

1. The applicant submitted an email on 29 December 2014 and through the
Tribunal's e-mailing system on 2 January 2015. The applicant is a staff member of the
United Nations Human Resources Management Commission (formerly the
United Nations Human Resources Management Commission) (not to be confused with the
United Nations Human Resources Management Commission).
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2. It is noted that the facts and grounds of appeal are (s) 5.287729((s)5.287716.4682(P)12.(s)5.28772(s)-

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10. The six (6) PP members gave the Applicant the following findings among the evidence and dates of promotion to the P45 level: 66-69-A5-1, 7-151 and 154. The Director stated that the Applicant's mean of the

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2. During the hearing on the merits, the Applicant admitted the submissions made on the spot by the respondent in the aforementioned cases. The Counsel for the respondent requested the Assessor to take into account the following case.

24. On 29 January and 4 February 2016, the respondent and the Applicant (respondent) filed additional submissions in the case (on the T'una).

25.

Case No. UNDT/GVA/2015/076

Judgment No. UNDT/2016/049

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e. The Applicant asked to demonstrate an educational process in the implementation of the Promotions Policy that would account for the contested decision in a timely manner.

%. The Promotions Policy does not require that Promotions sessions be held every year.

%. The High Commissioner is not bound by the recommendations

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42. 7n %ts ;udgment

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During the 2011, Promotions Session, the Applicant and the Respondent were both present and participated in the same session. The Applicant and the Respondent were both present and participated in the same session.

A's evidence on the Promotions Session in 2012

51. The Applicant takes issue with the fact that no Promotions Session was held in 2012- so the 2011, Promotions Session is the only one held. The Applicant's evidence is that the Respondent's evidence is that the Applicant and the Respondent were both present and participated in the same session. The Applicant's evidence is that the Respondent's evidence is that the Applicant and the Respondent were both present and participated in the same session.

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6A. The Panel's finding that the Promotion Policy is consistent with the principle of non-discrimination is based on the assessment and analysis of the relevant provisions of the Staff Regulations (Articles 5.9.1 and 5.9.), the conditions of service of the staff and the assessment of the staff members' performance. The Panel is satisfied that the Promotion Policy is consistent with the principle of non-discrimination.

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Promotions Policy : as to the amended provisions of the 2009-2011 Promotion Policy, the Commission found that the Commission's decision to implement the 2009-2011 Promotion Policy was not in accordance with the provisions of the 2009-2011 Promotion Policy.

10A. The Commission notes that since the 6PP mem'ers' decision of 2009, the Commission has not issued any decisions on the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy.

109. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy.

Implementation of the 2009-2011 Promotion Policy

110. Although not specifically mentioned in the 2009-2011 Promotion Policy, the Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy. The Commission notes that the 2009-2011 Promotion Policy was not implemented in accordance with the provisions of the 2009-2011 Promotion Policy.

114. The Tribunal (hereinafter referred to as the Tribunal) finds that the Commission's decision of 12 October 2015 regarding the promotion of the applicant to the position of Deputy Chief of Mission is not in accordance with the provisions of the Staff Regulations and Rules. The Tribunal finds that the Commission's decision is not in accordance with the provisions of the Staff Regulations and Rules, in particular, article 112.1 of the Staff Regulations and Rules, which provides that the Commission shall not promote an employee to a higher grade if the employee is not qualified for the higher grade. The Tribunal finds that the Commission's decision is not in accordance with the provisions of the Staff Regulations and Rules, in particular, article 112.1 of the Staff Regulations and Rules, which provides that the Commission shall not promote an employee to a higher grade if the employee is not qualified for the higher grade.

Promotion to the P44 grade and a 15% increase in salary is the subject of the applicant's claim. The applicant claims that the Commission's decision is not in accordance with the provisions of the Staff Regulations and Rules, in particular, article 112.1 of the Staff Regulations and Rules, which provides that the Commission shall not promote an employee to a higher grade if the employee is not qualified for the higher grade. The applicant also claims that the Commission's decision is not in accordance with the provisions of the Staff Regulations and Rules, in particular, article 112.1 of the Staff Regulations and Rules, which provides that the Commission shall not promote an employee to a higher grade if the employee is not qualified for the higher grade.

115. Articles 5.12.2 to 5.12.6 of the Staff Regulations and Rules apply to the applicant's claim. The Tribunal finds that the Commission's decision is not in accordance with the provisions of the Staff Regulations and Rules, in particular, article 5.12.2 of the Staff Regulations and Rules, which provides that the Commission shall not promote an employee to a higher grade if the employee is not qualified for the higher grade. The Tribunal finds that the Commission's decision is not in accordance with the provisions of the Staff Regulations and Rules, in particular, article 5.12.2 of the Staff Regulations and Rules, which provides that the Commission shall not promote an employee to a higher grade if the employee is not qualified for the higher grade.

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159. The Tribunal's findings contained in ePADs are not on the basis of the evidence presented. The Tribunal's findings are based on the evidence presented and are not based on the evidence presented. The Tribunal's findings are based on the evidence presented and are not based on the evidence presented.

160. The Tribunal's findings are based on the evidence presented and are not based on the evidence presented. The Tribunal's findings are based on the evidence presented and are not based on the evidence presented. The Tribunal's findings are based on the evidence presented and are not based on the evidence presented.

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Judgment No. UNDT/2016/049

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172. T)e T(%'una\$ ag(ees : %t) t)e /es#ondent t)at t)e P(omotions Po\$%" does not s#e&% %&a\$\$" en5%sage t)at t)e 6PP mem'e(s : %\$\$)o\$d a meeting o(t)e(6e&ond /ound (e5%e:- :)%&) enta\$\$s an %nd%5%dua\$ assessment "' t)e 6PP mem'e(s o t)e &and%dates. .o:e5e(- t)e e5%den&e s)o:s t)at t)e D. / > &on5ened t)e 6PP mem'e(s to gat)e(%n Gene5a to ma=e su&) assessment- and most %m#o(tant\$"- se%ised t)s o##o(tun%t" to g%5e t)em %nst(u&t%ons o(suggest%ons as to t)e moda\$%ties o t)e((e5%e:. No m%notes : e(e ta=en o sa)d meet%ng. ?%e : %se- t)e D. / > #(o5%ded ad5%&e to t)e 6PP #(o(to %ts gat)e(%ng %n Gene5a- t)(oug) 5%deo&on e(en&e and ema\$\$s- as deta\$\$ed a'o5e. T)ese : e(e not o(ma\$\$" (e&o(ded %n m%notes e%t)e(- 'ut t)e" a(e- to some e@tent- (e \$e&ted %n t)e ema\$\$s t)emse\$5es and a do&ument ent%t\$ed 1Ta\$=%ng Po%nts2.

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176.

, conclusion in respect of the legality of the decision

1A0. The Tribunal has identified a possible significant and fundamental element of the Promotion Policy of 2011, Promotion Commission:)&) ma" 'e summed as o\$so : sB

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d. The 6PP mem'e(s not assessng &om#\$an&e : t) t)e m&n&num #e(o(man&e t)(es)o\$d unde(se&. 5.9.10%3 o t)e P(omotions Po\$&"G

e. The D. / > ad5\$ng t)e 6PP mem'e(s to ta=e %nto a&&ount- du(ng t)e(6e&ond / ound (e5%e :- t)e &and&dates* su&ta'%'t" o(#a&ement n a&tua\$ #os&tions at t)e P45 \$e5e\$G

. The D. / > ad5\$ng t)e 6PP mem'e(s to ta=e %nto a&&ount t)e(#e(sona\$ =no : \$edge o t)e &and&datesG

g. The D. / > %nt(odu&ng a (an=ng met)odo\$og" :)&) #e(m&tted t)e a\$\$o&ation o t)e same (an= to mo(e t)an one &and&date- : t)out an" adm&n&st(at&5e \$suan&e and an" &ons&de(at&on o t)e %m#a&t on t)e &and&dates* &onso\$&ated (an=ngG

). The s&gn% &ant e((o(s n t)e (an=ngs #(o5&ded ' " t)e 6PP mem'e(s- &ou#sed : t) a \$a&= o d%\$gen&e ' " D. / > %n t)e &onso\$&at&on o data- #uts %nto 9uest&on t)e (e\$a'%'t" o t)e (an=ngsG

