



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

SURVO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT 8-2.69s4.42425 .4801

Introduction

1. The Applicant, a P-4 level Chief of Section in the Statistical Information Services Section (“SISS”), Statistics Division (“SD”), Economic and Social Commission for Asia and the Pacific (“ESCAP”), contests: (a) the decision not to reclassify the P-4 Section Chief post to the P-5 level for the period 2003-2009, during which he contends that he performed functions at a P-5 level in SISS without due compensation or recognition; (b) the decision not to select him for the P-5 post of Chief of the Statistical Development and Analysis Section (“SDAS”); and, (c) the decision not to select him for the P-5 post of Chief of SISS. The Applicant also complains of abuse of authority and discrimination by the Chief of SD during these two selection processes.

2. The Applicant requests the following reliefs: financial compensation for the difference in salary and benefits between the P-4 and P-5 level post for the functions he performed from June 2003 to the date of selection of another candidate for the post of Chief, SISS; financial compensation for the violations of his due process rights as a result of the selection and promotion of a candidate other than him for the P-5 level posts of Chief, SISS, and Chief, SDAS; financial compensation for the demotion from Chief of Section to statistician and the permanent damage to his professional record and reputational damage as well as a delay in career advancement; financial compensation for the humiliation and suffering related to the prolonged and sustained mental stress; specific performance in relation to measures to rightfully receive the promotions to which he was entitled or otherwise to be offered a comparable post.

Relevant background

Reclassification of P-4 post of Chief SISS to the P-5 level

3. In July 2009, the P-4 level post of Chief, SISS, which was encumbered by the Applicant since 1 June 2003, was re-classified at the P-5 level. Following this reclassification, the P-5 post of Chief, SISS, was advertised on the United Nations employment website on 2 February 2010, through a vacancy announcement (“VA”).

Non-selection for P-5 post of Chief, SDAS

4. On 12 October 2009, a VA for the post of Chief, SDAS, was published by ESCAP, with a deadline for applications of 11 December 2009. Following his application to the VA, the Applicant was short-listed and took a written test for this post on 7 January 2010 and was interviewed on 10 February 2010.

5. On 17 June 2010, the Applicant received a memorandum from a Human Resources Officer in the Human Resources Management Section informing him that following the completion of the selection process “the Head of Department ha[d] decided to select another candidate for the subject post”.

Non-selection for P-5 post of Chief, SISS

6. On 2 February 2010, a VA for the P-5 post of Chief, SISS, was published by ESCAP, with a 3 April 2010 deadline for applications. Following his application, the Applicant was short-listed and, took a written test for this post on 4 May 2010. On 17 June 2010, following the completion of the written assessment, the Applicant was interviewed for the post of Chief, SISS.

7. On 3 September 2010, the Applicant received a memorandum from a Human Resources Officer in the Human Resources Management Section (“OHRM”) notifying him that the selection process for P-5 level post of Chief, SISS, had been completed and that while he had not been selected for the post, he had been placed on

is moot. In any event, the MEU considers that the re-classification of the Post was effected in 2009, and accordingly any request for management evaluation of that decision would undoubtedly be time-barred”.

Procedural history

12. On 9 March 2011, the Applicant filed a request for extension of time to file an application. Pursuant to the Tribunal’s direction, the Respondent filed a response on 14 March 2011. That same day, by Order No. 86 (NY/2011), the Tribunal rejected his request for an extension of time to file the application

despite good faith efforts by both parties, this matter had not been resolved through mediation.

18. By Orders Nos. 126 and 219 (NY/2014), dated 29 May 2014 and 1 August 2014, the parties were also instructed that, in case the informal resolution was unsuccessful, they were to file closing submissions by 14 August 2014 and 2 September 2014. On 2 September 2014, both parties filed their closing submissions as required by Orders Nos. 126 and 219. In his closing submissions, the Applicant recalled his “motion for directions” and indicated that he has a list of witnesses who could be called to testify that grave multiple violations occurred and that this had a wider impact affecting the morale of ESCAP staff-at-large. He also stated that, as a direct consequence of the events from 2010, he has been sidelined to interim positions and, since he has yet to be assigned to a suitable position, the selection for the P-5 post of Chief, SISS, and the Applicant’s non-selection remained illegal.

19. The Tribunal recalls that the purpose of the closing submissions is to enable the parties to inform it succinctly of the key facts and legal arguments that they presented during the proceedings.

20. In the present case, which is not related to a disciplinary decision, based on the extended submissions and evidence filed by the parties before the case was assigned to the undersigned judge, including on receivability issues, the Tribunal considers that no further documents or additional oral evidence is required and a case management discussion and/or a hearing is not needed. The case is to be decided on the papers before it. The parties were

Applicant's submissions

21. The Applicant's principal contentions may be summarized as follows:
- a. The Applicant had "a legitimate expectation to due compensation [including SPA] and reward for [his] efforts at the time they were provided or to the expectation of recognition of this contribution in enhancing [his] prospects within evaluations made in the promotion process";
 - b. The fact that since 2006 he acted as a *de facto* Officer-in-Charge of the Statistics Division for a period of three months in 2005, "is clear evidence of the level of [the Applicant's] qualification and competence that was ignored in both of the selection processes for promotion";
 - c. The Administration failed to follow the applicable rules regarding post selection processes, including overseeing the integrity and the fairness of it, resulting in a breach of the Applicant's right to due consideration, including by choosing to give more weight to the results of the written examination and interview over the Applicant's performance history. He was unfairly considered by the interview panel for post of Chief, SDAS, where questions were developed to favor the selected candidate. The selected candidate for the post of Chief, SISS, did not meet the minimum requirements and did not have comparable experience;
 - d. The delay in contesting his non-selection for the post of Chief, SDAS, stems from his supervisor making him believe that he would be in line for the reclassified P-5 level post of Chief, SISS, resulting in him deferring his appeal. Further, the violations regarding the non-reclassification of his post and his non-selection for the post of Chief, SISS, are ongoing. The entire selection processes were affected by a number of procedural violations, blatant and systematic abuse of authority, "persistent discrimination and bias, intended to damage the Applicant's career, and must therefore all be

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skills were fully considered.

Consideration

Applicable law

23. ST/AI/1998/9 (System for the classification of posts) dated 6 October 1998 states:

Section 1

Request for the classification or reclassification of a post

1.1 Requests for the classification or reclassification of a post shall be made by the Executive Officer, the head of Administration at offices away from Headquarters, or other appropriate official in the following cases:

(a) When a post is newly established or has not previously been classified;

(b) When the duties and responsibilities of the post have changed substantially as a result of a restructuring within an office and/or a General Assembly resolution;

(c) Prior to the issuance of a vacancy announcement, when a substantive change in the functions of a post has occurred since the previous classification; and

(d) When required by a classification review or audit of a post or related posts, as determined by the classification or human resources officer concerned.

1.2 The Office of Human Resources Management (OHRM), or the local Human Resources office in those cases where authority for classification has been delegated, shall provide classification advice when departments submit, with their budget requests, job de4a7/aRion s

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Section 4

Implementation

4.1 Classification decisions shall become effective as of the first of the month following receipt of a classification request fulfilling the conditions of section 2.2 above. When a classification request is submitted for advice prior to a budgetary submission, the classification shall become effective once the reclassification has been approved in the budget.

4.2 The classification of a post shall not negatively affect the existing contractual status, salary or other entitlement of the staff member encumbering the post. Staff members whose posts are classified at a level below their personal grade level will retain their current grade and salary level, on the understanding that every reasonable effort will be made to reassign them to a post at their personal grade level.

4.3 Staff members whose posts are classified at a level above their current personal grade level in the same category may be considered for promotion in accordance with established procedures, including issuance of a vacancy announcement, where applicable.

Section 5

Appeal of classification decisions

The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.

