



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/14

Judgment No.: UNDT/2009/14

Date: 27 August 2009

Original: English

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**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

PARKER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Nicole Lewis

**Counsel for Respondent:**  
Shelly Pitterman, DHRM/UNHCR

BETWEEN:

Case No: UNDT/GVA/2009/14

PARKER

APPLICANT

AND

THE UNITED NATIONS HIGH  
COMMISSIONER FOR REFUGEES

RESPONDENT

### JUDGMENT

Considering that the Applicant, assisted by Ms. Nicole Lewis as his counsel, submitted on 13 November 2008 an appeal before the Geneva Joint Appeals Board (JAB) seeking:

- 1- The rescission of the decision of 24 June 2008 by which the Chief, Recruitment and Postings Section, Division of Human Resources Management (DHRM), United Nations High Commissioner for Refugees (UNHCR), informed him, on the one hand that the Appointment, Posting and Promotions Board (APPB) had recommended that his recourse against his non-promotion be dismissed and that, on the other hand, the High Commissioner had accepted this recommendation;
- 2- That the Chief of the Recruitment and Postings Section apologise to him in writing;
- 3- That the DHRM be ordered to provide full reasons for its decision not to promote him from 2004 to 2007, and to provide him certain specified information;

- 4- If the Secretary-General deems that the Applicant should have been promoted over the years 2004 to 2007, that he orders that such a promotion be granted to him and that he be compensated for harm resulting from lost salary and moral damage.

Considering that, in accordance with the General Assembly Resolution A/RES/63/253, all cases pending before the JAB by 1 July 2009 have been transferred to the new United Nations Dispute Tribunal.

### **CONTENTIONS OF THE PARTIES**

In his statement of appeal, dated 11 November 2008, the Applicant submits that:

- the contested decision violates Section 180 of the Procedural Guidelines of the APPB since he did not submit a recourse himself and he did not ask the Chief of the Recruitment and Postings Section to do so on his behalf. His e-mail to the latter was aimed at querying about the information made available to the APPB. It also violates Section 181 of the Procedural Guidelines of the APPB as the recourse must be in writing and fully documented.
- the decision runs contrary to the Applicant's rights since he did not obtain the information he requested from the Chief of the Recruitment and Postings Section, i.e. information regarding the period of 8 months of his Performance Appraisal Reports (PARs) that is outstanding, explanation as to why DHRM's records reflect that he was not promoted for 2005 and 2007 sessions, clarification on the attribution of additional points, and a response on the Applicant's allegations of incorrectness of his fact sheet.

In its reply registered on 28 January 2009, UNHCR submits the following:

- the decision contested by the Applicant must be considered as being the High Commissioner's decision not to promote him. If the Applicant maintains that he had not submitted a recourse application against the original non-promotion, his letter to the Chief of the Recruitment and Postings Section was not clear and he

challenged the non-promotion. In any event, the Administration is always entitled to re-examine its own decisions and eventually to rectify if they are irregular;

- the Applicant has obtained all information required to protect his rights and the information he provided to the Administration has been taken into account. The methodology used for promotions is objective and transparent, based on the attribution of points according to four criteria of which the Applicant was informed;

- the Applicant's observations were taken into account by the APPB during the recourse session and the minutes of the recourse session were communicated to him on 24 June 2008;

- The eight months in question relate to PARs rated outstanding. He was not recommended for promotion in 2005 and 2007 and such recommendation is to the discretion of the supervisor, who is the only one capable to assess the quality of the Applicant's work. The recommendation for 2006 was taken into account and, the recommendation for the session 2004 did not fall under the weighed criteria as set out in the Methodology used. The exact number of points on the fact sheet should have been 65.71 instead of 65.67; this was corrected during the recourse session but would have not influenced the recommendation of the APPB. The Applicant could not be proposed in 2007 as he was in situation of Staff In Between Assignments (SIBA) and he thus had no direct supervisor; also, the fact sheet was not erroneous.

In his observations to the Respondent's Reply, registered on 6 April 2009, the Applicant holds that:

- his fact sheet should have been corrected even if the mistake had no impact on future promotions;

- he was proposed for promotion in 2005 and 2007;

- the Respondent may not hold that the Administration re-examined the Applicant's situation in his interest for he adopted a procedure which violated its own rules;

- some doubts exist on the objective and transparent character of the Methodology applied by the APPB at the 2007 session and the Staff Council raised questions concerning the points system applied.

In its comments dated 22 May 200, UNHCR underlines that the Methodology used for promotions was put in place following JAB recommendations and aimed at ensuring transparency, and reiterates that the Appellant was not recommended for promotion in 2005 and 2007.

## **FACTS**

On 3 April 2008, the Applicant requested the Chief of the Recruitment and Postings Section to share with him all written information which had been made available to the APPB for the meeting of 27 January-1 February 2008 in preparation of the annual promotions pertaining to the year 2007. On 22 April 2008, the Chief of the Recruitment and Postings Section informed him that his recourse was time-barred but provided him with the information given to the APPB. On 29 April 2008, the Appellant informed the Chief of the Recruitment and Postings Section that information given to the APPB was erroneous. On 30 April 2008, the latter recognized the mistake made as well as the fact that the Appellant had indeed been recommended for promotion in 2006, a mistake which was brought to the knowledge of the APPB. On 24 June 2008, the Chief of the Recruitment and Postings Section informed him that UNHCR's APPB had recommended that his recourse against his non-promotion be rejected and the High Commissioner had accepted this recommendation. By the same letter the Applicant was informed that his number of points had been corrected and that it amounted to 65.67 points. On 22 August 2008 the Applicant requested administrative review by the Secretary-General of the decision of 24 June 2008.

## **CONSIDERATIONS**

In the first place, the Applicant requests the rescission of the decision of 24 June 2008 by which the Chief of the Recruitment and Postings Section informed him, on the one hand, that UNHCR's APPB had recommended that his recourse against the non-promotion at the 2007 session be rejected, and on the other hand, that the High Commissioner had accepted such recommendation.

The Applicant contends firstly that the contested decision was taken in violation of Sections 180 and 181 of the Procedural Guidelines of the APPB since the recourse had not been submitted in the prescribed form, it was not submitted by himself, and he had not asked the Chief of the Recruitment and Postings Section to do so on his behalf. However, it results from the file that the Administration, on its own initiative, following a letter from the Applicant, decided to have the situation re-examined during the recourse session. As a result, the Appellant was again not recommended for promotion, and the High Commissioner decided not to grant him such a promotion. Hence, the Applicant's present application must be considered as aimed against the confirmation of the non-promotion decision brought to the Applicant's Knowledge by the Chief of the Recruitment and Postings Section on 24 June 2008 and UNHCR is entitled to hold that no provision prohibits to have the situation of a staff member re-examined by the APPB, even in the absence of a formal recourse on his part, with the aim to verify that no mistake has been committed.

In as much as the Applicant's situation regarding promotion was re-examined by the Administration, not to the Applicant's request, but on the Administration's initiative, the staff member cannot seriously assert that he was unable to inform the APPB of the mistakes contained in his file. However, he has the right to contest before the Tribunal the decision notified to him on the grounds that the APPB would have founded its non-recommendation for promotion on incorrect facts.

He alleges that, contrary to what the Administration claims, he was recommended for promotion by his superiors in 2005 and 2007. Nevertheless, confronted with the opposite assertion by UNHCR, the Applicant did not produce any document demonstrating the veracity of such allegations. Moreover, it flows from the documents included in the file and particularly from the matrix of points which constituted one of the basis for the establishment by UNHCR of the list of promotions according to the Methodology and the Procedural Guidelines of the APPB that, even after correction in his favour of a small mistake in the calculation of points, the total score obtained would not have permitted him to be

recommended for promotion in the 2007 session. Lastly, if the Appellant seems to contest the Methodology used by UNHCR to establish the list of promotion, he does not give to the Tribunal sufficient details as to allow the latter to pronounce itself on his allegations, whereas UNHCR provided copies of the rules that were applied.

In the second place, the Applicant requests the Tribunal to order UNHCR to grant him a promotion and to compensate him for damage resulting from loss of salary and moral damage. It results from what has been stated above that the Applicant has not established the illegality of the decision not to promote him at the 2007 session. In consequence, the said requests cannot but be rejected.

In the third place, as no provision in the UNDT Statute gives competence to the Judge to order the Chief of the Recruitment and Postings Section to provide his apologies in writing to the Applicant, this request is rejected.

Finally, the contested decision concerns only the 2007 promotion session. By the present Judgment, the Tribunal has ruled on issues raised with regard to this session, having all relevant information been provided by the Administration and then made available to the Applicant. The information pertaining to previous sessions falls out of the scope of the present dispute; hence the request for information regarding 2004-2006 promotion sessions is to be rejected.

For the reasons stated above,

It is DECIDED that:

The Applicant's application is rejected.

*(Signed)*

Judge Jean-François Cousin

Dated this 27 day of August 2009

Entered in the Register on this 27 day of August 2009

*(Signed)*

Víctor Rodríguez, Registrar, UNDT, Geneva