UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/024
Judgment No.: UNDT/2017/053
Date: 13 July 2017
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GLAVIND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Daniel Trup, OSLA

Counsel for the Respondent:
Katya Melluish, UNON

Introduction

1. The Applicant is a former staff member of the United Nations Office at Nairobi (UNON). In her application dated 21 March 2014, she is contesting the decision by the Assistant Secretary-General for Human Resources Management (ASG/OHRM), dated 27 February 2014, "to refuse her application for retroactive promotion commencing January 2012" (the Contested Decision).

Procedural history

2. The application was served on the Respondent on 24 March 2014 with a reply date of 24 April 2014. On 11 April 2014, the Respondent submitted a Motion for extension of time to file a reply. The Tribunal, by its Order No. 077 (NBI/2014), granted the Respondent an extension of time until 15 May 2014.

3. The Respondent filed a reply on 15 May 2014 in which he asserted that the Application was not receivable *ratione materiae* as the Applicant had failed to request management evaluation of the Contested Decision.

4. On 17 February 2015, the Tribunal issued Judgment No. UNDT/2015/016 in which it ruled that the application was receivable.

5. Vide Order No. 264 (NBI/2015), the Parties were informed that the Tribunal, pursuant to art. 16.1 of the Dispute Tribunal's Rules of Procedure, considered that a hearing was not necessary for the fair and expeditious disposal of the case and to do justice to the Parties and shall rely on the Parties' written pleadings to adjudicate this matter.

6. The Applicant and Respondent filed their closing submissions on 30 September and 1 October 2015 respectively.

Facts

7. The Applicant served as the Chief of the UNON Human Resource Management Service (HRMS) from 1 May 2000 to 30 April 2004. She was

appointed to the post of Chief of Support Services Service (SSS) at UNON at the P-5 level effective 1 May 2004.

8. During the period of August through November 2008, a consultant, working under the direction of UNON and OHRM/Department of Management (DM), undertook a comprehensive review[1] of the post and grade structure of UNON's Office of the Director General (ODG), the Division of Administrative Services (DAS)[2], the Security & Safety Service (SSS) and the United Nations Information Center (UNIC) to ensure that UNON's resource structure was commensurate with its role as the central service provider for the global network of operations of the Nairobi-based offices. The consultant was also tasked with submitting proposals to UNON and OHRM/DM for the realignment of the structures and grade levels at UNON, taking into account those of similar United Nations offices in Geneva and Vienna.

9. The consultant's report recommended that the services provided by the Central Support Service (currently SSS) should be organized under the supervision of a Chief at the D-1 level who would report to the Director of DAS.

10. UNON put forward the SSS position at the D-1 level in its 2010/2011 budget proposal, which was submitted to United Nations Headquarters at the end of 2008. UNON's budget request was supported by the ASG/OHRM[3].

11. In 2009, UNON was informed that the Controller had not approved the upgrade of the Applicant's position to the D-1 level in the 2010/2011 budget. In 2011, UNON tendered another request for the upgrading of the Chief of SSS to the D-1 level in its 2012/2013 budget submission. At the end of 2011, the General Assembly approved the request.

12. The newly upgraded D-1 position was advertised on 9 January 2012. The Applicant applied for this post. The written test was conducted in September

[1] This review was recommended in an April 2008 report issued by an OHRM Monitoring Team that visited Nairobi from 15-25 September 2007.
[2] SSS falls under the management/supervision of DAS.
[3] Interoffice memorandum dated 26 January 2009 from the ASG/OHRM to the USG/DM.

2012. The interviews took place in April 2013 and she was selected for the post on 1 June 2013.

13. On 5 November 2013, the Applicant wrote to the ASG/OHRM to request "exceptional approval of promotion to the D1 level effective 1 January 2012 for pension purposes only".

14. On 7 February 2014, the Applicant requested management evaluation of the decision not to consider her request for retroactive promotion commencing 1 January 2012.

