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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/013

Judgment No.: UNDT/2019/008

Date: 28 January 2019

Original: English

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**Before:** Judge



... In June 1997, the Applicant commenced work as a Clerk in the Department of Peacekeeping Operations at the G-3 level.

... On 23 May 2000, the Applicant was promoted to the GS-4 level, with effect from 1 June 2000.

On 25 January 2000, the post was classified at the GS-5 level.

On 8 September 2011, the Applicant made two requests for retroactive payment of a special post allowance SPA to compensate him for having performed work at the GS-5 level since 16 June 1997. These two similar requests were addressed to the Executive Officer for DPKO, and to [the Office of Human Resources Management] OHRM .

... On 1 March 2012, the Applicant filed a request for management evaluation claiming SPA for the entire period of time during which he was performing duties at a higher level.

... On 16 April 2012, the [MEU] recommended two years payment of SPA. The Applicant received payment of SPA for the period 17 April 2010 to 16 April 2012.

On 1 July 2012, the Applicant filed an application in Case No. UNDT/NY/2012/060 contesting the payment of the SPA to be insufficient.

... On 11 September 2014, the Applicant filed a request for management evaluation of: a) the decision on 16 June 1997 to appoint him to a post that was not classified; b) the decision to not classify this post until January 2000; and c) the decision to not correct his pay grade to GS-5 following the classification of the post at GS-5 level in January 2000. He sought placement at the GS-5 pay grade retroactive from 16 June 1997, the date of his entry on duty in the post.

On 17 September 2014, the MEU responded to this request, advising that it was premature as no decision had yet been taken by the administration.

Between October 2014 and September 2015, the Applicant communicated with senior management of the department regarding the issues outlined in his management evaluation request.

On 24 September 2015, the Applicant requested the amendment of his 11 September 2014 management evaluation request to reflect that he had attempted to pursue the matter with the Administration without resolution.



- a. The proceedings are suspended for one month pending the resolution to the present case;
  - b. By **5:00 p.m. on Monday, 14 May 2018**, the parties shall inform the Tribunal as to whether the case has been resolved; in which event, the Applicant shall confirm to the Tribunal, in writing, that his application is withdrawn fully, finally and entirely, including on the merits. In case the parties consider that additional time is needed for the settlement negotiations, the parties shall request a further suspension of the proceedings by also stating a time limit;
  - c. If the parties fail to reach an amicable solution, they are to file their closing statements, including a submission on remedies, by **5:00 p.m. on Monday, 21 May 2018**.
7. On 13 May 2018, in response to Judgment No. UNDT/2018/049, the Applicant filed his closing statement and, on 22 May 2018, the Respondent filed his closing statement.
- 8.

## **Consideration**

### *Scope of the case*

11. \_\_\_\_\_ ons, the principal issues of the present case are defined as follows:

- a. Did the Applicant have a right to have the post to which he was appointed as a Clerk at the GS-3 level in 1997 classified?
  
- b. If in the affirmative as remedies is the Applicant entitled to:
  - i. An upgrade

Organization to re-examine a decision that was taken 17 years prior, the Applicant avers that he has a legal right to a review of administrative decisions under Chapter XI of the Staff Regulations and Rules, and that he exercised this right by filing a management evaluation and an application to the Dispute Tribunal. The Applicant further states that the Respondent ignores the purpose of Chapter XI of the Staff Regulations and Rules in regard to the obligation to review administrative decisions

provided for the temporary appointment of staff members without a classified job description. The recruitment for such an appointment could be initiated with a description of the principal functions to be performed for which reason the Applicant was lawfully assigned an entry-level grade based on his experience. At the relevant time, the Organization appointed General Service staff members at entry-level grades based on their qualifications and experience, rather than the classified level of the post funding their position, and the Directive provided the appointment of staff members at an entry-level grade based on work experience and education. The purpose of assign



and filing an application before the Dispute Tribunal. This principle is



22. On close perusal of the Directive in its entirety, including paras. 12 and 14(a) of its Annex, it follows that it is nowhere as much as contemplated that a staff member



2000 classification of the post to the GS-  
appointment at the GS-3 level was in error. Secondly, there would have been no material benefit to the Applicant from the classification of the post at the higher level. Had the post been classified at the levels suggested by the Applicant, he would either have been appointed at an entry-level grade of GS-3, or not appointed at all.

27. The Tribunal observes that, when appointed in 1997, whether the post was classified or not, the Applicant was hired at the GS-3 level and from the facts of the case, it follows that he knew about his level when he was recruited. As part of the remedies, the Applicant now intends to challenge the propriety of this decision approximately 19 years later as he believes that he should have been placed at the higher GS-5 level.

28. The Tribunal notes that, in the application, the Applicant defines the contested review in the present case is clearly the decision by which the Applicant was recruited against an unclassified post when he was hired as a Clerk at the GS-3 level in 1997, and not the decision concerning the level he should have been hired at. These are two entirely different administrative decisions invoking the latter decision in an effort to rectify the first decision does not change this circumstance. The Tribunal observes that, if it were to award the Applicant retroactive payment at the GS-5 level for the failure of appointing him against a classified post, it would have to do so by giving effect to a possible right for him to be appointed at this higher level. Not only would this amount  
of Procedure rather than compensation under its art. 10.5(b), but it would require the Tribunal to make a determination on the appropriate classification of the post at the material time, which is not a function of this Tribunal and which would be at best speculative.

29. retroactive payment at the GS-5 level  
is denied in the context of the present case.

Is the Applicant entitled to any monetary compensation for his pecuniary and/or non-pecuniary losses in connection with being hired at the GS-3 level against an unclassified post?

30. In essence, the Applicant seeks compensation for (a) his loss of chance of not having been able to apply for higher level positions and (b) for his alleged stress in relation to the delay in classifying his post.

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he Tribunal notes  
that the Applicant has provided no evidence whatsoever to substantiate any harm in connection with him being incorrectly hired against an unclassified post.

32. As for his alleged loss of chance, the Applicant claims as a remedy that he be

