



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1193

Case No. 1288: CHOW

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Omer Yousif Bireedo; Mr. Dayendra Sena Wijewardane;

Whereas at the request of Pauline Chow, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 31 December 2002 and thereafter until 9 April 2003;

Whereas, on 25 March 2003, the Applicant filed an Application containing pleas which read as follows:

### “II. PLEAS

...

7. On the merits, the Applicant respectfully requests the Tribunal *to find* that:

(a) the Secretary-General failed to respect the right of the Applicant to full and fair consideration for promotion and that, as a result of procedural irregularities and the injection of extraneous considerations, the Applicant was denied such full and fair consideration;

(b) the decision of the Director, Internal Audit Division [(IAD), formerly Audit and Management Consulting Division (AMCD),] Office of Internal Oversight Services [(OIOS)], to reject [the] Applicant's candidacy for promotion from P-4 to P-5 level violated her right to full and fair consideration for

promotion and violated due process under the established promotion procedures;

(c) the wilful non-disclosure or lack of transparency regarding the written tests that the Applicant was required to take compromised the integrity and reliability of the vacancy/promotion process to the detriment of the Applicant's right to ... equal, fair and impartial treatment, and evidenced the improper use of extraneous factor[s] for the negative decision taken;

(d) the Applicant has been subjected to harassment as well as prejudicial and discriminatory treatment ...;

(e) the selection process for the promotion also lacked transparency and consistency in that no guidelines had been issued. Furthermore, no consultations with the staff were conducted prior to the introduction of this new testing procedure as required by ST/SGB/274, ["Procedures and Terms of Reference of the Staff Management Consultation Machinery at the Departmental or Office Level", of 28 September 1994,] ...;

(f) the IAD [management disregarded] the Secretary-General's call for special measures applicable to the promotion of women to posts at the Professional level and above in ST/AI/1999/9 [, "Special Measures for the Achievement of Gender Equality", of 21 September 1999,] ...

8. The Applicant most respectfully requests the Administrative Tribunal *to order* that:

(a) guidelines for the testing procedures be issued in accordance with the uniform approach for promotion throughout the [United Nations] after an appropriate staff consultation ...;

(b) the Applicant be promoted to the next vacant [P-5] post ...;

(c) having been bypassed for five promotions since 1998, [the] Applicant receive payment of compensation for the disruption of her career in an amount equivalent to two years' net base salary;

(d) [the] Applicant receive payment for compensation for the undue delay at the [Joint Appeals Board (JAB)] ... and afterwards by the ... Secretary-General for almost three years in an amount equivalent to six months' net base salary."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 June 2003 and periodically thereafter until 31 December 2003;

Whereas the Respondent filed his Answer on 29 December 2003;

Whereas the Applicant filed Written Observations on 5 March 2004;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 4 October 1976, on a six-month fixed-term appointment at the G-3 level as a Calligrapher, Chinese Calligraphic Unit, Translation Division, Department of Conference Services. She resigned on 18 February 1977, but returned to the Organization on 1 March 1977, on a two-year fixed-term appointment at

the P-2 level as Associate Auditor, Internal Audit Service. Her fixed-term appointment was subsequently extended, and she was promoted. At the time of the events that gave rise to this Application, the Applicant had a permanent appointment, and held the P-4 level position of Auditor, AMCD, OIOS.

On 27 April 1998, the P-5 level position of Chief of Section, AMCD, post number QSA-48823-T-P-5-001, was advertised. The Applicant applied for the position and was subsequently interviewed and asked to take a written test as part of the evaluation process. On 7 October, the Applicant was advised that she had not been selected for the post.

On 25 January 1999, the vacancy announcement was issued for another P-5 level position of Chief of Section, AMCD, post number UNA-48823-E-P-5-004. Again, the Applicant applied for the post, was interviewed and was asked to take a written test as part of the evaluation process. On 10 November, the Applicant was advised that she had not been selected for the post.