15. By a letter dated 27 February 2014, the ASG/OHRM informed the Applicant, *inter alia*, that:

> In section 10.2 of ST/AI/2010/3 on the Staff Selection system, when a staff member is selected for a position that entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision, subject to the availability of the position and the assumption of higher-level functions. The effective date of your promotion to the D-1 level was therefore correctly made following the decision to select you for the position.
>
> I noted that as you had received a special post allowance to the D-1 level prior to the completion of the selection process, you received equal pay for the work of equal value. Bearing this and the above in mind and in the absence of any administrative error, I regret that I am not in a position to agree to your request to retroactively promote you to the D-1 level effective 1 January 2012 for pension purposes only.

16. By letter dated 6 March 2014, the Chief of the Management Evaluation Unit (MEU) informed the Applicant that her request for management evaluation was moot due to the ASG/OHRM's letter of 27 February 2014 and time-barred because the decision to promote her had been taken on 1 June 2013. Thus, her request for management evaluation should have been sent within 60 calendar days of 1 June 2013.

Applicant's case

17. The Applicant's case as deduced from her pleadings is summarized below:

18. The Applicant submits that the Tribunal must consider three substantive issues, when determining her case:

a. Whether the Administration maintained discretion to grant retroactive promotion;

b. Whether an obligation, under the principle of equal pay for work of equal value, had been triggered in the circumstances; and

c. Whether the Administration failed to exercise its discretion fairly in refusing to consider the request for retroactive promotion, in order to comply with its obligations under the principle of equal pay for work of equal value.

Whether the Administration maintained discretion to grant retroactive promotion.

19. Pursuant to staff rule 12.3, the Secretary-General may make exceptions to the Staff Rules provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly. The granting of a retroactive promotion is not inconsistent with any Staff Regulation or General Assembly decision. The power pursuant to staff rule 12.3(b) to grant retroactive promotion existed and was available to the Administration. The Applicant submits that the cases of *Zeid*[4] and *Kamal*[5], highlight that such an administrative power does exist within the United Nations and has been exercised on previous occasions.

20. The Respondent, in his reply dated 15 May 2014, implicitly accepts that such a power to exercise retroactive promotion exists. The reasoning given for the Administration's failure to do so at that time related not to any legal impediment but rather primarily to the costs involved. The initial notification made by the Administration to the Applicant on 27 February 2014, stated that "any retroactive

[4] UNDT/2013/005.
[5] UNDT/2011/034.

promotion would give rise to actuarial costs and interest payable by the Organization." This letter would suggest that at the minimum, the Administration had in fact obtained and considered such financial information before refusing the request. This appears not to have been the case.

21. The reasoning for the Administration's refusal related not to any legal impediments but rather to the costs involved and its conclusion that its obligations under the principle of equal pay for work of equal value had been met.

Whether an obligation, under the principle of equal pay for work of equal value, had been triggered in the circumstances.

22. The Applicant submits that the principle of equal pay for work of equal value exists within the machinations of the United Nations. Aside from the case law, most notably the former United Nations Administrative Tribunal decision in *Janssen*[6] and *Sabet & Skeldon*[7], the Administration accepted such a principle existed in the decision issued by the ASG/OHRM on 27 February 2014. In her decision communicated to the Applicant, she states:

> *I noted that as you had received a special post allowance* [SPA] *to the D-1 level prior to the completion of the selection process, you received* ***equal pay for work of equal value.***

23. What is in dispute between the parties is whether SPA is sufficient for the Administration to submit that no further obligation, under the principle of equal pay for work of equal value, exists.

24. In the Respondent's submissions dated 15 May 2014, the Administration puts forward the notion that any general principles of law may only be applied by the Dispute Tribunal within the context of and consistent with the staff regulations rules and administrative issuances.

25. The Applicant submits that the principle of equal pay for work of equal value has already been accepted to be part of the fabric of Administrative Law

[6] Judgment No. 1113, (2003).
[7] Judgment No. 1217, (2003).

within the United Nations. It is, therefore, not for the Administration to pick and choose that, which is convenient for them to follow under this principle.

26. If such a principle of equal pay for work of equal value has been accepted, then it applies to all aspects of the staff member interactions with the Administration. In other words, either the principle of equal pay for work of equal value applies in its totality or it does not. In *Diaz-Menendez, Centellas Martinez*[8], the court reiterated that the Administration retained no discretion to violate the principle of equal pay for work of equal value. This principle of the inclusion of pensions into the concept of equal pay for work of equal value has been accepted in the context of jurisprudence and general international Administrative Law under the Equal Remuneration Convention 1951.

