

**IN THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL**

**IN THE MATTER OF**

**CHANDNI SHAH**

**Applicant**

**and**

**THE COMMONWEALTH SECRETARIAT**

**Respondent**

**Before the Tribunal constituted by**

**Christopher Jeans QC, President; Justice Seymour Panton O.J, C.D, member and  
Professor Epiphany Azingo SAN, member**

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**JUDGMENT**

## JUDGMENT

### Introduction and overview

1. Ms. Chandni Shah had a long and distinguished career with the Respondent.
2. She joined the organisation in 1977 as a secretary and shorthand typist. She went on to hold senior secretarial roles. Between 1978 and 1990 she provided direct support to the Secretary-General, both nationally and internationally.
3. Her employment ended on her redundancy in August 2014.
4. She was dissatisfied with various aspects of her treatment in relation to the redundancy. She thought that she enjoyed a form of tenure which should have protected her from redundancy. She was particularly dissatisfied with the decision not to redeploy her into an available alternative job. She was unhappy about aspects of the redundancy “package”, which reflected her pay on termination of employment.
5. As is usual in the case of redundancies, the situation which brought about Ms Shah’s dismissal was largely outside the employee’s control. The Respondent was cutting jobs and her post was disestablished.
6. However, Ms Shah did make some choices which are relevant to the claim she now brings. First she chose not to appeal against the decision not to offer her an alternative role. Secondly she had chosen during her employment not to transfer to new terms and conditions. One consequence of this latter decision was that her pay – and consequently her redundancy payment – were lower than would have otherwise been the case. Thirdly, she included in her claim to this Tribunal a complaint about the unfair application of her terms and conditions, without awaiting the outcome of an internal investigation into this complaint.
7. In her Application to the Tribunal, she maintains that the redeployment process was unfair and selective and that her redundancy was not effected on lawful grounds. She

relies on a contention about her tenure. She alleges inequality and unfairness in relation to the application of her terms and conditions. She queries her redundancy package

8. The Respondent denies that her complaints are justified. It also raises some jurisdictional issues. In particular it contends that the Tribunal lacks jurisdiction to consider matters on which it says she failed to exhaust internal remedies, specifically
  - (i) not appealing the decision not to offer her an alternative role
  - (ii) not awaiting the outcome of the internal investigation before bringing a complaint about the application of her terms and conditions.
  
9. We will first outline the facts bearing on the claims before addressing, in turn, the issues which arise.

### **The facts**

10. The Applicant Ms Shah was originally employed as a “Secretary/Short hand typist” in 1977. The letter of appointment<sup>1</sup> written in August of that year expressly incorporated the Respondent’s “Staff Rules and Regulations” as amended from time to time. The letter provided that she was to be on probation for the first six months. It does not provide that she was to be employed for any fixed period of time if she “passed” her probation.
  
11. Ms Shah did not merely “pass” her probation. She must have excelled. For as early as 1978 she was working for the Secretary-General himself. Until 1990 she served the Secretary General as his Senior Secretary/Acting General secretary. Thereafter she served in many Divisions. It was clearly, as we have said, a distinguished career.
  
12. In 2004, Secretariat Staff including Ms Shah were given the option of transferring to new Terms and Conditions of Service (“TACOS”). A letter<sup>2</sup> dated 30<sup>th</sup> April 2004 reminded her of the Pay point and salary she would enjoy if she chose to “switch” to the new TACOS. The letter also stated :

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<sup>1</sup> Annex 8 to Rejoinder

<sup>2</sup> Annex 10 to Application

“Switching to the new terms and conditions of service has no impact on the tenure of your contract”

