



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Marie-José Bofill against Judgment No. UNDT /2012/165, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in

finding the recourse receivable. [Ms. Bofill] was consequently not recommended for promotion.

... By inter-office memorandum IOM/046- FOM/047/2011 of 25 July 2011, the High Commissioner announced the results of the recourse session. [Ms. Bofill] was not on the list of staff members promoted following the session.

... On 4 August 2011, [Ms. Bofill] received a copy of the minutes of the APPB deliberations regarding her recourse.

Submissions

Ms. Bofill's Appeal

4. Ms. Bofill submits that the UNDT Judgment is tainted by errors of law and material errors of procedure.
5. Ms. Bofill submits that her non-promotion is a result of UNHCR's discriminatory promotion system. The promotion methodology automatically excludes candidates who, like her, joined UNHCR at a later point in their career.
6. Ms. Bofill alleges that she is a victim of harassment and abuse of authority by her supervisor and other high UNHCR officials.
7. Ms. Bofill alleges a contradiction between the fact that she had been interviewed for a specific D-2 position and the fact that she was not promoted to a D-1 position; a contradiction, which reveals that the UNHCR methodology is "absurd", "senseless" and "characterized by bad faith".
8. Ms. Bofill requests that the Appeals Tribunal order the initiation of an investigation as well as the personal appearance of the parties. Ms. Bofill requests that this Tribunal vacate the UNDT Judgment and that the Appeals Tribunal either itself promote her to the D-1 position or order UNHCR to do so. Alternatively, she requests that the Appeals Tribunal direct UNHCR "to reconsider [her] promotion ... for the 2009 promotions session". In addition, she seeks compensation for harm sustained as a result of psychological harassment as well as legal costs.

Secretary-General's Answer

9. The Secretary-General contends that an overwhelming proportion of Ms. Bofill's appeal arguments on the merits merely constitutes a re-statement, in almost identical terms, of her application to the lower court and that as such, she has not met the burden of satisfying this Tribunal that the UNDT's decision is defective.
10. The Secretary-General submits that Ms. Bofill has not shown any error in the UNDT's rejection of her claim of discrimination and arbitrariness inherent in the UNHCR promotion system. Ms. Bofill contradicts herself on this ground of appeal when she contends that UNHCR's promotion methodology automatically excludes later entrants to the United Nations system and

“irremediably prevent[s] [her] from ever being promoted”, but subsequently states that she had been cleared and interviewed for a specific D-2 post.

11. The Secretary-General contends that Ms. Bofill has not demonstrated that the Dispute Tribunal erred in rejecting her claim of harassment and abuse of authority. In addition, Ms. Bofill has again failed to provide supporting evidence in her appeal to substantiate this claim.

12. The Secretary-General requests that the Appeals Tribunal reject the appeal in its entirety.

#### Considerations

17. In particular, we note that by Order No. 135 (GVA/2012), the UNDT requested the Secretary-General to produce (a) the minutes of the APPB deliberations relating to the 2009 promotions process; (b) the list of candidates considered during that session showing the ranking of eligible candidates, including the number of points allocated to each criterion; (c) the list of candidates (matrix), as divided into groups, that was considered by the APPB in the second round; and (d) the list of candidates considered

Likewise, the Ombuds Office noted frustration of some staff as regards promotion criteria due to limited points allocated to sp

- Did not fulfil the “Diversity in Performance Appraisals” criteria. It was recalled that “Diversity in Performance Appraisals” would be considered as being met if consistent superior evaluations (i.e. those with a rating of “superior” or “outstanding”) are provided during the period under review (2005/2009) by different managers. In this respect, the Board noted that the performance appraisal reports on record related to the period under review reflected a mix of superior and fully effective ratings;
- Fulfilled the two UN languages criteria since her mother tongue is French and she has passed the UN language proficiency examination in English;
- Had not underfilled on a D-1 position during the period under review.

When comparing the staff member with the remaining candidates during the third round analysis in terms of performance and her position in the ranking order (the staff member is ranked number 79 out of 91 eligible staff members), the Board decided that while a valued staff member Ms. Bofill's name could not be retained given the limited number of available slots. The staff member is therefore not recommended for promotion. <sup>7</sup>

25. In all those circumstances, we do not find that the UNDT erred in law oreriao .0(o)6.58gv1(a)1





