



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/059

Judgment No.: UNDT/2013/014

Date: 4 February 2013

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

LINNÉR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Shelly Pitterman, UNHCR

Introduction

1. By his application filed on 16 July 2012 with the Registry of the United Nations Dispute Tribunal, the Applicant requests:
 - a. Rescission of the decision of the United Nations High Commissioner for Refugees (“the High Commissioner”) not to promote her to the D-1 level during the 2009 promotion exercise;
 - b. To be compensated for material and moral damage suffered.

Facts

2. The Applicant joined the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in October 1981. In 2009, she held a position at the P-5 level.
3. By IOM/FOM/043/2010 of 16 July 2010, the Director of the Division for Human Resources Management (“DHRM”) notified all staff of the promotion methodology applicable to the 2009 annual promotions session that had been established by the Appointments, Postings and Promotions Board (“APPB”). He also informed all staff that the number of promotion slots for 2009 had been decided as follows:

P-5 to D-1:	10
P-4 to P-5:	10
P-3 to P-4:	40
<u>P-2 to P-3:</u>	<u>35</u>
Total:	95

4. By IOM/FOM/068/2010 of 29 October 2010, the Director DHRM informed all UNHCR staff that the 2009 annual promotions session would be held in late November 2010.
5. The APPB convened from 23 November 2010 to 2 December 2010.
6. By IOM/013-FOM/014/2011 of 1 March 2011, the High Commissioner published the list of promoted staff members. The Applicant was not among them.

7. On 25 March 2011, the Applicant introduced a recourse before the APPB against the decision not to promote her during the 2009 annual promotions session.

8. The APPB reviewed the Applicant's request at its recourse session held from 16 to 19 May 2011. After taking into account the corrections to the list of results concerning the Applicant's performance and mobility, the APPB maintained its recommendation not to grant her a promotion.

9. By IOM/046-FOM/047/2011 of 25 July 2011 and an e-mail sent out on 29 July 2011 to all UNHCR staff, the High Commissioner announced the results of the recourse session. The Applicant was not among the promoted staff members following that session.

10. On 4 August 2011, the Applicant received a copy of the minutes of the Board's deliberation on her recourse.

11. On 30 September 2011, the Deputy High Commissioner received an e-mail from the Applicant. Included as an attachment was the Applicant's unsigned request for a management evaluation dated 29 September 2011, in which she contested the decision of the High Commissioner not to promote her to the D-1 level during the 2009 annual promotions session.

12. By memorandum dated 28 October 2011, the Deputy High Commissioner informed the Applicant that her request for a management evaluation was not receivable as it had not been filed within the time limit stipulated in Staff Rule 11.2(c). By memorandum dated 16 April 2012, the Deputy High Commissioner nonetheless replied to the request for management evaluation confirming that the decision not to promote her to the D-1 level was taken in compliance with the Rules and Procedures of the Organization.

13. The Applicant filed her application with the Registry of this Tribunal on 16 July 2012. The Respondent filed his reply on 16 August 2012.

14. By Order dated 22 January 2013, the Judge assigned to the case informed the parties that he intended to rule first on the receivability of the application and

without holding an oral hearing. In addition, he also invited the parties to file objections, if any, by 29 January 2013.

15. On 29 January 2013, the Applicant filed her comments and requested an oral hearing.

Parties' submissions

16. The Applicant's principal contentions are:

a. Contrary to what the Respondent maintains, the request should be declared receivable. She submitted to the Secretariat of the Deputy High Commissioner one signed copy of her request for a management evaluation that referred to 29 September 2011. This is confirmed in her e-mail of 30 September 2011. She returned on 30 September 2011 to that same office and asked a colleague who worked there to transmit her request to the Deputy High Commissioner. There are witnesses who can confirm this;

b. She had been ranked first on the list established by the Director DGRH. There is therefore no reason not to promote her;

c. The delay in the mediation process regarding her contested 2009 performance appraisal had a significant impact during the final phase of the APPB's consideration;

d. Although the minutes of the APPB's deliberations indicate that her non-recommendation was directly related to performance issues, in the recourse session this link was no longer made, but the recourse session nonetheless confirmed the APPB's initial decision;

e. During the recourse session, the APPB failed to take into account both the factual errors contained in her 2008 evaluation report, and the managerial skills she had demonstrated in a particularly challenging environment in the Office of the Inspector General;

