
ADMINISTRATIVE TRIBUNAL

Judgement No. 862

Case No. 922: SZEKIELDA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, Vice-President, presiding;
Ms. Deborah Taylor Ashford; Mr. Julio Barboza;

Whereas at the request of Karl-Heinz Szekiolda, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended the time-limit for the filing of an application with the Tribunal until 31 August and 30 November 1995, and to 28 February and 31 May 1996;

Whereas, on 31 May 1996, the Applicant filed an application requesting the Tribunal, inter alia:

"...

9. ... to find:

(a) That the Administration failed to implement the Secretary-General's wishes to confirm that the Applicant will receive full and fair consideration, as a matter of priority, for current or foreseeable vacancies at the D-1 level;

...

10. ... to order:

(a) That the Applicant retroactively, as of 1992, be appointed to the D-1 level;

(b) That the Applicant be compensated for the following:

- (i) [Administrative harassment and abuse of authority]
- (ii) [The prevention of the Applicant's professional and career development and breach of contract] in the amount of US\$100,000.
- (iii) ... US\$50,000 for tortious conduct.
- (iv) ... US\$100,000 for breach of contract [manipulation of vacancy announcements and procedures].
- (v) ... US\$100,000 for breach of contract and tortious conduct [tampering with Personnel Evaluation Reports and personnel fact sheets].
- (vi) ... US\$50,000 for tortious conduct [prevention of the Applicant's transfer to the Outer Space Affairs Division].
- (vii) ... US\$100,000 for breach of contract [actions detrimental to career development].
- (viii) ... US\$35,000 ... for tortious conduct [professional damage, defamation, and moral suffering].
- (ix) ... US\$100,000 [for lack of fair treatment and due process]."

Whereas the Respondent filed his answer on 10 January 1997;

Whereas the Applicant filed written observations on 7 February 1997;

Whereas, on 14 March 1997, Hanifa Mezoui, a staff member of the United Nations, filed an application to intervene in the case;

Whereas, on 27 March 1997, the Respondent submitted comments on the Applicant's written observations;

Whereas, on 13 April 1997, the Applicant submitted a reply to the Respondent's comments;

Whereas, on 16 April 1997, the Respondent submitted comments on the application of Ms. Mezoui for intervention in the case;

Whereas, on 21 July 1997, the Tribunal requested the Respondent to provide it with certain information, which the Respondent did, on 23 July 1997;

Whereas, on 7 August 1997, the Tribunal informed the parties that it had decided to adjourn adjudication of the case until its next session;

Whereas, on 25 August 1997, the Applicant filed additional documents with the Tribunal;

Whereas, on 9 September 1997, the Tribunal requested the Respondent to provide it with comments on the Applicant's submission of 25 August 1997, which the Respondent did, on 19 September 1997;

Whereas, on 29 September 1997, the Applicant submitted a reply to the Respondent's comments of 19 September 1997;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 5 August 1974, as an Economic Affairs Officer in the Department of Economic and Social Affairs on an 18-month fixed-term appointment, at the P-3, step III level. His appointment was extended through 31 December 1976, but the Applicant separated from the Organization on 31 April 1976. He re-entered the service on 31 January 1978, on a two-month fixed-term appointment, as an Economic Affairs Officer at the P-4, step I level in the Department of Economic and Social Affairs. On 1 March 1978, his appointment became probationary and, on 1 March 1980, he was granted a permanent appointment. On 1 April 1981, he was promoted to the P-5 level, with the functional title of Chief, Remote Sensing Unit, Cartography and Information Services, Natural Resources and Energy Division, Department of Technical Cooperation for Development (DTCD). Between March 1985 and May 1992, the Applicant, at various times, was designated as Officer-in-Charge or Acting Chief of the Infrastructure Branch, Natural Resources and Energy Division, when the chief of that branch was on temporary leave. In 1995, the Applicant's title became Chief of the

Remote Sensing Section, Sustainable Development and Environmental Management Branch, Department of Development Support and Management Services (DDSMS). The Applicant separated from service on 31 December 1996.