27. Specifically, that equal pay includes pensions. In the case of the European Court of Justice (ECJ), judgment of 17 May 1990 of *C-262/888, Douglas Harvey Barber and Guardian Royal Exchange Assurance Group*[9], the court determined that all forms of occupational pension fall within the meaning of equal pay for work of equal value. This was further reiterated in the context of civil service pension schemes in the ECJ judgement of 28 September 1994 of *C-7/93, Bestuur van het Algemeen Burgerlijk Pensionenfonds and G.A. Beune*[10]. In this case the ECJ concluded that a civil service pension scheme which essentially relates to the employment of the person concerned, forms part of the pay received by that person.

28. This principle is reflected in The Equal Treatment Directive (No.2006/54/EC), which sought to implement principles of equal opportunities and equal treatment of men and women in matters of employment. Article 14

[8] UNDT/2014/131.
[9] European Court of Justice case of *Douglas Harvey Barber and Guardian Royal Exchange Assurance Group C-262/88[8]* , § 28, *http://eurlex.europa.eu/resource.html?uri=cellar:32ab0ae3-b8cc-4104-8f5c-03d29be408e0.0002.03/DOC_2&format=PDF*.
[10] European Court of Justice case of *Bestuur van het Algemeen Burgerlijk Pensionenfonds and G.A. Beune, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61993CJ0007&from=EN*

affirmed the principle that a pension scheme for public servants falls within the scope of the principle of equal pay[11].

29. Article 1 of the Equal Remuneration Convention 1951, while not explicitly defining gross remuneration, is worded in such general terms that it covers not only take-home pay, but also earnings and benefits in a broad sense and is regarded to include pensions[12]. Such a position was confirmed by the International Labour Office's (ILO), 34th Session in 1951.

30. In *Chen*[13], the UNDT implicitly accepted that any award of compensation under the heading of equal pay for work of equal value included the payment of backdated pension rights.

31. The Administration failed to give sufficient priority to the Applicant. Once the Applicant's post was upgraded in January 2012, the Administration had effectively taken 18 months before recruiting her to the D-1 level. During these 18 months, the Applicant had been performing her function to the full. Despite her continued requests to speed up the process of selection, the Administration appeared to not act with due consideration for the position of the Applicant.

32. Although having been paid SPA between January 2012 and June 2013, the Applicant, due to the long process of recruitment, had lost out in relation to her valuable pensionable entitlements. The Applicant's pension benefits are computed on the basis of her last three years of service. The Applicant subsequently retired on 31 January 2015, i.e., before her promotion could fully affect her pension level.

33. The Applicant submits that despite payment of SPA, the period of time in which she worked as a P-5 officer on a D-1 post omits pension contributions and as a result violated the principle of equal pay for work equal value. Consequently, the obligation to remedy this by the Administration was triggered.

[11] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, *http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0054#ntr8-L_2006204EN.01002301-E0008*.
[12] International Labour Conference, Report of the Committee of Experts, 91st Session, 2003, Report III (Part 1B), § 215, *http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-iii-1b.pdf*.
[13] UNDT/2010/068.

Whether the Administration failed to exercise its discretion fairly in refusing the request for Retroactive Promotion

34. The Administration's refusal to exercise its discretion in favour of the Applicant was based on the idea that the costing for retroactive promotion was too high and that payment of SPA meant that its obligations under International Administrative Law had been met. The Applicant submits that such considerations were a complete abdication of the Administration's responsibilities vis-à-vis the staff member and International Administrative Law.

35. In considering the request made by the Applicant on 5 November 2013, the Administration failed to give any real or proper consideration to it. Specifically:

a. That the Applicant had been performing the role of Chief of SSS since 1 May 2004. Although the position had been deemed to be at the D-1 level since 2008, the Administration remunerated her at that level only as of 1 June 2013. In other words, the Applicant was underpaid for a period of five years.

b. In August 2008 an independent review commissioned jointly by OHRM and UNON concluded the level of the post of Chief, SSS in UNON to be D-1, the same level of similar posts in UNOG (Geneva) where the Applicant's colleagues were already being paid at the D1 level. The subsequent recommendation to upgrade the Applicant's post was deliberately and intentionally ignored or disregarded by the Administration until 2011.

c. The newly upgraded position was finally advertised in January 2012, but the Administration completed the selection process some 18 months later. According to the Organization's own norms, a recruitment or selection process cannot exceed four months. The Administration did not provide a single reason for such a lengthy recruitment process.

d. The Applicant was promoted to the D-1 level in June 2013, yet the Administration was well aware that the Applicant was to retire in January

> 2015 and that she would not fully benefit from this promotion for the purposes of her pension benefits.

36. At the same time, the Administration relied on costing that seemed not to have, in fact, been available to them. The Applicant submits that as it was held in *Obdejin*[14], there is an obligation on the Administration to act fairly in its dealings with staff members. In this instance, any concept of fair treatment was overridden by specific non-quantifiable costs. In any event, as confirmed in *Chen*[15], budgetary considerations should not trump the requirement for equal treatment.

37. Aside from the objection relating to costs, the Administration's decision to refuse the request was also grounded on a misguided notion that they had met their obligations vis-à-vis equal pay for work of equal value.

38. Whilst the Administration enjoys broad preference in such matters, that authority is not absolute. In *Banguora*[16], the former United Nations Administrative Tribunal concluded that although the Administration has discretionary power, which means necessarily, that staff members do not, strictly speaking, have a substantial right to secure a particular decision that should be protected, they do, however have a right to fair and equitable treatment because the Tribunal monitors the way in which that power is exercised.

39. In the present case, any fair and equitable consideration of the exercise of discretion should have included the fact that the request for retroactive promotion was to remedy a prolonged recruitment process in which the Applicant lost out in relation to pension rights. In addition, the obligations under the principle of equal pay for work of equal value had been triggered and not yet fully met. As a result, the Applicant submits that the withholding of the Administration's discretion was unfair. To that extent, therefore, a suitable remedy was and remains required and warranted.

[14] UNDT/2011/032.
[15] *Op. cit.*
[16] Judgment No. 1029 (2001).

Remedy sought

40. The Applicant requests the Tribunal to set aside the impugned decision and that it be returned to the appropriate official for reconsideration. In the alternative, the Applicant requests a monetary compensation equivalent to the pecuniary damages she will suffer as a result of the Administration's refusal to grant her a promotion effective 1 January 2012. The Applicant estimates that these damages are equivalent to the amount of 12 months' net base salary.

Respondent's case

41. The Respondent's case is summarized below.

a. The only question for the Tribunal is whether the Administration's discretion not to grant the Applicant a retroactive promotion for pension purposes as an exception under staff rule 12.3(b) was exercised fairly.

b. The contested decision is a discretionary decision. The Respondent submits that it is not for the Tribunal to make a determination of whether or not there was merit to the Applicant's request for a favourable discretionary decision; the Tribunal's role is not to substitute its own decision for that of the decision-maker as was held by the Appeals Tribunal in *Hastings*[17]. As held in *Christensen*[18], the question of whether there are circumstances that justify an exception to the Staff Rules should be considered on a case by case basis.

c. The only question for the Tribunal is whether or not the exercise of discretion in the present case was legal, rational, and procedurally correct, and not tainted by forms of abuse of power such as violation of the principle of good faith in dealing with staff, prejudice or arbitrariness, or other extraneous factors – in other words, whether the discretion was exercised properly.

[17] 2011-UNAT-109.
[18] 2012-UNAT-218.

d. Other than the general provision for granting exceptions to the Staff Rules, there is no provision for retroactive promotion within the rules and regulations of the Organization which govern the employment of staff. The relevant instrument governing appointment of staff is ST/AI/2010/3 (Staff selection system), which states at section 10.2 that the decision to select a candidate shall be implemented upon its official communication to the individual concerned. When the selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision, subject to the availability of the position and the assumption of higher-level functions.

e. Even if all the conditions in rule 12.3(b) to make an exception to the Staff Rules are met, the matter remains a question of the exercise of discretion by the Secretary-General: a staff member has no right to the granting of an exception under this rule.

