



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1338

Case No. 1420

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Mr. Dayendra Sena Wijewardane, Second Vice-President; Mr. Goh Joon Seng.

Whereas, on 20 October 2004 and on 30 March 2005, a staff member of the United Nations, filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, resubmitted his Application, which was received by the Tribunal on 18 April 2005, requesting the Tribunal:

- “(a) To order his promotion to the D-1 level with retroactive payment of salary and other benefits;
- (b) To award him unspecified damages as compensation for hardship and injury to himself, his family and his personal property;
- (c) To order the condemnation of the actions taken by the [Economic Commission for Africa (ECA)] Administration as well as the [Joint Appeals Board (JAB)] for the actions taken in respect of the Applicant and his appeal; and,
- (d) To order that the Secretary-General conduct an investigation in order to examine violations of managerial authority at ... ECA.”

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 31 October 2005 and once thereafter until 30 November 2005;

Whereas the Respondent filed his Answer on 30 November 2005;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

“Employment history

... The [Applicant] joined the Organization on 14 October 1982 on a 2-year fixed-term appointment (...) at the P-3 level with the functional title of Economic Affairs Officer in the Agricultural Institutions and Services Section, ECA/FAO Agriculture Division of ECA in Addis Ababa. ... He was promoted to P-4 effective 1 April 1985. [His appointment was further] extended ... through 31 December 1989[and, on] ... 1 March 1990, [he] was granted a permanent appointment. Effective 1 July 1992, the [Applicant] was promoted to P-5 ... [and from] 1 November 1995 to 31 December 1996, the [Applicant] served as Officer-in-Charge (OiC) of the Agriculture Division and was granted [a] special post allowance (SPA) to the D-1 level ... Effective 8 March 1997, the [Applicant] was reassigned to Yaoundé as [OiC] of the [Central African Subregional Development Centre (SRDC-CA)]. Effective 9 June 1997, the [Applicant] was granted [an] SPA to D-1. Effective 26 August 1999, the [Applicant] was reassigned as Chief, Food Security and Sustainable Development Division (FSSDD)/ECA, Addis Ababa. ...

Summary of the facts

... In a letter dated 10 May 1999, [the] Executive Secretary, ECA, advised the [Applicant] that in view of the security situation in SRDC in Yaoundé, (Cameroon), ‘I wish to confirm my decision to reassign you back to Addis Ababa, which I conveyed to you in our telephone conversation a few weeks ago’. [The Executive Secretary, ECA] continued that, ‘[a]s you recall, we did agree that this would be in the best interest of you and your family. I therefore expect you to relocate back to Addis Ababa as soon as possible, in any case no later than mid July 1999.’ In the same letter, [the Executive Secretary] expressed his ‘profound gratitude and appreciation for the leadership that [the Applicant] had provided for the work of the SRDC’ ... Effective 29 July 1999, [the Executive Secretary, ECA] designated [someone else] as OiC, SRDC to replace the Appellant.

... On 8 October 1999, [the Executive Secretary, ECA], wrote a letter to the [Applicant] under the heading: ‘Your performance as [OiC] of ...SRDC-CA’. By this letter, the Executive Secretary informed the [Applicant that] ... his decision to relocate [him] to Addis Ababa ... was taken beyond considerations of personal safety and security. According to the Executive Secretary, the [Applicant] had demonstrated poor judgement in the exercise of his functions as OiC of the Centre. ...

...

... According to the [Applicant], he had applied for the vacancy of the D-1 post to head the SRDC-CA office. The vacancy was re-advertised later and the [Applicant] re-submitted his candidature for this post. The [Applicant] affirms that he was not informed that he did not qualify for that post or that the Departmental Panel Review (DRP) had recommended another candidate. ...”

According to the Applicant, on 6 December 1999, he filed with the Secretary-General a request for administrative review of a number of issues, including the decision to transfer him from Yaoundé back to Addis Ababa; investigation of the accusations made by the Executive Secretary, ECA, contained in the letter of 8 October 1999; and, the handling by ECA of the recruitment/promotion to the post of Chief SRDC-CA.

On 4 May 2000, the Applicant lodged an appeal with the JAB in New York. The JAB adopted its report on 8 July 2004. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

17. The Panel first considered the preliminary issues of competence and receivability. The Panel found itself competent to consider and recommend on this case. ...

18. The Panel, having taken note of the great volume of documentation submitted by the Appellant, observed that its task would have been rendered less burdensome had the Appellant made an effort to submit succinct and focused presentations.

19. The Panel then considered the contention made by the Appellant that the letter dated 8 October 1999 from the Executive Secretary of ECA addressed to [him] was uncalled for and damaged the [his] career. The Panel noted from the records, that the contested letter addressed to the Appellant was copied to ... the staff member's file. In this regard, the Panel recalled administrative instruction ST/AI/292 dated 15 July 1982 on 'Filing of adverse material in Personnel Records'.

...

