

# **UNDT/2010/021, De Porres**

## **UNAT Held or UNDT Pronouncements**

The Tribunal noted that the case was one of the cases provided for under Section 4.2 of ST/SGB/2009/11 on transitional measures. At the outset, the Tribunal declared the application irreceivable with respect to any claim which had not been raised previously in the request for review to the Secretary-General. The Tribunal further raised ex officio the issue of the receivability *ratione personae* of the application since the decision not to select the Applicant to the post was taken when the Applicant was a former staff member. The Tribunal noted that article 3, paragraph 1 (b), of the UNDT statute had to be read in conjunction with article 2, paragraph 1 (a), of its statute, thus limiting the access of former staff members to the Tribunal to applications against decisions alleged to be in non-compliance with the terms of an Applicant's former appointment. The Tribunal considered that since the decision did not affect the terms of a previous appointment of the Applicant with the Organisation, the application had to be declared irreceivable *ratione personae*. Since the case would normally have been examined by UNAT, the Tribunal further examined whether the application would have been receivable in front of UNAT. It noted that the criteria with respect to the receivability *ratione personae* of applications submitted by former staff members, as established by Article 2, paragraphs 1 and 2 (a), of the UNAT statute, correspond to those established by the UNDT statute. Hence, also in application of the relevant articles of the UNAT statute, the application was deemed to be irreceivable.

## **Decision Contested or Judgment/Order Appealed**

The Applicant appealed the decision taken by the Secretary-General upon recommendation of the JAB with respect to the non-selection of the Applicant to a post published in 2007 after the Applicant's separation from service. The Applicant claimed that her non-selection was motivated by extraneous factors since her supervisor, who was sitting on the selection Panel, had allegedly sexually harassed her since 2003.

## Legal Principle(s)

N/A

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

De Porres

## Entity

UNOG

## Case Number(s)

UNDT/GVA/2009/055

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

3 Feb 2010

## Duty Judge

Judge Cousin

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Personal (ratione personae)

Staff selection (non-selection/non-promotion)

Full and fair consideration

## Applicable Law

Former Staff Rules

- Rule 111.2(a)

UNAT Statute

- Article 2.1
- Article 2.2(a)
- Article 2.1(a)

UNDT Statute

- Article 3.1(b)