AB AT

TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-054

Ilic

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Mark P. Painter Judge Luis María Simón
Judgment No.:	2010-UNAT-051
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Edward P. Flaherty

Counsel for Respondent: John Stompor

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Maja Ilic (Ilic) unsuccessfully applied for promotion to the P-4 level during the promotion session conducted by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 2007 (2007 Promotion Session). Her application to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) failed mainly on the ground that she failed to demonstrate how some material mistakes on her fact-sheet prejudiced her chances of promotion. This Court affirms the Judgment of the Dispute Tribunal.

Facts and Procedure

2. Ilic is a staff member of UNHCR. Ilic applied for a promotion to the P-4 level during the 2007 Promotion Session. The High Commissioner did not promote Ilic. Ilic's appeal to the Geneva Joint Appeals Board (JAB) was transferred to the Dispute Tribunal.

3. On 16 October 2009, Judge Cousin of the UNDT rendered Judgment No. UNDT/2009/046, rejecting the application. The UNDT found that the promotion by the High Commissioner of another staff member who was not recommended by the Appointments, Postings and Promotions Board (APPB) was not irregular. Ilic's general argument that UNHCR's promotion system lacked transparency could not be the basis for rescission of the decision not to promote her. For the UNDT to rescind the decision, Ilic needed to show eitc 0.698fE[(AB) wa. Tc 0nHe(t8-208fE[(f0 Tc 34 Tw 13.99or a)5(psromotion to t

5. The UNDT considered Ilic's specific arguments regarding the application of the Methodological Approach. UNHCR calculated her service as from 13 October 2002, whereas Ilic argued that the correct date was in 1998 in accordance with Staff Rule 104.3 on reinstatement. As Ilic's contract, effective as from 13 October 2002, made no mention of reinstatement, the UNDT found that the number of points awarded to her for service was correct. Ilic was not eligible for promotion until 2005, and so the recommendation by her supervisor for her promotion in 2005 could not be taken into account. The UNDT also rejected Ilic's arguments that her rotation history and academic qualifications were not properly taken into account.

6. During its recourse session, the APPB acknowledged that Ilic's performance evaluation for 2007 had not been taken into account during the first promotion session. But, the additional points arising from this correction did not lead to a change in the recommendation not to promote Ilic. The UNDT found that the fact-sheet submitted to the APPB concerning Ilic's employment history contained mistakes. First, her assignment to the Office of the Humanitarian Coordinator for Iraq was incorrectly

Submissions

Ilic's Appeal

8. Ilic seeks an order from the Appeals Tribunal that the Secretary-General produce additional information and documents, including: a copy of the legal opinion relating to the adoption of the Methodological Approach; evidence regarding the consideration by the APPB of the non-weighted/so-called "soft criteria" set out in the Methodological Approach; and an explanation for the errors contained in Ilic's fact-sheet. Ilic also requests an oral hearing.

9. Ilic submits that the UNDT made errors of fact and law. First, Ilic submits that the UNDT's findings regarding her seniority are flawed. There is no legal basis for UNHCR's decision to limit the calculation of her seniority to service within UNHCR, instead of within the United Nations system. Ilic refers to the Staff Administration Mobility and Administration Manual (SAMM) General Principles, Chapter VI, Section 3.23, and the Administrative Instruction ST/AI/2007/1 entitled "Mobility and Hardship Scheme of the United Nations". Ilic argues that her seniority should have been calculated as from 1 November 1999 at the latest.

10. Second, Ilic submits that the UNDT made erroneous findings regarding the consideration by the APPB of her university degrees and the application of the soft criteria under the Methodological Approach. She also submits that the UNDT erred in finding that the errors contained in her fact-sheet did not diminish her chances of promotion. The fact that the minutes of the APPB do not refer to Ilic's university qualifications amounts to a lack of transparency, which violates her right to due process. The consideration by the APPB of an inaccurate fact-sheet violated her right to full and fair consideration for a promotion. Further, Ilic asserts that the fact-sheet was "wrongfully and illegally manipulated by the UNHCR Administration". Ilic argues that, had the APPB properly considered her seniority, hardship duty station assignments, performance evaluation in 2007, university degrees, and the fact that she was performing functions at the P-4 level, she would have been in contention for promotion.

14. Ilic requests that the Appeals Tribunal reverse the decision of the UNDT and order that the 2007 Promotion Session be "invalidated" and conducted again.

Secretary-General's Answer

15. The Secretary-General submits that the appeal is not receivable as it was filed by Ilic 14 days after the deadline of 6 February 2010, calculated in accordance with Article 7(1) of the Statute of the Appeals Tribunal (Statute) and Articles 7(1) and 29 of the

19. The Secretary-General submits that the Appeals Tribunal should not consider Ilic's additional arguments supporting her contention that the APPB followed an irregular procedure because they were not made before the UNDT, lack any evidentiary support, and do not meet the statutory requirements for introducing additional evidence. If the Appeals Tribunal does consider them, the Secretary-General submits the following arguments. As to the allegation of a discriminatory practice, the Secretary-General cites

21. With regard to the submission that Ilic was denied the correct number of points for her 2007 performance evaluation, the Secretary-General argues that the UNDT correctly found that the APPB took the evaluation into account at the recourse session and the additional points received did not cause Ilic to lose a chance to be recommended

25.

rounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

30. Ilic asserts that the Dispute Tribunal made errors in law and fact and therefore reached erroneous conclusions regarding the consideration by the APPB of her university degrees, the application of the criteria under the Methodological Approach, and the errors in her fact-sheet.

31. In our opinion, the minutes of the recourse session held by the APPB clearly show that the experience and achievements of Ilic were properly considered at the 2007 Promotion Session. With the additional points granted by the APPB in respect of "an additional 4 months outstanding in the PAR calculation", she achieved a total score of 61.5 while the last staff member promoted within her group reached a total score of 66.4. The APPB therefore decided not to recommend her for promotion.

32. We note that the Dispute Tribunal took "into consideration the unfortunate errors contained in [her] fact-sheet and ... assess[ed] whether they may have seriously undermined her chances of promotion in 2007". The Dispute Tribunal was of the view that, with 61.5 points and ranked 190th, Ilic stood no chance of being promoted as the last staff member promoted was ranked 157th.

33. We do not fault the conclusion reached by the Dispute Tribunal on this issue as Ilic, who bore the burden of proof, failed to discharge it.

34. Ilic also complained about the lack of transparency of the promotion system and the criteria used under the Methodological Approach. We share the view of the Dispute Tribunal that Ilic's general argument that UNHCR's promotion system lacked transparency could not be the basis of the UNDT's decision to rescind a decision to deny a promotion.

35. We note that there have been various expressions of dissatisfaction by staff members appearing before this Tribunal that the Methodological Approach used by the APPB had a negative impact on the evaluation and ranking for "staff in between

assignments" and "specialist" staff.[2] However, we wish to stress that any deficiencies

Judgment

39. The Appeals Tribunal dismisses the appeal. The UNDT Judgment is affirmed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(*Signed*)	(*Signed*)	(*Signed*)
Judge Adinyira, Presiding	Judge Painter	Judge Simón

Entered in the Register on this 17th day of August 2010 in New York, United States.

(*Signed*)

Weicheng Lin, Registrar
United Nations Appeals Tribunal