

UNDT/2009/045, Solanki

UNAT Held or UNDT Pronouncements

The High Commissioner is not bound to follow the recommendations of the Appointments, Promotions, and Postings Commission, but he cannot grant a promotion without the situation of the eligible official having been examined by the Commission. It is up to the administration to establish the list of promotions to put in place regulations to reconcile the two imperatives of advancement on merit and that of gender parity, if necessary by establishing quotas. Failing to have such regulations in place, the administration must apply the regulations in force. Article 10, paragraph 5, of the Tribunal's statutes requires the judge, in certain cases, to fix the compensation that the defendant may choose to pay in lieu of setting aside the contested administrative decision. The judge assesses this sum taking into account the material damage resulting from the illegal decision and fixes it in this case at CHF8000. The Applicant cannot claim any compensation beyond the loss of the additional wages he would have received had he been promoted. Indeed, the administration has the choice of either executing the judge's decision annulling the refusal of promotion, or paying the sum set above. In the first hypothesis, the High Commissioner must again rule on the promotion of the official, who on the one hand if he obtains a promotion can claim to be promoted retroactively and thus will not have suffered any prejudice and, on the other hand if he is not promoted, he will not be able to claim any compensation except to challenge again before the Tribunal the new refusal decision. In the second hypothesis, where the administration chooses to pay the sum fixed by the judge instead of drawing the consequences of the cancellation, the said sum must be considered as compensating the material damage suffered during a year as soon as the official was able to assert their promotion rights during the following session. The Statute of the court does not allow the judge to issue injunctions to the administration and the annulment of a refusal of promotion for the procedural flaw does not mean that the official should have been promoted, the request of the official tending to this that the judge orders the administration to grant him a promotion can only be rejected. CThe contested decision rescinded. The judge fixes the sum for compensation corresponding to

paragraph 5 of article 10 of the statutes of the Tribunal. Rejection of the surplus

Decision Contested or Judgment/Order Appealed

The Applicant contests HCR High Commissioner's refusal to promote him to P-5. The Commission in charge of the recommendations for promotions at HC applied a system of quotas for men/women and not the regulations in force.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Solanki

Entity

UNHCR

Case Number(s)

UNDT/GVA/2009/017

Tribunal

UNDT

Registry

Geneva

Date of Judgement

15 Oct 2009

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Pecuniary (material) damages

Staff selection (non-selection/non-promotion)

Applicable Law

UNAT Statute

- Article 10.5