

namely that the participant should elect to receive the benefit at the standard annual rate. The Tribunal finds no ambiguity in the language of article 29 of the Pension Fund Regulations.

IV. Comparing clause (d) of article 29 with the corresponding provisions (article IV, paragraph 4) in the Pension Fund Regulations prior to 1 January 1970, which read:

“A participant whose retirement benefit would be increased as a result of the application of paragraph 1 (b) above may, at the date of retirement, elect to waive the additional amount which he would thereby receive; if he so elects, he shall be entitled to a retirement benefit calculated under paragraph 1 (a), and shall then be entitled to receive a lump sum under the conditions of paragraphs 2 or 3 above,”

the Applicant argues that there is between the two texts a difference which supports his plea that a benefit payable at the minimum annual rate may be commuted as such or alternatively that at least that part of the benefit which is not commuted shall be paid at that rate. The Tribunal has closely examined those texts and finds that both confine the facility of commutation of a pension benefit into a lump sum only to those who receive, or elect to receive, the benefit at the standard annual rate.

V. The Tribunal therefore decides that under clause (d) of article 29 of the Pension Fund Regulations, the Applicant cannot commute into a lump sum his pension benefit at the minimum annual rate unless he elects to receive the benefit at the standard annual rate.

VI. The application is rejected.

(Signatures)

R. VENKATARAMAN  
President

Zenon ROSSIDES  
Member

Roger STEVENS  
Member

Jean HARDY  
Executive Secretary

Geneva, 14 April 1972

---

**Judgement No. 154**

(Original: English)

**Case No. 147:**  
**Monasterial**

**Against: The Secretary-General  
of the United Nations**

---

*Request for the Tribunal to find that the Applicant is eligible for the grant of a special post allowance.*

*Principal request.—Discretionary power of the Secretary-General to grant a special post allowance and incompetence of the Tribunal to enter into the merits of such a decision.—Contention that the grant of a special post allowance was not denied by the*

*Respondent but that he did not consider the Applicant's case at all on the ground that the Applicant had not assumed the responsibilities of a higher level post.—Staff Rule 103.11.—How to determine, for the purposes of a special post allowance, whether the person concerned has assumed higher responsibilities.—Test of assignment to a post at a higher level on the official manning table.—This criterion is a reasonable one and within the authority of the Secretary-General to prescribe.—The request is rejected, as the Applicant was never assigned to a higher level post on the official manning table.*

*The consequential pleas are rejected.*

*The application is rejected.*

#### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Zenon Rossides; Sir Roger Stevens, alternate member;

Whereas, on 3 May 1971, Marcelino M. Monasterial, a staff member of the United Nations, filed an application requesting the Tribunal:

“(a) To find that the Applicant, since 1 January 1965, has been eligible for the grant of a special post allowance under Staff Rule 103.11.

“(b) To award to the Applicant appropriate compensation for the Administration's denial of his eligibility.

“(c) To invite the Secretary-General to give effect to the unanimous recommendation of the Joint Appeals Board that he ‘may wish to exercise his discretion in favour of the Applicant and grant the appropriate allowance.’

“(d) Should the Secretary-General avail himself of his right, under article 9(1) of the Statute of the Tribunal, not to take the action envisaged under (c) above, to award to the Applicant three times the amount which the Applicant would have received had the allowance been granted.”;

Whereas the Respondent filed his answer on 10 June 1971;

Whereas the Applicant filed written observations on 14 October 1971;

Whereas, on 13 April 1972, the Respondent submitted additional information at the request of the Tribunal;

Whereas the Applicant submitted additional observations on 15 April 1972;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 February 1947 under a temporary appointment at grade 2 as an Escort in the Department of Conference and General Services. On 1 September 1952, he was assigned as Professional Assistant to the Housing and Town and Country Planning Section of the Department of Social Affairs and promoted to the G-4 level. On 1 February 1954 his appointment was converted to a permanent contract. On 1 August 1961 the Applicant, who had been reassigned to the Research and Publications Section of the Department of Economic and Social Affairs, was promoted to the G-5 level. On 1 January 1965 he was reassigned to the Housing Section of the Housing, Building and Planning Branch and, from 1 January 1968, he served in the Research and Training Section of the Centre for Housing, Building and Planning. On 21 November 1968, in a memorandum addressed to the Executive Officer of the Department of Economic and Social Affairs, the Applicant requested that a special post allowance be granted to him “in recognition of [his] performance of professional functions for the last three consecutive years”; in his memorandum the

Applicant referred to "documentary proof of the professional level of [his] performance in recent years", to "examples of actual work assignments reflecting [his] professional responsibilities" and to "evidence of [his] professional responsibilities and of the fact that they have been considered by [his] superiors to be at the P-2/P-3 levels"; the memorandum concluded:

"All the above documentation should more than prove that I have been undertaking and have assumed 'the full duties and responsibilities of a post at a clearly recognizable higher level' than my own G-5 as called for under Staff Rule 103.11 (b). Having met all the requirements stated by that Staff Rule, I am, therefore, respectfully requesting that I 'be granted a non-pensionable special post allowance from the beginning of the seventh month of service at the higher level' in accordance with the terms of Staff Rule 103.11 (b). In view of the fact that I have performed at the higher level since January 1965, I would further request that payment of the allowance be authorized retroactively to August 1965."