13. Ms Shah elected not to transfer to the new terms.
14. In subsequent years Ms Shah was given further opportunities to switch to the new TACOS. She chose to remain on her existing terms.
15. Ms Shah sent a memo<sup>3</sup> dated 5<sup>th</sup> May 2010 to Assistant Secretary-General Steve Cutts complaining about “certain contractual decisions which Management took in regard to staff members who decided to remain on “indefinite” tenure after 2004 TACOS Review”. She said that this had given rise to “anomalies in the treatment of staff on “indefinite” terms”.
16. She went on to point out that her pay would be higher under the new TACOS. She complained that this entailed discrimination against her as a member of staff who chose to remain on the old TACOS. She said that she was “dubious” of “legal opinion on this subject” to the effect that “a staff member can remain on the indefinite terms without receiving the same treatment as those of the colleagues in a similar Pay-point under New TACOS”.
17. She followed up this complaint with a further memo dated 19<sup>th</sup> January 2011. That memo included wider complaints not relevant to the present proceedings. We note however that she characterises the issue she had raised in the 5<sup>th</sup> May 2010 as relating to the “indefinite tenure” she enjoyed. She notes that some staff had been upgraded “whilst retaining their indefinite tenure”.
18. We interpolate here that Ms Shah did not make it clear at this stage what she meant by “indefinite tenure” or precisely how, from her perspective, the question of “tenure” related to the new TACOS. As we have noted above, the Secretariat had stated in the letter of 30<sup>th</sup> April 2004 that switching to the new TACOS would not affect the “tenure” of Ms Shah’s contract. However, that letter was itself not explicit as what “tenure” might mean in the context of Ms Shah’s employment. We return to this below.

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<sup>3</sup> Annex 6 to Application

19. Following an investigation, Mr Cutts replied<sup>4</sup> on 28 March 2011. We set out numbered paragraph 4 of his reply in full (emphasis original) :

**4. Indefinite Tenure status raised in your letter of 5 May 2010**

With reference to your decision to stay on the old TACOS and the subsequent financial disadvantage [footnote here refers to “Loss of earnings and pension”] you explained, you are aware that the Secretariat has given many opportunities to staff to move to the new TACOS and after careful consideration many have exercised this option. The opportunities to move to the new TACOS continue to be available annually which in your case would no doubt result in salary increase should you wish to exercise this option.”

20. Mr Cutts’ memo does not explain his understanding of “Indefinite Tenure status” or how it relates to the question of switching to new TACOS. The memo is however, very clear in confirming that the option to transfer to the new TACOS remained open to Ms Shah.

21. On 15<sup>th</sup> July 2011 MS Shah wrote to Mr Cutts indicating that her priority was to move to another position in the Secretariat.

22. In 2014, the Secretariat restructured its staff organisation. The aim was to reduce London staffing by some 15% to allow for the creation of certain new positions under the Strategic Plans.

23. On 4<sup>th</sup> February 2014 there was a “Town Hall” meeting for support staff to explain relevant processes. It was chaired by interim ASG George Saibel.

24. A “Q&A” document<sup>5</sup> was issued in connection with the meeting. It explained the function of the “Screening Panel” on redeployment where an employee’s post was deleted. The Screening panel would inform the employee of the most suitable vacancies (based on CV and experience). Where the employee expressed interest in such a job an interview panel would be established to “consider your suitability”. Although the Staff Handbook made no provision for appeal in relation to the screening panel process, it was announced that the Secretary-General had “exceptionally authorised a right of appeal to the Assistant Secretary-General a.i./Deputy Secretary

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<sup>4</sup> Annex 2 to Reply

<sup>5</sup> Annex 1 to Answer

General for Corporate Affairs”. Appeals would have to be submitted “within seven working days of notification of the panel’s decision”.

25. On 18<sup>th</sup> March 2014<sup>6</sup> Zarinah Davies, Director of the Human Resources Division, wrote to Ms Shah notifying her that her post had been disestablished. The letter asked whether Ms Shah wished to be considered for redeployment. It explained that if she did wish to be considered for redeployment a Screening Panel would be set up.

26. Ms Shah duly asked to be considered for redeployment. A Screening Panel was set up. Two potential posts were identified for consideration. They were both Executive Assistant posts (Grade K). Ms Shah indicated that she wished to be considered for both (without preference). She was duly interviewed.

27. On Friday 6<sup>th</sup> June 2014 she learned that she had been unsuccessful at interview. It is clear that she had some form of discussion about this with Ms Davies on that day<sup>7</sup>. She was upset about the unsuccessful outcome of the interview process and became sick. She took sick leave from the following Monday 9<sup>th</sup> June<sup>8</sup>. Over the succeeding weeks and months she remained on sick leave but sought written feedback from MS Davies as to why she had been unsuccessful at interview. She began to raise other issues concerning her redundancy and referred to her “indefinite tenure”. She did not, however, seek to appeal against the decision not to redeploy her.

28. Ms Davies stated in her email of 13<sup>th</sup> June 2014<sup>9</sup> that she would respond “separately on your feedback request and the implications of our discussion of last Friday 6 June”. She did not, in the end, provide written feedback. In her reply to the later grievance (see below) Ms Davies was to maintain that she had supplied oral feedback when informing Ms Shah of the results of interviews on 5<sup>th</sup> June (we think that that this should read 6<sup>th</sup> June but nothing turns on this) and again on 25<sup>th</sup> July 2014.

29. By a letter dated 20<sup>th</sup> August 2014 from Ms Davies (apparently received<sup>10</sup> by Ms Shah on 29<sup>th</sup> August 2014) the Secretariat served formal notice of redundancy, terminating Ms Shah’s employment with effect from 31<sup>st</sup> August 2014. The letter explained her

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<sup>6</sup> Annex 8 to Application

<sup>7</sup> See especially email of 13<sup>th</sup> June from Ms Davies at Annex 3 to Application; letter of 20<sup>th</sup> August 2014 at Annex 1; Grievance of 1<sup>st</sup> October at Annex 7

<sup>8</sup> Grievance at Annex 7 to application and email correspondence at Annex 3 both refer.

<sup>9</sup> Annex 3 to Application

<sup>10</sup> Ms Shah’s letter of 11<sup>th</sup> September 2014 refers – Annex 5 to Application

redundancy calculation. This calculation was based on the formula in the Staff Handbook which uses a multiplier of pay. We understand the calculation of pay to be based on the employee's contractual pay at termination.

30. On 11<sup>th</sup> September 2014 Ms Shah wrote<sup>11</sup> expressing her dissatisfaction and indicating that she was taking legal advice.

31. On 1<sup>st</sup> October 2014 Miss Shah produced a formal grievance. She delivered it to Ms Davies on 3<sup>rd</sup> October<sup>12</sup>. The grievance was critical of the redundancy process and of the higher incentives offered to volunteers for redundancy and the failure to appoint her to one of the two posts identified for potential redeployment. It complained about lack of responsiveness on the part of the Secretariat to her email correspondence. In relation to "Indefinite tenure" the grievance articulated the following case:

"During my time with the Secretariat it had always been my understanding that the support staff who joined the organisation in the earlier years were given assurances that their contracts would be indefinite until their retirement age".

The letter does not state however the source of this "understanding", nor does she identify any assurance given to her personally. Furthermore she does not explain why granting an "indefinite" contract should mean that it could not be terminated before retirement age or why it could not be terminated in the event of redundancy. We deal with this below.

The letter continues

"I have been given a contract until the Secretariat's retirement age of 65 based on my performance.

In 2003-2005, the Secretariat conducted a major review of terms and conditions of service and salary levels. My indefinite status was reaffirmed then and was given a legally binding contract as long as I remained under the "old terms and conditions of service". The drawback was that my salary became stagnant unless I changed to the new terms and conditions...

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<sup>11</sup> Annex 5 to Application

<sup>12</sup> See email correspondence at Annex 3 to Application

32. The grievance letter goes on to assert that she considered it “discriminatory” to be paid at a lower level than that she would have enjoyed under the new TACOS.

