

**Administrative Tribunal**Distr.  
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## ADMINISTRATIVE TRIBUNAL

Judgement No. 662

Case No. 712: POTOOKIAN

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding; Mr. Mikuin Leliel  
Balanda; Mr. Hubert Thierry;Whereas, on 3 February 1993, Nicola Potookian, a former staff member of the United  
Nations, filed an application in which he requested the Tribunal, inter alia:

“(a) To order the Secretary-General to implement the Applicant's promotion effective March 1987, as recommended by the Joint Appeals Board;

(b) Alternatively to order the Secretary-General to implement the Applicant's promotion effective 16 December 1988, ...;

(c) In the event that the Secretary-General decides, ..., to pay compensation in lieu of specific performance, the Applicant requests ... an amount equal to the difference between the Applicant's gross salary, ..., at the G-4 level and the gross salary at the G-5 level to which he would have been eligible effective 1987, as recommended by the JAB or 16 December 1988, the date when the Applicant was reassigned to his former Library Assistant post in the Library. ...”

Whereas the Respondent filed his answer on 20 September 1993;

Whereas the Applicant filed written observations on 12 October 1993;

Whereas, on 1 July 1994, the Tribunal put questions to the Respondent to which he

provided answers on 6 July 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 15 May 1963, as a Messenger at the GS-1, step I level, in the Office of General Services/Communications, Archives and Records Division/Registry-Mail Operations Section. On 15 August 1963, he was granted a probationary appointment. With effect from 1 January 1965, he was transferred, with the functional title of Labourer, to the Stack and Loan Section of the Dag Hammarskjöld Library in what was then the Office of Conference Services. The Applicant's probationary appointment was extended for one year, with effect from 15 May 1965, and converted to a permanent appointment on 1 May 1966. On 1 November 1966, the Applicant's functional title became Clerk. The Applicant was promoted to the GS-4 level on 1 April 1971, and his functional title became Senior Clerk.

On 2 July 1979, the Applicant was reassigned from the Library Service/Stack and Loan Section to the Documentation Service/Documents Reference and Collections Section, against post No. UNA-23780-E-G-4-029. With effect from 1 January 1980, the name of the Applicant's organizational unit was changed to Checklist Sub-Group.

In July 1982, the International Civil Service Commission approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

On 1 January 1985, the Applicant's post - renumbered to post No. UNA 29780-E-O-L-037 - was classified under job description No. 1488, at the GS-3 level.

Prior to September 1986, the Checklist Sub-Group was comprised of four staff members, Messrs. Gonzalez, Dowdell, Yousseff and the Applicant, all performing similar functions at the same level. On 16 September 1986, the Applicant was reassigned, with his post, to the Serials Group of the same section, to perform functions at the GS-4 level. As a result of the Applicant's reassignment and other staff movements, the staffing in the Checklist

Sub-Group was reduced to three. The three-member Sub-Group included a Mr. E. Cardona who moved to the Group, contemporaneously with the Applicant's reassignment, replacing one of the other former four group members, Mr. Yousseff who had vacated his post.

As a result of the "Study of Alleged Inconsistencies in the General Service Classification Exercise" undertaken by the Compensation and Classification Service in 1988, the post corresponding to job description No. 1488 was reclassified to the GS-4 level.

In the context of the 1985/1986 transitional measures set out in circular ST/IC/87/59 of 11 November 1987, Mr. Cardona submitted a revised job description No. 4457 as a result of assumption of additional duties, and his post was classified at the G-5 level on 26 September 1988.

On 8 November 1988, further to a communication addressed to him by the Director, Dag Hammarskjöld Library, the Executive Officer, Department of Conference Services (DCS), wrote to the Chief, Compensation and Classification Service, requesting that the functions the Applicant had previously performed - job description No. 1488 - be retroactively classified at the GS-5 level. The Executive Officer, DCS, noted that the post encumbered by Mr. Cardona had been reclassified at the GS-5 level on the basis of assumption of additional functions. The functions of job description No. 4457 and the functions of job description No. 1488, that is, the functions the Applicant had previously performed, were essentially the same and the G-4 grade of the post corresponding to job description No. 1488 might have been based on an inadequate job description. On 17 November 1988, the Deputy Chief, Compensation and Classification Service, informed the Executive Officer, DCS, that upon further review and relying on verification of the respective duties by the supervisors of the posts at the time that the job descriptions had been prepared, he had concluded that the two job descriptions did not cover the same duties.

On 16 December 1988, the Applicant returned to the Checklist Sub-Group with his post, and the staffing of the Group increased once again to four. He resumed the checklisting functions described in job description No. 1488, and Mr. Cardona continued to perform the functions described in job description No. 4457.

On 28 March 1989, the Executive Officer, DCS, asked the Deputy Chief,

Compensation and Classification Service, to reconsider his decision of 17 November 1988 not to classify the post covered by job description No. 1488 at the GS-5 level. The Deputy Chief, Compensation and Classification Service, replied on 12 June 1989, stating that a review of the information did not provide grounds to change the original determination that job description No. 1488 and job description No. 4457 did not cover the same functions.

On 10 July 1990, the Assistant Secretary-General for Human Resources Management approved a recommendation by the Interdepartmental Task Force on the Dag Hammarskjöld Library, contained in its interim report of 16 April 1990, to review, as an exception to the current guidelines for classification of posts, a very limited number of General Service cases in the Library. The post encumbered by the Applicant was among the posts to be reviewed. Any recommendation would take effect from 16 April 1990.

On 30 December 1991, the Applicant requested the Secretary-General to review the administrative decision not to implement his promotion "which was due since 1987". The Applicant argued that he had been performing the functions described in job description No. 4457, classified at the G-5 level, since 1980 and that "for purely bureaucratic reasons ... my promotion has been delayed indefinitely."

On 22 January 1992, the Applicant was reassigned to the post described in job description No. 4460, classified at the G-5 level, with effect from 29 October 1991.

On 28 February 1992, the Applicant, having received no reply, lodged an appeal with the Joint Appeals Board (JAB) against the administrative decision not to implement his promotion.

The JAB adopted its report on 18 September 1992. Its recommendations read as follows:

"Recommendations

22. The Panel unanimously recommends that the Appellant and the other checklists involved, including the one on post # 4457 be given the same grade since the Administration on several occasions has indicated that they perform basically the same functions. Should the Compensation and Classification Service decide that

these posts are indeed at the G-5 level, the Panel recommends that the upgrading be retroactive to 1987, the date at which post # 4457 was reclassified to G-5, since the fact that the Administration did not formally make the job descriptions identical until recently should not be to the detriment of the individual staff members."

On 3 November 1992, the Director of Personnel transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has re-examined your case in the light of the Board's report. Bearing in mind that

- (I) classification of posts is a technical exercise which may have serious financial implications whenever a post is upgraded; changes in the classification level can be made only when OHRM is provided with a sufficient basis for determining that a prior classification should be changed;
- (ii) your post, which had been classified at the GS-3 level in the initial classification exercise, was subsequently upgraded to GS-4 in 1988 as a result of a study on alleged inconsistencies which had been conducted in your department;
- (iii) you were never assigned to the post which was reclassified to G-5 in 1988, after additional duties had been added to the job description;
- (iv) in the context of an overall review of the situation in the Dag Hammarskjöld Library, OHRM agreed in 1990, as an exception to the current guidelines for reclassification of posts, to review a limited number of cases where insufficiency of prior job descriptions might have caused problems. OHRM agreed at the time that, as a further exception to the usual rule, where the earliest date of promotion of the incumbent of an upgraded post to the level of that post is the date on which the post is reclassified, the incumbents of posts upgraded as a result of the review would be promoted retroactively as of 16 April 1990;
- (v) as a result of the review, your post was reclassified from the GS-4 to the GS-5 level in July 1992; in accordance with the decision taken in 1990, you will be retroactively promoted to that level effective 16 April 1990,

the Secretary-General has concluded that the unsatisfactory aspects of your case have already been remedied in a fair and equitable manner, in the context of the more general solution reached with respect to all the staff members included in the limited review agreed to by OHRM in 1990. He has decided to take no further action in your case.

...”

A P.5 Personal Action form was prepared on 25 November 1992, implementing the Applicant's upgrading from the G-4 to the G-5 level, with effect from 16 April 1990.

On 3 February 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

His promotion to the G-5 level should be made retroactive to March 1987 as recommended by the JAB, or alternatively to 16 December 1988, when he was reassigned to his former post in the Library.

Whereas the Respondent's principal contentions are:

1. The Applicant was not performing the functions of the post described in job description No. 4457 which was classified at the G-5 level in 1988. He cannot therefore claim

a right to a retroactive promotion based on the classification of functions which he never discharged.

2. The Applicant has been adequately compensated for the administrative confusion that arose out of this classification exercise.

The Tribunal, having deliberated from 1 to 22 July 1994, now pronounces the following judgement:

I. The Tribunal must decide whether the Applicant, who was promoted from the G-4 to the G-5 level on 25 November 1992, with retroactive effect from 16 April 1990, may claim that the promotion should have taken effect either in March 1987 or on 16 December 1988.

II. From 1979 onward the Applicant had been working as an Assistant Librarian and formed part of the Checklist Sub-Group within the Dag Hammarskjöld Library. From 1985 onward his job classification matched job description No. 1488, and in 1988 he was promoted to the G-4 level. Colleagues of his in the Sub-Group were promoted to the G-5 level in 1985 and 1987. But in September 1986, the Applicant was reassigned (on loan) to another unit while his post was taken by another assistant librarian (Mr. Cardona). Mr. Cardona was promoted to the G-5 level in September 1988, with effect from March 1987, and his post (formerly encumbered by the Applicant) was defined by a new job description, No. 4457. In 1988 (16 December), the Applicant was returned to his former post with job description No. 1488, i.e. without the reclassification and promotion from which Mr. Cardona had benefited. Only in July 1992, was he promoted to the G-5 level, with retroactive effect from 16 April 1990, as a result of an exceptional review of the classifications of certain posts that had been requested by the Assistant Secretary-General for Human Resources Management.

III. The Applicant submits that his temporary reassignment deprived him of a promotion he would otherwise have had, since the tasks performed by Mr. Cardona were identical or

similar to those that he performed after returning to the Checklist Sub-Group on 16 December 1988. He therefore asks that his promotion to the G-5 level be made retroactive to either March 1987, when the post encumbered by Mr. Cardona, job description No. 1488, was redefined and classified under job description No. 4457, or December 1988, when the Applicant returned to his former job.

The Respondent, on the other hand, maintains that the Applicant did not in fact perform the duties corresponding to job description No. 4457, which differed appreciably from the duties of the post covered by job description No. 1488, to which the Applicant was assigned before and after his reassignment.

IV. The Tribunal finds, like the Joint Appeals Board, that post classification procedures in the Dag Hammarskjöld Library were somewhat disorderly. However, the Tribunal has repeatedly held that in the absence of procedural irregularities or other extraneous factors involving a lack of due process, it does not enter into job classification issues. The Tribunal is not equipped to evaluate a job description properly. That is the function of specialized bodies within the Organization. In this case, there is no question of irregularity in the procedures followed and no discrimination is alleged. However, information requested and received by the Tribunal indicates that the description of the post classified under job description No. 4457 is appreciably different from that of the post classified under job description No. 1488. Since the job description is the focal point of the classification process, there is thus a valid basis for concluding that the Applicant cannot claim retroactivity in his promotion to the G-5 level beyond 16 April 1990.



V. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Jerome ACKERMAN  
Vice-President, presiding

Mikuin Leliel BALANDA  
Member

Hubert THIERRY  
Member

Geneva, 22 July 1994

R. Maria VICIEN-MILBURN  
Executive Secretary