



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-049



**Vangelova
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Judgment No.:	2010-UNAT-046
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Cristián Gimenez Corte

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Petia Vangelova (Vangelova) is a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR). She filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) challenging the decision of the High Commissioner not to promote her to the P-4 level during the 2007 promotion session (2007 Promotion Session). The Dispute Tribunal rejected her application on the ground that she received full and fair consideration during the 2007 Promotion Session; and that there was no violation of her rights in respect of the contested decision. The Appeals Tribunal affirms the decision of the Dispute Tribunal.

Facts and Procedure

2. Vangelova joined UNHCR in June 1992 as a Senior Secretary at the G-5 level. In January 2000, she was promoted to the P-2 level and her appointment was converted into an indefinite one. In July 2001, she was promoted to the P-3 level. From July 2000 to December 2003, November 2004 to August 2005 and July 2007 to May 2008, Vangelova was treated as “staff in between assignments” (SIBA). She is stationed in Goma, Democratic Republic of the Congo (DRC).

3. Between 27 January and 2 February 2008, UNHCR conducted the 2007 Promotion Session. On 29 February 2008, Vangelova was informed of her non-promotion. She filed a recourse application to UNHCR’s Appointments, Posting and Promotions Board (APPB). Vangelova, inter alia, maintained that the APPB’s definition of “period under review” in the Methodological Approach was unclear, that it failed to consider that she was temporarily acting at the P-4 level, and that her SIBA status had an impact on her non-promotion. The APPB reviewed Vangelova’s recourse application. It noted an error in not having considered that she was acting at the P-4 level for almost two years and that she had scored higher than the last staff member promoted within her group. However, the APPB noted that Vangelova had not been recommended for promotion by her last supervisor. It further

noted that Vangelova's experience and achievements had been properly reflected on her fact-sheet. The APPB decided not to recommend Vangelova for promotion.

4. On 4 June 2008, the former Joint Appeals Board (JAB) in Geneva received an appeal from Vangelova, in which she challenged not only her non-promotion during the 2007 Promotion Session, but also her non-promotion in the years prior to 2007. Vangelova's appeal before the JAB was transferred to the UNDT in Geneva following the abolition of the JAB at the end of June 2009.

5. On 24 September 2009, the Dispute Tribunal held a hearing during which Vangelova reiterated the points of contention she had made to the APPB. On 16 October 2009, the UNDT issued Judgment No. UNDT/2009/049. The UNDT ruled that only the appeal against the denial of promotion during the 2007 Promotion Session was receivable. The UNDT noted that Vangelova had attached to her application her request to the Secretary-General for administrative review, but did not refer to the arguments made in the request. Consequently, only the arguments made by Vangelova before the JAB and UNDT were considered. The UNDT rejected Vangelova's application. The UNDT found that Vangelova had failed to specify in what respects the non-promotion decision violated Staff Rules 4.2 and 4.3, and that she had failed to establish any irregularity during the 2007 Promotion Session. The UNDT further found that the APPB had considered Vangelova's entire career during its review of her recourse.

6. Vangelova received the English translation of the Judgment on 23 December 2009. At the request of Vangelova, the President of the Appeals Tribunal granted an extension of the time limit in which to file her appeal to 12 February 2010. On 11 February 2010, Vangelova filed an appeal via e-mail. She was asked by the Registry of the Appeals Tribunal to take corrective action to cure the defects in her submission. Vangelova filed a corrected appeal on 19 February 2010. The Secretary-General filed an answer on 15 April 2010.

Submissions

Vangelova's Appeal

7. Vangelova states that she did not receive any legal support from the Office of Staff Legal Assistance (OSLA) and prepared her case by herself. She does not have the legal

skills to correctly describe the violations that have been inflicted upon her. Vangelova requests that the Appeals Tribunal “act *ex officio* to establish the truth”.

8. Vangelova repeats the arguments she presented to the UNDT. She submits that she scored higher than the last staff member promoted within her group; her SIBA status was taken into account as a negative factor for the purpose of scoring and ranking; and the system and methodology designed for the 2007 Promotion Session were flawed and not transparent, resulting in a denial of a fair and appropriate review and violation of the basic principles of fairness and good management required by the Staff Rules and UNHCR’s own rules.

9. The UNDT accepted UNHCR’s response that her career had been fully reviewed, despite the fact that neither details of the review nor supporting documents had been provided by UNHCR in support of its response. The UNDT failed to take into account that the promotions system, as designed, had a negative impact on the evaluation and ranking for SIBA staff like her. Vangelova requests that the Appeals Tribunal promote her to the P-4 level, and that it order the maximum material compensation for the professional, moral, and financial damage to her.

Secretary-General’s Answer

10. The Secretary-General requests that the appeal be rejected as time-barred. Vangelova was granted an extension of time to file her appeal until 12 February 2010, but only submitted it on 19 February 2010, one week after the expiration of the new deadline.

11. In the alternative, the Secretary-General maintains that the UNDT correctly found that Vangelova’s application for promotion received full and fair consideration during the 2007 Promotion Session.

12. Vangelova failed to identify any of the five grounds for appeal set out in Article 2(1) of the Appeals Tribunal’s Statute. She merely repeats the same complaints that she made to the JAB and fails to indicate any error on the part of the UNDT that would require a reversal of its Judgment.

13. The Secretary-General submits that Vangelova was aware that her last supervisor did not recommend her for promotion, but she did not formally contest her supervisor's non-recommendation. The UNDT thus correctly found that, in the absence of any challenge, her supervisor's decision became final. The UNDT correctly stated the reasons, facts, and law on which the Judgment is based.

14. Vangelova's plea for the Appeals Tribunal to act *ex officio* and to promote her is legally meaningless and should be rejected.

Considerations

15. As a preliminary matter, the Appeals Tribunal rejects Vangelova's request for an oral hearing. Vangelova's brief on appeal is sufficient and does not require further clarification.

16. The Appeals Tribunal also rejects the submission by the Secretary-General that the appeal is time-barred in view of the provisions of Article 8(4) of the Rules of Procedure of this Tribunal. Article 8(4) provides as follows:

After ascertaining that the appeal complies with the requirements of the present article, the Registrar shall transmit a copy of the appeal to the respondent. If the formal requirements are not fulfilled, the Registrar may require the appellant to conform the appeal to the requirements of the article within a specified time. Once the corrections have been properly made, the Registrar shall transmit a copy of the appeal to the respondent.

17. From the record of appeal, the Appeals Tribunal observes that the appeal was submitted on 11 February 2010. The Registrar requested Vangelova to conform the appeal to the requirements of Article 8 of the Rules of Procedure. The Secretary-General was not aware that it was a corrected appeal which was filed on 19 February 2010 and hence raised this preliminary issue of time-bar. The Appeals Tribunal therefore holds that the appeal is receivable.

18. The Appeals Tribunal has noticed that the receivability of an appeal is often raised as an issue as the respondent is unaware that an extension of time was granted for the appellant either to file the appeal or to correct the appeal under Articles 7 or 8(4) of the Rules, respectively. In order to forestall any such objection in future, the Appeals Tribunal will require that a copy of the correspondence with the Registry or the order, as

appropriate, granting an extension of time to file the appeal or to correct the appeal be attached to the appeal form.

19. The Appeals Tribunal finds no merit in the appeal. Article 2(1) of the Statute provides that

[t]he Appeals Tribunal shall be competent to hear and pass judgment on an appeal against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

20. Vangelova does not identify which of the five grounds for appeal set out in Article 2(1) forms the legal basis of her appeal. Her submissions are focused mainly on the same arguments she made before the UNDT: the designed methodology for promotion, the process for calculating points, the process for evaluating and selecting staff for promotion, and the attribution of slots are not transparent and treat staff (especially SIBA) unequally, thus violating her rights under the Charter of the United Nations and the Staff Rules.

21. Vangelova has failed to establish how the UNDT erred on questions of law or fact resulting in a manifestly unreasonable decision in dismissing her application. We have undertaken a critical examination of the appeal and endorse the conclusion reached by the UNDT:

It appears from the examination of the file and in particular from the minutes of the recourse session that the Appointments, Promotion and Promotions Board, following the applicant's recourse, assessed her experience and performance, examined her situation in the light of the non-weighted criteria of the Methodological Approach, and decided that the period of about two years during which she had underfilled a post at the P-4 level should be taken into consideration in the assessment of her situation. However, the same Board decided not to recommend her for promotion although she had accrued more points, according to the Methodological Approach, than the last staff member recommended, on the sole ground that she had not been recommended for promotion by her previous supervisor.

22. Contrary to Vangelova's allegation that she was not aware that she was not recommended for promotion, the APPB recourse session expressly found otherwise. The Dispute Tribunal correctly noted:

While the applicant is contesting that refusal before the Tribunal by arguing that her performance during the same period had been described as superior, it is nevertheless the case that she did not contest the decision to refuse to recommend her, which thus became final. The provisions of section IV of the Procedural Guidelines of the Appointments, Postings and Promotions Board stipulate that the supervisor's recommendation is one of the most important criteria for the Board to take into account.

23. Although Vangelova contends that the Methodological Approach had a negative impact on the evaluation and ranking for SIBA staff like her, the Appeals Tribunal does not find any evidence of a violation of her rights in respect of the contested decision.

Judgment

24. In light of the foregoing, the Appeals Tribunal dismisses the appeal and affirms the UNDT Judgment.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal