

Introduction

1. By application filed on 2 May 2016, the Applicant, now a retired staff member of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision issued by the High Commissioner on 16 November 2015 not to promote her from the P-4 to the P-5 level during the 2014 Promotions Session.

2. The Respondent conceded that the Applicant’s candidacy for promotion to the P-5 level during the 2014 Promotions Session was not given full and fair consideration. The 2014 promotion exercise for candidates to the P-5 level was vitiated by the same procedural irregularities as those identified in this Tribunal’s Judgment

assigned as Policy Officer within the Division of Human Resources Management, UNHCR, in Geneva, returning in August of that year to a temporary assignment as Senior Legal Officer with the UNHCR Staff Council. The Applicant retired from UNHCR on 31 October 2018.

5. On 7 May 2015, the Applicant was advised that she was eligible for promotion to the P-5 level during the 2014 Promotions Session conducted under the Policy and Procedures for the Promotion of International Professional Staff Members (UNHCR/HCP/2014/2), promulgated by the High Commission on 5 February 2014 (“Promotions Policy”). The Promotions Policy provided for three rounds of evaluations. The High Commissioner had decided that 46 slots would be available for promotion to the P-5 level, which were to be equally shared between female and male candidates.

6. On 3 July 2015, the Applicant was advised that she fulfilled the requirements to advance from the First Round to the Second Round of evaluations.

7. During the Second Round, the Applicant’s candidacy was subject to a comparative assessment by a Senior Promotions Panel (“SPP”) composed of six members. Male and female candidates were evaluated separately. The 161 female candidates were ranked by each of the SPP members based on the criteria of performance, managerial accountability and exemplary leadership qualities, determined from a review of their fact sheets. As the Applicant was not ranked amongst the first 46 female candidates, there being double the number of slots available for female candidates, her application did not proceed to the Third Round of evaluations.

8. On 16 November

10. On 18 March 2016, the Applicant was advised that her request for management evaluation was untimely as she should have waited the result of the recourse application. By an all-staff broadcast of 22 July 2016, the Applicant was informed that her recourse application had not been successful.

Receivability

11. The Respondent initially objected in his reply to the receivability of the application. However, at a case management discussion held on 5 October 2018 and through written submissions filed on 16 November 2018, the Respondent informed the Tribunal that he no longer challenged the receivability of the application. The Respondent again accepted liability, noting that the matter now only concerned consideration of an appropriate remedy.

12. The Tribunal is thus no longer concerned with the receivability of the application nor with the specific complaints of the Applicant as to the procedural flaws in the implementation of the Promotions Policy during the 2014 promotion exercise. It will therefore proceed to consider the remedies alone.

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b. She also requests financial compensation for material damages considering her “eligibility as of 2012 and the lack of recognition of (her) merits for the wellbeing and prosperity of [the United Nations] and UNHCR for the last 25 years in different positions”;

c. In addition, she requests compensation for moral damages (frustration and denigration), including compensation for discrimination;

d. Although the Applicant initially asked the Tribunal not to set an amount of compensation that the Organization may elect to pay instead of rescinding the decision, she nevertheless argues that if the Tribunal decides to set such amount, the present case deserves an amount of compensation in lieu of rescission higher than that awarded in *Rodriguez-Viquez* as she has retired and is thus not able to seek promotion again; and

e. The Applicant further claims reimbursement for the costs of her trip from Warsaw to Geneva, being CHF304.12, to attend the hearing and the cost of her return trip from Geneva to Sofia in the amount of CHF 137.99.