f. The minutes of the APPB's deliberations show that the fact of having encumbered a post at a higher-level is a criterion that was taken into account. In accordance with the promotion methodology applicable to the 2009 annual promotions session, this criterion can be taken into account only during the second phase of consideration and not during the first;

g. The fact that she encumbered a post at a higher level than hers a number of times was not taken into account;

h. None of the women who were promoted had previously encumbered a post at a higher level than theirs;

i. The APPB did not comply with paragraph 1.4.1 of *UNHCR Policy on Achieving Gender Equality in UNHCR Staffing*, which states that one half of available promotions to posts in which gender parity has not yet been achieved must be granted to female candidates.

17. The Respondent's principal contentions are:

a. The Applicant did not submit her request for management evaluation within the statutory time limit and it is therefore not receivable;

b. All of the candidates who were promoted had performance ratings that were higher than the Applicant's. The non-admission of her 2009 performance appraisal to the recourse session had no impact on her chances of obtaining a promotion, and there is no reason to rescind this decision (*Bofill 2011-UNAT-174*);

c. In accordance with paragraph 8 of the promotion methodology applicable for the 2009 annual promotions session, the Applicant's rank was important during the first phase of the evaluation process and not during subsequent phases;

d. Contrary to what the Applicant maintains, one of the recommended female candidates did encumber a post at a higher grade than hers;

e. For the 2009 annual promotions session, the APPB systematically took into consideration the periods during which a candidate encumbered a post at a higher level than his/her own provided that the incumbency period lasted a year or longer. Records indicate that the Applicant encumbered a post at a higher grade than hers only for a period of three and half months in 2008;

f. Contrary to what the Applicant maintains, the APPB did take into account the *UNHCR Policy on Achieving Gender Equality in UNHCR Staffing* by recommending five men and five women for ten available promotion slots. The promotion of an eleventh candidate, in this case a male, was necessary to resolve a very specific situation.

Consideration

18. The Tribunal must first determine whether or not the request is receivable.

19. Article 8 of the Tribunal's Statute states that:

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; ...

20. Also, provisions 11.2 (a) and (c) of the Staff Rules provide:

Rule 11.2

Management evaluation

(a) A staff member wishing to formally contest an administrative decision ... shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received

notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

...

21. It is not contested that on 29 July 2011, the Applicant received notification of the final decision not to promote her to the D-1 level. While the various communications that the Applicant sent to the Deputy High Commissioner and to the Tribunal give differing information on the date when she signed her request for a management evaluation, the Tribunal reminds that it is not the date of signature but the date of receipt which is the basis for determining whether a request was submitted by the deadline.

22. Even by the Applicant's own account, 29 September 2011 is the very earliest date on which she could have hand-delivered the request for management evaluation to the desk of the Deputy High Commissioner. In any case, the deadline of 60 calendar days from the date on which she received notification of the decision to be contested had expired on 27 September 2011.

23. Both the Appeals Tribunal and the Dispute Tribunal have stressed the importance of compliance with statutory deadlines (see, to that effect, *Mezoui* 2010-UNAT-043, *Ibrahim* 2010-UNAT-069 and *Christensen* 2012-UNAT-218, on the one hand, and *Odio-Benito* UNDT/2011/019 and *Larkin* UNDT/2011/028 on the other hand).

24. In addition, article 8.3 of the Tribunal's Statute specifies that the Tribunal "shall not suspend or waive the deadlines for management evaluation," and, according to the established case law of the Appeals Tribunal, this article means that the Dispute Tribunal cannot extend the deadline for filing a request for management evaluation with the Secretary-General (see e.g. *Costa* 2010-UNAT-036, *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini et al.* 2011-UNAT-108).

25. In the instant case, the Applicant also puts forward technical problems that arose during the transmission of her request for a management evaluation. It

should be recalled that the 60-day time limit granted to staff members to submit a request for management evaluation is long enough to deal with and allow for the resolution of technical problems related to e-mail transmissions, such as those that occurred in this case.

26. The Tribunal, therefore, can only note the late submission of the request for management evaluation and declare the application irreceivable without the need to hear witnesses and to hold an oral hearing.

Conclusion

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

The Application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 4th day of February 2013

Entered in the Register on this 4th day of February 2013

(Signed)

René M. Vargas M., Registrar, Geneva