Section 6

Appeal Procedure

6.1 Appeals shall be submitted in writing to:

(a) The Assistant Secretary-General for Human Resources Management [(“ASG/OHRM”)], in the case of appeals regarding:

(i) Posts in the Professional category and at the D-1 and D-2 levels or reclassification of a General Service post to the Professional category;

(ii) Posts in the Field Service category;

(iii) Posts in the General Service and related categories at Headquarters and in small and medium-sized duty stations, except when posts in such duty stations are

administered by the offices indicated in subparagraph (b) below;

(b) The respective head of office in the case of posts in the General Service and related categories administered by ECA, ECLAC, ESCAP, ESCWA, the United Nations Office at Geneva, the United Nations Office at Nairobi and the United Nations Office at Vienna, up to and including posts at the G-7 level, except where the appeal involves a request for reclassification of such a post to the Professional category.

6.2 Appeals must be accompanied by the job description on the basis of which the post was classified.

6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.

6.4 The appeal shall be referred for review to:

(a) In the case of appeals submitted to the Assistant Secretary-General for Human Resources Management, the responsible office in the Office of Human Resources Management, which will submit a report with its findings and recommendation for decision by, or on behalf of, the Assistant Secretary-General;

(b) In the case of appeals submitted to the head of office, the local human resources service or section, which will submit a report with its findings and recommendation for decision by, or on behalf of, the head of office.

6.5 If the review results in an upgrading of the classification to the level sought by the appellant, the appellant shall be notified in writing of the decision.

6.6 If it is decided to maintain the original classification, or to classify the post at a lower level than that claimed by the appellant, the appeal, together with the report of the reviewing service or section,

decision on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal.

6.15 In those cases where the appeal is successful, the effective date of implementation of the post classification shall be, subject to the availability of a post, the same effective date as that of the original decision, as defined in section 4.1 above.

...

24. ST/AI/1999/17 (Special post allowance) (“SPA”) dated 23 December 1999 states:

Section 2

General provisions

2.1 Under staff rule 103.11, staff members are expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher-level posts. Nevertheless, payment of a non-pensionable SPA is authorized by the same rule in exceptional cases when a staff member is called upon to assume the full duties and responsibilities of a post which is clearly recognizable at a higher level than his or her own for a temporary period exceeding three months

...

Section 3

Temporary assignments

Temporary assignments to temporarily vacant posts

3.1 Temporary assignment to a post that is temporarily vacant shall be made in accordance with section 2.4 of ST/AI/1999/8 on the placement and promotion system, and section 2.2 of ST/AI/1999/9 on special measures for the achievement of gender equality, which require that the department or office concerned inform its staff of temporary vacancies expected to last for three months or longer so as to give staff members the opportunity to express their interest in being considered.

Temporary assignments to vacant posts

3.2 In addition to the requirements set out in section 3.1 above and in order to implement paragraph 10 of section III.B of General Assembly resolution 51/226, in which the Assembly requests

the Secretary-General “to take effective measures to prevent the placement of staff members against higher-level unencumbered posts for periods longer than three months”, temporary assignments to vacant posts shall require that the department or office concerned has already initiated the proper procedures for filling the post on a permanent basis. This may be demonstrated by requesting:

(a) Issuance of a vacancy announcement for the vacant post, unless the requirement of such issuance has been waived in accordance with section 3.4 of ST/AI/1999/8;

or:

(b) Classification of the post, where this is a precondition for issuing a vacancy announcement in accordance with section 3.2 of ST/AI/1999/8;

or:

(c) Filling of the vacant post through the competitive examination process, where applicable.

The purpose of the present requirement is to ensure that assignments to higher-level vacant posts, as well as any SPAs granted on that basis, are limited to cases where vacant posts cannot be filled within three months under the established procedures for recruitment or placement and promotion, and where successful programme delivery requires temporary assignment to vacant posts for longer than three months.

...