On 6 January 1969 the Applicant sent a reminder to the Executive Officer, adding that in the absence of any reply by 20 January 1969 he would have no alternative but to construe that silence as a negative reply implying an administrative decision which might be appealed directly to the Secretary-General under Staff Regulation 11.1. On 10 January 1969, the Executive Officer addressed to the Applicant the following reply:

"...  
"From the time of your reassignment to the Centre for Housing, Building and Planning in January 1965, you have occupied a G-5 post in the manning table of the Centre. Accordingly, the basic condition stipulated by staff rule 103.11 (c) that, in your capacity as General Service staff member, you must have been required 'to serve in a higher level post in the Professional category' has not been met. Consequently, your request for a special post allowance cannot be considered. You will appreciate that this fact does not represent an administrative decision but solely an application of the relevant staff rule."

On 16 January 1969, the Applicant requested the Secretary-General to review "the decision not to grant the special post allowance". On 28 January 1969 the Under-Secretary-General for Administration and Management, replying on behalf of the Secretary-General, informed the Applicant as follows:

"...  
"I regret to inform you that, having carefully examined your claims and the record contained in your official status file, I do not find that an administrative decision has been taken resulting in the non-observance of Rule 103.11, nor would I find a valid basis under this Rule for recommending to the Secretary-General that you be granted exceptionally a post allowance for any period of service during the past four years."

"Contrary to your assertion that 'since January 1965 I have been occupying a professional level post as Assistant to the Director in the Office of the Directorate of the Centre for Housing, Building and Planning,' the official manning table records of the Department of Economic and Social Affairs show that at all times since that date you have occupied a post at the G-5 level. ... Therefore, the necessary conditions that the 'staff member in the General Service category is required to serve in a higher level post in the Professional category' [Staff Rule 103.11 (c)] and 'for a temporary

period' [Staff Rule 103.11 (b)] have not existed. As their absence has precluded the possibility of considering the grant of a special post allowance, no decision could have been made under the Rule resulting in its non-observance within the meaning of Staff Regulation 11.1.

“ . . . ”

On 4 April 1969 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 1 December 1970. The Board's recommendations read:

*“Recommendations*

“37. Since contradictory views appear to have been held by the substantive office (Centre for Housing, Building and Planning) and the Executive Office of the Department of Economic and Social Affairs with respect to the appellant's level of functions and one periodic report of the appellant clearly indicates that he had assumed responsibilities at a higher level, the Joint Appeals Board unanimously recommends to the Secretary-General that an administrative review be undertaken to determine whether or not the appellant has been performing or had performed for any period in the past at the professional level. If as a result of this review, sufficient justification is shown to exist for consideration of a special post allowance for any length of time in accordance with the provisions of Staff Rule 103.11, the Secretary-General may wish to exercise his discretion in favour of the appellant and grant the appropriate allowance.”

On 25 January 1971 the Director of Personnel notified the Applicant of the Secretary-General's decision as follows:

“ . . . ”

“The Joint Appeals Board recommended that an administrative review be undertaken to determine whether or not you had been performing or had performed for any period in the past at the Professional level. Since the Secretary-General had in fact reviewed this question very carefully immediately preceding your submission of the appeal to the Joint Appeals Board and the Secretary-General had taken into account the divergent views on this question raised by you, the Secretary-General has now decided that there would be no need to undertake a fresh administrative review of this question. The Secretary-General has therefore decided to maintain the decision which he had taken prior to your appeal whereby your request for a special post allowance was not granted.”

On 3 May 1971, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. No discretionary decision to grant or to withhold a special post allowance has ever been taken by the Secretary-General, the Administration having consistently argued that the Applicant had never assumed the duties of a P-2 post and that he therefore had never become eligible for being considered for the grant of such an allowance. Accordingly, the application is directed, not against a non-existing discretionary decision, but against the administrative decision maintaining that the Applicant has not performed duties at the professional level: the Applicant is not arguing his entitlement to a post allowance, but the prior question of his eligibility for such an allowance.
2. Even if the Applicant's level of performance had no other relevance except that of establishing his eligibility for a special post allowance, any argument

holding that the discretionary nature of the grant of such an allowance renders superfluous the consideration of the factual question of a staff member's eligibility for the allowance would be untenable in view of the direct link which exists between a discretionary decision of the Secretary-General and the accuracy of the information on which that decision is based.

3. Under the general principles of international administrative law, the Applicant has an obvious legal entitlement to official recognition of his actual level of performance quite independently of the circumstance that such recognition would make him eligible for the grant of a special post allowance.

4. The Applicant has fully satisfied the criterion of subparagraph (b) of Staff Rule 103.11 since 1 January 1965. He has even met the alleged additional criterion, advanced by the Respondent, that the staff member concerned must also be listed in the manning table against the higher-level post.

Whereas the Respondent's principal contentions are:

1. The Applicant had no entitlement to be considered eligible for a special post allowance. No procedural or substantive right with respect to "eligibility" for this allowance can be derived from a rule which vests a discretionary authority in the Secretary-General. There is, in particular, no basis in the rule for the Applicant's contention that, although he has no right to a special post allowance, he is none the less entitled to a finding of eligibility. Measuring the "clearly recognizable" level of the Applicant's responsibilities is no more proper a task for the Tribunal than the exercise of the discretion exceptionally to grant the allowance. Given the established promotion procedure referred to in Staff Rule 104.14, it would be contrary to the text and purpose of Staff Rule 103.11 to establish "eligibility" for a special post allowance which would prejudice the principle of promotion. Contrary to the clearly expressed intention of Staff Rule 103.11, the Applicant seeks, by claiming to be eligible for a special post allowance, the recognition of his ability and performance which he feels has improperly been denied him by virtue of his not having been placed on the promotion register. The Applicant's alleged assumption of P-2 duties, far from being clearly recognizable, was not evidenced by his assignment to a P-2 post on the official manning tables of the Department, or indeed by any undisputed or clear preponderance of opinion. Neither is there any indication that his alleged assignment is temporary, as required by the rule.

2. The Secretary-General's refusal to apply exceptional treatment under Staff Rule 103.11 is not subject to review by the Tribunal.

The Tribunal, having deliberated from 10 to 18 April 1972, now pronounces the following judgement:

I. Under article 2 of its Statute, the Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members, including all pertinent regulations and rules in force at the time of alleged non-observance.

II. The grant of a special post allowance under Staff Rule 103.11 is a matter within the Secretary-General's discretion, to be exercised in exceptional cases, and the Tribunal is not competent to enter into the merits of such decision.

III. The Applicant contends that the grant of a special post allowance was not denied by the Respondent in the exercise of his discretion but that the Respondent did not consider the case at all on the ground that the Applicant had not assumed the responsibilities of a higher level post.

IV. The Respondent claims that the necessary conditions specified in Staff Rule 103.11 have in the case of the Applicant never existed—in particular that the Applicant has not assumed the full duties and responsibilities of a post at a clearly recognizable higher level than his own for a temporary period.

V. In support of his claim the Applicant refers to memoranda and periodic reports by his supervisors and to other documentary evidence. He contends that this documentation proves that he had assumed the full duties and responsibilities of a P-2 post, i.e. of a post clearly recognizable as of a higher level than his own G-5 post, and for a period exceeding six months, as required by Staff Rule 103.11. The Applicant in particular contends that since 1 January 1965 he had assumed duties and responsibilities of a higher level post as outlined in a memorandum dated 14 April 1965 from the Chief of the Housing Section to the Director of the Bureau of Social Affairs, that from 1 August 1965 he began performing the functions of a Special Assistant in the Directorate of the Centre for Housing, Building and Planning, that subsequently he was transferred to fill the post of a Special Assistant vacated by another staff member who had served at the P-2 level, a post for which provision existed in the 1965 budget, and that the Director of the Centre for Housing, Building and Planning had in the budget estimates of the Centre for 1967 shown the Applicant as the incumbent of a P-2/P-1 post in the Office of the Director.

The Applicant also relies on a memorandum dated 10 June 1965 from the Assistant Director of the Bureau of Social Affairs to the Director of that Bureau stating that the Applicant “has for the past several months satisfactorily continued to perform functions of a higher professional level with a degree of responsibility equivalent to that of professional officers at the P-2 and P-3 levels” and on a memorandum dated 27 September 1966 from the Acting Director of the Centre for Housing, Building and Planning to the Chairman of the Appointment and Promotion Committee saying that the Applicant’s “present duties are clearly at the professional level”.

