

Translated from French



United Nations Dispute Tribunal

Case No.: UNDT/GVA/2009/5
Judgment No.: UNDT/2009/049
Date: 16 October 2009
English
Original: French

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Víctor Rodríguez

VANGELOVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Self-represented

Counsel for respondent:

Shelly Pitterman, DHRM/UNHCR

Notice: The format of this judgment has been modified for publication purposes in accordance with article 31 of the rules of procedure of the United Nations Dispute Tribunal.

Application

1. In her appeal to the Joint Appeals Board (JAB), registered on 4 June 2008, the applicant requested it to recommend that:

- The decision of the High Commissioner for Refugees not to promote her to the P-4 level in 2007 should be rescinded;
- The decisions not to promote her in the years prior to 2007 should be rescinded;
- She should be awarded compensation for the harm suffered.

2. In its resolution 63/253, the General Assembly decided that all cases pending before the Joint Appeals Board as at 1 July 2009 would be transferred to the United Nations Dispute Tribunal.

Applicant's submissions

3. The applicant states that she worked in remote non-family duty stations, was appreciated by her supervisors and had received good appraisals and that the refusal of promotion caused her great harm.

4. She limited herself to claiming in her appeal of 4 June 2008 that the contested decision was taken in violation of staff rules 4.2 and 4.3.

5. At the hearing held on 24 September 2009, the applicant maintained that no account had been taken of the fact that she had been underfilling a post at the P-4 level for almost two years and that she had not been recommended for a higher-level post for the last six months, from January to June 2007. At the first promotion session, she had obtained 67.2 points and ranked higher than the last woman in her group to have been promoted, with only 66.4 points. Her status as staff member in between assignments had influenced the contested decision, even though she had repeatedly requested assignment. Account was not taken of the posts held at non-family duty stations. Some staff members had been promoted although they were not eligible.

Respondent's observations

6. The application is receivable with respect to the denial of promotion in 2007 but not to the earlier denials of promotion.

7. The Office of the High Commissioner for Refugees (UNHCR) applied the Methodological Approach for ensuring the transparency of promotion decisions; this allows candidates to understand how their situations are considered. The applicant received all the information needed to enter a recourse. The fact that she had underfilled a higher-level post for almost two years in Darfur was taken into consideration by the Appointments, Postings and Promotions Board (APPB) at the time of the appeal and it was pointed out to the applicant that she had not been recommended by her previous supervisor.

8. A hearing was held on 24 September 2009, during which the applicant and the Chief of the UNHCR Legal Affairs Section, representing the High Commissioner, presented oral arguments.

Judgment

9. The applicant contests the decision by which the High Commissioner for Refugees refused to award her a promotion to the P-4 level in 2007 and contested before the Joint Appeals Board (JAB) the decisions by which the High Commissioner refused to award her a promotion in previous years. However, while it is not contested that the denial of promotion in 2007 was in fact the subject of a request to the Secretary-General for administrative review and that the application is therefore receivable, it is found that the decisions to refuse promotion taken prior to 2007 were not the subject of requests for administrative review. It is therefore decided that only the appeal against the denial of promotion in 2007 is receivable.

10. Although the applicant attached to her appeal to JAB her request for administrative review by the Secretary-General dated 21 August 2008, she did not refer to the argument which she had used in that request. Consequently, the judge has to reply only to the arguments specifically raised in the appeal to JAB and in subsequent submissions to JAB or this Tribunal, and to the arguments presented orally at the hearing.

11. The applicant submits that the decision not to promote her is contrary to the Charter of the United Nations and the provisions of the Staff Rules stipulating that the main factors to be considered with regard to promotions are efficiency, competence and integrity. However, the applicant does not specify in what respects the contested decision violates the said provisions and thus does not enable the judge to rule on these assertions.

12. Although the applicant claims that the High Commissioner's award of promotions was irregular because he failed to seek the Board's advice, the judge's examination of the file shows that, with respect to promotion to the P-4 level, which was the only level relevant to the applicant's situation, the High Commissioner promoted only one staff member not recommended by the Board. In that instance the High Commissioner, who is not required to follow the Board's recommendations, promoted a staff member who was eligible and whose situation had been reviewed by the Board at its first promotion session and then reviewed again following the staff member's recourse. Consequently, the arguments put forward by the applicant fail to establish that the staff member in question was promoted irregularly.

13. It appears from the examination of the file and in particular from the minutes of the recourse session that the Appointments, Postings and Promotions Board, following the applicant's recourse, assessed her experience and performance, examined her situation in the light of the non-weighted criteria of the Methodological Approach, and decided that the period of about two years during which she had underfilled a post at the P-4 level should be taken into consideration in the assessment of her situation. However, the same Board decided not to recommend her for promotion although she had accrued more points, according to the Methodological Approach, than the last staff member recommended, on the sole ground that she had not been recommended for promotion by her previous supervisor.

14. Accordingly, the principal reason for the refusal to recommend promotion was that the applicant had not been recommended in 2007. While the applicant is contesting that refusal before the Tribunal by arguing that her performance during

the same period had been described as superior, it is nevertheless the case that she did not contest the decision to refuse to recommend her, which thus became final. The provisions of section IV of the Procedural Guidelines of the Appointments, Postings and Promotions Board stipulate that the supervisor's recommendation is one of the most important criteria for the Board to take into account.

15. It is not sufficient for the applicant to submit that the Board did not take into account the many years during which she was assigned to hardship and non-family posts, when the minutes of the above-mentioned recourse session indicate that her entire career was considered.

16. Accordingly, the applicant has not established that the decision denying her promotion in 2007 was taken improperly or that it was vitiated by a manifest error. Her application must therefore be rejected.

17. For these reasons, the Tribunal DECIDES:

The application is rejected.

Judge Jean-François Cousin

Dated this 16th day of October 2009

Entered in the Register on this 16th day of October 2009

Víctor Rodríguez, Registrar, UNDT, Geneva