

Introduction

1. On 21 April 2009, the Applicant contested the decision of the Secretary-General to reject her request for compensation for the prejudice suffered as a result, first, of the harassment of which she had been a victim for 10 years, second, of the placement of unfavourable documents on her personnel file, and last, of the decision not to select her for posts for which she was qualified, especially the post published under Vacancy Announcement No. 07-HRI-OHCHR-41-4977-R-Geneva.

2. The Applicant requests the following:

- a. That her pension retirement rates be recalculated to take into account the promotion she should have been given and the payment of the difference in salary she should have received during the period running from 29 May to 28 August 2008;
- b. That the Organization be ordered to pay her the sum of USD250,000 as compensation for the moral damages suffered and the sum of USD25,000 as costs, all with interest.

Facts

3. The Applicant began her service with the United Nations in May 1980 as a clerk/stenographer with the United Nations Volunteer Program (“UNVP”) of the United Nations Development Program (“UNDP”) in Geneva at the G-3 level, on a fixed-term contract.

Secretary at the G-4 level, and was promoted to the G-5 level on 1 October 1989 in the Office of the Assistant Secretary-General for Human Rights, CHR.

5. On 13 December 1995, the Chief of the Personnel Service of the United Nations Office at Geneva (“UNOG”) requested the Applicant to provide comments on a collective complaint she had lodged with other colleagues. By memorandum dated 27 February 1996, the Chief, Personnel Service, UNOG, informed the Applicant that given the general nature of the allegations contained in the complaint, with no details as to the facts, the procedure opened with regard to discriminatory and

released for evaluation and another candidate eligible at the 15-day mark was selected.

10. By letter dated 28 November 2007, the Applicant requested the Secretary-General to review the decision to place adverse material in her personnel file. In that same letter, she drew the Secretary-General's attention to the treatment that had been inflicted on her for the past 10 years and asked him to investigate the discrimination of which she had been a victim.

11. The Applicant was separated from service upon retirement from the Organization, on 31 December 2007.

12. By letter dated 25 January 2008, the Chief, Human Resources Management Service ("HRMS"), UNOG, replied to the Chief, Administrative Law Unit ("ALU"), Office of Human Resources Management ("OHRM"), New York Secretariat, that since the claims of harassment and discrimination put forward by the Applicant dated back 10 years and that the Applicant had not identified any precise administrative decision, her request for administrative review was not admissible in that respect. He further noted that with regard to the Applicant's request for administrative review against the administrative decisions not to select her for one of the two above-mentioned posts, the applicable procedure had been followed and the Applicant's rights had not been violated. With regard to the filing of adverse material on the Applicant's personnel file, the Chief, HRMS, UNOG, stated that the Applicant's personnel file did not contain any such material. He also emphasized that the fact that she had been granted a permanent appointment in 2006 served to prove that her efficiency, competence and integrity had been recognized by the Organization.

13. On 29 May 2008, the Applicant was appointed on a short-term contract until 28 July 2008 as Secretary, at the G-5 level, step 12. This appointment was renewed until 28 August 2008.

14. On 4 February 2008, the Officer-in-Charge, ALU, OHRM, denied the Applicant's request for review.

15. On 27 March 2008, the Applicant appealed to the Geneva Joint Appeals Board (“JAB”) against the decisions not to select her for the two above-mentioned posts and against the letter of 25 January 2008 from the Chief, HRMS, UNOG, and the corresponding reply from the ALU dated 4 February 2008. In her appeal, the Applicant went on to stress that she was not contesting the decision not to select her for the post published under Vacancy Announcement No. 07-HRI-OHCHR-415305-R-Geneva and that the decision not to select her for KKqVl OFKvcíWvqItOFzKcííKlhOF,cYqqít,vzIgOt t Announcement FvFíz,HHYINOFvYcqWç,IoOFíççç,vzI.OFíççKKYqI OvFíKKYW,I0OF,cYq,K,I7OFíçç

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19. By letter of 21 May 2010, the Applicant's Counsel informed the Tribunal that he was no longer defending the Applicant.

20. By e-mail dated 28 May 2010, the Office of Staff Legal Assistance ("OSLA") informed the Tribunal that it was defending the Applicant at her request.