On 3 December 1999, the Applicant requested the Secretary-General to review the administrative decision contained in the letter of 10 November 1999, stating that she was appealing “these decisions” and referred to her non-selection “for the two posts at the P-5 level in [AMCD]”. Although the letter of 10 November actually related only to post number UNA-48823-E-P-5-004, the Applicant’s request for administrative review and appeal have been treated as concerning both afore-mentioned P-5 level posts.

On 1 February 2000, an organizational chart for AMCD was issued, in which a male staff member’s name was listed against the P-5 post of Chief, Iraq Programme Unit. This P-5 post was, however, included on a list of vacancies circulated to all staff in the Division by the Director, AMCD, on 4 February. Subsequently, a vacancy announcement was issued for the post in question (post number QDA 10008-T-P-5-001) and the Applicant applied for the position.

On 12 February 2000, the Applicant lodged an appeal with the JAB in New York against her non-selection for posts number QSA-48823-T-P-5-001 and UNA-48823-E-P-5-004.

On 17 March 2000, the Applicant wrote to the JAB requesting suspension of the administrative action to fill post number QDA 10008-T-P-5-001. In its report of 5 April, the JAB concluded that the request “failed on a threshold question”, as there was “no appealable administrative decision that could be suspended as the filling of the vacant post was still at a very early phase”. However, the JAB added the following “Observation”

“Notwithstanding any of the above, the Panel wished to state for the record that it was perturbed by the fact that the organic chart of 1 February 2000

identified [the male staff member] as the Chief of the Iraq Programme Unit. It hoped that this represented only a clerical error and not the preferences of the OIOS management for a certain candidate to fill the P-5 post.

...

On 6 April 2000, the Under-Secretary-General for Management advised the Applicant that the Secretary-General had accepted the Board's decision not to accede to her request for suspension of action.

On 14 September 2000, the Applicant advised the JAB that she had been interviewed on 12 September for post number QDA 10008-T-P-5-001, but that a male staff member had been placed against the post on 1 February, prior to the issuance of the vacancy announcement. The Applicant stated that this had deprived her of full and fair consideration for the post and had violated the rules of the Organization on the filling of temporary vacancies. The Applicant claimed that, as a result of her appeal to the JAB, she had been subjected to "further abuses by management".

Effective 1 December 2000, the promotion of the male staff member against post number QDA 10008-T-P-5-001 was confirmed. There is no record of the Applicant requesting administrative review of this decision.

The JAB adopted its report on 6 April 2002. Its considerations, conclusions and recommendations read, in part, as follows:

*"Considerations*

23. The Panel, before entering into the substance of the case, looked into the procedural aspects of the case. In that regard, the Panel first ensured that the Appeal met the requirements for receivability. Then the Panel noted with great concern the delay of the Respondent in submitting his reply. The Panel found such delay unjustified when the reply was in fact a compilation of two memoranda prepared on 11 January 2000 and 7 November 2000 ... These memoranda constituting the Respondent's reply were submitted to the Secretariat of the Joint Appeals Board ... on 6 November 2001. The Panel found this delay of 22 months totally unjustified, with all negative consequences on the morale of the Appellant and the administration of justice process in general. The Panel also expressed its concern that such a delay may discourage potential appellants to exercise their legal rights as staff members, if such delays become the norm.

...

*Non-Selection*

25. The Appellant is contesting the transparency of the selection process for promotion to P-5 as the practice of administering tests as part of the selection process was not made known to her before hand and in addition, the results were not disclosed. The Appellant therefore alleged that this lack of

transparency denied her the right to full and fair consideration for the promotion exercise.

...

28. In that connection, the Panel questioned to what extent written and oral test demonstrate a staff member's ability to perform at the P-5 level. While the Panel admitted the relevance of testing as a selection process for checking the background for first applicants, it raised doubt about this method being used for promotion exercise. However, the Panel came to the agreement that the P-5 post being a managerial position, requires that candidates be highly qualified as concerns supervisory and leadership abilities, vision, drafting skills etc, criteria which are not necessarily reflected and subjected to a written test.