VI. Staff Rule 103.11, paragraph (a) provides that staff members shall be expected to assume temporarily without extra compensation “the duties and responsibilities of higher level posts”. Paragraph (b) provides that a staff member who is called upon to assume “the full duties and responsibilities of a post at a clearly recognizable higher level than his own for a temporary period exceeding six months may, in exceptional cases, be granted a . . . special post allowance”. Paragraph (c) provides that the allowance may be paid immediately on the assumption of the higher duties and responsibilities “in the case of a staff member assigned to serve in a mission or when a staff member in the General Service category is required to serve in a higher level post in the Professional category”.

It follows that for the payment of a special post allowance in exceptional cases, it is not enough that a staff member should have assumed the duties and responsibilities of a higher level post covered by paragraph (a); he must also have complied with the requirements of paragraph (b). If he is to be entitled to

immediate payment of the allowance, he must moreover have complied with the requirements of paragraph (c).

VII. The Respondent contends that "in practice, only where the higher responsibilities are evidenced by assignment on the official manning table of the Department (requiring the approval of others than the Units or supervisors alone) would the higher level be deemed 'clearly recognizable'; such a criterion is clearly within the Secretary-General's discretion to establish and apply".

VIII. The Tribunal notes that the Joint Appeals Board did not find it possible to make a recommendation on the basis of the facts before it and only recommended that an administrative review be undertaken. It is beyond the purview of the Tribunal to make a factual assessment as to whether a staff member has assumed the full duties and responsibilities of a post at a clearly recognizable higher level. The Secretary-General is entitled to establish criteria for deciding such issues. As there was no evidence before the Tribunal that such criteria had been made known through an administrative rule or instruction or in some other official manner, the Tribunal requested additional information from the Respondent as to whether there was any administrative rule, instruction or precedent where the test of assignment on the official manning table had been applied.

In the reply the Respondent stated as follows:

"Office of Personnel advises that practice mentioned in paragraph 17 of Respondent's answer is substantiated by reference to UN budgetary procedure whereby Secretary-General consistently exercises his discretion under Staff Rule 103.11 only in cases where he may effect payment of allowance with funds allocated to post at higher level authorized by official manning table approved in budget by General Assembly. Under budgetary procedure, Secretary-General cannot consider granting allowance attaching to post which does not exist in official manning table. Office of Personnel also advises they are aware of no precedent where higher responsibilities for purposes of allowance were not evidenced by assignment to a post at the higher level authorized in official manning table."

IX. In the view of the Tribunal, the criterion that the assumption of higher responsibilities for the purposes of a special post allowance should be evidenced by assignment to a post at the higher level on the official manning table is a reasonable one and within the authority of the Secretary-General to prescribe. The Tribunal feels, however, that the present litigation might have been avoided if the criterion had been made known to the staff in some official manner.

X. Although the Applicant was proposed by the Centre for Housing, Building and Planning for a P-2/P-1 post in the departmental budget estimates for 1967 and although, as the Tribunal understands, a post at the P-2 level was vacant, the Applicant was never assigned to a higher level post on the official manning table and was at all times shown as G-5 on that table.

XI. As the Applicant's plea of assumption of higher responsibilities is not evidenced by assignment to a post at the higher level on the official manning table, the Applicant fails to meet the requirements of Staff Rule 103.11 as applied by the Respondent.

XII. The Respondent has also argued that the Applicant has not assumed the responsibilities of a higher level post "for a temporary period" as required in Staff Rule 103.11 (b). In view of the decision in paragraph XI above, the Tribunal does not pronounce on the plea.

XIII. As the Applicant's main contention fails, his consequential pleas also fail and are hereby dismissed.

XIV. The application is rejected.

(Signatures)

R. VENKATARAMAN  
President

Suzanne BASTID  
Vice-President

Zenon ROSSIDES  
Member

Roger STEVENS  
Alternate member

Jean HARDY  
Executive Secretary

Geneva, 18 April 1972

---

### Judgement No. 155

(Original: French)

Case No. 155:  
Belaineh

Against: The Secretary-General  
of the United Nations

---

*Request by a former staff member of the United Nations Children's Fund for the rescission of a decision refusing to grant a special post allowance.*

*The facts are not disputed and the Respondent is simply justifying his decision by reference to the discretion which he may exercise in the granting of such allowances.—Staff Rule 103.11.—The Secretary-General was not legally bound to grant a special post allowance to the Applicant.—Claim that the contested decision was motivated by prejudice.—The argument is rejected, as the Applicant has not proved the existence of prejudice.*

*The application is rejected.*

---

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Zenon Rossides; Mr. Vincent Mutuale;

Whereas, on 22 November 1971, Hailu Belaineh, a former local staff member of the Office of the United Nations Children's Fund, hereinafter called UNICEF, at Addis Ababa, Ethiopia, filed an application against a decision not to grant him a special post allowance;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 4 January 1972;

Whereas the Applicant, in the pleas of his application, requests the Tribunal