



Case No.: UNDT/GVA/2010/061

Judgment No.: UNDT/2010/188

Date: 18 October 2010

English

functional diversity is assessed on the basis of standard job titles and categories, is a disadvantage for those who, like himself, have served as experts for a significant part of their career;

g. Overall ratings in performance appraisals do not necessarily reflect the evaluations of the various elements retained to measure performance. To review fact-sheets only is not sufficient for the APPB to form its opinion;

h. The fact that he was not recommended for promotion by his supervisor for 2008 was wrong, since at his performance appraisal for the same year, his supervisor had indicated that he would recommend him for promotion;

i. By attributing points to supervisors' recommendations, significant emphasis is being placed on an element that is not necessarily objective;

j. The points system devised cannot serve as an objective, fair and transparent measurement of the capacity of a staff member to fulfil functions at a higher grade;

k. Whilst it was planned at previous promotion sessions to give special attention to candidates performing in expert posts, this did not happen in his case as he was disadvantaged by his

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18. The Respondent's contentions are:
- a. The application is not receivable insofar as the Tribunal is requested to order that measures are taken to change the UNHCR promotions system. Such an order would interfere with the discretionary powers of the High Commissioner and falls outside the Tribunal's powers as provided for in article 10 of its Statute;
 - b. The Applicant received the same attention by the APPB as other candidates and the Board considered his individual profile. In addition to applying the points system, the APPB reviewed the situation of each candidate in detail in order to decide whether candidates were equally qualified within a group;
 - c. The attribution of points to the Applicant for functional diversity was determined in the same way as for other candidates. The APPB was fully aware of the functions performed by the Applicant;
 - d. The calculation of points for rotation was transparent and carried out in accordance with what is provided for in the methodology. The Applicant's duty travels were indeed not taken into consideration since he did not change duty stations. The APPB did not consider it necessary to consider the number of his duty travels and it is within its discretion to do so;
 - e. Contrary to the Applicant's assertion, former experts were not disadvantaged by the methodology. Experts in UNHCR have the same rotation possibilities as other staff members. It is their choice to move or not to other functions and they know from the beginning of their career with UNHCR that rotation is valued by the Organization. Rotation is one of the underlying principles of the UNHCR human resources policy and is imperative for the Organization. The rotation criterion was therefore introduced to reflect this need. The Assistant High Commissioner for Protection has indeed recognised that the methodology makes no reference to how former experts ought to be assessed and that this issue deserves

further discussion. Nevertheless, the fact that former experts were not given special attention does not constitute a procedural irregularity;

f. In its judgment Andrysek UNDT/2009/038, the Tribunal confirmed that the criteria used for the 2007 promotion were in line with the APPB Procedural Guidelines. The same applies for the 2008 session methodology;

g. Although the Applicant criticises the use of performance appraisal reports for the measurement of performance because they are subjective, no performance appraisal can ever be entirely objective and the APPB has chosen to use the performance appraisals reports to do so, which is within its discretion;

h. To use the number of supervisors' recommendations as a criterion to measure performance is also within the discretion of the APPB.

Judgment

19. Although the Applicant is entitled to contest before this Tribunal the legality of the decision not to promote him to the P-5 level for 2008, his request that the Tribunal order UNHCR to amend the procedure for granting promotions can only be rejected since the UNDT Statute does not authorise the Tribunal to substitute itself to the Administration in enacting the rules applicactevHyí] T[,edpíyHíYSçqyYyzSnR-íçqyíM cpíyHíYSçqyzzS0R-íçq,zSpR-zçMyHíYzççMMcT d s [SsR-yçHzY RMçwíçMzqzSfR-Hçi Althuy

date to determine the seniority and the eligibility of staff members at the 2008 session.

22. It is therefore important to ascertain whether the High Commissioner was in a position to modify the APPB Rules of Procedure and Procedural Guidelines. Firstly, it should be noted that under the letter from the Joint Advisory

transparency of the procedure, which is only a goal, but that he should provide specific facts establishing that the legal instruments guiding the selection of staff for promotion were not followed.

26. The Applicant holds that the methodology used during the 2008 promotion session is not in line with the Staff Rules that require that, with regards to promotions, priority consideration be given to performance. In that respect, staff regulation 4.2 provides that:

The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

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27. The APPB Procedural Guidelines applicable to UNHCR staff, issued in 2003, provide that, after it has been determined that a staff member meets the minimum seniority requirements for promotion, recommendations from supervisors, performance appraisals and seniority will be taken into consideration.

With regard to promotion to the P-5 level, the ~~the, qpc, wíqM, StRíçpíyHíYShR-íçqywfHMpzwpzím-qç~~

Decision

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

The application is rejected.

(signed)

Judge Jean-François Cousin

Dated this 18th day of October 2010

Entered in the Register on this 18th day of October 2010

(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva