



**Mebtouche
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

[No. 2010-UNAT-033]

Before: Judge Sophia Adinyira, Presiding
Judge Kamaljit Singh Garewal
Judge Rose Boyko

Case No.: 2010-045

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Phyllis Hwang

JUDGE SOPHIA ADINYIRA, Presiding Judge.

Synopsis

1. The Appellant, Larbi Mebtouche (Mebtouche), a retired staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), filed an application with the United Nations Dispute Tribunal (UNDT) against the High Commissioner's decision not to promote him to the D-1 level during a promotion session in 2007. The UNDT ordered the rescission of the decision not to promote Mebtouche or, in lieu of the rescission, the payment of compensation in the amount of 9,000 Swiss francs.

decision was vitiated and ordered its rescission, or in lieu of the rescission, a payment of compensation in the amount of 9,000 Swiss francs. The UNDT refused Mebtouche's claim for compensation for moral suffering caused by the decision on the grounds that in light of his performance appraisal and seniority, his chances of being promoted were rather slim.

4. On 3 February 2010, Mebtouche filed an appeal against the UNDT judgment.

Submissions

Mebtouche's Appeal

5. Mebtouche reiterates his arguments presented before the UNDT. He submits that the UNDT erred in fact by failing to consider his submissions regarding his former service on a "specialist" post.

6. Mebtouche submits that this issue was all the more relevant as the UNDT recognized that "the High Commissioner made irregular use of his prerogative to promote on the basis of executive decision *by promoting three staff members who were ineligible*" (emphasis in the original). Mebtouche argues that an appropriate use of the High Commissioner's prerogative to grant promotions on the basis of an executive decision would have been Mebtouche's case. He requests additional compensation for the alleged failure to take into account his prior service on a specialist post.

7. Mebtouche further contends that, having found a violation of his rights, the UNDT failed to order an adequate and effective remedy. In his opinion, given the UNDT's order to rescind the impugned decision or, in lieu of rescission, the payment of compensation in the amount of 9,000 Swiss francs, it was a foregone conclusion that the Administration would opt for payment of compensation. He therefore requests compensation "at a level which puts the Respondent before a real choice between specific performance and payment of compensation".

Secretary-General's Answer

8. The Secretary-General submits that at the time that Mebtouche was considered for a promotion, he was serving on a "generalist" post. Accordingly, the provision in the Methodological Approach allowing for a "case by case" review of staff members serving on "specialist" and "expert" posts did not apply to him. The Secretary-General further

contends that Mebtouche acknowledges that the “case by case” procedure does not apply to him. Rather, Mebtouche is advocating that the procedure should be extended to staff members who previously served on expert posts. The Secretary-General submits that the UNDT did not have the authority to introduce different procedures for the evaluation of candidates in a promotion session.

9. The Secretary-General further contends that the compensation ordered by the UNDT should not be enhanced as the level of compensation as ordered by the UNDT as an alternative to the rescission of a contested decision should be commensurate with the extent of the injury the staff member would suffer if the Organization opted not to rescind a decision.

Considerations

10. As a preliminary matter, the Appeals Tribunal rejects Mebtouche’s request for an oral hearing via teleconference. Mebtouche’s brief on appeal is sufficient and does not require further clarification.

11. The Tribunal finds that Mebtouche’s contention that the UNDT failed to consider his arguments regarding the former service on a “specialist” post is without merit. In fact, the issue was considered by the UNDT. Mebtouche requests that the “case by case” consideration applied to “specialist” staff members during promotion sessions should be applied not only to those currently serving on such posts, but to all those who have served on an expert post for substantial part of their career. However, neither the UNDT nor this Court has the authority to amend any regulation or rule of the Organization. At best, this Court may point out what it considers to be a deficiency in a regulation or rule and recommend a reform or revision. The circumstances of the present case do however not warrant such a recommendation.

12. Turning to Mebtouche’s contention that the compensation in lieu of the rescission of the impugned decision was too low, we find that the compensation of 9,000 Swiss was inadequate having regard to the fact that the order was made on 16 October 2009, at a time when Mebtouche had already retired and therefore had no possibility of any further promotion.

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2010-045