33. The letter concludes with a series of “action points” she was seeking by way of grievance.

34. The first action point was specified as

“I should have been redeployed in a suitable position in the Secretariat”

35. Further “action points” included a request to the Secretariat to recognize the nature of my indefinite tenure”.

36. Alternatively she sought

“a proper retirement package bearing in mind I should have been employed until my retirement age of 65” .

37. She further suggested that the redundancy calculations did not match those shown in an example previously distributed and that it should in any event have been calculated by reference to pay-point “K” - the grade she would have enjoyed if she had agreed to switch to the new TACOS. She also suggested that her pension should be adjusted by reference (as we understand it) to this pay-point.

38. Ms Shah “chased “- Ms Davies for a response to the Grievance on 19<sup>th</sup> November 2014<sup>13</sup>.

39. Ms Davies responded by letter<sup>14</sup> of 21<sup>st</sup> November 2014. The letter dealt separately with the redundancy, redeployment and feedback issues on the one hand and the question of “indefinite tenure” and unfair application of terms and conditions on the other.

40. In relation to the redeployment process the letter stated shortly that the Screening Panel

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<sup>13</sup> Annex 13 to Application

<sup>14</sup> Annex 13 to Application

“considered your application and performance at interviews, but did not find you suitable for either vacancy. This marked the conclusion of the Screening Panel Procedures.”

41. The letter went on to deal with feedback and the lack of an appeal.

“I informed you of the outcome of your interviews on 5 June 2014, including the option to appeal the outcome of the Screening panel process within a 7 day period, which was exceptionally provided by the Secretary-General during the restructuring process. During the meeting you requested feedback on the reasons for non-selection which I provided during the meeting and separately on 25 July 2014. You chose not to formally appeal the Screening panel outcome. “

42. In relation to “issues regarding indefinite tenure and unfair application of terms and conditions” Ms Davies’s letter stated that an external investigator, Ms Cathy Potgeiter, had been appointed to investigate the grievance.

43. Ms Shah was not prepared to await the outcome of Ms Potgeiter’s investigation. In an email dated 26<sup>th</sup> November 2014<sup>15</sup> she said that Ms Davies’s letter of 21<sup>st</sup> November 2014 had come “too late” since she had already intimated that she was preparing an application to this Tribunal. On the same day (26<sup>th</sup> November 2014) she lodged her application to the Tribunal

44. On 17<sup>th</sup> December 2014 Ms Davies wrote<sup>16</sup> to Ms Shah indicating that the grievance investigation would continue despite the Tribunal application. It confirmed that Ms Potgeiter would be arranging a meeting. The letter stated

“This investigation is without prejudice to your right to continue with your CSAT application on the other issues concerning the change plan, restructure, redeployment and the decision to make you redundant”

45. Ms Potgeiter duly interviewed MS Shah and other witnesses.

46. Ms Potgeiter reported<sup>17</sup> on 30<sup>th</sup> March 2015. She rejected the complaints which fell within the scope of her inquiry. She did not agree that Ms Shah’s “indefinite tenure”

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<sup>15</sup> Annex 3 to Application

<sup>16</sup> Annex 8 to Answer

<sup>17</sup> Attachment to Applicant’s Additional Statement

meant that her employment could not be terminated before she reached the age of 65. Ms Potgeiter noted that Regulation 16 of the Staff handbook made it clear that staff could be made redundant at any time. However she noted that the questions of “unfair dismissal” and redundancy terms were outside the scope of her inquiry. Ms Potgeiter also investigated at length the allegations of inconsistent treatment in relation to terms of service as between Ms Shah and three other named employees, in particular that these individuals had been “upgraded whilst retaining their indefinite tenure”. She concluded that there was no evidence to substantiate this claim, although she notes deficiencies in the paperwork relating to the comparator cases<sup>18</sup>.

