



## Introduction

1. In an application submitted on 8 February 2010 to the United Nations Dispute Tribunal, the Applicant requests the following:
  - a. That the Tribunal order the amendment of the promotions procedure;
  - b. To be promoted retroactively to the P-5 level for the 2008 promotion session;
  - c. To be awarded compensation for the damage suffered.

## Facts

2. The Applicant has been working for the United Nations High Commissioner for Refugees (“UNHCR”) since June 1994.
3. Through IOM/FOM No. 010/2009 of 3 February 2009, the Director of the Division of Human Resources Management (“DHRM”) informed all UNHCR staff that the 2008 annual promotion session would be held in March 2009 and that the number of promotion slots for 2008 had been decided as follows:

P-5 to D-1: 10  
P-4 to P-5: 20  
P-3 to P-4: 42  
P-2 to P-3: 38  
Total: 110

4. By email dated 10 March 2009, the Director, DHRM, sent to all staff the

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26 candidates promoted, only 21 had been recommended by the APPB. The High Commissioner promoted some staff members without obtaining first the advice of the APPB. The High Commissioner arbitrarily increased the number of promotion slots without the agreement of the APPB. Three candidates with fewer points than himself were promoted;

c. His candidacy was not fully considered. His seniority, rotation in ann n n otiitutninonerif



High Commissioner is responsible for the management evaluation function.

### Judgment

17. Although the Applicant is entitled to contest before this Tribunal the legality of the decision not to promote him to the P-5 level for 2008, his request that the Tribunal order UNHCR to amend the procedure for granting promotions can only be rejected since the UNDT Statute does not authorise the Tribunal to substitute itself to the Administration in enacting the rules applicable to the staff.

18. The Applicant holds that the Deputy High Commissioner, to whom the management evaluation function has been delegated in UNHCR, cannot duly carry out this function since he is responsible for assessing a decision taken by his supervisor, the High Commissioner. The Tribunal can only reject this argument since the management evaluation function provided for in the Staff Rules is a procedure by which the Administration is able to correct its own mistakes if necessary and the Deputy High Commissioner, due to the delegation of this function to him by the High Commissioner, can in no way be considered in a conflict of interest.

19. In any event, since the legality of a decision is assessed at the date at which it is taken, circumstances such as the ones above, which are subsequent to the contested decision, shall in no way vitiate the legality of the decision to refuse promotion.

20. Contrary to what is alleged by the Applicant, the fact that the Deputy High Commissioner was late in responding to his request for management evaluation could in no way have been prejudicial to him.

21. Moreover, it is appropriate for the Tribunal to reaffirm that, given the discretionary nature of promotion decisions, the control it has over the legality of those decisions is limited to assessing the regularity of the procedure followed to take the decision and the factual errors in the review of the staff member's career.

22. By letter dated 8 September 2010, the Tribunal informed the parties that it intended to raise on its own motion the issue of the legality of the 2008 promotion



of the decision of the High Commissioner to fix 31 December 2008 as the cut-off date to determine the seniority and the eligibility of staff members.

26. The Applicant holds that the methodology applied at the 2008 promotion session is in contradiction with the Procedural Guidelines with regard to consideration of seniority. Paragraph 152 of the APPB Procedural Guidelines specifies very clearly that, in recommending staff members for promotion, the APPB shall give priority consideration to performan



awarded to each candidate by application of the 2008 promotions methodology, may have been recommended by the APPB and subsequently promoted. However, it is not for the Tribunal to substitute its own appreciation of the merits of staff members with either that of the APPB or of the High Commissioner.

30. Lastly, it is alleged by the Applicant that the APP

Decision