



## **Application**

1. In his appeal to the Joint Appeals Board in Geneva, registered on 17 October 2008, the applicant requested it to recommend that:

- The decision of 29 February 2008 by which the United Nations High Commissioner for Refugees denied him a promotion to the P-5 level during the 2007 promotion session should be rescinded;
- He should be promoted to the P-5 level.

2. In its resolution 63/253, the General Assembly decided that all cases pending before the Joint Appeals Board as at 1 July 2009 would be transferred to the United Nations Dispute Tribunal.

## **Applicant's submissions**

3. The applicant contends that the procedure for drawing up the list of promotions for the year 2007 was irregular, because the Administration unilaterally introduced a new methodology in breach of the existing procedures.

4. Under the rules of procedure and Procedural Guidelines of the Appointments, Postings and Promotions Board promulgated on 3 November 2003, the Joint Advisory Committee has authority to propose changes to the rules. Paragraph 141 of the Procedural Guidelines provides that the number of promotions is to be decided each year by the High Commissioner, on the advice of the Joint Advisory Committee. The Director of the Division of Human Resources Management (DHRM) refused on several occasions to submit the final draft of the methodology to the Joint Advisory Committee before putting it before the High Commissioner. The Director also announced that the distribution of promotions across grades would be different from that proposed by the Committee. The method used by the Appointments, Postings and Promotions Board for recommending promotions for the year 2007 was not known to the staff until a few days before the promotion session began, contrary to a recommendation from the Joint Appeals Board (JAB) that it should be published a year in advance.

5. The methods used by the Appointments, Postings and Promotions Board to enhance gender parity amounted in this case to a de facto gender-based quota system. That was not the intention of the 2007 Methodological Approach, and such a system was not within the Board's discretion. The system adopted by the ar7Py amounnted be difeft8(e a)41(n) aom2ary

6. It is possible to use a system for discriminating between the sexes, but this has to be justified by some existing inequality between them, and there is no information on this score in relation to the P-5 level.

7. The points accrued by the applicant (110.51) must be compared with those of the other candidates who received promotions in order to determine whether the Appointments, Postings and Promotions Board and the High Commissioner respected the principle of equal qualification of men and women. It has also to be ascertained whether he was considered in the light of the other non-weighted criteria, namely number of posts held and his performance appraisal reports, his knowledge of languages and the training courses he has taken.

#### **Respondent's observations**

8. The Methodological Approach did not change the rules governing promotion at UNHCR. It is merely a new tool for applying the same criteria, so there was no need to submit it to the Joint Advisory Committee. The recommendation made by the Joint Appeals Board that an interval of one year should be allowed to elapse before publishing the new method and putting it into practice is not binding on the Administration, which was not therefore required to observe this period before applying the new method.

12. The applicant argues that the Methodological Approach, which was jointly decided by the UNHCR Administration and the Appointments, Postings and Promotions Board for the purpose of determining which staff members should be recommended for promotion to the P-5 level, could not be properly followed during the 2007 promotion session, because the Joint Advisory Committee had not been consulted. Staff regulation 8.1 provides that the Secretary-General shall establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and resolving issues

them on the basis of the non-weighted criteria and, lastly, where staff members were found to be equally deserving of promotion, to take into consideration gender parity and geographical diversity. However, the minutes of the first session held by the Appointments, Postings and Promotions Board for the 2007 exercise indicate that, after drawing up a single list of staff members eligible for promotion and ranking them according to points scored following the four main criteria, the Board divided them by gender and decided to recommend equal numbers of women and men for promotion and then separately assessed the merits of the candidates. Thus the Board, although it was attempting to achieve the goal of gender parity set by the High Commissioner, did not follow the order for the application of criteria established under the Procedural Guidelines or the rules that it had set itself under the Methodological Approach.

17. The High Commissioner recalls that, on the one hand, the provisions of the Charter of the United Nations setting out the principle of the equal rights of men and women and, on the other hand, the goals set by the Secretary-General in the General Assembly at its sixty-third session imposed on him an obligation to establish a policy for the achievement of gender parity in UNHCR, which he did in January 2007. He explains that the goal was to achieve gender parity at all grade levels by 2010 and notes that his instruction requested the Appointments, Postings and Promotions Board to ensure that, for all grade levels at which parity had not been achieved, the number of female staff recommended for promotion was equal to that of male staff, provided that the women had the required qualifications. Accordingly, the High Commissioner is justified in claiming that the system put in place, whereby equal numbers of women and men would be promoted to the P-5 level in order to achieve gender parity, was not in itself unlawful, since it was consistent with another principle enshrined in the Charter of the United Nations, namely merit-based promotion. Nevertheless, in seeking to achieve that goal, the High Commissioner had a duty to set clear rules for promotion, reconciling the two principles, and if that was not possible under the rules in force — as stated above — he had a duty to modify the rules before the annual promotion session. He could not merely request the Board, through the Division of Human Resources Management (DHRM), to apply such quotas.

18. The irregularity committed by the Appointments, Postings and Promotions Board by not following the order established under the existing rules for the application of criteria when listing staff to be recommended for promotion to P-5 inevitably altered the decisions taken by the High Commissioner on the basis of those recommendations. Hence, the High Commissioner's decisions with regard to P-5 promotions for 2007 were the result of an irregular procedure, and vitiated the entire promotion process in respect of that grade and, consequently, also vitiated the decision to deny the applicant a promotion, since there were a limited number of promotion slots.

19. It follows from the foregoing that the High Commissioner's decision not to

21. Although the refusal to grant a promotion to the applicant has thus been declared unlawful because of a procedural flaw and consequently rescinded, the judge is not authorized under the statute to substitute himself for the Administration and to declare that the applicant should be promoted to the higher grade. Thus, the applicant's claim in this regard must be rejected.