



## **Introduction**

1. By application filed on 21 July 2015, the Applicant, a staff member of the United Nations High Commissioner for Refugees (“UNHCR”), contests the

7. By email of 30 October 2014, the Applicant requested DHRM to provide him the documentation considered by the Senior Promotions Panel regarding his candidacy. On the same day, DHRM responded to the Applicant's request, transmitting to him his fact sheet as reviewed by the Senior Promotions Panel. DHRM further informed the Applicant of the reason for his non-selection (namely that his overall ranking placed him outside the margin of 200% of the number of slots allocated for promotion to P-5 level), and explained to him the procedure for seeking recourse, including the requirement to submit a written and fully documented application "no later than four weeks after the receipt of [the 30 October 2014] message".

8.

12. By memorandum dated 2 March 2015 and distributed to all UNHCR staff members via email on 3 March 2015, the High Commissioner announced his decisions following the Recourse Session. The Applicant was not among the candidates promoted upon recourse.

13. By memorandum dated 20 March 2015 addressed to the Deputy High Commissioner, the Applicant requested management evaluation of the Senior Promotions Recourse Panel's decision of 2 March 2015 to reject his recourse application. The memorandum was initially sent to the Promotions Secretariat and was sent again, on 29 March 2015, to the Office of the Deputy High Commissioner.

14. By email of 29 April 2015, the Office of the Deputy High Commissioner informed the Applicant that his request for management evaluation, received on 29 March 2015, was still under consideration and of his right to file an appeal before the Dispute Tribunal within the time limit set forth in art. 8 of its Statute and Staff Rule 11.4(a). The Applicant received no further response to his request for management evaluation.

15. The Applicant filed his application with the Registry of this Tribunal on 21 July 2015.

16. The Respondent submitted his reply on 24 August 2015, wherein he challenged, *in r a a* the receivability of the application.

17. On 11 November "uyt dummc"n 11 he11 Nfefesbergcuy"u"(t1d2cu5utbedJy20tr""(ttdJy2nym""C

**Parties' submissions**

19. The Applicant's principal contentions concerning the receivability of his application are:

- a. He provided a legitimate justification for the late filing of his recourse application as he was on uncertified sick leave for two days due to severe headaches;
- b. His request for management evaluation was receivable as it was filed within 60 days from the notification of the decision of the Senior Promotions Recourse Panel rejecting his recourse application; and
- c. He did not challenge, through management evaluation, the initial 17 October 2014 decision not to promote him as he had filed a recourse application, and only learned on 24 August 2015, when he received thewaw guwv

d. The Applicant did not have any legitimate expectation that a decision would be taken on his recourse application, although the Respondent acknowledges that the Applicant was provided with inaccurate information about the forum for deciding on the receivability of his late recourse application; to protect his rights, the Applicant should have filed a request for management evaluation against the initial decision on promotion, as the deadline had not expired at the time.

**Consideration**

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27. In view of the foregoing, the Tribunal has to first consider whether the request for management evaluation was filed in a timely ma



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31. The Applicant's request to have his recourse considered, although filed out

application for procedural defect, did not create a new right for the Applicant to challenge the original, substantive, decision not to promote him to the P-5 level and, therefore, cannot be considered for the purpose of art. 8(1)(d)(i)(b) of the Tribunal's Statute.

35. Likewise, the Tribunal finds that the Applicant's filing of a recourse application after the deadline set forth in sec. 5.13.2 of the Promotions Policy had no bearing on the time limit to challenge the initial decision on his promotion, which started to run from 20 October 2014. In this respect, the Tribunal stresses that the filing of a recourse application that does not comply with the four-week deadline does not suspend the time limit to file a request for management evaluation of the original decision, which the applicant seeks to contest. To find otherwise would allow any staff member to re-open the deadline for management evaluation at any time, simply by filing a late application for recourse.

36. The Tribunal notes that it could conclude otherwise only if a recourse application filed after the four-week deadline was ultimately found to be receivable and considered on the merits. Indeed, in such a scenario, the initial non-promotion decision might be superseded by a new decision; hence, the deadline for management evaluation might start to run upon notification of the new non-promotion decision resulting from the recourse. In contrast, in a scenario like the present one, where the recourse application was found to be time-barred, the initial decision remained final and the deadline for requesting management evaluation started to run as of the notification of said initial decision.

37. In view of the foregoing, the Tribunal finds that the decision on non-promotion insofar as the Applicant is concerned was notified on 20 October 2014 and not subject to any further review. The Applicant's request for management evaluation, submitted on 20 and 29 March 2015, was thus time-barred.

38. Therefore, the application before the Tribunal is irreceivable, *rat on at r a (E s 2014-UNAT-402)*.

**Conclusion**

39. In view of the foregoing, the Tribunal REJECTS the application.

( n )

Rowan Downing

Dated this 15<sup>th</sup> day of January 2016

Entered in the Register on this 15<sup>th</sup> day of January 2016

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René M. Vargas M., Registrar, Geneva