14. The Respondent’s principal contentions are:

a. Promotion is no longer possible, as the Applicant has retired;

b. In any event, the Tribunal does not have the power to grant the requested promotion as it is a discretionary matter in respect of which the Tribunal has no power to substitute its views for the discretion of others. The Respondent refers in this connection to *Tsoneva* UNDT/2016/049, paras. 193-197 and *Sanwidi* 2010-UNAT-084;

c. The Respondent referred to judgments *Rodriguez-Viquez* UNDT/2016/030, *Muftic* UNDT/2016/031, *Natta* UNDT/2016/033, *Spannuth Verma* UNDT/2016/043, *Tsoneva* UNDT/2016/049, *De la Varga Fito* UNDT/2016/055 and *Landgraf* UNDT/2016/056, where the Tribunal set an alternative amount to rescission at CHF6,000 given the extreme difficulty in ascertaining the chances of promotion. The sum set in compensation should not exceed that set in *Tsoneva*;

d. No material damages should be paid in light of the Tribunal's previous finding in *Tsoneva*, that "the only damages that may be considered would relate to a loss of the additional salary [the Applicant] would have received had it not been for the contested decision" and that its computation was dependent upon whether and when any such promotion would take place, leading to the conclusion that "any possible loss of salary for the year following [the date of the Decision] is too speculative to justify or permit the award of material damages";

e. Even if the Applicant had been promoted at the time of the contested decision, her grade and corresponding entitlements would not have been affected until 1 September 2017, when the High Commissioner adjusted the grade and corresponding entitlements of staff members whose promotion under the Promotions Policy remained unimplemented in the absence of an assignment to a position at the higher grade; and

f. In respect of moral damages, evidence needs to be submitted and none has been submitted.

Consideration

15. The Tribunal's power regarding the award of remedies is delineated in art. 10.5 of its Statute, which states:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested decision or specific performance

performance

Case No. UNDT/GVA/2016/028

Judgment No. UNDT/2019/034

22. Following the change of promotion system, the Applicant could apply and compete for positions at the P-5 level from 1 September 2017. This left her a very short window of 14 months before her retirement to apply for

has now retired, the Respondent will necessarily have to pay her compensation in lieu of rescinding the contested decision. In line with previous jurisprudence, the amount awarded under art. 10.5(a) of the Statute as compensation in lieu of rescinding the decision must be considered as compensation for loss of salary, including pension, due to the denial of promotion (see *Tsoneva* UNDT-2010-178, para. 44; *Mutata* UNDT-2009-044, *Andersson* UNDT-2012-091, quoted in *Rodriguez-Viquez*, para. 174).

26. As to the Applicant's claim for moral damages, the Applicant credibly testified at the hearing held partly *in camera* of her ongoing frustration about repeated flaws in the implementation of the Promotions Policy, for two consecutive years, and the lack of effective remedies following her successful challenge to the decision not to promote her during the 2013 Promotions Session. As part of UNHCR Staff Council, she was at the centre of the staff members' grievances and actively took part in long-standing efforts to ensure fairness in the promotion process. She explained how she felt stressed and distressed about her lack of career prospects, the lack of recognition of her 16 years of work with UNHCR and the unfairness resulting from seeing colleagues being promoted under a flawed system. She stated that she decided to retire after having been at home in between assignments, given her lack of prospect to be appointed to a position.

27. ^{HJGQHG} The Applicant provided a medical report from a doctor she consulted at the

by the Tribunal in its judgments concerning the 2013 Promotions Session, delivered between 14 April 2016 and 6 May 2016, and their reoccurrence in the 2014 Promotions Session. The Applicant was actively engaged in this whole process, as a litigant in the 2013 and 2014 Promotions Sessions, and as a member of UNHCR Staff Council. The Tribunal finds that this medical evidence corroborates the Applicant's testimony about the stress and distress that she claims having suffered as a result of the decision not to promote her during the 2014 Promotions Session, which represented her last chance for promotion before she retired. The Tribunal therefore finds that the Applicant provided sufficient evidence of her moral damages and considers it appropriate to award her the amount of CHF3,000.

29. Additionally, the Applicant provided the Tribunal with details of a claim for the cost of her return flights from her home to Geneva in the sum of CHF442.11. The Tribunal notes that it did not order the Applicant to attend in person and that her appearance could have been efficiently undertaken through a video link. The Applicant elected to come in person and this is a matter at her expense.

Conclusion

30. In view of the foregoing, the Tribunal DECIDES:

- a. The contested decision denying the Applicant

d. The aforementioned compensation in lieu of rescission and the sum ordered to be paid for moral damages shall