%. The e@t(eme d%5e(gen&es %n t)e (an=ings #(o5%ded ' ' t)e 5a(ous 6PP mem'e(s to t)e same &and%dates- o(:)%&) no sat%is a&to(" ans : e()as 'een #(o5%ded- and :)%&) ma" suggest t)at t)e e((o(s %dent% %ed a'o5e &on&(ete\$" %m#a&t)ed on t)e (esu\$ts- o(t)at t)e &om#a(at%5e and (an=ing e@e(&%se : as s%#m%" %m#oss%'\$e to a&&om#s)s g%5en t)e \$a(ge num'e(o &and%dates- t)e %n o(mat%on #(o5%ded to t)e 6PP mem'e(s- :)%&) &ons%sted on\$" o t)e &and%dates* a&t s)eet- and t)e s)o(t t%me o(&ondu&t%ng t)e%(e5%e : G and

;. The a%\$u(e to ta=e m%nutes o 6PP meetings #(o(to- o(du(%ng- t)e 6e&ond / ound e5a\$uat%on and to (e&o(d ad%&es #(o5%ded ' ' t)e D . / > .

1A1. 7n \$%g)t o a\$\$ t)e o(ego%ng- t)e T(%'una\$ %nds t)at t)e &ontested de&%s%on %s un\$a : u\$.

1A2. The T(%'una\$ notes t)at t)e A##\$%&ant : as e\$%g%'\$e o(&ons%de(at%on o(#(omot%on %n t)e 2014 P(omot%ons 6ess%on- :)%&) %t unde(stands %s %n %ts %na\$ stage- and :\$\$ &ont%ne to 'e e\$%g%'\$e %n utu(e sess%ons unt%\$ #(omot)ed. !" &ondu&t%ng an e@tens%5e (e5%e : o t)e 201, P(omot%ons H@e(&%se- add(ess%ng ea& and e5e(" #(o&edu(a\$ %((egu\$a(%t" (a%sed ' ' t)e A##\$%&ant- and %n \$%ne : %t) t)e A##ea\$s T(%'una\$*s ;udgment %n "e!touche 0see #a(a. 42 a'o5e3- t)e T(%'una\$)o#es to)a5e #(o5%ded some gu%dan&e as to)o : t)e P(omot%ons Po\$%&" oug)t to)a5e 'een %m#s%ment)ed %n %ts &u((ent o(mu\$at%on- s)ou\$d t)e UN . C / de&%de to &ont%ne to use %t %n utu(e #(omot%ons e@e(&%ses.

1A. 7n add%t%on to %ns%st%ng on t)e ne&ess%t" o %m#s%ment%ng t)e Po\$%&" as ado#ted- t)e T(%'una\$ (e&omm)ends to t)e Adm%ns%tr(at%on to 1(e o(m2 su&) ' ' su##s%ment%ng t)e Po\$%&" : %t) an adm%n.

Case No. UNDT/GVA/2015/076

Judgment No. UNDT/2016/049

191. The Commission on Promotions Postulated a sign and antit)at t) (m#ant on t) A##\$ant*s & an&e o(#omotion &annot 'e measu(ed. > ost &(ta%n\$"- t) A##\$ant)ad a (ea\$ &)an&e o(#omotion.

192. The (e o(e- t)e T(% 'una\$ (es&nds t)e de&sion.

6#e&% %& #e(o(man&e

193. The A##\$ant (e9uests to 'e g(anted #omotion to t)e P45 \$e5e\$. 6) e also (e9uests t)e T(% 'una\$ to (e5'e: t)e P(omotions Po\$&" and esta'\$is) an adm'n'ist(at%5e %nst(u&tion.

194. The T(% 'una\$ (e%te(ates t)at t)e &ontested de&sion %s d%sk(et%ona(" %n natu(e- and t)at %t %s not %ts (o\$e to e@e(%%se t)e d%sk(et%ona(" aut)o%t" %sted on t)e 6PP and t)e .%g) Comm%ss%one("' su'st%tut%ng %ts o:n assessment o(t)at o t)e &om#etent o %&a\$ 0see Sanwidi 20104UNAT40A4G !!assi 20114UNAT41103. 7t %s #a(t o t)e &on&e#t o d%sk(et%on t)at %ts e@e(%%se ma" \$a: u\$\$" (esu\$t %n de&sions t)at a(e d% e(ent (om t)ose t)e T(% 'una\$ m%g)t)a5e #e e((ed. T)e(e o(e- :)e(e t)e ;ud%&a\$ (e5'e: &on&(ns t)e e@e(%%se o d%sk(et%on- t)e T(% 'una\$ &an o(de(s#e&% %& #e(o(man&e- su&) as %t)as 'een (e9uested %n t)e #(esent &ase- so\$e\$" %n t)e (a(e)" #ot)es% :)e(e t)e (esu\$t o t)e e@e(%%se o d%sk(et%on &an 'e na((o: ed do: n %n su&) a: a" as to on\$")a5e one \$ega\$\$" &o((e&t out&ome 0see demagic et al% UNDT/2015/1153. T)%s %s not t)e &ase %n t)e a##\$&at%on at)and.

195. The T(% 'una\$)as &on&\$uded t)at t)e 6PP)ad not a%(\$" and ade9uate\$" &ons%de(ed t)e A##\$ant*s &and%da&" o(#omotion to t)e P45 \$e5e\$:)en &om#a(ng)e(: %t) t)e ot)e(&and%dates. T)e .%g) Comm%ss%one(- :)o %s t)e &om#etent de&sion4ma=e(-)as not (e&e%5ed a #(o#e(and meaning u\$ (e&om%ndat%on o(ma=ng %s de&sion as to :)et)e(o(not to a: a(d one o t)e 56 a5a%a'\$e \$sots o(#omotion to t)e P45 \$e5e\$ to t)e A##\$ant. Unt%\$ t)%s e@e(%%se)as 'een #(o#e(\$" #e(o(med- %ts out&ome (ema%ns o#en o(t)e A##\$ant. 7 t)e T(% 'una\$: e(e to g(ant t)e A##\$ant a #(omotion- %t : ou\$d 'e tantamount to #(e;udg%ng t)e out&ome o t)e &om#a(at%5e assessment o a\$\$ e\$%g%'\$e &and%dates en5%aged %n t)e P(omotions Po\$&"- and su'st%tut%ng %ts

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200. In summary, the Commission's decision regarding the motions under UN . C / # (previous motions) is that the Tribunal's award of the amount of the national contribution to the Commission is C . +A-000 (see

205. In the various cases concerning the UN . C / (motions sessions- t) e T('una\$ (e;e&t)ed (e9uests o(mate(%a\$ damages on t)e 'as% t)at %ts o(de(to (es&%nd t)e de&%s%on and to a : a(d &om#ensat%on %n %eu o (es&%ss%on &o5e(ed a\$\$ mate(%a\$ damages t)at an a##\$%&ant ma")a5e %n&u((ed. T)e T('una\$ (easoned t)at % t) e / es#ondent &)ose to rescind t)e &ontested de&%s%on and to ta=e a ne : de&%s%on on an a##\$%&ant's #(omot%on- t)e a##\$%&ant : ou\$d 'e a'se to &\$a%m #(omot%on (et(oa&t%5e\$" % #(omoted- o(to &)a\$\$enge t)e ne : de&%s%on on #(omot%on % not #(omoted. Conse9uent\$"- t)e(e : ou\$d not)a5e 'een a mate(%a\$ damage. In tu(n- % t) e / es#ondent &)ose to #a" &om#ensat%on- t)e sum a : a(ded must 'e &ons%de(ed as &om#ensat%on o(\$oss o sa\$a(" due to t)e den%a\$ o #(omot%on 0see /soneva UNDT/2010/17AG " ututa UNDT/2009/044G ndersson UNDT/2012/0913.

206. I)e(eas t)e T('una\$'s)o\$d%ng t)at #a"ment o t)e amount a : a(ded o(&om#ensat%on %n %eu o (es&%ss%on a##\$%es to t)e #(esent &ase- %ts %nd%ng t)at (es&%ss%on ma" enta%\$ (et(oa&t%5e g(ant o #(omot%on and &om#ensate an" \$oss o sa\$a(" &annot 'e a##\$%ed mutatis mutandis.

207. Unde(t)e &u((ent P(omot%ons Po\$%&"- t)e A##\$%&ant's #(omot%on- e5en % %t &ou\$d t)eo(et%&a\$\$" 'e a : a(ded (et(oa&t%5e\$"- : ou\$d not 'e e e&t%5e (om t)e t%me o t)e .%g) Comm%ss%one(*s %n%t%a\$ de&%s%on on #(omot%ons- t)at %s 20 <&to'e(2014- 'ut on\$" as o :)en t)e A##\$%&ant %s a##%o%nted to a #ost at t)e)%g)e(\$e5e\$ 0se&s. 5.12.1 and 5.12.,3. In t)%s (es#e&t- t)e T('una\$ notes t)at a\$)oug t) e A##\$%&ant a\$\$eges t)at)e(#(omot%on : ou\$d 'e e e&t%5e %mmediate\$" %n)e(&ase- 'e&ause s)e : as : %t)%n t) : o "ea(s o (et%(ement- t)%s : as not t)e &ase at t)e (e5e5ant t%me- name\$" on 20 <&to'e(2014.

