



United Nations Dispute Tribunal

Case No.: UNDT/GVA/2009/17
Judgment No.: UNDT/2009/045
Date: 16 October 2009
English
Original: French

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Victor Rodríguez

SOLANKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Ulrich Garms and Ugo Cedrangolo

Counsel for respondent:
Shelly Pitterman, DHRM/UNHCR

Notice: The format of this judgment has been modified for publication purposes in accordance

Application

1. In his appeal to the Joint Appeals Board (JAB), registered on 19 December 2008, the applicant requested it to recommend that:

- The decision of the High Commissioner for Refugees denying him a promotion to P-5 during the 2007 promotion session should be rescinded;
- He should be promoted to the P-5 level;
- He should be awarded compensation equivalent to the additional ~~salary~~ that he would have received if he had been promoted

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 was promoted to the P-4 level in June 1994 and received no further promotions, although he was recommended and his ~~performance was rated "satisfactory" several times~~

The Appointments, Postings and Promotions Board did not introduce

stages and gender was not taken into consideration until the third stage. Under its Procedural Guidelines, the Appointments, Postings and Promotions Board is required to pay due regard to gender parity. The UNHCR gender policy requires the Board to ensure that, at the grade levels where parity has not been achieved, half of all promotions will be awarded to women. This is in line with the policy advocated by the General

Postings and Promotions Board. The fact that one of the two staff members was promoted although he had not sought recourse against the Board's decision not to recommend him during the first session does not vitiate his

2007 promotion session, since the High Commissioner has the authority to award promotions once the Appointments, Postings and Promotions Board has issued its recommendations.

17. The applicant alleges that there is no documentary evidence that the Appointments, Postings and Promotions Board assessed his situation on the basis of the non-weighted criteria set out in the Methodological Approach. However, that allegation is disproved by the minutes of the promotion session held from 27 January to 1 February 2008, which state that each candidate was assessed in the light of all the non-weighted criteria, including that of geographical diversity of the staff eligible for promotion.

18. The Procedural Guidelines applicable to UNHCR staff, issued in 2003, provide that, after it has been determined that a staff member meets

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

was consistent with another principle enshrined in the Charter of the United Nations, namely merit-based promotion. However, 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.

22. The irregularity committed by the Appointments, Postings and

Article 1: The High Commissioner's decision not to promote the applicant to the P-5 level during the 2007 promotion session is rescinded.

Article 2: The applicant is entitled to receive the amount of the promotion award of \$10,000, plus interest at an annual rate of 8 per cent, starting 90 days after notification of this judgment.

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Article 3: The remainder of the applicant's claims are rejected.