

# **2010-UNAT-044, Solanki**

## **UNAT Held or UNDT Pronouncements**

UNAT preliminarily held that the Appellant had not identified any exceptional circumstances justifying the need to file observations in reply to the Secretary-General's answer. UNAT held that the observations would not be taken into consideration. UNAT held that UNDT had correctly observed that it was not able to substitute itself for the Administration or to declare that the Appellant should have been promoted to the P-5 level. Regarding the Appellant's contention about the quantum of compensation, UNAT held that UNDT was in the best position to decide on the level of compensation given its appreciation of the case. UNAT held that UNDT was correct in determining the measure of compensation under Article 10. 5(a) of its statute and that the amount set was reasonable. UNAT dismissed the appeal and affirmed the UNDT judgment.

## **Decision Contested or Judgment/OrderAppealed**

The Applicant contested the decision not to promote him to the P-5 level. UNDT found that the Appointments, Posting and Promotions Board's (APPB) consideration of gender parity was not in accordance with the Procedural Guidelines or the Methodological Approach. UNDT found that the APPB did not follow the order established under the rules for the application of criteria when listing staff to be recommended for promotion. UNDT concluded that the irregularity vitiated the entire promotion process and the decision to deny the Applicant a promotion. UNDT ordered the rescission of the decision not to promote the Applicant to the P-5 level. UNDT also set an amount of compensation, 8,000 Swiss Francs plus interest, that the Secretary-General might elect to pay as an alternative to rescission.

## **Legal Principle(s)**

Compensation must be set by UNDT following a principled approach and on a case-by-case basis. In cases such as this, UNDT should be guided by two elements. The first element is the nature of the irregularity that led to the rescission of the contested administrative decision. The second element is the chance that the staff member would have been recommended for promotion had the correct procedure been followed.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Solanki

## Entity

UNHCR

## Case Number(s)

2010-046

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

1 Jul 2010

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

In-lieu compensation

Staff selection (non-selection/non-promotion)

Full and fair consideration

## Applicable Law

UNAT RoP

- Article 31.1
- Article 8
- Article 9

UNAT Statute

- Article 6

UNDT Statute

- Article 10.5

## Related Judgments and Orders

UNDT/2009/045