
ADMINISTRATIVE TRIBUNAL

Judgement No. 495

Case No. 543: CASTELLANOS

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Roger Pinto, President; Mr. Ahmed Osman, Vice-
President; Mr. Francisco A. Forteza;

Whereas, at the request of Andrés Castellanos, a staff member
of the United Nations, the President of the Tribunal, with the
agreement of the Respondent, successively extended to 27 September
1989 and 31 March 1990, the time-limit for the filing of an
application to the Tribunal;

Whereas, on 30 March 1990, the Applicant filed an
application, containing the following pleas:

"II. PLEAS

A. The Applicant respectfully requests the Tribunal:

1. As a preliminary measure, to order the Respondent to produce:
 - (a) The memorandum from the Chairman, Appointment and Promotion Board (APB), to the Secretary-General through the Assistant Secretary-General for Human Resources Management and/or the Under-Secretary-General for Administration and Management conveying the Board's decision to include the Applicant's name on the Promotion Register;
 - (b) The portion of the report of the Appointment and Promotion Board on the 1986 Senior Officer (P-5) Recourse Procedure that concerns its decision to place the Applicant on the 1986 Promotion Register; (c) The memorandum from the Assistant Secretary-General for Human Resources Management and/or the Under-Secretary-General for Administration and Management containing the proposals that the Applicant's name be deleted

from the Promotion Register, and any other correspondence on this subject; and

- (d) The decision of the Secretary-General to delete the Applicant's name from the Promotion Register;
2. Under article 9, paragraph 1 of the Tribunal's Statute:
- (a) To rescind the Respondent's decision to delete the Applicant's name from the 1986 Senior Officer (P-5) Promotion Register, and to order the Respondent to restore the Applicant's name to that Register and to place the recommendation for promotion on his service record;
 - (b) To order the Respondent to find a way to implement the Applicant's promotion to the P-5 level;
 - (c) To fix an appropriate award of compensation for the damage caused to the Applicant's career prospects by the improper actions of the Respondent that deprived the Applicant of the benefit of the regular process by which his promotion would have been implemented from the 1986 Promotion Register. The financial loss may be measured by the difference in the Applicant's net remuneration and pension entitlements at the P-4 level from 1 October 1986 until 26 June 2000 when he reaches age 60 and those that he would have received if he had been promoted to the P-5 level as of 1 October 1986. With respect to both his net remuneration and eventual pension entitlements, the Tribunal may wish to fix the amount of monetary compensation at eighteen months of the Applicant's net salary, which is at present \$4,628.38 per month; and
 - (d) To fix an appropriate award of compensation for the damage caused to the Applicant's professional reputation by the improper actions of the Respondent."

Whereas the Respondent filed his answer on 19 July 1990;

Whereas the Applicant filed written observations on 3 October 1990;

Whereas, on 11 October 1990, the Tribunal put questions to the Respondent and requested the production of certain documents;

Whereas, on 16 October 1990, the Respondent provided answers to the questions put by the Tribunal and submitted the following documents, upon the condition that they be released to the Tribunal only, in order to protect the confidentiality of proceedings before the APB: (a) a memorandum from the Chairman of the APB, to the Secretary-General, through the Under-Secretary-General for

Administration and Management dated 9 June 1987, containing the APB'S recommendations for the 1986 P-5 regular promotion review; (b) a memorandum from the Chairman of the APB, to the Secretary-General, through the Under-Secretary-General for Administration and Management dated 5 January 1988, containing the APB'S recommendations for the 1986 P-5 promotion recourse review; (c) a memorandum dated 27 January 1988, from the Assistant Secretary-General for Human Resources Management to the Under-Secretary-General for Administration and Management relating to the Board's recommendations; and (d) a memorandum dated 31 March 1988, containing the Under-Secretary-General for Administration and Management's response to the Assistant Secretary-General for Human Resources Management;

Whereas, on 19 October 1990, the Tribunal communicated to the Applicant the answers provided by the Respondent to the questions put by the Tribunal and informed him that it would sustain the Respondent's request not to release the confidential documents;

Whereas, on 25 October 1990, the Applicant commented on the Respondent's submissions, filed an additional document and further requested, in particular, the production of the memorandum of 27 January 1988, which the Respondent had refused to release;

Whereas, on 1 November 1990, the Tribunal decided, under article 10, paragraphs 1 and 2 of the Rules of the Tribunal, not to communicate to the Applicant any of the documents provided by the Respondent concerning proceedings before the APB and informed the Applicant that the Tribunal had decided to take into account these documents, not communicated to the Applicant, only to the extent that they were favourable to him;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 19 September 1961, on a short-term appointment as a Clerk, at the G-2 level. On 21 December 1961, he was granted a probationary appointment and on 1 September 1963, a permanent appointment. During the course of his employment with the United Nations, the Applicant was promoted to the P-1 level, on 1 January 1971 and to

the P-2 level, on 1 April 1974, as an Associate Archivist. On 1 February 1976, the Applicant was transferred to the Office of Technical Co-operation of the Department of Economic and Social Affairs as an Associate Programme Management Officer. On 1 April 1978, he was transferred to the Department of Technical Co-operation for Development (DTCD) and was promoted to the P-3 level, as a Programme Management Officer. On 1 June 1981, he was promoted to the P-4 level. On 1 July 1983, he was reassigned, within DTCD, to the Energy Branch, Natural Resources and Energy Division, as an Economic Affairs Officer. On 1 October 1985, he was reassigned to the Country Programming and Evaluation Branch, Policy, Programming and Development Planning Division, DTCD, where he now serves. The Applicant's performance, since his promotion to the P-4 level, has been evaluated in performance evaluation reports that rate his performance as "Outstanding" or "Excellent".

In a memorandum dated 3 February 1986, the then Assistant Secretary-General for Personnel Services, asked all Heads of Departments and Offices to submit their recommendations for promotion for consideration by the Appointment and Promotion Board (APB) and its subsidiary bodies. He noted that the minimum period of service required for promotion to the P-5 level remained at five years and that staff serving at his or her present level since or before 1 September 1981, would be considered to meet the criteria. He requested each Department to forward with the recommendation, an up-to-date and complete staffing table and "specific information" as to whether or not a post would be available within the register to implement the promotion.

On 20 March 1986, the Secretary-General announced to the staff in ST/SGB/217, the immediate implementation of various economy measures required by the financial situation of the Organization, including a recruitment freeze and the suspension of the promotion process for six months. In a memorandum dated 25 March 1986, the then Under-Secretary-General for Administration and Management informed all Heads of Departments and Offices of the modalities for the implementation of these measures. As regards promotions, they would be delayed by six months, i.e., till 1 October 1986, the

effective date of any promotions resulting from the 1986 review. On 19 June 1986, the then Assistant Secretary-General for Personnel Services asked Heads of Departments and Offices to submit their recommendations for promotion by 31 July 1986. According to the statement made by the representative of the Respondent to the Joint Appeals Board (JAB), the staff/management panel which reviewed the internal DTCD recommendations "conducted a thorough review of all staff of the Department"; "five P-5 posts were available for the 1986 promotion and five staff (but not the [Applicant]) were recommended by the panel"; "subsequently, an additional P-5 post became available and the panel convened again, reviewed again and recommended a sixth staff member, again not the [Applicant]"; "the Head of the Department accepted all of the recommendations of the internal panel, and submitted them to the APB as the Department's recommendations".

On 19 February 1987, the Assistant Secretary-General for Human Resources Management (OHRM¹) transmitted to the Chairman of the APB (Chairman of the Board), a set of guidelines for the appointment and promotion bodies entrusted with the 1986 Promotion Review.

On 17 June 1987, the Assistant Secretary-General, OHRM, announced to the staff in information circular ST/IC/87/35, the 1986 Senior Officer (P-5) Promotion Register (1986 P-5 Promotion Register), containing the names of staff at the P-4 level, whom the Secretary-General, having considered the recommendations of the APB, had approved for inclusion in the Register for promotion to the P-5 level. The Applicant's name was not included in the Register.

On 17 July 1987, the Applicant instituted a recourse procedure against the non-inclusion of his name in the Register. In his recourse letter, he noted, regarding the availability of a post for his promotion, that "a P-5 post should be vacated by the promotion to the D-1 level of a colleague in [his] Division who the

¹Successor of the Office of Personnel Services.

Board included on the 1986 D-1 Promotion Register (Mr. Moussa Kaba)" and that "in addition, there is a possibility of using another P-5 vacant post in [his] Division which although earmarked to be cut, has nevertheless remained vacant since 1986."

On 30 September 1987, the Under-Secretary-General, DTCD, replying to an inquiry of 16 September 1987, from the Assistant Secretary-General, OHRM, concerning the availability of posts in the Department, in connection with the 1986 promotion recourse procedure, indicated that the only vacant posts which had not been used for staff members already included in the 1986 Promotion Register, or submitted for filling through the vacancy management system, were at the P-3 and P-4 levels.

In a communication dated 18 December 1987, the Assistant Secretary-General, OHRM, who acted as an ex-officio member of the APB, informed the Under-Secretary-General, DTCD, that the 1986 Promotion Recourse Review was about to be finalized and that the Applicant's name was "likely to be added to the [1986] P-5 Promotion Register". He asked him for his confirmation on an urgent basis that posts were available "in the appropriate units or offices to implement such promotions", should the Applicant's name appear on the Register. In a reply dated 23 December 1987, the Under-Secretary-General, DTCD, stated that there were no vacant posts at the P-5 level in the Department.

According to the statement by the representative of the Respondent before the JAB, on 15 January 1988, 15 staff members of DTCD wrote to the Assistant Secretary-General, OHRM, with copies to the Secretary-General, the Under-Secretary-General for Administration and Management, the Under-Secretary-General for DTCD and the President of the Staff Committee, drawing his attention "to a recent recommendation of the APB which may result in the addition to the 1986 P-5 Promotion Register" of the Applicant's name. They complained that "in view of the circumstances of the case [namely lower seniority and specialized qualifications as compared to other P-4 candidates of the Department] the validity of the Board's decision appears questionable". According to a statement by the representative of the Respondent, this letter was not transmitted to the APB.

In a letter dated 6 April 1988, the Chairman of the Board

advised the Applicant that, notwithstanding the additional information he had submitted in his letter of recourse, the Board had not found that there had been an "omission so significant as to afford grounds for amending its previous decision [not to include him in the 1986 P-5 Promotion Register]". Also, on 6 April 1988, the Assistant Secretary-General, OHRM, announced to the staff in information circular ST/IC/87/35/Add.1 that the Secretary-General, on the recommendation of the APB, had approved the addition of further names of staff to the 1986 P-5 Promotion Register. The Applicant's name was not included in this addendum to the Register.

On 20 May 1988, the Applicant received from the Executive Officer of his Department, copies of the exchange of memoranda of 18 and 23 December 1987, indicating that his name was likely to be added to the 1986 P-5 Promotion Register as a consequence of the recourse procedure. In a letter dated 6 June 1988, to the Chairman of the Board, the Applicant pointed out the contradiction between the content of these memoranda and the Chairman of the Board's letter of 6 April 1988, and asked that the documents be placed before the Board and that he be informed of the Board's conclusion on the matter. Replying on behalf of the Board on 22 June 1988, the Chairman wrote:

"As you may know, the functions of the Board are advisory in nature and its deliberations are considered confidential. Nevertheless, I can confirm to you that notwithstanding any position taken by the Board to recommend or not to recommend your promotion, the final decision was not to include your name in the 1986 P-5 Promotion Register."

Also, on 6 June 1988, the Applicant requested the Secretary-General to review, under staff rule 111.2(a), the decision to deny him the inclusion of his name in the 1986 P-5 Promotion Register on the basis of irregularities and improper procedure by the Administration and the Chairman of the Board. Having received an acknowledgement of his request dated 13 June 1988, but no further response, the Applicant lodged an appeal with the JAB on 12 August 1988. The Board adopted its report on 13 March 1989. Its conclusions and recommendation read as follows:

"Conclusions and Recommendation

37. The Panel unanimously

Finds that the administrative provisions pertaining to the 1986 promotion exercise have been scrupulously adhered to, as far as the requirement of the existence of a vacant post is concerned;

Finds that, while the appellant failed to produce direct evidence that the contested decision was motivated by prejudice or by some other extraneous factor, it cannot refrain from harbouring certain doubts in respect of the requirement of due process;

Finds that as questions of promotion are discretionary with the Secretary-General, as held by the Administrative Tribunal in its Judgement No. 275, Vassiliou [1981], the Secretary-General had full authority to take the contested decision provided his decision was not tainted by prejudice, some other extraneous factor or lack of due process;

Finds that, in the present case, the requirement of due process may not have been fully complied with and considers that the benefit of the doubt should be given to the appellant, who should therefore be compensated.

38. Consequently, the Panel recommends that the appellant be granted an indemnity equivalent to two months' salary.

39. The Panel makes no further recommendation in favour of the appeal."

On 27 March 1989, the Under-Secretary-General for Administration and Management, transmitted to the Applicant a copy of the Board's report and advised him that:

"The Secretary-General, having re-examined your case in the light of the Board's report, has decided to maintain the contested decision. However, in view of the particular circumstances surrounding your case, the Secretary-General has further decided to grant you an ex-gratia payment equivalent to two months' net base salary at the P-4 level and to take no further action on the matter."

On 30 March 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Secretary-General did not respect and properly apply the rules and procedures set forth in staff rule 104.14 (f)(iii)(A) and exceeded his authority in deciding to delete the Applicant's name from the 1986 Senior Officer (P-5) Promotion Register.

2. In deleting the Applicant's name from the Promotion Register established by the APB, before he approved the Register and announced it to the staff, the Secretary-General in effect, changed the recommendations of the Board and usurped its function.

3. The Secretary-General's decision to delete the Applicant's name from the 1986 P-5 Promotion Register was an abuse of discretionary power.

4. In arriving at the contested decision, the Respondent took into account an extraneous factor.

Whereas the Respondent's principal contentions are:

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

2. Availability of posts was an integral part of the 1986 Promotion Review. It was within the authority of the ex-officio member of the APB to ensure that this requirement was met.

3. There is no credible evidence of improper motivation leading to the decision of the APB not to include the Applicant's name in the 1986 P-5 Promotion Register, or in the Secretary-General's acceptance of that Register.

The Tribunal, having deliberated from 11 October to 8 November 1990, now pronounces the following judgement:

I. The Applicant contests the Respondent's decision to delete his name from the 1986 Senior Officer (P-5) Promotion Register (1986 P-5 Promotion Register) prepared by the Appointment and Promotion Board (APB) in 1988, after a successful recourse procedure submitted by the Applicant. The application thus raises the issue of the scope of the authority conferred by the Staff Rules on the

Secretary-General over the Promotion Register once the APB recommendations are submitted to him for approval.

II. Staff rule 104.14(f) describes the function of the APB with regard to promotion in subparagraph (iii) as follows:

"(A) The selection of staff members qualified for promotion. For this purpose, the Board shall normally once a year conduct a comprehensive, grade by grade review of all staff members within its purview. Wherever practicable, it shall develop and maintain promotion registers embodying the results of such a review. These registers shall be established in relation to an estimate of the total number of known and foreseeable vacancies to be filled by promotion at each grade level in the period until the next general review of staff."

III. Staff Rule 104.14(f) plainly specifies that the action of the APB in the field of promotion is only a recommendation to the Secretary-General. Therefore, the Secretary-General enjoys a discretionary power over the recommendations of the APB embodied in the promotion register submitted to him. He is not obliged to accept the recommendations of the APB. He may approve or disapprove them.

IV. But the discretionary power of the Secretary-General in this respect is not absolute. There are certain limitations on it. Thus, in Judgement No. 411, Al-Ali (1988), paragraph III, the Tribunal, while recognizing the principle that promotions are subject to the discretion of the Secretary-General, noted also that:

"... staff members are promoted regularly according to an elaborate process governed by rules and procedures laid down in article 104.14 of the Staff Rules and related Secretariat issuances. These rules and procedures ... also contain safeguards to ensure fairness and objectivity in a process which is vital to the life of a staff member.

The Tribunal considers that these rules and procedures are part of the conditions of service of staff members, and therefore they should be respected, correctly interpreted and properly applied, as long as they are in force."

Moreover, the exercise by the Secretary-General of his

discretionary power to approve or to disapprove the recommendations of the APB must not be tainted by forms of abuse of power (détournement de pouvoir) such as lack of due process, violation of the principle of good faith in dealing with staff members, prejudice or arbitrariness or other extraneous factors which may flaw his decision.

V. Having said this, the Tribunal will examine whether the deletion by the Respondent of the Applicant's name from the 1986 P-5 Promotion Register was done improperly as alleged by the Applicant.

VI. The Tribunal observes first that the modalities followed in case of a decision of approval by the Secretary General of the recommendations of the APB have been the subject of a well-known established practice familiar to staff members. The Secretary-General announces his approval of the recommendations through the Assistant Secretary-General for Human Resources Management (OHRM) in the form of an Information Circular, in which, as in the Information Circular related to this case, the following is stated in the first paragraph:

"The Secretary-General, having considered the recommendations of the Appointment and Promotion Board, has approved the following promotion register for staff members at the First Officer (P-4) level for promotion to the Senior Officer P-5 level."
(Emphasis added)

VII. In the present case, the Applicant discovered, almost by accident, that the APB, as will be seen below, had sustained his recourse, and the Applicant now challenges the validity of the Secretary-General's disapproval of the APB recommendation for his promotion to the P-5 level. Accordingly, the Tribunal will review the steps taken related to the inclusion of the Applicant's name in the 1986 P-5 Promotion Register by the APB and to the subsequent deletion of his name by the Secretary-General in order to see whether any impropriety was committed.

