Introduction

1. In an application submitted on 15 June 2010 to the United Nations Dispute Tribunal, the Applicant requests the following:

a. The rescission of the decision by which the United Nations High Commissioner for Refugees refused to promote her to the D-1 level for 2008;

b. To be promoted to the D-1 level or to be recommended for promotion at the D-1 level at the 2009 promotion session;

c. To be compensated for the material and moral damage suffered;

d. To receive fair compensation for her lawyer's fees.

Facts

2. The Applicant has been working for the United Nations High Commissioner for Refugees ("UNHCR") since May 2001.

3. Through IOM/FOM No. 010/2009 of 3 February 2009, the Director of the Division of Human Resources Management ("DHRM") informed all UNHCR staff that the 2008 annual promotion session would be held in March 2009 and that the number of promotion slots for 2008 had bee

6. Through IOM/FOM No. 022/2009 of 28 April 2009, the High Commissioner published the list of staff promoted. The Applicant was not amongst those promoted.

7. By email dated 8 May 2009, the Applicant received, at her request, a copy of her case file as examined by the APPB at the 2008 promotion session.

8. By letter dated 28 May 2009, the Applicant filed recourse before the APPB against the decision not to promote her at the 2008 session.

9. The APPB reviewed the Applicant's recourse at its recourse session which took place from 22 to 26 June 2009. The Applicant was not recommended for promotion.

10. Through IOM/FOM No. 035/2009 of 28 July 2009, the High Commissioner announced the results of the recourse session. The Applicant was not amongst the staff members who were promoted after the session.

11. By email dated 12 August 2009, the Applicant received the summary of the deliberations of the APPB regarding her recourse.

12. By letter dated 20 September 2009, the Applicant submitted a management evaluation request to the Deputy High Commissioner, as well as a request for amicable settlement, with regard to the High Commissioner's decision not to promote her to the D-1 level at the 2008 promotion session.

13. By email dated 21 October 2009, the Applicant was informed that it would not be possible to respond to her request for management evaluation within the stipulated time limit. She was also informed that the absence of a response did not impact on the time within which she may file an application to the Tribunal.

14. By memorandum dated 30 November 2009, the Assistant High Commissioner for Protection, on behalf of the Deputy High Commissioner, informed the Applicant that she had forwarded her request for amicable settlement to the UNHCR Ombudsman and that the time limit for management evaluation was suspended while consultations took place with the Ombudsman.

15. By email dated 29 March 2010, the UNHCR Ombudsman informed the Deputy High Commissioner that the parties had been unable to reach an amicable settlement.

16. By email dated 18 May 2010, the Deputy High Commissioner sent to the Applicant the outcome of his management evaluation, i.e., that the decision not to promote her to the D-1 level had been taken in accordance with the Organization's rules and procedures.

17. On 15 June 2010, the Applicant filed an application before the United Nations Dispute Tribunal.

18. By letter dated 8 September 2010, the Tribunal informed the parties that it intended to raise on its own motion the issue of the legality of the 2008 promotion session and requested that the Respondent provide comments in this regard. The Respondent submitted his comments on 15 September 2010.

19. On 1 October 2010, an oral hearing took place in which the Applicant, her Counsel and Counsel for the Respondent participated.

Parties' contentions

20. The Applicant's contentions are:

a. Lack of predictability: The promotions methodology is issued extremely late and therefore does not comply with the requirements of the principle of predictability;

b. Absence of good faith: The current promotions system violates the principle of good faith. Failure to meet the promotion criteria is apparently not an obstacle in obtaining a promotion. She fulfils the promotion criteria and has a letter from her supervisor recommending her for promotion;

c. Gaps in the methodology: In the promotions methodology, little reference is made to the consideration of staff members serving on expert posts. Because of this omission, it is not possible to fully appreciate the qualities of staff members who are, or who have been, assigned to such functions. The methodology is also incomplete in the sense that it does not take into consideration the entire career of candidates. That she performed as an expert from 2001 to 2008 was not taken into account;

d. Discrimination: The promotions system is discriminatory and violates the principle of equal treatment since more men than women are promoted. Moreover, there is a continuing failure to promote financial experts to the D-1 level;

e. The Administration did not provide any explanations to her as to how the methodology criteria were applied in her case. Moreover, the Administration delayed the procedure despite her diligent behaviour;

f. The contested decision is based on obvious unlawful grounds;

g. The APPB minutes refer to a supernumerary promotion. However, this type of promotion is not envisaged in the promotions methodology published for the 2008 session. A staff member was granted this promotion. This staff member, who was competing with her for promotion, was also the UNHCR Ombudsman until February 2010. He was in charge of the procedure for reaching an amicable settlement in her casac h fen

this type of control, and in the present case, it does not appear useful that witnesses appear before the Tribunal.

23. By letter dated 8 September 2010, the Tribunal informed the parties that it intended to raise on its own motion the issue of the legality of the 2008 promotion session: indeed, contrary to paragraph 11 of the APPB Rules of Procedure and paragraphs 140 and 144 of the Procedural Guidelines, published in 2003, that provide that the annual promotion session takes place in October and that staff seniority is calculated up to that date, the High Commissioner accepted the proposal of the Joint Advisory Committee to fix 31 December 2008 as the cut-off date to determine the seniority and the eligibility of staff members at the 2008 session.

24. 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 Committee, dated 27 January 2009, the decision to modify the date of October is a provisional measure that applies only to the 2008 session.

25. Regulation 8.2 of the Staff Regulations then in force provides that:

> The Secretary-General shall establish joint staff-management machinery at both local and Secretariat-wide levels to advise him or her regarding personnel policies and general questions of staff welfare as provided in regulation 8.1.

26. Thus, the above-mentioned provision authorises the Joint Advisory Committee, a UNHCR body on which both the staff and the Administration are represented, to suggest to the High Commissioner any changes to the rules concerning the staff. Even though the APPB Rules of Procedure and Procedural Guidelines are the legal instruments that govern the promotions procedure at UNHCR, neither the Rules and Guidelines, nor any other legal text preclude the High Commissioner from deciding on a szíçwwd gqwYSgRwçpww5wqYYzSqwYSgRpqwYwçpww5wq

introduced by the High Commissioner in 2003, after consultation of the Joint Advisory Committee. Hence, another legal text adopted by the High Commissioner upon the advice of the Joint Advisory Committee could legally modify the preceding one. It follows that there is no need to uphold the illegality of the decision of the High Commissioner to fix 31 December 2008 as the cut-off date to determine the seniority and the eligibility of staff members.

27. The Respondent maintains that the Tribunal must not review arguments submitted by the Applicant which have only been put forward before the Tribunal without having been submitted previously as part of the management evaluation request. However, although the UNDT Statute provides that the Tribunal can only be seized, with certain exceptions, of an administrative decision which has previously been submitted by the Applicant for management evaluation, no provision precludes the Applicant, including because she was subsequently better

found to be equally competent. Therefore, by the mere fact that more men than women were promoted to the D-1 level following the session, it cannot be assumed that discrimination occurred against female staff members.

34. In contesting the legality of the decision not to promote her in 2008, the Applicant asserts that the High Commissioner approved promotions in an i

promoted, she will not be able to claim any compensation unless she files an application before the Tribunal contesting the new decision to deny her a promotion. In the second case, should the Administration choose to pay the compensation set by the judge rather than take the action rising from the rescission order, that sum must be considered as compensation for the loss of salary due to the denial of promotion in 2008, since the Applicant will again be able to exercise her right to seek a promotion during the 2009 promotion session.

staff members at the P-5 level received more points than her and that only 19 staff members were promoted to the D-1 level. Thus, the irregularity committed by the High Commissioner in promoting two non-eligible can

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