### The Application

47. The Application contests a decision or decisions in the redundancy termination letter dated 20<sup>th</sup> August 2015. It focusses centrally on the redeployment process but alludes also to alleged unfair and discriminatory treatment “as detailed in ...my formal grievance letter dated 1<sup>st</sup> October 2014”.

48. Ms Shah’s “pleas” are as follows:

- (i) made redundant on other than lawful grounds
- (ii) unfair or constructive dismissal
- (iii) breach of contract of employment
- (iv) specific performance, or alternatively
- (v) compensation for loss of earnings to be quantified
- (vi) discrimination , unfair and unequal treatment;
- (vii) moral damages and exemplary damages at the discretion of the tribunal for loss occasioned to the applicant by Comsec’s flagrant disregard of its own Institutional rules and procedures;
- (viii) Costs
- (ix) Any other remedy the Tribunal may consider appropriate

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<sup>18</sup> Para5.12 of her Report, attached to Additional statement

### The Tribunal's Jurisdiction

49. The Tribunal's relevant jurisdiction is limited by its Statute.

50. It may consider "the non-observance of a contract in writing" which includes "the non-observance of the contract of employment or terms of appointment" of a staff member": see Article II (1) .

51. Article II (3) prescribes that the Tribunal may only consider an application in relation to a contract of service where

"the Applicant has exhausted all other remedies within the Commonwealth Secretariat ... including the redress of grievance procedures specified in the contract and staff rules."

### The Respondent's position

52. The Secretariat contends in the Reply that the Application may not be considered because internal remedies were not exhausted. In particular it points to

- (a) the lack of an internal appeal in relation to redeployment and
- (b) Ms Shah's decision not to await the grievance outcome in relation to other matters.

53. In its subsequent pleadings it maintains in the alternative that no relevant breach of duty towards Ms Shah has been committed.

### The issues

54. We consider in turn

- (A) The jurisdictional objections
- (B) As regards any issues over which the Tribunal has jurisdiction, whether the claim is well founded.

#### (A) Jurisdictional questions

- (a) Does the lack of appeal against the decision not to redeploy Ms Shah mean that the Tribunal lacks jurisdiction to consider her complaint about redeployment.

55. We have concluded that the answer is “Yes”.
56. The Tribunal does not have jurisdiction over the decision not to redeploy unless the Applicant has exhausted all other remedies within the Commonwealth Secretariat.
57. It is not in dispute that Miss Shah was informed that an appeal could be brought against a decision not to redeploy. The Respondent explained the process at the Town Hall meeting and the Q&A's specifically flagged the exceptional provision which had been made for appeal. Ms Davies says<sup>19</sup> she reminded Ms Shah of the possibility of appeal whilst informing her that her interviews had not been successful in early June 2014. We have no reason to doubt this. Ms Shah makes the point that the potential for appeal was not confirmed to her in writing at the point when she was informed of the interview outcomes. We agree that it would have been better to have reiterated the position in writing at that point. But Ms Shah does not suggest that she was unaware of the possibility or was under any relevant misunderstanding about the scope for appeal or the timing. At no stage did she seek to invoke the appeal process or ask for a clarification of time limits or an extension.
58. Ms Shah does not suggest that she in fact brought an appeal against the redeployment process.
59. In the circumstances the only question is whether the special right of appeal falls within the expression “all other remedies within the Commonwealth Secretariat” for the purposes of Article 11(3). Does it matter that it is not specified within the procedures in the Staff Handbook? Putting it another way, does its “exceptional” character mean that it does not qualify as a “remedy” for this purpose?
60. We note that the Article refers to “*all*” other remedies. It is perhaps stating the obvious to say that the draftsman would not have used the word “all” if it had been intended to distinguish between different categories of remedy or to restrict “remedies” to those for which the Handbook (or Staff rules) provided.
61. We note also that employee is to exhaust all remedies “*including*” those in the contract and Staff rules. If it had been intended to limit the obligation to exhaust remedies to

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<sup>19</sup> See in particular letter of 21st November 2014 in Annex 13 to Application

those in the contract and Staff Rules the word “including” would be unnecessary and inappropriate.

62. Furthermore, the importance of exhausting internal remedies has long been recognised in international administrative law. The policy of the law is to discourage the invocation of legal remedies (with their attendant costs, formalities and delays) where more immediate, informal opportunities for relief are available within the organisation. It is not surprising that a Statute such as ours should restrict our jurisdiction in such broad terms.

63. We therefore conclude that the opportunity to appeal against the decision on redeployment amounted to a “remedy” which Ms Shah failed to exercise. The Tribunal therefore has no jurisdiction over the redeployment issue.

*(b) Does the Applicant’s decision not to await the grievance outcome mean that the Tribunal lacks jurisdiction to consider the matters which were the subject of that grievance?*

64. Again, the answer is “yes”.

65. Ms Davies letter of 21<sup>st</sup> November 2014 informed Ms Shah in the clearest terms that her grievance dated 1<sup>st</sup> October 2014 (delivered to Ms Davies on 3<sup>rd</sup> October) was being progressed under the Secretariat’s grievance procedure. It informed her that a named investigator had been appointed. Ms Shah nonetheless went ahead with the lodging of her application 5 days later claiming that it was by then “too late” to do otherwise.

66. Whilst we understand Ms Shah’s wish to progress her claim to the Tribunal we do not consider that there is any serious basis for suggesting here that the grievance process was not an internal “remedy” or that she had “exhausted” it. There could be cases (though we prefer not to speculate too widely) where the failure to progress a grievance (or the position being adopted by the Secretariat in relation to a grievance) meant that it no longer amounted to a remedy or could be taken to be exhausted. This cannot be said here. The grievance was a recent one and was, to the Applicant’s knowledge being progressed when she lodged her Application.

67. Accordingly the Tribunal has no jurisdiction to consider the substance of the matters set out in the grievance. .

Is there any part of the application over which the Tribunal does have jurisdiction?

68. It follows that we do not have jurisdiction to consider “core” aspects of Ms Shah’s complaint concerning redeployment and the matters in her internal grievance.

69. Does any part of her complaint remain?

70. Ms Davies recognised in her letter of 17<sup>th</sup> December 2014<sup>20</sup> that there were aspects of the Application to the Tribunal which were not the subject of (or could not be considered under) the grievance process. These she summarised broadly as “the change plan, the restructure, redeployment and the decision to make you redundant”.

71. The Tribunal’s jurisdiction to consider any issue arising in relation to redeployment is, as we have held, separately precluded by the failure to use the internal appeal process. But on a fair reading of the application, (bearing in mind that the Applicant is not legally represented) we agree with Ms Davies that there is within the Application a general challenge to the lawfulness of the dismissal which is not precluded by failure to exhaust the grievance procedure.

72. Although Ms Potgeiter looked at the question of Ms Shah’s “tenure” as part of the Grievance procedure she noted<sup>21</sup> that “redundancy terms” and “unfair dismissal” were outside the scope of her investigation.

73. In particular we do not consider that the Applicant is precluded from proceeding with a claim that her dismissal was itself a breach of contract.

74. We further consider that there are points raised in relation to the redundancy terms in the dismissal letter, consideration of which are not precluded by the availability of any unused internal remedy.

75. We therefore address these matters in turn

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<sup>20</sup> Annex 8 to Answer

<sup>21</sup> Paras 5.2 and 5.3 of Report attached to Applicant’s additional statement

(B) Matters over which the Tribunal has jurisdiction

(i) Lawfulness of dismissal

76. We remind ourselves that irrespective of internal remedies the Tribunal only has relevant jurisdiction over the “non-observance of the contract of employment or terms of employment”. It follows that we do not have any general jurisdiction over managerial actions which do not ultimately raise issues under the contract of employment

77. Furthermore, as the Respondent points out under international administrative law, Tribunals may not in any event “*substitute their assessments or judgments for that of the administrative authority in respect of the reorganisation of posts or staff in the interests of efficiency*”: See Amerasinghe *Principles of the Law of International Organisations* [2005], at p301 cited at para 28 of the Rejoinder.

78. However, Ms Shah does, as we understand her Application, challenge the lawfulness of her dismissal on the basis that she had “indefinite tenure” which precluded lawful dismissal (on grounds other than misconduct or performance) before retirement age.

79. As we record above, Ms Shah was appointed back in 1977 on terms which

- (i) made no provision that employment would continue to age 65 or for any period;
- (ii) incorporated (in the usual way) the Staff Rules and Staff Regulations as amended from time to time.

80. Staff Regulation 16, which was incorporated into her contract, explicitly provides that the Secretary General may terminate the employment of a staff member if

- “(a) the needs of the service require abolition of the post or reduction in the staff
- (b) such action would be in the interest of the efficient functioning of the Secretariat...”

81. This Regulation is plainly wide enough to enable the Secretary-General to dismiss for redundancy. No express term appears in her original terms to contradict this; and it is not suggested that any amendment to the express terms was issued to change the position.

82. Whether needs of the service or efficient functioning of the Secretariat required the deletion of Ms Shah's post and her consequent redundancy were matters for the discretion of the employing body.
83. We conclude therefore that Ms Shah misunderstood her contractual position. Whatever the basis for it, her supposition that having an "indefinite" contract meant having a contract to last until retirement (subject only to performance and misconduct issues) was misplaced. The terms of her contract and the Staff Regulations which were incorporated provided otherwise.
84. It was therefore entirely lawful under the contract to dismiss her for redundancy.
85. We would add that an "indefinite" contract normally refers to a contract of uncertain duration which can be terminated (usually by notice) at any time. No doubt Ms Shah contrasted her "indefinite" contract of employment with the fixed terms of three or four years on which many senior staff at the Secretariat are employed. But the contrast here is that whereas their employment would terminate *automatically* at the expiry of their fixed terms (unless renewed) her employment would continue indefinitely unless and until terminated by notice. Notice could be given at any time and certainly in the event of redundancy.

(ii) Payment on Redundancy

86. Ms Shah complains that her termination payment on redundancy ought to have reflected a right to be employed to age 65. We have found she had no such right, so this claim falls away.
87. Further she says her termination payment ought to have reflected the salary and pension contributions she would have enjoyed (at Grade K) if she had transferred to the new TACOS. The short answer to this is that she elected not to transfer to the new TACOS and so remained on her old terms. This was a choice she made. There were many opportunities to switch to the new TACOS but she elected not to take them. When she made her choice not to switch, the Secretariat respected it. She is not entitled to revoke her decision now.

88. It was most unfortunate if she made the decision to remain on her old terms because of a mistaken belief that by remaining on the old terms she had some superior form of tenure which protected her from redundancy dismissals. As we record above, however, the Secretariat had however pointed out in 2004 that a switch to new TACOS would have “no impact” on her tenure.

### CONCLUSIONS

89. It follows that the Tribunal dismisses the Application in its entirety.

90. In consequence there is no remedy which can be awarded.

91. The parties shall each bear their own costs

92. Aside from the issues in the case, we would like to express the hope that the opportunity was taken to thank Ms Shah properly for what amounts to a working lifetime of distinguished service to the Secretariat. The notice of termination contains a very brief and formal note of thanks but we have seen nothing in the papers to indicate that a proper expression of appreciation was written. Of course there is an inevitable formality about documentation surrounding redundancy, especially when the employee is raising a grievance or challenge. But it would be most unfortunate if the disputes surrounding redundancy had obscured the importance of recognising in print her contribution to the organisation.

Given this 18<sup>th</sup> day of December, 2015.



Christopher Jeans QC, President



Judge Seymour Panton O.J, C.D.  
member



Professor Epiphany Azing SAN,  
member