20A. In deed- on 20 <&to'e(2014- t)e A##\$%&ant : as 5A "ea(s o\$d- name\$" ou("ea(s a : a" (om (et%(ement as)e(no(ma\$ (et%(ement age %s 62 due to t)e a&t t)at s)e ente(ed t)e se(5%&e o t)e Un%ted Nat%ons- and

sa\$a(" . T)e T(% 'una\$ must t)e(e o(e e@am#ne % t)%s #oss%'\$e \$oss o sa\$a("- %n &ase t)e /es#ondent does not e\$e&t to #a" &om#ensat%on %n \$%eu o (es&%ss%on- ;ust% %es t)at %t a : a(ds t)e A##\$%&ant mate(%a\$ damages.

210. As (e&a\$\$ed a'o5e- e5en % t)e A##\$%&ant)ad 'een g(anted #(omot%on on 20 <&to'e(2014- t)%s #(omot%on : ou\$d not)a5e 'een e e&t%5e unt%\$ s)e : as a##o%nted to a P45 \$e5e\$ #os%t%on. 7n t)e meant%me- s)e : ou\$d)a5e &ont%nued to (e&e%5e)e(sa\$a(" at t)e P44 \$e5e\$. T)e(e o(e- an" \$oss o sa\$a(" : ou\$d de#end not on\$ " on :)et)e(t)e A##\$%&ant : as %ndeed #(omoted- 'ut a\$\$o on :)en s)e : ou\$d)a5e 'een a##o%nted to a P45 #os%t%on)ad s)e 'een #(omoted. T)e e5%den&e s)o : s)t)at t)e A##\$%&ant)ad not 'een a##o%nted to a P45 #os%t%on as o t)e date o t)e)ea(%ng. I)et)e(- and % so :)en- s)e : ou\$d)a5e 'een a##o%nted at t)at \$e5e\$)ad s)e 'een #(omoted on 20 <&to'e(2014 and &ons%de(ed %n t)e ne@t 5a&an&%es* &om#end%um %s s#e&u\$at%5e.

211. Cons%de(%ng t)at %t %s un&e(ta%n t)at t)e A##\$%&ant : ou\$d)a5e 'een g(anted #(omot%on- t)at %t %s a\$\$o un&e(ta%n t)at s)e : ou\$d a%ot 'eed a##o%nted&ed5

21.,. 7n sariotis- :)%&) :as %ssued on 2A >a(&) 201,- t)e A##ea\$s T(%'una\$ de\$%neated t)e D%#ute T(%'una\$s*s ;u(%sd%&t%&t%on to a :a(d mo(a\$ damages %n t)e o\$\$o : %ng te(msB

,6. To %n5o=e %ts ;u(%sd%&t%&t%on to a :a(d mo(a\$ damages- t)e UNDT must %n t)e %(st %nstan&e %dent% " t)e mo(a\$ %n;u(" susta%ned ' " t)e em#%o"ee. T)s %dent% %&at%on &an ne5e('e an e@a&t s&%en&e and su&) %dent% %&at%on : %\$\$ ne&essa(%\$ " de#end on t)e a&ts o ea&) &ase. I)at &an 'e stated- ' " :a" o gene(a\$ #(%n&%#%e- %s t)at damages o(a mo(a\$ %n;u(" ma" a(%seB

0%3 +(om a '(ea&) o t)e em#%o"ee*s su'stant%5e ent%t%ements a(%%ng (om)%s o()e(&ont(a&t o em#%o"ment and/o((om a '(ea&) o t)e #(o&edu(a\$ due #(o&ess ent%t%ements t)e(e%n gua(anteed 0'e t)e" s#e&% %&a\$\$" designated %n t)e Staff Regulations and Rules or arising from the principles of natural justice). Where the breach is of a fundamental nature, the breach may of itself give rise to an award of moral damages, not in any punitive sense for

0'3 Compensation

e. Assot)e(&\$a\ms a(e (e;e&ted.

{Signed}

Judge / o : an Do : n\ng

Dated t)\s , (d da" o >a" 2016

Hnte(ed \n t)e /eg\ste(on t)\s , (d da" o >a" 2016

{Signed}

/en0 >. Va(gas >.- /eg\st(a(- Gene5a