Section 4

Eligibility

Staff members who have been temporarily assigned to the functions of a higher-level post in accordance with the provisions of section 3 above shall be eligible to be considered for an SPA when they meet all of the following conditions:

Section 6

Effective date of SPAs

6.1 The earliest date from which

may be paid as of the date when the staff member has assumed the higher-level

functions discharged those functions for accordance with subsection 4 (b)

above:

(b) When a staff member has assumed higher-level functions in a mission;

(c) When a staff member in the General Service or related of a post in the Professional categories set out in section 10 below.

6.2 Notwithstanding the provisions of section 6.1 above, SPA may not predate either:

(a) The original request for SPA by more than one year;

or:

(b) The effective date of the classification decision in cases of upwards classification of the post.

Section 7

Duration and extension of SPAs

7.1 SPAs shall be granted for a specific period determined in accordance with the provisions of the present section.

SPA for assignment to a temporarily vacant post

7.2 When an SPA is granted to a higher-level post which is temporarily vacant, it may be granted for an initial period of up to one year.

7.3 The SPA may be extended by the department or office without reference to the SPA panel to cover a total period of up to two years, including the initial period, upon the supervisor's certification that the staff member continues to satisfactorily perform the full functions of the higher-level post.

SPA for assignment to a vacant post or a post reclassified at a higher level

7.4 When an SPA is granted to a staff member temporarily placed against a higher-level vacant post or a post reclassified at a higher level, the SPA may be granted for an initial period of up to three months.

7.5 Any extension beyond the initial period shall require resubmission to the SPA panel, with justification based on

Section 9

Decision

9.1 The selection decision for posts up to and including at the D-1 level shall be made by the head of department/office when the central review body finds that the evaluation criteria have been properly applied and/or that the applicable procedures have been followed. The selection shall be made by the official having authority to make the decision on behalf of the Secretary-General when the central review body finds that the evaluation criteria were improperly applied and/or that the applicable procedures were not followed, in accordance with the provisions of section 5.6 of ST/SGB/2002/6. In all cases, the recommendations of the central review body shall be given due consideration. Recommendations for selection for posts at the D-2 level shall be made by the head of department/office for review by the Senior Review Group. The Senior Review Group shall provide its recommendation to the Secretary-General, who will make the selection decision. When the post to be filled involves significant functions in the management of financial, human and physical resources and/or information and communications technology, the executive or local personnel office shall inform OHRM of the proposed selection so that the approvals required by Secretary-General's bulletin ST/SGB/2005/7 may be obtained prior to selection. [Footnotes omitted]

9.2 When recommending the selection of candidates for posts up to and including at the D-1 level to the head of department/office, the programme manager shall support such recommendation by a documented record. The head of department/office shall select the candidate he or she considers to be best suited for the functions, having taken into account the Organization's human resources objectives and targets as reflected in the departmental human resources action plan, especially with regard to geography and gender, and shall give the fullest regard to candidates already in the service of the Organization. For posts in the Professional and higher categories subject to geographical distribution, if the head of department/office proposes to select an external candidate from an overrepresented Member State, the proposed selection decision must be justified to, and approved by, OHRM prior to selection of the candidate. If the head of a department/office who has not met the gender targets set out in the departmental action plan proposes to select a male candidate where an equally qualified female candidate exists, the proposed selection decision must be justified to, and approved by, OHRM. For vacancies at the P-3 level, prior to selection of an external candidate, that decision must be justified on the record to, and approved by,

OHRM. When recommending the selection of candidates for posts at the D-2 level, section 4.2 of ST/SGB/2009/2 shall apply.

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a formal process, as explained below. Regardless of the choice made, the aggrieved individual is encouraged to keep a written record of events, noting dates, places, a description of what happened and the names of any witnesses and of anyone who may have information concerning the incident or situation at issue.

...

Formal procedures

5.11 In circumstances where informal resolution is not desired or appropriate, or has been unsuccessful, the aggrieved individual may submit a written complaint to the head of department, office or mission concerned, except in those cases where the official who would normally receive the complaint is the alleged offender, in which case the complaint should be submitted to the Assistant Secretary-General for Human Resources Management or, for mission staff, to the Under-Secretary-General for Field Support. Formal resolution may also be initiated by the submission of a report of prohibited conduct from a third party who has direct knowledge of the situation to one of the officials listed above (the “responsible official”). The aggrieved individual or third party shall copy the written complaint or report to the Office of Human Resources Management for monitoring purposes.

...

5.13 The complaint or report should describe the alleged incident(s) of prohibited conduct in detail and any additional evidence and information relevant to the matter should be submitted. The complaint or report should include:

- (a) The name of the alleged offender;
- (b) Date(s) and location(s) of incident(s);
- (c) Description of incident(s);
- (d) Names of witnesses, if any;
- (e) Names of persons who are aware of incident(s), if any;
- (f) Any other relevant information, including documentary evidence if available;
- (g) Date of submission and signature of the aggrieved individual or third party making the report.

5.14 Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission

28. ST/STGB/2009/7 (Staff Regulations of the United Nations and provisional Staff Rules), dated 16 June 2009 states:

Rule 11.2

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in

29. ST/SGB/2010/6 (Staff Regulations and provisional Staff Rules) dated 2 September 2010 states:

Regulation 1.1

Status of staff

...

dependency allowances, if any) which the staff member would have received had the staff member been promoted to the next higher level.

...

Rule 3.16

Retroactivity of payments

Consideration

Post classification

31. The first contested decision identified by the Applicant consists of the “[i]llegal actions taken in bad faith, in that there was a persistent refusal to reclassify the P-4 Section Chief post (the only P-4 Chief of a substantive Section at

in the classification of the post at the wrong level. It results that such an appeal can be filed, by either the head of the unit and/or by the incumbent of the post;

b. Consequently, even in the absence of such an action from the head of the unit, at the time of its classification, the incumbent of a post has the right to appeal a classification decision on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level;

the human resources service or section concerned as appropriate for their observations which must be submitted within a period of two weeks. In cases where the Administration has questioned the receivability of the appeal, the Committee shall first determine if the appeal is receivable. The following appeals shall not be receivable: (i) appeals submitted after the 60 day time limit, unless exceptional circumstances warrant the waiver of the time limit; (ii) appeals that are based on new functions which were not the subject of the contested decision, and (iii) appeals that are based exclusively on comparison with other posts without any reference as to the reason why the reclassification decision, on its own merits, would be incorrect (arts. 6.7-6.8);

v. The Assistant Secretary-General, OHRM, or the Head of Office, as appropriate, shall take the final decision on the appeal. A copy of the final decision shall be communicated promptly to the Appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal (art. 6.14).

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a preliminary step that a staff member has to follow before filing an appeal against such a decision before the Dispute Tribunal.

36. On 17 March 2009, the General Assembly adopted Resolution 63/253 “Administration of justice at the United Nations” and decided to abolish United Nations Administrative Tribunal as of 31 December 2009 and to create a new formal system of justice comprised of the United Nations Dispute Tribunal and the United Nations Appeal Tribunal which became operational as of 1 July 2009. All the cases pending before the former Administrative Tribunal were transferred to the Dispute Tribunal and consequently, after 1 July 2009 an appeal against a non-reclassification decision could be filed before this Tribunal.

37. Article 8.1(d) from the Tribunal’s Statute states that an application is receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required.

38. The Tribunal notes that the former incumbent of the Applicant’s post retired

40. Further, the Tribunal finds that a management evaluation request was not required in the present case, since a request for review of a classification decision, or lack thereof, should have first been made before of Classification Appeal Committee, which is a specialized body, and not before the Management Evaluation Unit.

41. With regard to the refusal to reclassify his post, the Applicant refers to the “illegal actions taken in bad faith” without indicating elements to identify the specific administrative decision(s), the date of the alleged refusal(s) to reclassify his post, and why any such decision(s) was in non-compliance with the terms of his contract of employment.

42. The Tribunal notes that arts. 8.3 and 8.4 from the Tribunal’s Statute state that, in exceptional cases, upon receiving a written request by an applicant, the deadline by which one has to file an application with the Tribunal may be waived or suspended for a limited period of time. An application, even when there are exceptional circumstances, is not receivable if it is filed more than three years after the Applicant’s receipt of the contested decision. The Applicant alleged that the contested decision was the continuous refusal to reclassify his post between 2003-2009. In the present case, and aside from the Tribunal’s finding that there is no actual contestable administrative decision before the Tribunal, the Applicant did not request that the Tribunal waive or suspend the deadline for filing an appeal against a particular decision(s) either with or prior to filing his appeal. The Applicant has not provided the Tribunal with any information that would enable it to establish that this application was filed within three years from the date of notification.

43. In *Reid* 2013-UNAT-389, the Appeals Tribunal stated that

14. As recalled in Art. 7(6) of the rules of Procedure of [the Dispute Tribunal, “(UNDT)”] “in accordance with art. 8.4 of the Statute of the Dispute Tribunal, no application shall be receivable if filed more than three years after the Applicant’s receipt of the contested administrative decision”. Moreover, as the Appeal Tribunal has previously held, “under Art. 8(4) of the UNDT Statute, the UNDT

after the applicant's receipt of the contested administrative decision”
(*Bangoura* 2012-UNAT-268).

Special post allowance

44. In *Massabni* 2012-UNAT-238, the Appeals Tribunal held that:

2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties submissions.

3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not the requested judgment.

45. The Tribunal considers that the second decision being contested by the Applicant is directly related to his request for reclassification and can be found in the remedy section of his application whereby he requests “financial compensation for the difference in salary and benefits between P-4 and P-5 since June 2003 to the date of selection of another person for that post”.

46. The Tribunal observes that the Applicant also mentioned in the grounds of appeal related to the first contested decision that while he was encumbering a post at the P-4 level, he performed functions at the P-5 level for seven years without due compensation or recognition “while being provided with the expectation that this

before over and above [his] current submission, but never before [did he] ma[ke] complaints that [he] was entitled to take before the Tribunal”.

47. The Tribunal notes that in his 29 October 2010 request for management evaluation, the Applicant expressly indicated that one of the remedies he was seeking was “monetary compensation for the P-5 level work that [he] has been doing with P-4 benefits since June 2003”. Based on the facts of the case and accompanying documents, the MEU requested comments

July 2009 (when the Applicant's post was reclassified at the P-5 level) and 1 August 2009-6 September 2010 when the new Chief, SISS, was appointed.

51. The Tribunal considers that the grounds of appeal mentioned above are related to the request for compensation and finds that it represents a retroactive request for SPA. It results that by including the same request, even though it was inserted in the wrong section, in his 29 October 2010 request for management evaluation, the Applicant, made a wr

reclassification of his post at the P-5 level until the successful candidate was assigned to the post, prior to his filing a request management evaluation on 29 October 2010.

55. The Tribunal observes that it is not c

58. Pursuant to staff rules 11.2(a) and (c) a staff member who wants to formally contest an administrative decision shall as first step, submit to the Secretary General in writing a request for management evaluation within 60 calendar days from the date on which the staff member received notification of the contested decision. Consequently, the deadline to file a request for management evaluation of his non-selection for the P-5 level post of Chief, SDAS, was 18 August 2010.

59. The Tribunal notes that the time limits set by staff rule 11.2(c) may be extended and/or suspended by the Secretary-General based on pending efforts for informal resolution conducted by the Office of Ombudsman. However, neither occurred in the present case.

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management evaluation of his non-selection decision for the P-5 level post of Chief, SDAS, within the applicable time limits and his request for management evaluation is therefore not receivable. In the absence of a timely request for management evaluation, the appeal against th

and exceeding performance appraisals, were not correctly assessed during the selection process.

71. The VA for the P-5 post of Chief, SISS, included the following qualifications requirements:

Education

Advanced university degree (Master's degree or equivalent), preferably in statistics, economics, demography or relevant field. A first level university degree with a relevant combination of academic qualifications and experience in the above field or a related area may be accepted in lieu of the advanced university degree.

Work experience:

At least 10 years of progressively responsible professional experience in statistics development, data dissemination and programme management at national and/or international level; working experience in Asia and Pacific Region is considered desirable; a strong track of record of innovative development of statistical publications and products and policy- relevant statistical analysis and publications is desirable.

Language:

English and French are the working languages of the United Nations

experience in official statistics development and technical cooperation programme management at national and international level””. The Tribunal considers that the Applicant presented contradictory arguments and, eventually, recognized that the selected candidate met the work experience requirement.

73. As part of his reply, the Respondent produced the official overall evaluations of the two recommended candidate. The Tribunal notes that a comparative analysis of the two recommended candidates’ written test indicates that the Applicant obtained a lower score than that of the

manifest errors of judgment. In *Ljungdell* UNDT/2011/208, the Tribunal held that it is for the Administration to determine the suitability of each candidate and the Tribunal should not substitute its judgment to that of the Secretary-General in the assessment of a candidate's suitability for a given post. Similarly, in *Gordon* UNDT/2011/173 and *de Saint Robert* UNDT/2011/175, the Tribunal found that, in reviewing selection decisions, it is not for the Tribunal to substitute its own assessment for that of the selection panel except where errors of facts have been committed. Finally, in *Roland* UNDT/2010/095, the Tribunal stated that the assessment of candidates in a promotion exercise involves a high degree of judgment and experience which will not be replicated by a Judge and that accordingly, unless there was some obvious anomaly or evidence that irrelevant material was taken into account, relevant material ignored or of a mistake of fact or law, the Tribunal will not be able to conclude that the process was significantly flawed.

77. The Tribunal considers that the above does not reflect a mistake of fact or law or an obvious anomaly in the selection process. There is no evidence of a biased attitude by the members of the selection panel or that the selection process was otherwise flawed.

78. The Applicant stated that “in relation to the denial of the first P-5 Post [...] [the Chief, SDAS, Ms. HF] made [him] clearly understand and believe that [he] would be in line for the reclassified Section Chief post, [...] in his own Section” and he considered that as a promise of promotion for the P-5 level post of Chief, SISS.

79. The Tribunal considers that the letter from 17 June 2010 sent by the Chief, SD, to the Applicant whereby she said that she “would like to encourage [him] to apply for other vacant posts for which [he] believe[s] he has the necessary qualifications” is a standard recommendation by a manager to one a staff member and is not equivalent to a promise for promotion. Rather, it consists of an encouragement to apply for other vacant P-5 posts. The Tribunal further considers that there is no evidence that the Chief, SD, as the Applicant also alleged, made repeated remarks, in

public and/or private, that the Applicant should seek transfer to the Programme Management Division. The Tribunal also notes that this allegation contradicts other ones made by the Applicant, as underlined in the previous paragraph.

80. In *Parmar* UNDT/2010/006, the Tribunal held that staff regulation 4.4 which provides that the fullest regards shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations “does not confer an absolute (as distinct from qualified) preference in favor of staff already in service in filling the vacancies”. Further, the Tribunal stated in *Douaji* UNDT/2011/160 that a promise of priority consideration must be understood as giving priority only over other equally qualified candidates. When qualifications of another candidate are superior, the Administration is by no means bound to grant the post to the candidate enjoying priority consideration.

81. In this case, the Executive Secretary of ESCAP was responsible for making the final decision based on the recommendation of the interview panel which were endorsed by the CRB. She took the decision to select the other recommended candidate and to place the Applicant on the roster. There is no reference in the application and/or evidence that she abused her discretion in taking this decision.

82. As held by the Appeals Tribunal in *Andrysek* 2010-UNAT-070, staff members do not have a right to promotion. The Applicant was recommended for the position as he was deemed a suitable candidate.