21. By letter dated 28 July 2010, the Judge in charge of the case informed the parties that he intended to raise on his own initiative the question of the inadmissibility of part of the application, given that the request for review submitted to the Secretary General on 28 November 2007 only pertained to the decision to place adverse material on the Applicant's personnel file.

22. On 9 August 2010, the counsel assigned to the case by OSLA informed the Tribunal that he was no longer defending the Applicant.

23. A hearing was held on 30 August 2010, at which the Applicant was present with a new counsel.

Parties' contentions

24.

her career. In that respect, according to Judgment UNDT/2009/011, Sefraoui, it is only when an applicant learned the identity of the successful candidate that he could reasonably have apprehended that there were grounds for submitting a request for review; therefore time began running from the date of discovery of the identity of the successful candidate. In the Applicant's case, the deadline for submitting a request for review could only start to run once she realized the impact that the two memoranda had had on her candidature. Her claim in this respect should therefore be found to be admissible. In addition, the Administration did not give her an opportunity to respond to the memoranda of 1995 and 1997 contemporaneously with their submission. Notwithstanding the Respondent's assertions, the two memoranda constitute adverse material;

- d. The Applicant applied for over 20 posts unsuccessfully and was repeatedly denied advancement. The Respondent misused its discretionary power in the selection decision for the post published under Vacancy Announcement No. 07-HRI-OHCHR-41-4977-R-Geneva, which constitutes a détournement de pouvoir; in particular, the Chief of the Branch in which the post was located was biased against her, which came out when the Chief of the Branch gave testimony at a Joint Disciplinary Committee case involving the Applicant. The Applicant's candidacy was not accorded fair consideration. The Applicant therefore requests the Tribunal to vitiate the decision not to select her for the above-mentioned post;
- e. The Applicant has adduced proof of her allegations and recalls a recent example of the present Tribunal regarding the burden of proof (UNDT/2009/095, Sefraoui);
- f. As for the Respondent's argument that the Applicant's complaint concerning the harassment and discrimination to which she has been subjected for 10 years is inadmissible, even if one considers that these requests cannot be treated like a separate request, they

are in any event admissible as elements of proof making it possible to corroborate the Applicant's other requests.

25. The Respondent's contentions are:
 - a. The Applicant's general claims of harassment and discrimination do not constitute an administrative decision that can be appealed and are thus not admissible;
 - b.

- e. Similarly, for the post published under Vacancy Announcement No. 07-HRI-OHCHR-41-4977-R-Geneva, the Respondent submits that the procedure foreseen by administrative instruction ST/AI/2006/3 was followed and the decision not to select the Applicant constitutes a valid exercise of administrative discretion. The Applicant's rights were respected and the claim is unfounded;
- f. The decisions not to select the Applicant were not tainted by improper motives and the Applicant did not produce any such evidence. The Applicant's candidacies were given full and fair consideration;
- g. The Applicant's plea for payment at the G-5, step 12 level instead of Step 1 for a short-term assignment after she had already retired is inadmissible, pursuant to staff rule 111.2(a), as the Applicant did not present it at the time of initial administrative review;
- h. The Applicant's pleas for monetary compensation are unfounded

32. With regard to the memoranda dated 13 December 1995 and 6 November 1997 which were placed on the Applicant's OSF, she maintains that they constitute two adverse documents as defined by administrative instruction ST/AI/292 and that they were included in an unofficial file, given that they were not in her OSF when she consulted it in the early 2000s.

33. Assuming that the two contested documents may be deemed to be adverse material as defined by administrative instruction ST/AI/292, in any event, the Tribunal noted that the documents in question were in the Applicant's OSF. In view of the fact that, quite regrettably, the documents contained in these files bear neither reference codes nor numbers, it is impossible to determine the exact date on which they were placed on file. As it is incumbent upon the Applicant to prove her allegations, the Tribunal can only note that the Applicant has failed to do so.

34. In addition, the Applicant herself recognized during the hearing that she had received the documents in question when they were drafted in 1995 and 1997. Thus, contrary to what she asserts, she was in a position to submit comments if she had deemed them unfavourable. Finally, if the Applicant had wished to contest these memoranda via a formal review, she had to respect the time limit of two months laid down in rule 111.2(a) of the former

Dated this 3rd day of September 2010

Entered in the Register on this 3rd day of September 2010

(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva