

ADMINISTRATIVE TRIBUNAL

Judgement No. 416

Case No. 411: HAILEMARIAM

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Roger Pinto, Vice-President, presiding;  
Mr. Ahmed Osman; Mr. Ioan Voicu;

Whereas, on 19 August and 13 November 1986, Gabreyesus Hailemariam, a staff member of the Economic Commission for Africa, hereinafter referred to as ECA, filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, filed his application on 4 December 1986;

Whereas the pleas of the application read as follows:

"II. PLEAS

(a) That the Tribunal take these documents into account:

- i) Applicant's hand written letter to the Director of Social Development Division of the ECA dated 25 October 1976 (...)
- ii) The Director's reply in a routing slip dated 26 October 1976 (...)
- iii) Applicant's letter to Chief of Personnel dated 4 April 1977 (...)
- iv) Applicant's letter to the ECA Executive Secretary dated 10 June 1977 (...)
- v) Applicant's letter to the Chairman of the ECA

Appointment and Promotion Committee (hereafter referred to as 'APC') dated 7 December 1977. No reply from APC - (...)

- vi) Applicant's 2nd letter to the APC Chairman (ECA) dated 23 October 1978. No reply. (...)
- vii) Applicant's letter dated 24 May 1979 addressed to the Coordinator, Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, New York (...)
- viii) Applicant's re-assignment of work dated 17 February 1979 (...)
- ix) Recommendation letters from the Applicant's Director of Division of Social Development, the Applicant to be granted SPA [special post allowance] against P.4 - post (011) dated 23 November 1979 and others including for promotion (...)
- x) ECA Executive Secretary's opposition to the recommendation 2nd para. dated 22 October 1980 (...)
- xi) Applicant's second letter to the Grievance Panel in New York against the Executive Secretary's intervention ... dated 10 November 1980 (...)
- xii) Letter and a cable from Mr. F. Villanueva, Chief Staff Service, Office of Personnel Services to Mr. Daniel K. Ghansah, Chief, Personnel Section, ECA, Addis Ababa (Ethiopia) dated 19 August and 22 November 1982 (...)
- xiii) Applicant's letter to the Chairman of the ECA APC - dated 28 January 1982. No reply (...)
- xiv) Applicant's letter to Joint Appeals Board hereafter referred to as 'JAB' dated 16 March 1983 (...)
- xv) Letter from N. Jasentuliyana, Coordinator Grievance Panel to Mr. D. Ghansah, Chief, Personnel Section, ECA, Addis Ababa, dated May 1983 (...)
- xvi) Mr. D. Ghansah's reply to the Coordinator Grievance Panel dated 9 June 1983 (...)
- xvii) Cable from the Coordinator of the JAB dated 22 January 1986 (...)

- xviii)Applicant's rebuttal of 30 January 1986 (...)
- xix)Cable from the Coordinator of the JAB dated 11 February 1986 (...)
- xx)Letter to the Applicant from the Secretary of the JAB dated 21 April 1986 (...)
- xxi)Performance evaluation reports:
  - (i) Covering 1 March 1974 - 29 February 1976 (...)
  - (ii) Covering 1 March 1976 - 28 February 1977 (...)
  - (iii) Covering 1 March 1977 - 30 November 1978 (...)
  - (iv) Covering 1 December 1978 - 30 November 1981 (...)
- xxii)The JAB Alternate Secretary's memo to the Applicant dated 6 August 1985 (...)
- xxiii)Minutes of the 4th, 5th and 6th meetings of the Inter-divisional Working Group on Rural Development dated 30 - 31 March and 1 April 1977 in which the Applicant acted as a Secretary and a member (...)
- xxiv)Minutes of the meeting of the IRD Personnel held on 26 May 1977 the Applicant acted as a Secretary (...)
- xxv)Minutes of the Seventh Meeting of the Inter- divisional Working Group on Rural Development held on 17 March 1978 (...)
- xxvi)Directory of Activities of International Voluntary Agencies in Rural Development in Africa - 3rd Edition (...)
- xxvii)Advisory services towards the revival of the Integrated Rural Development Section, vis-a-vis the Social Development Division dated 18 August 1983 (...)
- xxviii)Advisory services towards the revival of the International Voluntary Agencies Bureau dated 16 May 1985 (...)
- xxix)Study Tour of People's Communes in China - 15 October - 5 November 1980 - Review and comments in relation with African Development in Rural Sector (...)
- xxx)Refugee: From one of the Africa's main problems to International concern - 14 March 1983 (...)

- xxxi) Report of the Joint Meeting of the African Regional Inter-agency Committee on Rural Development (Applicant's full participation) (...)
  - xxxii) The Applicant's re-assignment by the Job Description dated 10 December 1982 (...)
  - xxxiii) Performance evaluation report covering 6 June 1982 - 26 August 1983 (...)
  - xxxiv) The Chief of Integrated Rural Developments recommendation the Applicant to be re-assigned against P.2 (030) vacant post (...)
  - xxxv) Country Case Studies and Comparative Evaluation of the Organization, Administration ... as referred to in ... dated 1975 - 1981 (...)
- b) That the Tribunal rescind in toto views and conclusions contained in the report of the United Nations Joint Appeals Board to the Secretary-General, Confidential Report No. 543 case No. 83-11 of 21 April 1986 to the effect that the report contains nothing more but conjectures and distortions of submissions. It discussed issues which were not raised either by the Applicant or the Respondent and to do that the Board is not legally equipped. The Board reached to its wrong conclusions because it failed to analyse facts and weigh them based on their merits. It, rather, added, conjectured and emphasized issues that were not raised by the Respondent and thereby going beyond its terms of reference.

The Applicant found the report to be unprofessionally assessed, subjectively treated and biased. Therefore, the Applicant prays that the Tribunal rescind the conclusions, and decisions of the United Nations Joint Appeals Board, restore his acquired rights on their merits and award him what he has been denied, viz. promotion to P-2 level or failing that SPA claimed for the period he acted in a higher post than his normal post running from 1973 through 1982 as per annexes plus any other equitable compensation."

Whereas the Respondent filed his answer on 30 December 1987;

Whereas, on 18 February 1988, the Applicant filed written observations in which he informed the Tribunal that he had accepted a proposal by the Respondent to pay him a special post allowance

(SPA) to the P-2 level for the period 1 February 1980 - 10 December 1982, on the understanding that this acceptance would not prejudice his appeal concerning promotion to the Professional category and payment of an SPA for periods running prior to 1979;

Whereas, on 16 March 1988, the Applicant informed the Executive Secretary of the Tribunal that the Chief, Personnel Section, ECA, notified him that the Office of Personnel Services (OPS) at Headquarters would only agree to pay him an SPA for the period 1 February 1980 to 10 December 1982 if the Applicant withdrew in its entirety the portion of his appeal concerning the SPA. In view of this condition, the Applicant decided to refuse the settlement offer and to maintain his appeal;

Whereas the facts in the case are as follows:

Gabreyesus Hailemariam entered the service of the United Nations Economic Commission for Africa, ECA, in Addis Ababa on 1 December 1959. He was initially offered a series of short term appointments as a Documents Clerk at the GS-6 level. On 1 May 1960, he was offered a fixed-term appointment; on 1 January 1961, a probationary appointment and on 1 December 1961, a regular appointment. On 1 January 1964, he was promoted to the GS-7 level as a Reference Clerk and on 1 January 1966 to the GS-8 level as a Librarian Clerk. On 15 July 1968, he was reassigned from the Library to the Social Development Section within the Division of Human Resources Development. Effective 1 September 1968, his functional title was changed to Research Assistant. On 1 January 1973, his functional title was changed to Senior Research Assistant and he was promoted to the GS-9 level. Effective 1 March 1974, his appointment was changed from regular to permanent.

The record of the case shows that the Applicant sought promotion to the Professional category since 1976. In October 1976, he asked Mr. Riby-Williams, then Chief of the Social Development Division, to give "more formal recognition" to his professional functions and to recommend him for promotion. The Chief, Social

Development Division, had stated in a report evaluating the Applicant's performance during the period March 1974 to 29 February 1976, that the Applicant's performance "was often at the professional level". However, he did not recommend the Applicant for promotion. Not having appeared on the 1977 P-1/P-2 Promotion Register, on 7 December 1977, the Applicant instituted a recourse procedure before the Appointment and Promotion Committee (APC), ECA, in order that the APC reconsider his case. He was unsuccessful in this regard.

Between 1977 and 1978 a P-2 post (Post P-2(011)) became available in the Social Development Section. The Chief, Social Development Division, recommended another staff member from the Department for promotion to the Professional category in connexion with the 1978 promotion review, but did not recommend the Applicant.

After the local APC completed its 1978 promotion review, on 29 September 1978, the Chief, Personnel Section, ECA, conveyed to the Chief, Social Development Division, that although the APC had noted there was an available post in the section to effect the promotion of staff, it had concluded that neither the Applicant, nor his colleague who had been recommended for promotion, were really suitable at the time to effectively carry out the duties of the post as outlined in the job description.

On 1 November 1978, the Assistant Secretary-General for Personnel Services, sent a memorandum to all Heads of Departments and Offices with instructions on how to proceed with recommendations of staff for the 1979 promotion review. The record of the case shows that neither the Chief, Social Development Division, nor the Executive Secretary, ECA, recommended the Applicant for promotion to the Professional category.

On 20 December 1978, the General Assembly adopted resolution 33/143, in which it requested the Secretary-General in Section I, paragraph 1(g) to adopt measures to ensure that movement of staff from the General Service to the Professional category should be conducted exclusively through competitive methods of selection.

In a memorandum dated 18 May 1979, the Chairman of the APC, ECA, submitted to the Chairman of the Appointment and Promotion Board at Headquarters, the Committee's recommendations of staff members at the GS-9 level for promotion to the Assistant Officer P-1 level. The APC, who had considered the Applicant as a collateral, listed the Applicant's name under the heading of "staff members in grade but not recommended". It also reiterated its views that the Applicant although "academically and professionally qualified" was not "suitable at the present time to effectively carry out the duties of the post as outlined in the job description." On 24 May 1979, the Applicant filed a complaint with the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, hereinafter referred to as the Discrimination Panel, concerning the decision by the ECA, APC, not to include his name on the 1979 Promotion Register.

On 29 August 1979, the Secretary-General, pursuant to section I, paragraph I(g), of General Assembly resolution 33/143, issued bulletin ST/SGB/173 establishing annual competitive examinations, commencing with the 1979 promotion year (1 April 1979 to 31 March 1980) for promotion of staff members from the General Service category to the Professional category. On the same date the Assistant Secretary-General for Personnel Services issued administrative instruction ST/AI/268 establishing the detailed policies and procedures of the new system governing the review at each duty station of staff members in the General Service or related categories who qualified for promotion to the Professional category.

On 15 October 1979, the Applicant informed the Chief, Personnel Section, ECA, that he would not sit for the competitive examination. On 1 November 1979, the Applicant asked the Acting Chief, Division of Administration and Conference Services, ECA, to place him against one of the vacant professional posts in the Social Development Division and to pay him an SPA. He asserted that since 1975 he had been performing "purely professional services at a high standard but without any rewards." In a reply dated

9 November 1979, the Chief, Division of Administration and Conference Services, ECA, informed the Applicant that he could only be placed against a professional post with an SPA if the Chief of his Division recommended such administrative action. As regards his promotion, he advised the Applicant to sit for the competitive examination since the local APC had considered his case in the two previous years and had recommended against granting him a promotion to the Professional category.

On 23 November 1979, the Chief, Social Development Division, wrote to the Chief, Division of Administration and Conference Services, ECA, and strongly recommended that the Applicant be placed against post P-2(011) which was then vacant and be granted an SPA. He asserted that since February 1979 the Applicant had been assigned to perform certain functions that prior to 1977 had been performed by a staff member at the P-2 level. In addition, prior to February 1979, the Applicant's "performances were purely at a professional standard. However, because of non-availability of posts in the Division the staff member was not recommended for advancement".

On 3 December 1979, the Chief, Staff Services, OPS at Headquarters, wrote to the Chief, Personnel Section, ECA, concerning post P-2(011). He stated that the post could not be utilized for the Applicant's promotion because it was not included in the list of posts earmarked for the 1979 competitive examination. The Applicant should sit for the competitive examination.

On 6 December 1979, the Assistant Secretary-General for Personnel Services issued ST/AI/268/Add.1, in which he announced a special review to be conducted by the Central Examinations Board to exempt from the first competitive examination General Service staff members who, prior to 20 December 1978, had been assigned to and were fulfilling and were continuing to fulfil the duties of any of the 51 professional posts reserved for that first competitive examination. The instruction contained a list of posts and the index numbers of staff eligible for special review in 1979 against



the posts earmarked for this purpose. The vacant P-2(011) post in the Social Development Division was not listed therein.

On 27 December 1979, the Chief, Social Development Division recommended that the Applicant be promoted during the 1980 promotion review (1 April 1980 - 31 March 1981) against another P-2 post - P-2(030) - that would be available in 1980.

In a memorandum dated 27 May 1980, the Chief, Social Development Division confirmed to the Chief, Division of Administration and Conference Services, ECA, "that [the Applicant] be held against post No. 030 P-1/2 and appropriately with an SPA ...

This post was vacated through promotion ...". On 1 July 1980 the Chief, Personnel Section, ECA, transmitted this memorandum to the Chief of Staff Services, OPS at Headquarters, and sought Headquarters' views on the request for payment of an SPA. He noted that the Executive Secretary, ECA, did not support the Chief, Social Development Division's request, in view of the competitive examination. In a reply dated 22 September 1980, a Personnel Officer at Headquarters conveyed to the Chief, Personnel Section, ECA, the policy of the Office of Personnel Services on the granting of SPAs in the regional commissions. He noted that "assignment of staff in the General Service to the duties of Professional posts should not be done without prior consultation with OPS" and that the request should be made by or on behalf of the Executive Secretary. On 7 October 1980, the Chief, Personnel Section, ECA, transmitted the advice from Headquarters to the Chief, Social Development Division and stated that since the Executive Secretary had never approved the Applicant's assignment to a Professional post, the question of granting him an SPA did not arise.

In a memorandum dated 10 October 1980, the Chief, Social Development Division, requested the Executive Secretary's approval to place the Applicant against "the vacant post P-2(030)" and to grant him an SPA, until the post were filled through the competitive examination or recruitment on the ground that "[the Applicant] has been performing professional duties...". In a reply dated

22 October 1980, the Chief Personnel Section, ECA, stated that the Executive Secretary maintained his position and would not approve the Applicant's placement against the vacant post.

On 10 November 1980, the Applicant filed a further complaint with the Discrimination Panel in which he asserted that he had been performing professional duties since 1977 but the Executive Secretary, ECA, had unfairly denied him an SPA in respect of these duties.

On 20 November 1980, the Tribunal rendered Judgement No. 266 (Capio) against the Secretary-General of the United Nations. The Tribunal held that the Applicant, in that case, who had been performing professional functions and had been recommended by her Department for promotion in the 1979 promotion year under the previous promotion system, was entitled to be considered for promotion under the criteria applicable at the time of the Departmental recommendation and not by the competitive examination method. On 10 March 1981, the Assistant Secretary-General for Personnel Services announced to the staff in information circular ST/IC/81/19 that the Secretary-General had decided to apply the Capio judgement equally to other staff members in the General Service category who had been assigned the functions of a Professional post and for whom the department or office concerned had prepared recommendations prior to the issuance of ST/SGB/173 and ST/AI/268 of 29 August 1979.

In a memorandum dated 8 May 1981 entitled "Review of 1979 Departmental recommendations for Promotion of General Service staff members to the Professional category", the Director, Administration and Conference Division, ECA, communicated to the Assistant Secretary-General for Personnel Services the list of ECA staff that met the requirements of ST/IC/81/19. The Applicant's name was not mentioned among those staff members recommended by their divisions or by the APC for promotion nor among those Staff members not recommended by their divisions but who performed Professional functions.

On 28 January 1982, the Applicant instituted a recourse procedure with the Chairman of the APC, ECA. He requested the Committee to consider his case and recommend his promotion to the Professional category.

On 6 May 1982, the Co-ordinator of the Discrimination Panel transmitted its report to the Assistant Secretary-General for Personnel Services. The Panel concluded "that the ECA Appointment and Promotion Committee in 1979 did consider Mr. Hailemariam for promotion but declined to place him on the promotion register for clearly identified reasons which contain no evidence of discrimination". In addition, the Panel found "that it would be unfair not to grant Mr. Hailemariam an SPA during the period that he did undertake professional work and recommend[ed] to the Office of Personnel Services to take necessary corrective action".