On 11 February 1992, the Applicant requested the Under-Secretary-General of DTCD to consider him for promotion to the post of Chief of the Infrastructure Branch (D-1), as its incumbent was about to retire. On 19 February 1992, the Executive Officer of DTCD drew the Applicant's attention to the ongoing restructuring by the Secretary-General; specifically, the merging of DTCD with several other offices and departments in the new Department of Economic and Social Development (DESD).

On 6 May 1992, the Director, Science, Technology, Energy, Environmental and Natural Resources Division (STEENRD), DESD, informed the Chief of the Infrastructure Branch of the restructuring decided by the Secretary-General. The Applicant would remain physically located in the Physical Infrastructure and Transportation Branch, but his responsibilities in support of remote sensing activities were transferred to the Science and Technology Branch. The issue of transfer of responsibility for Cartography and Geographical Names would be addressed at a later stage.

On 19 May 1992, the Director, STEENRD, informed the Applicant that he would carry out his responsibilities (remote sensing) under the auspices of the Science and Technology Branch. On 18 June 1992, she wrote to the Applicant as follows: "I am very pleased to inform you officially of your assignment to the Science and Technology Branch, as Chief, Remote Sensing Section, with immediate effect. In carrying out your functions, you will report directly to the Chief of Branch, ...".

On 9 July 1992, the Director, STEENRD, informed the staff that, with effect from 1 July 1992, a P-5 staff member had been designated as Acting Chief of the Physical Infrastructure and Transport Branch (PITB) as the incumbent had retired.

By memorandum of 24 July 1992, the Under-Secretary-General for Economic and Social Development informed all DESD staff that the Department of Administration and Management had approved the new staffing table of DESD and that the Department was in a position to proceed with the Departmental Review Panels for the 1992 promotion exercise.

By letter dated 31 July 1992, addressed to the Under-Secretary-General for DESD, the Applicant questioned the reassignment, as of 1 July, of the other staff member from the Energy Resources Branch, to the post of Chief, PITB.

In his reply dated 20 August 1992, the Under-Secretary-General for DESD explained, inter alia, that, in line with the restructuring efforts, the Applicant's functions, namely remote sensing, had been placed within the Science and Technology Branch of DESD. The Under-Secretary-General wished to reorient the activities of the PITB towards the transport sector. The designation of the other staff member as Acting Chief of PITB, who was specialized in transportation, was a "logical consequence" of this effort.

On 12 October 1992, the Applicant was given a copy of his completed performance evaluation report (PER). A comparison of the final PER with an "advance" copy of an incomplete PER, which the Applicant had obtained and which had contained "A" ratings throughout, revealed that Section III of the final version had been amended: two of the "A" ratings had been changed to "B" ratings, and the corresponding comments thereto in the earlier version had been deleted. From his Official Status file, the Applicant then obtained a copy of another version of his PER, which showed only "A" ratings, had no alterations, and which was signed, on 27 July 1992, by all the reporting officers, including the Under-Secretary-General for DTCD.

On 15 October 1992, the Applicant instituted a rebuttal to the "12 October" PER claiming, based on the "advance" copy he had received, that two individual ratings given by the first reporting

officer had been subsequently downgraded from A to B by the second or third reporting officer.

In the meantime, the Departmental Review Panel constituted for the 1992 D-1 promotion exercise in DESD considered nine P-5 candidates, including the Applicant, as eligible for promotion to the D-1 level. The Review Panel recommended two candidates, but not the Applicant, for promotion. According to the record, the Applicant and the Respondent differ as to which version of the PER was before the Departmental Review Panel when it concluded its deliberations. The Applicant contends that the Departmental Review Panel was presented with the altered PER; the Respondent contends that the Review Panel considered the Applicant's unaltered PER.

On 10 December 1992, the Appointment and Promotion Board (APB) recommended two candidates, other than the Applicant, for promotion to the D-1 level.

On 11 February 1993, the Applicant requested the Executive Officer, DESD, to establish a panel to consider the rebuttal of his PER. On 12 March 1993, the Applicant selected three staff members for the rebuttal panel and requested that the rebuttal procedure be expedited.

On 24 June 1993, the Director of Personnel issued an Information Circular containing the 1992 Principal Officer (D-1) Promotion Register. The Applicant's name was not on the list.