83. Even if the Applicant believed that he had received a promise for promotion, such a promise had no legal consequences and, as previously found, the two candidates were not found to be equally qualified.

84. The Tribunal concludes that the Applicant’s right to a full and fair consideration for the post of Chief, SISS, was respected.

Abuse of authority

85. The final ground of appeal refers to the allegation of systematic abuse of authority and discrimination by the Chief, SD, during the selection exercise for the P-5 level post of Chief, SISS.

86. The Tribunal notes that, sec. 5 of ST/AI/2008/5 states that individuals who believe that they are victims of prohibited conduct are encouraged to deal with the problem as early as possible using either the informal and/or the formal procedure established.

87. In the present case, there is no evidence that prior to bringing this matter before the Tribunal, the Applicant followed the procedure established in ST/AI/2008/5 and in Chapter XI of the Staff Rules requiring that a staff member attempt to use either the formal or informal approved mechanisms to deal with a complaint prior to filing an appeal with the Dispute Tribunal. The Tribunal has the competence only to review the legality of a decision taken by the responsible official and not to substitute his/her judgment and decide directly on a complaint of abuse of power and discrimination or to consider it as being a relevant background for a case. Consequently, the grounds of appeal against this decision are to be rejected.

Other matters

88. In the closing submissions, the Applicant filed, without leave from the Tribunal, new documents and a new additional ground of appeal, stating that as a direct consequence of the events from 2010, he has been side-lined to interim positions, has yet to be assigned to a suitable position, and the selection for the P-5 level post of Chief, SISS, remains illegal.

89. The Tribunal notes that the parties were informed by Order No. 22 (NY/2014), dated 30 January 2014, that the closing submissions consists of

a summary of the “the key facts and legal arguments that [the parties] presented during the proceedings”. If a party wants to file any new submission and/or additional new evidence, he/she must, in good faith, file a reasoned request prior to the expiration of the deadline for the submission of closing submissions. Such a request cannot be filed without leave from the Tribunal and should not represent a reason to delay the Tribunal’s deliberations.

90. The Tribunal observes that the case *Survo* UNDT/2011/109, where the contested decision was “the Administration’s attempt to identify the incumbent (Applicant) ‘a suitable post’, which should have been done before the successful candidate assumed the duties on 13 September 2010”, was successfully resolved through mediation thereby resulting in the Tribunal dismissing the Applicant’s application for suspension of action.

91. The Tribunal, after reviewing the Applicant’s submissions, notes that no criticisms, based on art. 10.2 from ST/AI/2006 Rev.1, of the selection decision for the post of Chief, SISS, implemented in September 2010 prior to a suitable position being identified for the Applicant who was the incumbent of the post, were included in his application prior or after the issuance of *Survo* UNDT/2011/109 in response to his application for a suspension of action of 15 April 2011.

92. Based on the principle of equality of arms, these new issues are not to be considered by the Tribunal as part of the appeal against the non-selection decision for the post of Chief, SISS, and/or evidence in the present case, since they were not part of the initial application. No additional ground of appeal and/or evidence can be allowed in a case without all parties being given an opportunity to respond to them. As results from the above, the Tribunal determined pursuant to art. 18 from the Rules of Procedure that the documents filed by the parties were sufficient for it to render a decision on the papers before, without the need for a hearing, with regard to both the part of the application that was found to be not receivable as well as the one found to be receivable.

Conclusion

In the light of the foregoing, the Tribunal DECIDES:

93. The appeals against the persistent refusal to reclassify the Applicant's post at the P-5 level during the period June 2003-July 2009 and his non-selection for the P-5 level post of Chief, SDAS, are dismissed as non-receivable;

94. The Applicant's request for compensation for the difference in salary and benefits between the P-4 level post he encumbered and that of the P-5 level post of Chief, SISS, for the period of June 2003 to the date of selection of another person for that post is remanded to the Administration for a full and fair consideration within ninety days of the date of publication of this judgment;

95.