UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS U

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. Oldrich Andrysek (Andrysek), a staff member at the P-5 level in the Office of the United Nations High Commissioner for Refugees (UNHCR), participated unsuccessfully in the promotion exercise conducted by the Appointments, Postings and Promotions Board (APPB), UNHCR, for promotion to the D-1 level. He is not entitled to an increase in compensation to three months' net base pay in accordance with *Mebtouche*,[1] because the facts of that case were different and distinguishable. The appeal is dismissed.

neither the General Assembly nor the Secretary-General, and therefore it is not in a position to substitute its judgment for policy decisions on personnel matters".[2] The Secretary-General also relies on the Appeals Tribunal's Judgment in *Mebtouche* that "neither the UNDT nor this Court has the authority to amend any regulation or rule of the Organization". [3]

15. According to the Secretary-General, the UNDT correctly established the amount of compensation of 9,000 Swiss francs, as an alternative to the rescission order. Andrysek's claim for compensation for moral suffering is untenable because he had little chance of promotion even if no irregularity had been found. Therefore, the claim for moral damages has no foundation.

Considerations

16. The UNDT decided a similar case on 16 October 2009 *(Mebtouche* [4]), also relating to the 2007 promotion session of UNHCR, regarding promotions of staff members at the P-5 to the D-1 level. Like Andrysek, Mebtouche had not been selected and was awarded 9,000 Swiss francs as compensation, on the same parity of reasoning that three persons had been wrongly promoted by the High Commissioner and the APPB had not followed the order established under the Procedural Guidelines and Methodological Approach for the application of criteria when listing staff recommended for promotion. On appeal before us, we increased the compensation to the equivalent of three months' net base salary. The issue in the present case is whether, following the above ruling, Andrysek should also be awarded the enhaMC sek, osh1(ld also)-4( )5(5(th)-g5(cas(The(.b0)5ID , fo(ity)]TJ-MCI17

unfairly deprive him of a promotion. He has a right to full and fair consideration, not to a promotion.

18. The contentions raised by Andrysek regarding the Methodological Approach before the UNDT were rightly rejected. The UNDT held:

> A comparison of the criteria established in the Procedural Guidelines and those established in the Methodological Approach reveals that the Methodological Approach merely defined a new way of determining the weight to be given to criteria which remained the same, so as to ensure greater transparency in drawing up the promotion lists. Hence, there was no rule obliging the Administration to obtain the agreement of JAC before applying this new working method for evaluating candidates, which did not change the rules in the Procedural Guidelines. Moreover, since JAB recommendations are not binding in themselves, no rule required the Administration to wait one year before implementing the Methodological Approach. [5]

Judgment

22. The appeal is dismissed. The Judgment