An exchange of correspondence ensued between OPS, Headquarters and ECA, in order to establish whether and when the Applicant was performing professional work. On 22 November 1982, Miss Doss, then Assistant Secretary-General for Personnel Services, informed the Applicant that she had approved the grant of an SPA to the P-2 level for the one-year period 1 February 1979 through 31 January 1980.

On 11 February 1983, the Applicant wrote to the Secretary-General to request an appointment to discuss non payment of an SPA for professional services rendered. That letter was treated as a request for review of an administrative decision. Not having received a reply, on 16 March 1983, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

On 3 May 1983, Mr. Nègre, then Assistant Secretary-General for Personnel Services, informed the Applicant that his recourse of 28 January 1982 had been considered by the Appointment and Promotion Board and that the Secretary-General had approved the Board's conclusion that he was not eligible for the special review provided for in ST/IC/81/19.

The Board adopted its report on 21 April 1986. Its

conclusions and recommendations read as follows:

"Conclusions and recommendations

129. The Panel finds that the appellant, who was never recommended for promotion to the Professional level prior to 29 August 1979, does not meet at least one of the two essential criteria in ST/IC/81/19 under which eligible staff members were promoted from the General Service to the Professional category without taking the competitive examination.
130. The Panel finds that despite the somewhat ambivalent behaviour of the appellant's former Director in his relations with the appellant, no significant error was committed to the appellant's detriment either as a direct or indirect result of such behaviour. Moreover, the appellant had in any case been considered as a collateral by the ECA APC so that any incidental wrong had been adequately rectified by the actions of ECA APC.
131. The Panel finds that the appellant's candidature for a Professional vacancy in ECA was given due consideration by the ECA Appointment and Promotion Committee in 1978 and 1979 and that its failure to recommend the appellant for promotion to a Professional vacancy in his department did not result from any improper motive or administrative error but from the fact that the appellant's performance, although satisfactory in General Service functions, was found to be consistently below the standards expected of staff members in the Professional category.
132. Furthermore, the Panel finds that although the appellant performed occasional professional functions as the exigencies of the service required, his claim to entitlement to a special post allowance spanning a cumulative period of six years was without merit and could not be upheld.
133. The Panel also finds that the Administration, within whose total discretion it was to grant an SPA, has more than adequately compensated the appellant for any occasional professional duties which he assumed.
134. The Panel also finds that the appellant's claim to a calculation of the SPA he received at the time it was granted rather than at the time it was due, is also without basis and cannot be upheld.
135. The Panel accordingly recommends that the appellant's claims regarding entitlement to promotion from the General Service to the Professional category under ST/IC/81/19, as well as

his claims to entitlement to a special post allowance be rejected in toto."

On 2 June 1986, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided to take note of the Board's report and to maintain the contested decision.

On 4 December 1986, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant has an acquired right to be promoted to the Professional category under the principles established in the Capio judgement since he was performing professional duties and had acquired rights for promotion prior to the Secretary-General's bulletin ST/SGB/173 and ST/AI/268.

2. The Applicant has been performing professional functions prior to 1977. The Joint Appeals Board examined the case subjectively and unprofessionally and did not restore his rights to an SPA for the entire period that he performed professional functions.

Whereas the Respondent's principal contentions are:

1. Exemption from the competitive examination procedure depends upon qualifying for the special promotion procedure created by ST/IC/81/19 of 10 March 1981. The Applicant did not qualify for this procedure because he had not been recommended for promotion to the Professional category by his Department prior to 29 August 1979.

2. The Respondent's failure to pay the Applicant an SPA did not violate any of his rights.

The Tribunal, having deliberated from 29 April 1988 to 24 May 1988, now pronounces the following judgement:

- I. The Tribunal has before it an application in which the

Applicant seeks restoration of his acquired rights and promotion to the P-2 level and other pertinent redresses. The Applicant claims that the decision of the ECA Appointment and Promotion Committee not to recommend him for promotion to the Professional category in 1978 at its 29 September 1978 session be declared null and void and his right to be included in the 1978 Promotion Register be restored.

The Applicant contends that he has an acquired right to be promoted to the Professional category under the principles established in the Capio judgement since he was performing professional duties and had thus acquired rights for promotion prior to the Secretary-General's bulletin ST/SGB/173 and ST/AI/268.

In addition, the Applicant claims that from 1973 through 1982, he performed functions at the professional level and should therefore be granted an SPA for that period.

The Tribunal will consider these claims in turn.

II. The Tribunal notes that information circular ST/IC/81/19 concerns the "review of General Service staff members recommended for promotion to the Professional category for the 1979 register". It was issued subsequent to Judgement No. 266 (Capio). In that case, the Tribunal had before it an application to the effect that the Applicant's promotion should be reviewed according to the method applicable prior to the implementation of General Assembly resolution 33/143 by administrative instruction ST/AI/268 of 29 August 1979. The Tribunal decided, on the basis of a very particular de facto situation specific to the Applicant, that the Respondent should take the necessary steps to admit the contention.

The Respondent complied with the judgement and decided, in addition, in ST/IC/81/19, to apply the solution equally to other staff members in the General Service category "who had been assigned the functions of a Professional post and for whom the department or office concerned had prepared recommendations prior to the issuance of the Secretary-General's bulletin ST/SGB/173 and ST/AI/268 of 29 August 1979". Cf. Judgement No. 266, Capio (1980).

III. The Tribunal observes that the effect of the implementation of ST/IC/81/19 has been to permit the promotion of staff members in the General Service category under the system in existence prior to the competitive examination system instituted by General Assembly resolution 33/143. It notes also that General Assembly resolution 35/210, annex III, paragraph 10(a), of 17 December 1980 reaffirms the competitive examination principle and provides that "no exceptions shall be authorized".

The purpose of ST/IC/81/19 was to prevent the competitive examination system from having retroactive effect when the chances of promotion of the staff member concerned under the prior system were already reasonably ensured at the time the new system entered into force. Hence, it cannot be contested that the Secretary-General has sought to ensure respect for acquired rights, a principle laid down in regulation 12.1 of the Staff Regulations.

IV. The Tribunal must first consider whether, in order to benefit from the special promotion procedure created by ST/IC/81/19 of 10 March 1981, the Applicant meets the requirements specified in the text.

V. The record of the case shows that the Applicant was considered by the ECA Appointment and Promotion Committee as a collateral and was never recommended for promotion to the Professional category in promotion reviews conducted prior to 1979.

Furthermore, at the request of the Assistant Secretary-General for Personnel Services, the ECA Administration conducted its review of 1979 departmental recommendations for promotion of General Service staff members to the Professional category in order to identify those ECA staff members who would meet the criteria set forth in ST/IC/81/19. It communicated the results of its review to the Assistant Secretary-General for Personnel Services in a memorandum dated 8 May 1981, in which it listed four categories of staff:

- "1. Staff members recommended by their divisions,
2. Staff members recommended by their divisions and APP [Appointment and Promotion Panel] for promotion,
3. Staff members recommended by their divisions and performing professional functions, and
4. Staff members not recommended by their divisions but performing professional functions."

The Applicant's name was not included under any one of those categories.

VI. The Tribunal notes that the Applicant lodged a complaint with the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, New York, (hereafter referred to as "Discrimination Panel") in which he stated that he was unfairly denied promotion to the Professional category. He later lodged a second complaint with the Discrimination Panel in which he requested the grant of an SPA for services he rendered at the Professional level. The Discrimination Panel found that "the ECA APC in 1979 did consider Mr. Hailemariam for promotion but declined to place him on the Promotion Register for clearly identified reasons which contain no evidence of discrimination". The Discrimination Panel also noted that "with the introduction of the competitive examination system, transitional arrangements were established under which Mr. Hailemariam would have been promoted exceptionally, had he fulfilled the exceptional requirements provided for".

VII. The Tribunal reiterates its rejection, as in Judgement No. 311, paragraphs VI-VIII (Schurz) and Judgement No. 345, paragraph VII (Gomez), of any theory that "collaterals" should be regarded as having an acquired right to be considered for promotion when, as a matter of fact, they had not been so recommended by their respective departments.



VIII. Consequently, the Tribunal finds that, since the second requirement specified in ST/IC/81/19 was not fulfilled, the Applicant cannot therefore validly claim the benefit of the said circular.

IX. In view of the foregoing, the second issue on which the Tribunal has to rule concerns the rights of the Applicant to be granted an SPA for the period he performed services at the Professional level.

X. The Tribunal notes that the Applicant had also claimed before the Discrimination Panel that he was entitled to an SPA. The Discrimination Panel found that it would be unfair not to grant the Applicant an SPA during the period in which he undertook professional work and recommended that OPS take the necessary corrective action. As a result, OPS informed the Applicant on 22 November 1982 that the Assistant Secretary-General, OPS, approved the grant of an SPA to the P-2 level to the Applicant for the period 1 February 1979 through 31 January 1980.

XI. According to the Respondent, OPS did not disclose why the period for the grant of an SPA to the P-2 level to the Applicant was limited to one year. The Respondent acknowledged that he has no further information on this point. However, in his conclusion and pleas, the Respondent asserts that the payment of an SPA for only a single year does not violate the rights of the Applicant. The Respondent points out that the granting of an SPA is "entirely within the discretion of the Secretary-General", the length of time that the Applicant performed duties of a professional nature being, by itself, not "decisive" without a showing of "prejudice". He refers in this respect to Judgement No. 155, Belaineh, paragraphs III and VI.

XII. Even if the Tribunal applied the rationale of the Belaineh

judgement, it would have to conclude:

1. That the length of time cannot on its own be considered as "decisive"; and
2. That in the present case, there are circumstances which render it "decisive".

XIII. The Tribunal further notes that in Judgement No. 295, Sue-Ting-Len, (1982) paragraph VII, it stated that "the decision taken in one case is binding only for that case. While the reasons cited in support of a judgement may be used as a basis for reasoning in respect of other cases, the circumstances of the case cannot be disregarded for the purpose of evaluating its scope, especially when the course of the proceedings has shown exceptional particularities which are apparent from a careful reading".

XIV. In the present case, the length of time during which the Applicant performed duties of a professional nature is relevant and important because the decision to grant him an SPA for a one-year-period differs considerably from the cumulative period of six years claimed by the Applicant and from the almost four years recommended by the Discrimination Panel.

XV. Moreover, the Tribunal notes that the Respondent himself recognized, after filing his answer with the Tribunal, that the period of one year approved for the grant of an SPA did not correspond to the cumulative length of time during which the Applicant performed duties of a professional nature.

The Tribunal observes that on 5 February 1988, ECA upon instructions from the Office of Human Resources Management<sup>1</sup> at Headquarters, offered the Applicant the monetary equivalent of an SPA to the P-2 level for the period 1 February 1980 to 10 December 1982. It should be noted that an SPA to the P-2 level was already

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<sup>1</sup> Successor of OPS

paid to the Applicant for the period running from 1 February 1979 to 31 January 1980.

Consequently, the Tribunal finds that the Respondent's conclusion that payment to the Applicant of an SPA for only a single year did not violate his rights cannot be upheld.

XVI. Furthermore, the Tribunal, considering all the facts and circumstances of the case, finds that the Respondent did not proceed in the Applicant's case with the circumspection, care and attention that is to be expected from an international organization in personnel questions, especially when the Applicant served the Organization for more than 28 years and a recent performance evaluation report states that "he is highly competent in performing duties at professional level" and "[the] quality of work accomplished is very admirable".

XVII. In view of the foregoing, the Tribunal considers that, taking into account the recommendation made by the Discrimination Panel that the Applicant be granted an SPA for "almost four years", and the fact that the Applicant's claim for an SPA was not fairly and properly treated, further corrective action should be taken.

XVIII. Taking into account that the Applicant has already received an SPA from 1 February 1979 to 31 January 1980, the Tribunal decides that, as compensation for the injury he has sustained, the Applicant is entitled to receive an additional amount of compensation equivalent to 6 years of special post allowance to the P-2 level, calculated on the basis of the year 1982.

XIX. For these reasons, the Tribunal decides:

1. The Respondent shall pay the Applicant the amount of compensation equivalent to 6 years of special post allowance to the P-2 level, calculated on the basis of the year 1982, as a full and final settlement of his rights for the period during which he

performed duties of a professional nature;

2. All other claims of the Applicant are rejected.

(Signatures)

Roger PINTO  
Vice-President, presiding

Ahmed OSMAN  
Member

Ioan VOICU  
Member

Geneva, 24 May 1988

R. Maria VICIEN-MILBURN  
Executive Secretary