to the Secretary-General for reconsideration following the grievance procedure was reasonable and lawful; and (iii) Secretary-General's decision should not be interfered with as this discretionary power was exercised in a lawful manner.

[\[5\(1\)\] Rumman Faruqi vs the Commonwealth Secretariat](#)

Interlocutory Application by Respondent relating to [\[5\(2\)\] Rumman Faruqi vs the Commonwealth Secretariat](#). Applicant argues, *inter alia*, that he should be allowed to consent to the Tribunal composition based on the 1996 UK Arbitration Act, that there should be a new process of appointment of arbitrators in line with the 1998 UK Human Rights Act and Article 6 European Convention on Human Rights, for the maintenance of the *status quo* as interim relief, and for an oral hearing. Tribunal allows for an oral hearing but dismisses the other claims on the grounds including: (i) Tribunal is an international administrative tribunal excluded from national law (Article XIV CSAT Statute (1999)) thus it is not bound by domestic statutes; and (ii) there is no basis to grant the interim relief as the need for urgency was no longer present and that the existence of "serious and irreparable damage" was to be found in the merits stage in this case.

[\[3\(2\)\] Selina Mohsin vs the Commonwealth Secretariat](#)

Compensation Judgment relating to [\[3\(1\)\] Selina Mohsin vs the Commonwealth Secretariat](#). Tribunal allows application on the grounds that: (i) Tribunal can award compensation where procedural irregularity is rescinded on moral injury and/or material loss; and (ii) Tribunal can award compensation even where procedural irregularity does not affect the decision taken. Tribunal awards Applicant £15,000 in compensation for moral injury for rescinded decision and the other procedural irregularities, and £10,000 for legal costs.

[\[3\(1\)\] Selina Mohsin vs the Commonwealth Secretariat](#)

Applicant challenges a number of decisions made by Respondent's internal review board and further contends that she suffered gender discrimination and harassment. Tribunal finds that there was no basis to her claims relating to discrimination and harassment. Nonetheless, Tribunal partly allows Application on grounds including: (i) internal review board's recommendation and Secretary General's acceptance of this recommendation was tainted with a significant procedural irregularity as the

board had request clarification from Applicant's supervisor without her knowledge; and (ii) Tribunal found that there were a host of procedural irregularities in this case including that senior management did not consult Applicant or have a record of the meeting where they decided to closely supervise her and no informal action was carried out prior to the formal grievance process.

[2] Dr A S Saroha vs The Regional Director, Commonwealth Youth Programme (Asia)

Applicant challenges Respondents' decision to terminate his contract with the Commonwealth Youth Programme Asia Centre. Tribunal dismisses Application as the Applicant cannot be considered: (i) "a member of staff" as provided for in Articles II.1(a) and II.4(a) CSAT Statute (1999); or (ii) a "person who enters into a contract in writing with the Commonwealth Secretariat" provided for in Article II.1(c) CSAT Statute (1999) as he was contracted with the Commonwealth Youth Programme Asia Centre and not the Commonwealth Secretariat.

[1] Gurmeet Hans vs the Commonwealth Secretariat and Ms Seelawathi Ebert, Regional Director, Commonwealth Youth Programme

Applicant challenges decision of Respondents to extend her probation and early termination of her contract. Applicant argues, *inter alia*, that First Respondent breached contractual obligations, deduction from her salary by Second Respondent relating to tax due to Indian Government was unauthorised, and that she was discriminated as an Indian. Tribunal finds that Respondents did not breach their contractual obligations and that there was no evidence to prove racial discrimination against the Applicant. Nonetheless, Tribunal allows Application partly, on grounds including: (i) Applicant suffered from procedural injustice as she was only informed about the extension of her probation four months after the first probation period; (ii) deduction of Applicant's salary for tax was not illegal but there was a mistake in the amount deducted.