On 16 July 1993, the Applicant wrote to the Chairperson of the APB, appealing the administrative decision not to include his name in the 1992 D-1 Promotion Register. He alleged that the delay in processing his PER on the part of the Executive Office of his Department had deprived the Departmental Review Panel of a complete personnel file in time for its promotion review. He "attached two copies of the performance evaluation report in question: one copy of the PER, which had been presented to the APB for the regular review, with only sections I and II [sic] completed and signed (...); and

another copy, duly completed and signed by all reporting officers and the Head of the Department, but unsigned by the [Applicant]. In the first copy all items in section I [sic] had been rated 'A', whereas in the second copy two items had been changed from 'A' to 'B'".

On 13 August 1993, the Chief, Office for Outer Space Affairs wrote a letter to the Officer-in-Charge, PSS, OHRM, regarding the "Reassignment of ... and [the Applicant]". Arrangements were made between the Office for Outer Space Affairs and the Department of Policy Co-ordination and Sustainable Development (DPCSD) to exchange a staff member from the Office of Outer Space Affairs for the Applicant using the P-5 level post of the Applicant. On 23 August 1993, DDSMS replied to the Officer-in-Charge, PSS, OHRM, that the Department would have no objection to releasing the Applicant, provided that the Office for Outer Space Affairs had a P-5 post for him. DDSMS did not agree to release the Applicant so that a staff member from the Office of Outer Space Affairs could work for DPCSD on the Applicant's P-5 post.

On 23 September 1993, the Under-Secretary-General for DDSMS informed all staff of the internal structure of the new Department established with effect from 1 April 1993.

On 17 November 1993, the Chairman of the APB informed the Applicant that the APB had considered his recourse and had found that there were no sufficient grounds to amend its previous recommendation not to include the Applicant's name in the 1992 D-1 Promotion Register.

On 10 January 1994, the Applicant wrote to the Secretary-General, requesting an administrative review of the decision not to include his name in the 1992 D-1 Promotion Register.

On 28 January 1994, the Rebuttal Panel constituted to consider the Applicant's rebuttal to his amended PER came to the following conclusions:

"1) Although the PER was noted and signed by the third reporting officer, ... the USG, DDSMS, on 27 July 1992, the report was not given to the staff member until October of 1992, more than two months after the signature of the third reporting officer. The Panel objects to and wonders why there was a two month delay between final signature and delivery of the report to the staff member.

2) Based upon a comparison of an advance copy of the report signed by the first reporting officer, with the final version of the report signed by all three reporting officers, it became obvious that the grades for categories 4 and 7 were changed from A to B subsequent to the signature of the first reporting officer. The Panel objects to changes being made to grades after the report had been signed by the first reporting officer and passed to the second reporting officer. There is a provision for comments by the second and third reporting officers in the event that they disagree with the findings of the first reporting officer. The Panel concludes that the report was improperly altered and recommends that the Executive Office of DDSMS be instructed by OHRM to implement proper safeguards to assure that future PERs are not similarly altered while under their care and supervision.

3) In so far as the 'altered' grades are concerned, the Panel concludes that since the Appellant received a top rating of 'an excellent performance', any improper changes to the report are academic in this case."

On 9 March 1994, the Under-Secretary-General for DTCD wrote to the Director of Personnel, concluding as follows: "I have carefully reviewed the Panel's report on [the Applicant]'s PER rebuttal. I agree to the report and concur that the second reporting officer should not have altered the grades for categories 4 and 7 of the PER, but should have made his own comments in the appropriate space. In addition, the considerable delay in giving [the Applicant] his completed PER for his signature should not have happened."

On 13 April 1994, the Applicant wrote to the Executive Officer as follows: "I refer to our discussion and would like to

confirm that I accept the transfer to ESCAP. This is with the understanding that the post under consideration is from the Regular Budget Programme and on the P-5 level."

On 14 April 1994, the Applicant lodged an appeal to the Joint Appeals Board (JAB) against the decision not to include his name in the 1992 D-1 promotion register.