f. The Applicant's request for an exception to the Staff Rules was considered by the ASG/OHRM as expressed in her correspondence of 27 February 2014. In particular, the provisions of the United Nations Joint Staff Pension Fund (UNJSPF) regulations and rules were considered and revealed not to allow for retroactive contributions, and furthermore the Pension Fund had been consulted and indicated that such a retroactive promotion would incur actuarial costs and interest.

h. In exercising the relevant discretion, the ASG/OHRM took into account the fact that the Applicant had received special post allowance from the date of reclassification, and had therefore received "equal pay for work of equal value".

i. The evidence suggests that the Applicant's request for an exception was properly considered and that the outcome was not based on any bias or prejudice or other improper motive. It was therefore a lawful exercise of discretion.

j. Should the Tribunal decide that the Secretary-General's discretion was exercised improperly, the question will arise as what damages should be awarded to the Applicant.

k. The Respondent is unable to obtain an accurate actuarial calculation from the UNJSPF without incurring substantial costs. The Respondent submits that the onus is on an Applicant who pleads economic loss to make a clear and accurate claim, rather than simply speculate. In the present case the Applicant has urged the Tribunal to award her 12 months' net base salary which she estimates is equivalent to the pecuniary damages she will suffer as a result of the Administration's refusal to grant her a promotion effective 1 January 2012. The Tribunal is urged to exercise caution in accepting the Applicant's estimate, and to consider obtaining a proper calculation from the UNJSPF prior to making any award in this case.

Considerations

42. The facts in this case, save the character of the position and the dates, are almost identical to those in the case of *Elmi* UNDT/2016/032. Legal issues and arguments are identical. The *Elm*i Judgment was appealed by the Secretary-General and determined in *Elmi* 2016-UNAT-704. The Tribunal therefore has the benefit of the United Nations Appeals Tribunal Judgment (UNAT) in determining the present application.

43. In *Elmi*, 2016-UNAT-704, it was held on the relevant issues raised by the application:

> 30. It was legitimate for the ASG/OHRM to consider that a retroactive promotion would create technical problems and additional costs as pension contributions had not been paid concurrently. The clear purpose of ST/AI/2010/3, Section 10.2 stipulating that a promotion may only become effective on the first day of the month following the decision, hence in the future, is to avoid the costs and technical problems which would arise from any retroactive promotion with regard to salary and pension.
>
> 31. The denial is in full accord with Staff Rule 3.10 which states:

> (a) Staff members shall be expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts.
>
> (b) Without prejudice to the principle that promotion under staff rule 4.15 shall be the normal means of recognizing increased responsibilities and demonstrated ability, a staff member holding a fixed-term or continuing appointment who is called upon to assume the full duties and responsibilities of a post at a clearly recognizable higher level than his or her own for a temporary period exceeding three months may, in exceptional cases, be granted a non-pensionable special post allowance from the beginning of the fourth month of service at the higher level.

Under Staff Rule 3.10, staff members must, in general, exercise higher level functions even without any extra compensation, and only in exceptional circumstances may they be granted a non-pensionable special post allowance "from the beginning of the fourth month of service at the higher level". Since Mr. Elmi received such SPA from the moment of the reclassification of his post, he already obtained a higher "remuneration" than generally allowed under Staff Rule 3.10(b). Furthermore, granting Mr. Elmi a retroactive promotion would have the same effect as granting him pensionable SPA, which is not possible under Staff Rule 3.10(b).

32.The denial of retroactive promotion "for pension purposes" does not violate the principle of "equal pay for work of equal value".

[…]

33. [T]he principle "equal pay for work of equal value" forbids discrimination; but it does not prohibit every form of different treatment of staff members. Such different treatment constitutes discrimination only when there is no lawful and convincing reason for the different treatment of staff members, e.g. when it is based on an *a priori* unlawful criterium such as gender or race, or when there are no significant differences between the categories of staff members being treated differently.

34. Applying this standard to the present case, the denial of a retroactive promotion "for pension purposes" does not constitute any discrimination against Mr. Elmi. It is true that there is different treatment: While the pensions of D-1 staff members exercising D-1 functions are calculated on the basis of their D-1 salaries, the time of the selection process in Mr. Elmi's case, with regard to his pension, only counts as time at the P-5 level although he also exercised D-1 functions over the period of several months. However, his different treatment is not discriminatory because there is a lawful and convincing reason for it. In administrative bodies like the United Nations, salary and pension generally follow

status and grade, not function. The reason and justification for the different treatment is the different grade of the staff members in question.

35. It does not follow from the principle "equal pay for work of equal value" that a staff member who exercises higher level functions has a right to receive the same salary and pension benefits as a staff member at a higher level exercising the same or similar functions. If this were the case, Staff Rule 3.10(a) and (b) would be unlawful in itself as it states expressly that staff members, for a certain amount of time, must exercise higher functions as a normal part of their customary work and without any pecuniary reward in the form of higher salary or pension and, afterwards and if certain criteria are met, may receive only non-pensionable SPA. As Staff Rule 3.10(a) and (b) regulates the interests of staff members of lower grades exercising higher level functions in a consistent and reasonable way, it lawfully embodies the principle of "equal pay for work of equal value" into the United Nations' system. It is not within the authority of the Appeals Tribunal or the UNDT to overturn such a legal framework.

36. This case is distinguishable from *Chen* where the UNDT, upheld by this Tribunal, ordered compensation "including the equivalent loss in pension rights". In *Chen*, the applicant requested reclassification of her post which was denied for years by the Administration without any convincing reason whereas in this case, Mr. Elmi requested retroactive promotion "for pension purposes" for having exercised higher level functions during a selection process. Furthermore, Ms. Chen never received SPA whereas Mr. Elmi, as stated above, received SPA for the whole length of the selection process in question.

37. Mr. Elmi has, among others, based the reasoning for his request for retroactive promotion effective 1 January 2012 on the length of the selection process. As the selection concerned a promotion for a D-1 position requiring utmost care in the examination and consideration of the candidates, we do not find it unreasonable that the selection process lasted [one and half years].

[…]

38. We note further that granting Mr. Elmi a retroactive promotion "for pension purposes" would create inconsistencies and injustice in other respects. It would be unfair that an incumbent like Mr. Elmi, who has, during a selection process, exercised higher level functions should, after having been selected, be granted retroactive promotion (in addition to the non-pensionable SPA he received) whereas an incumbent in the same situation but who was not selected and promoted, would only have his non-pensionable SPA.

44. As there is no basis for distinguishing the present case from *Elmi*, the UNAT judgment is binding as to the legal issues pertinent to this Applicant's case. As held in *Igbinedion* 2014-UNAT-410:

> there can be no doubt that the legislative intent in establishing a two-tier system was that the jurisprudence of the Appeals Tribunal would set precedent, to be followed in like cases by the Dispute Tribunal. The principle of *stare decisis* applies, creating foreseeable and predictable results within the system of internal justice. The Appeals Tribunal has the power of judicial review of the Dispute Tribunal's decision making, and the Dispute Tribunal should recognize, respect and abide by the Appeals Tribunal's jurisprudence.[19]

45. The Tribunal's conclusions in the present case are the following:

a. It was legitimate for the ASG/OHRM to invoke as reason for denial of retroactive promotion that it would have created technical problems and additional costs as pension contributions had not been paid concurrently.

b The denial of the Applicant's request for a retroactive promotion was not unlawful because of the length of the selection process, given that the selection concerned a promotion for a D-1 position requiring utmost care in the examination and consideration of the candidates.

c. The denial of retroactive promotion for pension purposes did not violate the principle of equal pay for work of equal value. It does not follow from the principle "equal pay for work of equal value" that a staff member who exercises higher level functions has a right to receive the same salary and pension benefits as a staff member at a higher level exercising the same or similar functions. Staff Rule 3.10(a) and (b) which foresees non-pensionable special post allowance lawfully embodies the principle of "equal pay for work of equal value"

d. The denial of the request for retroactive promotion is lawful, the administrative decision in question stays.

[19] Paragraph 24.

Judgment

46. The application is rejected in its entirety.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 13th day of July 2017

Entered in the Register on this 13th day of July 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi