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20.   Insofar as the Applicant's initial requests for remedies set out above are still
extant, the Tribunal finds that they are irrelevant. The contested decision before
the Tribunal, as identified by the Applicant and submitted for management
evaluation, is the decision not to promote her during the 2013 Promotions session.
Not only is the Tribunal not seised of an application challenging prior decisions
on the Applicant's promotion, but any such prior decision.s1 are not the subject
of a request for management evaluation and, as such, do not fall within the
Tribunal's jurisdiction pursuant to staff rule 11.2.a1 and art. 11.d1.1.(1 of the
Tribunal's Statute (see Gehr 2013-UNAT-22::1. Therefore, the Applicant's
request for damages as a consequence of these ets

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the staff members who have passed the first round based on their evaluation of the following criteria:

51. A staff member's performance during the past five years must be at the minimum "Achieved" or its equivalent, for overall work objectives and must be at the minimum "Proficient" or its equivalent, for overall competencies indicating the staff member's ability and readiness to perform at a higher level as reflected in the narrative of the performance appraisal in the PAS/e-PAD and the Fact Sheet. The highest regard will be given to consistently demonstrated exceptional performance and documented exemplary service, including in emergency operations during the past five years. In addition, service at

45.

58. The Tribunal notes that the Promotions Policy, which establishes the methodology for a three-round evaluation of candidates and sets out the evaluation criteria for each round, does not provide for the separate consideration of male and female candidates at any stage; nor does it refer to gender as being a factor for consideration in the evaluation of candidates. There is no reference to gender consideration in the Promotions Policy until the very end of the process; where sec. 5.10.2 provides that at each grade level where gender parity has not yet been achieved, at least 50% of the promotion slots will be awarded to substantially equally meritorious female staff.

59. Significantly, the Promotions Policy consistently refers to the comparative assessment and ranking of a single pool of candidates. In this respect, secs. 5.9.1 and 5.9.3 provide that in the Second Round, the SPP shall conduct a fresh comparative assessment of the staff members who advanced from the first round, following which the Panel Secretariat will compile the Second Round assessment rankings and develop a consolidated list of substantially equally meritorious candidates for consideration by the Panel Members in the Third Round. [Emphasis added]. Then, secs. 5.10.1 and 5.10.2 provide that in the Third Round, Panel members will collectively review the list of substantially equally meritorious candidates as retained after the second round review and make final recommendations, which are not to exceed the number of slots available at each grade level. [Emphasis added].

60. The fact that the DHRM had already instructed the SPP members to consider female and male candidates separately before the High Commissioner had announced his decision to divide equally the promotion slots between the two groups raises serious doubts about the whole decision-making process in respect of gender consideration for the application of the Promotions Policy, and is indicative of a lack of transparency of process.

61. In any event, the Tribunal finds that although the Administration may have sought to achieve the High Commissioner's objective to award an equal number of promotions to female and male candidates, its separation of candidates by

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on whether a candidate fitted with the specific needs of an APP member's section, he would have, or not, a better chance of receiving a high ranking. In this respect, it is further noted that three APP members were selected by the Administration and three by the staff members. Although these were senior staff members and were most probably generally aware of the operational requirements of the Organization, there is no indication that, among the six, they covered all the various areas of work of the UNHCR, nor that they had a specific knowledge of the Organization's need at the P-5 level at that particular time and within the Organization as a whole.

103. The Tribunal does not question the appropriateness of taking into account organizational requirements in the grant of promotions. However, it stresses that the Promotions Policy sets in place a process whereby, in the context of the UNHCR's rank in person system, staff members are awarded conditional promotions purely based on merits, and then effectively promoted when their profile corresponds to a particular need of the Organization. This is evidenced from the fact that the High Commissioner is bound to set a quantitative number of promotion slots, without any reference to specific areas of expertise, and from the evaluation criteria for each of the three rounds of evaluation, which solely relate to the candidates' personnel records. As abstract as the comparison of candidates may be without reference to any specific post, it is clear that the Promotions Policy does not envisage a matching exercise until the very end of the process, which is the effective grant of promotion upon the promoted staff's actual appointment to a specific post at the higher level (secs. 5.12.1, 5.12.2 and 5.12.3).

104. In view of the foregoing, the Tribunal finds that in advising the APP members to take into account the suitability of the candidates for appointment in positions at a higher level, the DHR? introduced an extraneous criterion for consideration during the Second Round which had the potential to subvert the whole promotion exercise, shifting from a merit-based consideration to an operational one. Given the DHR?'s role in providing "technical advice and guidance on rules, regulations, policy and methodology" to the APP (see sec. 4.2.5 of the Promotions Policy), the mere provision of its advice to the APP constitutes

10. Again, the Tribunal is not in a position to ascertain how the advice given by the DTA influenced the APP members' assessment of the candidates. The assertion that no information was requested must be considered with circumspection, as the testimony of the APP rapporteur in respect of the DTA's interaction with the APP members was on some aspects directly at odds with documentary evidence later presented, as discussed above (see paras. D4 and D5 above). Also, it could not be certain that the APP members did not ask information from someone else within the DTA.

10D. The Promotions Policy explicitly states, at sec. 5.:.i1 and .ii1, that the APP members must base their comparative assessment of the candidates on the latter's fact sheets and e2PADs. In turn, sec. 4. states that /EtF+e Panels shall ensure that conclusions are not influenced by any unsubstantiated information provided orally or in writing by any person or authority external or internal to the UN,C-, including by or on behalf of staff members whose cases are under review, thereby specifically preventing the taking into consideration of information not reflected in the documents provided to the whole panel. Likewise, the Promotions Policy does not envisage any role for the DTA to provide additional information to APP members but solely to provide technical advice and guidance on the applicable rules (see sec. 4.2.5).

10:. The Tribunal finds that there is no room in the Promotions Policy for the APP members to inform their rankings with additional information they may know about but that is not reflected in the documents subject to their review. Otherwise, candidates may be advantaged or disadvantaged based on the fact that they are known to some of the APP members, opening the door to nepotism and bias.

110. The Tribunal acknowledges that APP members may have known some of the candidates, for having previously worked with them or supervised them and, to some extent, may be influenced by their personal knowledge of the candidates' performance. This is unavoidable and, indeed, implicitly allowed by the Promotions Policy which did not preclude APP members to assess candidates they may know, unless if they were their current superv

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123.   She was unable to provide any further explanation during her testimony before the Tribunal.

124.   The problem with this correction exercise is that it assumes that the methodology for ranking (indistinguishable) candidates suggested by the D , - ? was binding or, at best, that the SPP members intended to follow it. Firstly, as these (instructions) were not the subject of an administrative issuance, they cannot be considered as binding upon the SPP members. One witness, indeed, referred to the methodological suggestion as in fact being no more than that, a suggestion, as it could not be more. Secondly, absent any evidence from the SPP members, who were not involved in the correction exercise, it cannot be presumed that they intended to follow the D , - ? As suggested approach. Indeed, most of them did not. In these circumstances, the Respondent's post factum reconstruction is purely speculative and of no assistance. The Tribunal is therefore not in a position to assess the impact of the numerous errors and dubious methodology adopted by some SPP members on the Applicant's chances for promotion.

125.   In view of the foregoing, the Tribunal concludes that the award of the same ranking to more than one candidate, upon suggestion from the D , - ?, had no basis in the Promotions Policy and constitutes a procedural error in its implementation. Such methodology could not be reasonably introduced without a

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133. As recalled above, it is not the Tribunal's role to engage in a review of the Promotions Policy unless it is alleged that it does not comply with a higher norm. This is not the case in the instant application. The three evaluation criteria for the Second Round, that is, performance, managerial achievements and exemplary leadership qualities, are in line with staff regulation 1.1.d), which provides that "[t]he Secretary-General shall seek to ensure that the paramount consideration in the determination of the conditions of service shall be the necessity of securing staff of the highest standards of efficiency, competence and integrity". The Promotions Policy provides further particulars for each criterion, which are also in line with staff regulation 1.1.d).

134. Regarding performance, it provides for a minimum standard [indicating the staff member's ability and readiness to perform at a higher level, and for consideration of [consistently demonstrated exceptional performance and documented exemplary service, including in emergency operation, and of [service at the higher grade level for one year or longer] recognized through the receipt of a[n] [...] TJD:51(T)- 7.3642-14.3239(()2.58011(")9.69979( )-41523

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round review. According to the APP Secretariat, there was no further discussion among the APP members as to the methodology for their comparative assessment of the candidates. The APP members, who were initially allocated three days for their overall review plus an additional one if needed, appear to have completed their review within four days. The fifth day was reserved for the D‑?‑ to consolidate the data, so the Third Round could proceed the following week.

141. There is no doubt that the APP members' task was enormous and highly complex, considering the large number of candidates that had to be assessed in a comparative fashion and the documents at their disposal. Comparing and ranking 161 candidates based on their performance, managerial skills and leadership qualities was, by nature, a highly complex exercise. The Applicant's fact sheet, for instance, contains 21 pages of densely condensed information about the languages skills, academic background, employment records, performance evaluations, and development and learning events.

142. The Tribunal recalls that the fact sheet contains no quantitative value such as performance ratings (by a supervisor). For the relevant period, the fact sheet merely contains, in the "Performance Evaluations" section, the staff member's work objectives and the comments of his or her supervisor divided as follows:

    a.   / ? anager Comments on Values, Core Competencies, and ? anagerial Competencies;

    b.   / ? anager Comments on Cross‑Functional and Functional Competencies; and

    c.   / ? anager Overall Competencies Comments.

143. These rubrics are very general and there are no specific comments, for instance, on managerial achievements and leadership qualities. The comments, which were not meant to serve as a specific appraisal of the candidates' capacity to perform at the P‑5 level, are either very general or, at times, focus on particular projects that are not directly relevant for the present exercise. The APP members were required to compare 161 fact sheets within a day or two, to do the same for

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150. Secondly, the Tribunal notes that there is no provision in the Promotions Policy in respect of the methodology for consolidating the individual rankings provided by each of the six APP members. The evidence shows that the D[HR] elected to take an arithmetic mean of the individual rankings provided by each APP member. In taking an arithmetic mean, the candidates' rankings were de facto converted into numerical values, which were then ranked from the lowest to the highest. None of the witnesses presented by the Respondent could provide any cogent explanation as to why this methodology was chosen. The evidence disclosed that no statistical advice was sought or obtained in respect of the appropriate methodology to be used.

151. The Tribunal recalls that the new version of the Promotions Policy, applied for the 2013 Promotions Session, is substantially different from the previous policy as it entails a ranking process rather than a scoring one. The consolidation

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1:0. A$ong t+e same $%nes* t+e A##ea$s T)%(una$)e&ent$" a7a)ded U'D10*000 fo) $oss of &+an&e of #)omot%on as &om#ensat%on %n

UNDT2201021 D* #a)a. 44J #ututaUNDT2200:2044J "ndersson UNDT220122
0:11.

1:4.

206. T+e T)‰(una$ unde)stands f)om t+‰s A##ea$s T)‰(una$As +o$d‰ng t+at a mo)a$ ‰n8u)" &ou$d (e ‰nfe))ed f)om t+e fa&t t+at a staff mem(e) +as susta‰ned a fundamenta$ ()ea&+ of +‰s o) +e) su(stant‰3e o) due #)o&ess ent‰t$ements. ‚o7e3e)* ‰t 7as &$ea) t+at ‰t 7as u$t‰mate$" ne&essa)" t+at a mo)a$ ‰n8u)" (e esta($‰s+ed* (" ‰nfe)en&e o) d‰)e&t e3‰den&e* fo) t+e T)‰(una$ to a7a)d &om#ensat‰on fo) mo)a$ damages.

20 .

d‰s&ussed a(o3e .see #a)a. 2: a(o3el* an" &$a‰m ‰n t+‰s)es#e&t does not fa$$ 7‰t+‰n t+e am(‰t of t+e T)‰(una$‰s 8u)‰sd‰&t‰on ‰n t+ese #)o&eed‰ngs.

210. T+e T)‰(una$ st)esses t+at t+e)e6u‰)ement to addu&e e3‰den&e of mo)a$ ‰n8u)" s+ou$d not &ome as a su)#)‰se ‰n t+e #)esent

(Signed)

Judge Rowan Downing

Dated this 26th day of April 2016

Entered in the Register on this 26th day of April 2016

(Signed)

René M. Vargas M., Registrar, Geneva