On 22 April 1994, the Director of Personnel, OHRM, wrote to the Executive Secretary, ESCAP, informing him of the decision of the Secretary-General to redeploy, to the Regional Economic Commissions, nine (9) professional posts to allow for joint programmes between the Commissions and DDSMS. Two professional posts were reassigned from DDSMS to ESCAP under this decentralization plan. One of them, at the P-5 level, was encumbered by the Applicant. On 13 May 1994, the Executive Secretary, ESCAP, wrote to the Director of Personnel, OHRM, that ESCAP would prefer to take the Applicant's post without him but, as it had been explained to him that OHRM could not redeploy vacant regular budget posts, on 3 June 1994, the Executive Secretary, ESCAP, accepted the transfer of the Applicant.

On 27 September 1994, the Medical Service gave clearance for the Applicant's service with ESCAP.

On 29 September 1994, the Executive Officer, DDSMS, informed the Applicant that the Medical Service had cleared him for reassignment to ESCAP and that he was "expected to report to that duty station effective immediately". On 30 September 1994, the Applicant's physician wrote to the UN Medical Director, referring to his telephone discussion and written statement of 1 August 1994 on the medical condition of the Applicant and regretting that his previous assessment had been neglected. He also pointed out that "a transfer at the present time would probably have a potentially disastrous effect on [the Applicant]'s medical condition" and requested that the UN should not transfer the Applicant to Thailand in view of his present medical state.

On 3 October 1994, the Executive Officer, DDSMS, reminded the Applicant that he should report to ESCAP before 1 November 1994 and that failure to do so could be construed as abandonment of post in accordance with administrative instruction ST/AI/393 of 12 April 1994.

On 17 October 1994, the Chief of Administration, ESCAP, wrote to the Executive Officer, DDSMS, as follows: "We are disappointed to learn about the delay of [the Applicant]'s transfer to ESCAP, pending the result of review by Medical Board, please IOV [inter-office voucher used to charge expenses from one account to another] charges to ESCAP for the [staff member]'s salary as of 1 October 1994 until his actual transfer to ESCAP."

On 21 October 1994, the Applicant requested the suspension of "the implementation of the decision dated 29 September 1994 due to be implemented on 1 November 1994, by the Executive Officer ... DDSMS to reassign [him] to ... (ESCAP), Bangkok, Thailand, based on a clearance from the Medical Service dated 27 September 1994".

On 28 October 1994, the JAB adopted its report on the suspension of action and recommended unanimously:

"the immediate suspension of action on the implementation of the decision contained in memorandum of 3 October 1994 from the Executive Officer, DDSMS to the Appellant ... until the final decision based on the report by the medical board."

On 13 January 1995, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

"... The Secretary-General rejects your request for stay of action, for the following reasons:

(a) Your medical condition is not in dispute, thus it would serve no further purpose to ask the views of an independent third party, as requested by the JAB Panel;

(b) Staff rule 106.2(a) (viii) and ST/AI/393, para. 9 do not apply here, since no sick leave has been denied to you and you in fact are reporting regularly to work in your former post;

(c) Your claim is essentially based on the contention that you may be put at risk considering that there may be no adequate facilities for treatment of your condition in Bangkok; this is not an issue related to a dispute on a staff member's health condition, which could be appealable under rule 106.2(a) (viii) to a Medical Board;

(d) The Administration has found no evidence in the JAB report or elsewhere to substantiate or support any allegation that you could be at risk or lack proper treatment for your medical condition in Bangkok. On the contrary, the Secretary-General has obtained the assurance from Medical authorities at ESCAP and has determined that adequate and efficient facilities will be available to you in that duty station.

(e) Furthermore, it must be noted that ST/AI/400 of 24 December 1995 now supersedes ST/AI/393, which was the basis of your initial recourse. New conditions have been established in its paragraph 7 concerning failure and refusal to undertake assigned functions."

On 21 February 1995, the JAB adopted its report on the Applicant's appeal against his non-promotion to the D-1 level. Its recommendations read as follows:

"37. ... the Panel unanimously recommends that:

i) The Appellant be paid \$5,000 as symbolic compensation for the violation of his rights to be considered for promotion and assignment on the basis of correct PERs;

ii) Full and fair consideration be given to effect a promotion of the Appellant to a vacant D-1 post for which he is qualified as a matter of priority at the earliest date;

iii) In view of the serious nature of the misconduct related to the alteration of the Appellant's PER and in order to deter any future wrongdoing of such a nature, an internal investigation be initiated, even at this late stage, and the

wrongdoer or wrongdoers be subject to disciplinary action and be made to pay for the financial consequences of such misconduct."

On 2 March 1995, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report of 21 February 1995, and informed him as follows:

"... The Secretary-General has noted that the Board, in recommending a symbolic compensation, recognized the difficulty in quantifying the effect of the alteration of your performance evaluation report (PER) on the contested decision. In the spirit of the recommendation in paragraph 37 (i), the Secretary-General has decided that you be paid compensation in the amount of \$3,000 in full and final settlement of the case. Furthermore, in accordance with the Board's recommendation in paragraph 37 (ii), the Secretary-General wishes to confirm that you will receive full and fair consideration, as a matter of priority, for current or foreseeable vacancies at the D-1 level for which you apply and are found to be qualified.

The Secretary-General accepts the recommendation in paragraph 37 (iii) of the Board that the Administration initiate an investigation into the irregularity in the handling of your PER and will instruct that such investigation be undertaken."

On 15 March 1995, the Assistant Secretary-General, OHRM, wrote to the Under-Secretary-General, DDMS, requesting that "[the Applicant] be formally placed against the D-1, ex-... post ... so as to ensure that [the Applicant] is given the full and fair consideration that he should be given."

In a reply dated 23 March 1995, the Under-Secretary-General, DDMS, stated that, contrary to the Assistant Secretary-General, OHRM's suggestion, "it would be inadvisable and inappropriate at this stage to take any action to place [the Applicant] formally against the D-1 post until [the Under-Secretary-General of the OIOS] has completed his investigation."

On 22 September 1995, the Applicant was interviewed for the D-1 post of Chief, Natural Resources and Environmental Planning and Management Branch of DDSMS. On 23 January 1996, the Departmental Panel met to review the candidates for the post.

On 20 February 1996, the Under-Secretary-General, OHRM, wrote to the Under-Secretary-General, DDMS, informing him that he had discussed the Applicant's case with the Assistant Secretary-General, OHRM, and concluded that: "There is no reason that I am aware of why the staff member involved should not be transferred to ESCAP and I have instructed [the Assistant Secretary-General, OHRM] to do so."

On 18 April 1996, the Assistant Secretary-General, OHRM, wrote to the Applicant requesting him to take "appropriate action to report to Bangkok on 3 June 1996." He further stated, "You should be aware that failure to comply with this decision on schedule will result in disciplinary proceedings."

On 19 April 1996, the Executive Secretary, ESCAP, wrote to the Assistant Secretary-General, OHRM, that due to all the delays and to their understanding from the Assistant Secretary-General, OHRM's memorandum to the Under-Secretary-General, DDMS, of 15 March 1995, that the Applicant would be placed against a D-1 post in DDSMS, "a post suitable to accommodate [the Applicant] is no longer available in ESCAP."

On 22 April 1996, the Applicant wrote to the Assistant Secretary-General, OHRM, in reference to his transfer to ESCAP, requesting that he be informed of "the post and organizational unit to which [he had] been assigned in ESCAP as well as the functions that [he would] be performing." He requested a copy of the relevant job description.

In a reply dated 25 April 1996, the Assistant Secretary-General, OHRM, informed the Executive Secretary, ESCAP, inter alia, that "your predecessor, ... and the former Director of Personnel, ... had formally agreed that [the Applicant] would be placed against

the redeployed P-5 post in the Minerals Resources Section ...". He further stated that "[t]here was never any confirmation to ESCAP that [the Applicant] was indeed placed against a post at Headquarters, and that the P-5 post re-deployed to ESCAP was released." The Executive Secretary, ESCAP, was requested to identify a P-5 post to absorb the Applicant in the Mineral Resources Section.

On 14 May 1996, the Deputy Executive Secretary of ESCAP, wrote to the Assistant Secretary-General, OHRM, stating that, to implement the Under-Secretary-General for Administration and Management's instruction, they would temporarily reestablish the post of Chief of the Mineral Resources Section of the Environment and Natural Resources Division. They requested permission to unfreeze a P-5 post for up to 19 work months.

On 31 May 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Administration failed to implement the Secretary-General's decision that the Applicant should receive full and fair consideration, as a matter of priority, for current or foreseeable vacancies at the D-1 level.

2. The Administration did not prevent continuous administrative harassment of the Applicant, abuse of authority and unethical conduct on the part of DDSMS relating to events connected with his promotion.

3. DDSMS constructed a pattern of character assassination against the Applicant and violated his rights as a staff member.

Whereas the Respondent's principal contentions are:

1. The Applicant has no right to promotion, but only a right to consideration for promotion. The Applicant was properly

considered for promotion, and his rights were not violated by his non-selection.

2. The non-promotion to D-1 of the Applicant is not due to extraneous factors.

3. The Applicant does not provide evidence of prejudice.

The Tribunal, having deliberated from 15 to 25 July 1997 in Geneva, and from 29 October to 26 November 1997 in New York, now pronounces the following judgement:

I. The Applicant makes extensive claims for relief, chief among them that the Administration failed to implement the Secretary-General's directive that he receive "full and fair consideration, as a matter of priority", for promotion to the D-1 level. The Applicant's other claims, all interrelated, include allegations that he suffered retaliatory harassment in response to a recommendation of the Joint Appeals Board (JAB); that executives in the Department of Development Support and Management Services (DDSMS) "constructed" a pattern of character assassination against him and continuously violated administrative procedures so as to prevent his promotion; and that DDSMS prevented the Applicant from performing his work programme during the two-year period preceding his transfer to ESCAP by failing to give him work assignments.

II. The JAB convened twice upon the request of the Applicant to consider issues arising from his interaction with various supervisors and executive officers of DDSMS. In the first instance, the JAB examined the circumstances surrounding the Applicant's performance evaluation report (PER), ultimately finding that DDSMS's handling of the PER violated his rights and recommending that he receive "full and fair consideration as a matter of priority" for

promotion to the D-1 level. The Secretary-General accepted this recommendation of the JAB. On the second occasion, the JAB recommended a suspension of the Applicant's transfer to ESCAP pending official resolution of questions concerning his health. However, the Secretary-General rejected the JAB recommendation. The Applicant does not appeal that decision and only appeals the implementation of the first decision.

III. The Applicant and the Respondent acknowledge that the JAB's recommendation did not imply that the Applicant had a right to a promotion, but recognized that he had a right to full and fair consideration for promotion to a position for which he possessed the requisite qualifications. The Applicant and the Respondent disagree about what constitutes "as a matter of priority" in the context of promotion.

IV. The Applicant seems to contend that "as a matter of priority" means that he should receive absolute priority over other candidates, particularly external candidates, in promotion decisions. This interpretation does not give adequate scope to the Secretary-General's discretion in promotion matters. As the Tribunal has held previously, factors such as qualifications, experience and seniority may be given differing degrees of weight by the Respondent (Cf. Judgements No. 362, Williamson (1986) and No. 312, Roberts (1983)). Moreover, the Tribunal has consistently held that it cannot substitute its judgement for that of the Administration on promotion questions (Cf. Judgement No. 470, Kumar (1989)) except where there is evidence of prejudice or improper motivation. The Tribunal rejects the Applicant's claim that "full and fair consideration, as a matter of priority" means that the Applicant should automatically be given precedence over all other candidates.

V. The Tribunal has examined the voluminous documents before it and finds that the record of delays, inaction, and inattention to the Applicant's efforts to secure promotion indicate that his promotion was not a "priority" within DDSMS. In fact, there is some suggestion in the record that promotions of other candidates might have been given a higher priority than the promotion of the Applicant.

The Applicant asserts that DDSMS blocked his attempts to move to another P-5 position when he requested to transfer to the Office of Outer Space Affairs in Vienna. This position might have offered the Department an early opportunity to be responsive to the Secretary-General's instruction. Rather than facilitating this transfer, however, DDSMS through a series of failures to communicate effectively with either the Applicant or the Vienna Office, was not helpful in transferring the Applicant. An opportunity for potential future promotion was thus lost.

VI. The Applicant argues that the decision not to promote him was motivated by a personal bias against him. To illustrate this bias, he asserts that DDSMS had a duty to fill the D-1 post of Chief, Natural Resources and Environmental Planning and Management Branch from within the Organization, yet declined to promote him, choosing instead an external candidate. The Secretary-General had issued a bulletin, in September 1995, informing departments of a freeze in recruitment. The Under-Secretary-General for Administration and Management had also instructed all department heads on 9 November 1995, to freeze outside recruitment and placement "for those levels of posts which have been affected by the planned reduction in posts." Under staff regulation 4.4, current personnel receive "the fullest regard" in hiring and in promotion decisions. Such regard, however, is balanced by Article 101 of the Charter, mandating that the highest standards of efficiency, competence and integrity be considered as factors in recruitment, as well as the necessity to

recruit staff on as wide a geographical basis as possible. The candidate chosen instead of the Applicant for the fixed-term D-1 post was a Costa Rican national with extensive technical, managerial and diplomatic experience who, it was perceived, would also help diversify the staff of DDSMS.

VII. The Tribunal does not accept the Applicant's assertion that DDSMS disregarded directives to recruit and promote internal candidates and that this demonstrates prejudice against his candidacy. The burden of proving prejudice rests with the Applicant (Cf. Judgement No. 351, Raj). The evidence cited by the Applicant does little to advance his claim. The Applicant points out the "negative and prejudicial evaluation" by the DDSMS panel that interviewed him for a D-1 post. The panel evaluated his qualifications and concluded that he met only some of the requirements of the position. The Tribunal finds no indication of bias in the panel's conclusions.

VIII. The Applicant's claim of character assassination originates principally from accusations by the Executive Officer of DDSMS that the Applicant harassed the Executive Officer. The Applicant responded with a counter-allegation that the Executive Officer sabotaged his career moves and administratively harassed him. A fact-finding panel constituted by the Under-Secretary-General for Administration and Management looked extensively into these allegations and concluded that none of the Applicant's claims had any basis in fact. The Tribunal finds that the Applicant in this appeal has not presented any evidence that would cause the Tribunal to question the conclusions in the fact-finding report.

IX. The Applicant complains that DDSMS prevented him from carrying out his work programme because for almost two years, he did not receive any official assignments from DDSMS while questions were

being asked about his transfer to ESCAP. The Respondent argues that the lack of assignments was a reasonable administrative decision given that DDSMS never knew precisely when the Applicant would finally be transferred to ESCAP and was therefore forced to operate under the expectation that the Applicant's departure was imminent. There is a factual dispute over precisely why the Applicant was delayed in reporting to work at ESCAP. The Applicant maintains that he was willing to accept the assignment pending medical clearance, while the Respondent implies that the Applicant was shirking his duties in failing initially to report. The Tribunal finds that the Respondent made a reasonable decision that the Applicant could not contribute to the department due to his impending departure.

X. For the foregoing reasons, the Tribunal finds as follows:

(a) The Applicant's claim that he did not receive "full and fair consideration as a matter of priority" is found to be valid, but only inasmuch as DDSMS failed to make the Applicant's promotion a matter of "priority" in the Department. In view of this, the Applicant should be compensated. The Tribunal assesses this compensation at the amount of four months of the Applicant's net base salary at the rate in effect on the date of his separation from service.

(b) The Applicant's claims of retaliatory action and of a pattern of harassment aimed against him, so as to prevent his promotion, are rejected;

(c) The Applicant's claim that he was unfairly estopped from carrying out a work program is rejected;

(d) All other claims are hereby rejected.

XI. For the foregoing reasons, the Tribunal:

(a) Orders the Respondent to pay the Applicant four months of the Applicant's net base salary at the rate in effect on the date of his separation from service;

(b) Rejects the request for intervention.

(Signatures

Samar SEN
Vice-President, presiding

Deborah Taylor ASHFORD
Member

Julio BARBOZA
Member

New York, 26 November 1997

R. Maria VICIEN-MILBURN
Executive Secretary