29. The Panel, after a careful review of the facts of the case, realized that the Appellant contested the tests because she felt that there was some element of uncertainty surrounding the process, which led her to infer that it was biased. To support her contentions, the Appellant argued that not only the tests were suddenly introduced without prior proper briefing to the staff, but also the subjects of the tests were in favour of another male staff member who received the promotion, and lastly, that there was no grading criteria and the results were not disclosed. The Panel concurred that all these factors made the Appellant feel, and rightly so, that management did not want to grant her the promotion.

...

31. With regard to Appellant's claim that she met 'all essential qualifications and criteria for promotion as set out in the reference announcement', the Panel deemed that it was not within its purview to make such an assessment as the Rules and Regulations have put into place a system to that effect. ... [However,] the Panel took note of the Respondent's [contention] ... that the Appellant lost every competition she entered for a P-5 post in AMCD because she failed both in the interview and the written test. The Respondent added that the record would show that the interviews alone would have been enough to remove the Appellant from the selection process for promotion. ...

#### *Gender discrimination*

32. The Panel also looked at the specific allegation made by the Appellant with regard to a history of gender discrimination within AMCD. The Appellant alleged that AMCD has always given preference to male candidates rather than to qualified females. ...

33. ... [T]he Panel felt that it was difficult to have a clear picture of the post distribution in AMCD. Therefore, it found that there was no basis to determine whether or not there was unequal treatment of women in their career development in AMCD. ...

...

*Harassment ...*

35. The Appellant raised the allegations of harassment by [the Director, AMCD], who on two occasions suggested that she consider an early retirement. The Panel admitted that such a suggestion could have been an indication that the staff member was no longer needed in the service, had it happened before the appeal. The Appellant claimed that they are the consequence of her appeal, which the Panel found troubling but could not make a judgement in view not only of the lack of substantiation on the part of the Appellant but also in view of the Respondent's silence on the matter.

...

*Conclusion*

37. In light of the foregoing, the Panel unanimously agreed that the selection process lacked transparency and consistency, but does not translate into any wilful action on the part of the Administration. With regard to the other allegations, the Panel found that there was little evidence to substantiate them.

*Recommendations*

38. The Panel thus unanimously recommended that in light of the foregoing, the Appellant be considered for any upcoming vacant P-5 post for which she qualified.

39. The Panel recommended that guidelines be issued for standardized and consistent tests within the department."

On 10 December 2002, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her as follows:

"...

The Secretary-General observes that the Board's conclusion that the selection process lacked transparency and consistency is not substantiated and, therefore, he does not accept it. However, the Secretary-General accepts the other conclusions of the Board and its recommendation regarding your consideration for vacant posts. Accordingly, he has decided that you be considered for any vacant P-5 post for which you apply and are found to be qualified.

..."

On 25 March 2003, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant was denied full and fair consideration for promotion.

2. The inference of inappropriate procedures and extraneous factors raised by the Applicant shifts the burden of proof to the Respondent.
3. The Applicant suffered gender discrimination and harassment.
4. The Applicant's rights were violated by the Respondent's inordinate delays in replying to her appeal to the JAB.

Whereas the Respondent's principal contentions are:

1. The non-recommendation of the Applicant for promotion conformed fully to the applicable legal procedures and did not violate any of the Applicant's rights.
2. The Applicant was not the subject of gender discrimination.
3. The Applicant was not subject to harassment or prejudicial treatment

The Tribunal, having deliberated from 1 to 23 July 2004, now pronounces the following Judgement:

I. It appears that the Applicant was passed over for promotion from the P-4 level post occupied by her in AMCD, OIOS, in New York to a P-5 position within the said Division on several occasions between 1998, when she first sought such promotion, and the submission of her appeal to the JAB in 2000. It is unclear and uncertain as to precisely which applications for promotion or how many such applications were intended to be covered by her appeal to the JAB and consequently by these proceedings before the Tribunal, but since her complaints are the same no matter how many applications for promotion were intended, the Tribunal will proceed as if all of her applications were involved, notwithstanding the Respondent's complaints understandably arising from this uncertainty, because the Tribunal is satisfied that this aspect will not affect the outcome of these proceedings one way or the other.

Additionally, the Applicant's claims regarding the latest of these promotion exercises (post number QDA 10008-T-P-5-001) arrive uncontested by the Respondent, who raises no issue as to their admissibility. The Tribunal notes that the matter was considered on its merits by the JAB without apparent protest although objections could have been raised that it was not receivable, *ratione materiae*, as the Applicant did not request administrative review thereof in accordance with staff rule 111.2 (a). The Tribunal finds, therefore, that the Applicant had every reason to believe her claim was properly before the JAB. (See Judgement No. 586, *Atefat* (1992).) In the view of the Tribunal, it would be unconscionable for it to raise such an issue on the Respondent's behalf under the circumstances, as the Applicant would now be deprived of a remedy which would have been available had objection been taken at the correct time.

II. The Applicant makes many complaints regarding what she alleges to be the inherent flaws or deficiencies in the system of promotion or the promotion procedures generally insofar as they applied to her situation, and she further contends that the manner in which her various applications for promotion were received and dealt with shows that she was subjected to prejudicial treatment, discrimination and harassment and that her rights of due process were denied.

She claims that her rights to full and fair consideration for promotion to a P-5 level post were denied to her and she claims that her proceedings before the JAB were so drawn out and delayed by the Respondent's failure to submit his reply, or to allow the JAB to proceed with its deliberations in the absence of the reply, as to amount to such a violation of her rights as to entitle her to compensation.

III. The Applicant's complaints about the promotion system or the promotion procedures in general may be summarised as follows:

- (a) written tests were wrongfully inserted by the Director of her Division into the promotion procedures which compromised the integrity and reliability of the promotion procedures and these tests lacked appropriate transparency;
- (b) these tests had been inserted without prior consultation with staff, in violation of the provisions of ST/SGB/274;
- (c) the promotion procedure failed to respect or show due deference to various resolutions, exhortations and policy objectives dealing with gender equality or with special measures to be taken for the advancement of women; and,
- (d) the selection process for promotion lacked transparency and consistency in that no guidelines had been issued.

In addition, the Applicant complains that she personally had not been given fair or reasonable consideration for promotion in that there was prejudice against her and that she suffered discrimination in the course of her various applications. She complains additionally that the very fact that she sought to challenge the promotion system and in particular as to how it failed to afford her fair and reasonable consideration caused further harassment which resulted in the issuance of biased and prejudiced evaluations, and which caused the Director of her Unit to encourage her resignation and to treat her unfairly. She provides what she claims is an example that the so-called competitive promotion process was a charade or a sham by claiming that a male Canadian citizen had enjoyed *de facto* promotion to Chief of the



Iraq Programme Unit (post QDA 10008-T-P-5-001) before the vacancy announcement for the position had been issued, thereby establishing that he had been selected for this promotion before the charade of going through the motions of a promotion competition had ever commenced.

IV. Before dealing specifically with the Applicant's various complaints and submissions, the Tribunal will deal with the discretionary nature of the promotion process and the Respondent's discretion in relation thereto. The primary purpose of the process is to seek and to identify the candidate most suitable to fill the vacant post in question. In that regard, section 6 of ST/AI/1999/8, "Placement and Promotion System", of 18 August 1999, which sets out the rules to govern the placement and promotion of staff relevant to this Application, and which is headed "Criteria for placement and promotion" does not seek to set out a sterile list of inflexible criteria to be applied in a mathematical way. The matters to be considered under the promotion procedure include:

- (a) past performance, competence, efficiency and demonstrated potential to perform at the level of the vacant post;
- (b) integrity;
- (c) relevant experience and seniority;
- (d) relevant academic training and professional qualifications and achievement;
- (e) supervisory and leadership abilities, where applicable;
- (f) record of mobility and service in hardship duty stations, where appropriate; and,
- (g) in certain circumstances, linguistic proficiency, when required.

It is apparent from the above that such measurements must by their very nature be subjective as they include qualities which cannot be measured by any yardstick or measured by arid formula or in any precise or objective way. The discretionary and dynamic nature of the process has been recognised and referred to in many of the Tribunal's Judgements. (See Judgements No. 134, *Fürst* (1969); No. 312, *Roberts* (1983), No. 362, *Williamson* (1986); No. 438, *Nayyar* (1988); No. 470, *Kumar* (1989); No. 554, *Fagan* (1992); No. 592, *Sue-Ting-Lin* (1993); and, No. 613, *Besosa* (1993).)

As stated by the Tribunal in Judgement No. 1110, *Sha'ban* (2003), it

"is keen to stress that discretionary decisions, such as the one now under review in these proceedings, are not made by the application of sterile formulae nor are they a mechanical or mathematical process. The discretion to be exercised is the discretion of the Respondent or those to whom he delegates same, and not that of a JAB, the Tribunal or other such body as may be asked

to review the decision made. On such a review, the review body would review the contested decision and ask: was it reached on reasonable and rational grounds; was it within the scope of the authority of the person or the body which made it; and, was it fair and free from prejudice. In Judgement No. 1088, *Khader* (2002) the Tribunal stated the following:

‘III. The primary purpose and objective of an Administrative Tribunal in reviewing the propriety and efficacy of a challenged administrative decision, is to determine if it was supported by adequate credible evidence and establish that it was made *intra vires* and in accordance with such Rules or Regulations as might apply and that the due process rights of the challenger (the person who has been affected by that decision) and his rights to fair procedures were vindicated in relation to the entire process. This brief description is not intended to be appropriate to all cases or to be exhaustive. In effecting the discharge of its said function, the Tribunal asks itself “was the decision maker entitled to make the decision under review, was he entitled to accept the evidence relied upon to support it, was he within his powers to make it and was it fair and just, in all of the circumstances?” It is not for the Tribunal to ordinarily embark upon fact finding *de novo* or to seek to substitute its subjective view of the facts in place of the view taken by the decision maker when it finds that the decision-making was *bona fide* and was made on adequate acceptable evidence.’”

The extract from *Khader* has been included so as to identify how the Tribunal approaches issues arising from the exercise of discretionary powers.

V. Viewed against this backdrop, the Tribunal must (like the JAB) reject both the general complaints made by the Applicant regarding the promotion system and her complaints that none of her various applications were given fair or reasonable consideration or that her non-selection arose from any discrimination or prejudice against her. As to the comments of the JAB relating to transparency and consistency, the Tribunal cannot adopt those criticisms as it considers them to be unfounded. The results of the various tests and the ‘scores’ awarded to each individual candidate must for reasons of privacy and confidentiality remain undisclosed, as to allow such information to be published would be a flagrant breach of the privacy which candidates for promotion might reasonably expect and which accords with the Organization’s long standing practises.

VI. Whilst seniority is just one of many matters to be considered in the course of the promotion process, it by itself is not to be taken as a decisive factor. In this regard, the Tribunal notes that whilst the Applicant enjoyed seniority in terms of service with AMCD and within the Organization, this was not enjoyed by her as against other candidates when viewed solely as seniority at the P-4 level. It further appears from the Respondent’s reply filed in the JAB proceedings and his Answer filed in these proceedings that matters such as productivity and other relevant criteria were fully considered. It appears from the record that a very weak

point insofar as the Applicant was concerned was her poor performance at interview in every competition and that she did not do as well as other short-listed or selected candidates in either the interview or the written tests. It was further stated that the records would show that her performance in the interviews alone - i.e. if there was no written test - would have provided sufficient grounds for her non-selection. It appears from the reports submitted by the Respondent in his reply to the JAB that the Applicant was unsuccessful because the successful candidates were found to be preferable to the Applicant, and the Tribunal can find no evidence or reason to doubt this proposition or to indicate that it was not so.

VII. The Tribunal stresses that it is not for the Tribunal to seek to examine the actual records made in the course of the promotion exercises, or to re-examine such records so as to seek by itself to “score” the various candidates by its own measure. Firstly, this cannot be done as the interview portions cannot be reconstructed; secondly, the Tribunal is not the body appointed to engage in such exercises and would not enjoy the skills or expertise to carry them out; but, perhaps most importantly of all, even if it were not for these shortcomings, it is for the appropriate body to engage in the said exercise and its judgement is final unless some procedural irregularity, bias or other potentially fatal defect can be identified and established.

Since the Applicant has failed to identify such a defect, her complaints that she was improperly overlooked or bypassed for promotion must be dismissed. The Tribunal’s jurisprudence firmly states that the burden of establishing matters such as bias or prejudice lies with the person making such allegations. (See Judgements No. 639, *Leung-Ki* (1994); No. 784, *Knowles* (1996); No. 870, *Choudhury et al* (1998); and, No. 1069, *Madarshahi* (2002).)

The Tribunal is satisfied that there was nothing untoward or improper or unauthorised in the introduction of the written tests of which the Applicant complains. In the view of the Tribunal, such tests are legitimate tools to assist the promotion body in seeking to assess and evaluate each candidate’s qualities as is required by the promotion process. Furthermore, they have been approved by the Office of Human Resources Management and such tests are used elsewhere within the Organization and not confined to promotion proceedings within OIOS. The Tribunal rejects the contention that their introduction without prior staff consultation contravened ST/SGB/274. The said Bulletin provides guidelines for Staff/Management Consultation Machinery which are designed and intended to promote the smooth and efficient running of an Office or Department so that there will not be unnecessary friction or an unnecessary incidence of issues giving rise to proceedings to be determined by the JAB. The Tribunal is satisfied that the introduction of the written test of which the

Applicant complains is a matter outside the scope or contemplation of the Bulletin and is a matter properly within the remit of the programme manager, having regard to his/her functions and responsibilities regarding the promotion system.

VIII. The Tribunal is satisfied that the other complaints made by the Applicant, whether against the system in general or against the manner in which her applications were dealt with, have not been established either by the production of factual material or by the Applicant's submissions concerning the inferences which should be drawn by the Tribunal from the evidence adduced in the case. On the face of it, the Applicant was afforded reasonable consideration for promotion on each and every occasion and she has not established to the satisfaction of the Tribunal either that the proposal designed for the advancement of women or the other matters relied upon by her were breached or that there were shortcomings of any sort which unfairly denied her promotion to a P-5 post. She has likewise failed to satisfy the Tribunal that she was denied promotion or unfairly treated in a prejudiced or hostile way. The matters put forward by the Applicant as evidence of harassment and prejudice are quite insufficient to establish prejudice against the Applicant of a sort which might have interfered with her promotion prospects so that the Tribunal (like the JAB) must likewise dismiss the Application on those particular grounds.

IX. As to the Applicant's submission concerning the filling of the post of Chief, Iraq Programme Unit, the Respondent submits that there is nothing sinister to be inferred from the events in question and that there was nothing unusual or sinister to be taken from the placing of the Canadian's name against the post in the organizational chart before the vacancy announcement was ever published. It is implicit in that submission that the Respondent argues that he was placed against that post initially in a temporary capacity and that there was nothing in the nature of a sham or a "going through the motions" arising in the promotion competition which subsequently took place. Unfortunately, the JAB did not see fit to make any examination of that issue or to reach any conclusion thereon.

The Tribunal must say that it is indeed suspicious, particularly if the Applicant is correct in saying that the Canadian's former (P-4) post was being advertised as vacant before the vacancy announcement for the P-5 was actually made. This would suggest that he was something more than a clear favourite for the P-5 position and would lend strong support to the suspicion that the winner was being effectually ordained before the race commenced. The Respondent submits that the Canadian's appointment in a temporary capacity to the P-5 post and the advertisement of the vacancy announcement had taken place simultaneously. However, the Tribunal finds that this is likewise factually incorrect as it is clear that his name

had been published in the organizational chart as holding that position at least three weeks before the vacancy announcement was actually issued. Whilst these matters do excite the Tribunal's suspicions, there is not sufficient evidence to establish that his appointment had actually been preordained. The evidence does support the proposition that the Canadian was originally appointed in a temporary capacity as he was paid a special post allowance and, perhaps more importantly, there is no evidence upon which the Tribunal could find that his appointment was ultimately improper or unfair so that he had been wrongfully appointed at the expense of the Applicant. Nonetheless, in the view of the Tribunal this was a serious procedural irregularity which clearly lessened the confidence of the Applicant in the fairness and transparency of the promotion procedure. The Canadian in question might, at a minimum, have been described as "Acting Chief, Iraq Programme Unit", until the actual vacancy was filled and his former position ought not to have been advertised as vacant until the P-5 level position had been filled on a permanent basis and then only in the event that the Canadian's candidacy had been successful. For this procedural irregularity the Tribunal awards the Applicant the sum of three months' net base salary.

X. Whilst the Applicant's complaints in relation to the promotion process and the Applicant's failures to enjoy promotion are rejected save for the matters arising from the filling of the post of Chief, Iraq Programme Unit, a further matter remains, namely the delay on the part of the Respondent in filing his reply in the JAB proceedings and his refusal either to allow the matter to proceed before the JAB in the absence of such a reply or his failure to allow a direct referral to the Tribunal on the basis of agreed facts. The two reports relied upon by the Respondent for the purposes of his said reply had been made available to the Administrative Law Unit (ALU) approximately 12 months prior to the Respondent filing his reply. That delay is, in the view of the Tribunal, inexcusable as it would appear that no further investigation or research was carried out by or on behalf of the Respondent during this period and the only reason offered for this portion of the delay was because the said Unit was dealing with cases in sequence so that the Applicant had to suffer the consequences resulting therefrom. The only input of the ALU over a prolonged period was its contributions to preventing the JAB from dealing with the case in the absence of a reply and in otherwise holding it up because it had not got around to reading the two reports which were ultimately filed by the Respondent as his said reply. The Tribunal shares the view expressed by the JAB that these delays were unjustifiable. Here was a case where the Applicant was alleging what was effectively a campaign by management to unfairly deny her promotion to a P-5 post and it must have been clear to all concerned that she was in a highly agitated and vexed condition

and very anxious that her proceedings be expedited and concluded. It must have been obvious to anybody concerned that her anxiety and distress was heightened by delays, as the longer the proceedings took, the more vacancies were liable to arise and that for so long as the Applicant was not favoured by a promotion the more she was liable to suffer from her perception that she was being unfairly bypassed for the promotion which she was claiming was her due.

In the opinion of the Tribunal, this was a case where the material upon which the reply was to be based was always readily to hand. The two reports ultimately relied upon were each prepared within a very short time of having been requested. In the opinion of the Tribunal, this delay was wholly disproportionate to the time required for preparation of the reply, had this issue been given the attention it so clearly deserved. In the view of the Tribunal, in all of the circumstances, this delay was such that it amounted to a denial of the Applicant's rights of due process that would merit compensation. Accordingly, it awards the Applicant the sum of US\$ 1,000.

XI. In view of the foregoing, the Tribunal:

1. Orders that the Applicant receive compensation of three months' net base salary at the rate in effect on the date of this Judgement for the denial of her procedural rights;
2. Orders that the Applicant receive US\$ 1,000 for the Respondent's procedural delay before the JAB; and,
3. Rejects all other pleas.

*(Signatures)*

**Kevin Haugh**  
Vice-President

**Omer Youssif Bireedo**  
Member

**Dayendra Sena Wijewardane**  
Member

Geneva, 23 July 2004

**Maritza Struyvenberg**  
Executive Secretary