VIII. The Tribunal notes the following:

1. The Applicant's Department did not recommend him for promotion to the P-5 level. But in a memorandum dated 7 April 1987, to the Chairman of the APB (Chairman of the Board), the Applicant asked that his promotion be considered and given proper attention.

2. On 17 June 1987, the 1986 P-5 Promotion Register was issued, after having been approved by the Secretary-General, but the Applicant's name did not appear in the Register.

3. On 17 July 1987, the Applicant availed himself of the recourse procedure before the APB. In his recourse, he expressed in detail his qualifications and performance at higher levels and also addressed the matter of post availability by pointing out that "a P-5 post should be vacated by the promotion to the D-1 level of a colleague in [his] Division who the Board included on the 1986 D-1 Promotion Register [Mr. Moussa Kaba]". On 6 April 1988, the Applicant was notified by the Chairman of the Board that his recourse was unsuccessful. In his letter, the Chairman of the Board stated the following:

(a) The Applicant's recourse had been placed before the APB, which gave it full and careful consideration;

(b) Notwithstanding additional information presented, the Board's re-examination of the Applicant's case did not reveal that there had been an omission so significant as to afford grounds for amending its previous decision.

IX. In fact, this letter of 6 April 1988, from the Chairman of the Board, did not accurately describe what had actually occurred. As admitted by the Respondent, the Applicant's recourse to the APB of 17 July 1987, was successful. The APB had found merit in the Applicant's recourse and had added his name to the 1986 P-5 Promotion Register recommendation to the Secretary-General for approval. In the Tribunal's view, the recourse procedure before the APB is, for obvious reasons, an important safeguard in connection with a staff member's right to be considered fairly for promotion. Not revealing to the Applicant the truth about the fate of his recourse was a serious irregularity, detrimental to the Applicant's right to seek proper redress.

X. On 20 May 1988, the Applicant received from the Executive Officer of his Department, copies of an exchange of memoranda of 18 and 23 December 1987, between the Assistant Secretary-General, OHRM, an ex-officio member of the APB and the Head of the Applicant's Department, indicating that his name was likely to be added to the 1986 P-5 Promotion Register as a consequence of the recourse procedure. In a letter dated 6 June 1988, to the Chairman of the Board, the Applicant indicated his belief that there was a contradiction between the contents of these memoranda and the Chairman of the Board's letter of 6 April 1988. The Applicant asked that these documents be placed before the APB and that he be informed of the APB's conclusion on the matter. Replying on behalf of the APB on 22 June 1988, the Chairman of the Board stated:

"As you may know, the functions of the Board are advisory in nature and its deliberations are considered confidential. Nevertheless, I can confirm to you that notwithstanding any position taken by the Board to recommend or not to recommend your promotion, the final decision was not to include your name in the 1986 P-5 Promotion Register".

XI. This answer also involves a serious irregularity. The Chairman of the Board, having another opportunity to reveal to the Applicant the true fate of his recourse, failed to do so. The Chairman of the Board did more than merely invoke the privilege of confidentiality. His words tend to create the impression that the Applicant's recourse failed at the level of the APB. The Chairman of the Board knew that it was the Respondent who had deleted the Applicant's name from the 1986 P-5 Promotion Register after it had been placed there by the APB. The language of the above communication, in the view of the Tribunal, does not satisfy the principle of good faith which should govern the relationship between the Administration and members of the staff.

XII. With regard to the information received by the Applicant that his name was likely to be added to the 1986 P-5 Promotion Register and the final decision not to include his name therein, the

Respondent gave the following explanation:

The APB, without ever rechecking the post availability situation with the Department, had recommended the addition of two DTCD staff members to the 1986 P-5 Promotion Register, the Applicant and one other (who submitted to the Joint Appeals Board (JAB) an application on the same issue). The Assistant Secretary-General, OHRM, as ex officio member of the APB, on 18 December 1987, duly rechecked with DTCD and was informed that no posts were available for these staff members. Given this situation, the Secretary-General did not accept the APB recommendation as regards the Applicant, since the availability of a post was an essential requirement with respect to the promotion process. Therefore, the Respondent justifies his non-acceptance of the recommendation of the APB for a specific reason, the non-availability of a P-5 post.

XIII. The Applicant claims, on his part, that this reason invoked by the Respondent for disapproving his inclusion in the 1986 P-5 Promotion Register was incorrect. He says that there was a foreseeable P-5 vacancy within the Applicant's Department in the 1986 Register. The Tribunal notes in this respect that the 1986 Principal Officer (D-1) Promotion Register, announced in an Information Circular dated 17 June 1987, contained the name of a staff member in the Applicant's Department, then at the P-5 level, Mr. Moussa Kaba. The expected promotion of Mr. Kaba would, therefore, have created a vacancy for the Applicant's promotion, and the earliest date for implementation of promotions for pay purposes from the D-1 Register was 1 October 1986. The Applicant drew the attention of the APB to this foreseeable vacancy in his recourse memorandum to the APB of 17 July 1987.

XIV. Hence, it is reasonable to believe that, when the APB added the name of the Applicant to the 1986 P-5 Promotion Register, it did so on the basis of that foreseeable P-5 vacancy. Since the APB found merit in the Applicant's recourse, it follows that the APB considered him eligible for promotion. The inclusion of his name in the recommended 1986 P-5 Promotion Register was therefore a proper

and valid APB action.

XV. The Tribunal finds still another irregularity in the process of consideration of the Applicant for promotion. When the Assistant Secretary-General, OHRM, wrote his memorandum of 18 December 1987, to the Under-Secretary-General, DTCD, inquiring about the existence of a P-5 post, he mentioned expressly the name of the Applicant as likely to be added to the 1986 P-5 Promotion Register. This disclosure of the Applicant's name in that communication improperly breached the confidentiality of the APB proceedings.

XVI. The Applicant further claims that an extraneous factor was taken into account in arriving at the contested decision. The Applicant alleges in this respect that a memorandum dated 15 January 1988, from 15 DTCD staff members opposing his promotion, which was sent to the Assistant Secretary-General, OHRM, with copies to the Secretary-General, the Under-Secretary-General for Administration and Management, the Under-Secretary-General, DTCD, and the President of the Staff Committee, improperly influenced the contested decision.

XVII. The Tribunal finds, in agreement with the Respondent, that this communication could not have adversely affected the deliberations of the APB, because the APB recommended inclusion of the Applicant's name in the Register. However, the Tribunal is not convinced, on the basis of the evidence before it, that the 15 January 1988 memorandum played no part in the decision by the Secretary-General to delete the Applicant's name from the Register. Yet the Applicant was not given, at the time, any opportunity to reply to the 15 January 1988 memorandum. The Tribunal considers that the handling by the Administration of this communication containing adverse material against the Applicant, was not proper.

XVIII. The Tribunal shares the view of the JAB that requirements of due process were not complied with in this case for the following reasons:

1. There was a regrettable breach of confidentiality in the proceedings of the APB.

2. The memorandum of 15 January 1988 had not been seen by or been notified to the Applicant.

3. The evidence does not establish that the memorandum was given no weight in the decision to delete the Applicant's name from the 1986 P-5 Promotion Register.

XIX. There are in addition to these violations of due process, the other irregularities mentioned above. Considering them and the non-compliance with due process, the Tribunal considers that the totality of what occurred in this case engages the responsibility of the Respondent and entails compensation for all of the injury sustained by the Applicant. The Tribunal fixes this compensation at the amount of US\$20,000. This amount shall be in addition to the compensation paid to the Applicant as a result of the Secretary-General's decision on the recommendation of the JAB.

XX. Since the Tribunal has concluded that the Secretary-General's exercise of discretion in disapproving the APB recommendation for the Applicant's promotion was flawed for the various reasons discussed above, the Tribunal trusts that the Applicant will now receive from the Respondent the full and fair consideration to which he is clearly entitled for promotion, at the earliest possible date, to a vacant P-5 post for which he is qualified, particularly in view of the unfair treatment to which he was subjected.

XXI. For all the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant, in addition to the compensation paid to him as a result of the Secretary-General's decision on the recommendation of the JAB, the amount of US\$20,000.

XXII. All other pleas are rejected.
(Signatures)

Roger PINTO
President

Ahmed OSMAN
Vice-President

Francisco A. FORTEZA
Member

New York, 8 November 1990

R. Maria VICIEN-MILBURN
Executive Secretary