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Case No.: UNDT/GVA/2011/091

Judgment No.: UNDT/2012/164

Date: 5 November 2012

English





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14. The Applicant filed his application with this Tribunal on 26 December 2011.

15.

20. By Order No. 141 (GVA/2012) of 14 September 2012, the Tribunal transmitted to the Applicant those documents produced by the Respondent that were relevant to him, in a redacted form, so as to protect the personal information pertaining to other candidates.

21. On 3 October 2012, a hearing took place in which the Applicant participated by telephone conference, and in the presence of his Counsel as well as the Respondent's counsel.

22. On 8 October 2012, following a request made by the Tribunal during the hearing, the Respondent submitted additional information, via the Tribunal's eFiling portal, which was communicated to the Applicant.

#### Parties' submissions

23. The Applicant's contentions are:

- a. ~~The~~ decision h

d. Given the outcome of the management evaluation, which

## Consideration





32. The Respondent legitimately contends that the memorandum as a whole makes it clear that performance is the key element to be taken into account by the APPB in arriving at its recommendations for promotion. However, the Administration must observe the rules which it itself has established. Accordingly, where the Administration has specified precise criteria which must be used in determining which staff members to recommend, it must strictly follow them, which has not been done in this case. Since the memorandum stipulates that only certain criteria could be used when, exceptionally, moving a candidate to another group, the APPB committed an irregularity by taking into consideration the Applicant's performance.

33. The Appeals Tribunal in its Judgments 2011-UNAT-172, 2011-UNAT-174 and 2011-UNAT-175 found that the circumstance of finding that the UNHCR promotions procedure had been flawed by an irregularity was not sufficient reason for the Dispute Tribunal to rescind a decision on non-promotion, and that the Dispute Tribunal should determine instead whether, in the absence of the irregularity committed, the Applicant had a significant chance of receiving a promotion.

34. In the present case, the Tribunal cannot but observe that moving a candidate to another group should be an exceptional occurrence and there is no reason to suppose that the Applicant would have been transferred to another group if the APPB had applied the sole criteria specified in the memorandum. The Tribunal therefore considers that if the APPB had followed the relevant procedure the Applicant would have had every chance of remaining in group 1. Since it is clear from paragraph 12 of the minutes of the 2009 annual promotions session that all the candidates in group 1, with a single exception, were recommended for promotion and that the High Commissioner promoted all the candidates recommended by the APPB, the Applicant would have had very high chances of being promoted if the applicable texts had been followed. The decision not to promote the Applicant should consequently be rescinded.

35. Under article 10.5 of the Statute of the Tribunal, the Judge shall, when

- a. The High Commissioner's decision not to promote the Applicant to the P-3 level during the 2009 annual promotions session is rescinded;
- b. If, rather than implementing the decision to rescind the non-promotion, UNHCR chooses to pay compensation, i