22. The Panel ... found two procedural errors with regard to the letter of 8 October 1999. First, the contested letter was copied to the staff member's file, on the same date, 8 October 1999, depriving the Appellant of his right to have an opportunity to make any comments thereon. Second, the contested letter contained allegations of a formal complaint made by the Government of France against the Appellant. Despite the request made by the Appellant to have copies of the communications between the Executive Secretary of ECA and the Government of France on the allegations brought against him, he did not receive such copies. The Panel was of the view that the Appellant's due process rights were thus violated as the Appellant was deprived of the opportunity to comment on the allegations made against him and the letter was filed without meeting all the necessary conditions required under administrative instruction ST/AI/292.

23. The Panel turned to consider the contention made by the Appellant that the management of ECA failed to react in time to evacuate him from Yaoundé and that it also failed to react appropriately to the alleged false allegations and alleged defamation by a representative of the host country, Cameroon, thus compromising his integrity, dignity and career. The Panel noted that the Executive-Secretary of ECA did request the Appellant to evacuate from Yaoundé as far back as 10 May 1999. Although the adverse security reports made by the Appellant were never confirmed by any of the official bodies, the Management of ECA nevertheless recalled the Appellant from Yaoundé, after he began to raise concerns in his reports about his own safety and that of his family in Yaoundé. The Panel agreed with the Respondent's contention that the events that occurred in Yaoundé prior to the Appellant's recall from that duty station were not attributable to any decisions, actions or inactions of the ECA Administration.

...

27. With regard to the contention made by the Appellant that he merited and deserved promotion at the Principal level (D-1), the Panel noted that recourse procedures were available to the Appellant within ECA that would ensure due process with respect to this plea. From the records the Panel found no evidence to support the request made by the Appellant to recommend granting him promotion to the Principal Officer level (D-1) as of July 1997. Furthermore, the Panel did not find in the file any evidence indicating that the recruitment process for the D-1 post, Chief SRDC-CA was undertaken arbitrarily or tainted by extraneous factors. ... The Panel ... was of the view that, in accordance with staff regulation 1.2 (c), the Executive Secretary of ECA had the authority to reassign the Appellant to Addis Ababa, bearing in mind the needs of the Organization and the particular circumstances of the Appellant at that time.

Conclusion and recommendation

28. In light of the foregoing, the Panel *unanimously agrees* that the refusal to remove a copy of the letter dated 8 October 1999 from the Appellant's official status file was a violation of administrative instruction ST/AI/292 ... The Panel also *unanimously agrees* that such letter constituted adverse material within the broad meaning of paragraph 2 of administrative instruction ST/AI/292. The Panel further *unanimously agrees* that this violation of his due process rights caused the Appellant damage for which he should be compensated.

29. However, the Panel also *unanimously agrees* that the decision taken by the Executive Secretary of ECA to remove the Appellant from the post as Acting Chief of SRDC-CA and to reassign him to Addis Ababa was not motivated by prejudice or by any other extraneous factor and was taken in accordance of staff regulation 1.2 (c). The Panel further *unanimously agrees* that the Appellant failed to submit evidence to substantiate his claim of denial of full and fair consideration for promotion.

30. The Panel *unanimously recommends* that: a) the letter dated 8 October 1999 be removed from the Appellant's official status file; b) the Administration of ECA, within six months, confirm to the Appellant in writing that it had removed the contested letter; and, c) that for the denial of his due process rights the Appellant be granted a compensation in the amount of US \$ 5,000 ...”

On 17 February 2005, the OiC, Department of Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB's findings and conclusions and had decided to accept the JAB's recommendations.

Thereafter, the Applicant filed the above-referenced Application with the Tribunal..

Whereas the Applicant's principal contentions are:

1. The decision not to promote him to the post of Chief, SDRC-CA, was tainted by prejudice.
2. The JAB failed to give his case “fullest regard” and did not act in good faith.
3. There was a significant delay in the Applicant's appeal before the JAB that caused him further injury.

Whereas the Respondent's principal contentions are:

1. The Applicant was given full and fair consideration for promotion to the position of Chief, SDRC-CA.
2. The decision of the Executive Secretary, ECA, to reassign the Applicant from Yaoundé to Addis Ababa was within his discretion.
3. The Respondent has remedied the procedural irregularities identified by the JAB and has adequately compensated the Applicant.

The Tribunal, having deliberated from 19 July to 27 July 2007, now pronounces the following Judgement:

I. The Applicant started his career in the United Nations in October 1982 at the P-3 level on a fixed-term appointment as an Economic Affairs Officer in the Agricultural Division, ECA. By 1 March 1990, he had secured a permanent appointment as a Senior Economics Affairs Officer at the P-5 level and, by the end of 1995, his career progression had led him to encumber a D-1 post as the OiC of the Agricultural Division, for which he received an SPA. In March 1997, he was reassigned to Yaoundé, Cameroon, as OiC of the SDRC-CA. This latter position was also at the D-1 level and he was granted an SPA for the two-year period from June 1997 to August 1999. His substantive grade level remained P-5 but all the indications were that the Applicant was considered a valuable staff member performing well in the Organization which he had been serving for 18 years. Indeed, this is evidenced by

his performance evaluation for the years 1996 and 1997, where his performance at the P-5 level was rated by his immediate supervisor, the Executive Secretary of ECA, as “very good” and the Executive Secretary made several appreciative remarks. The Applicant draws the attention of the Tribunal to these comments, as he is understandably proud of his contribution at this stage.

II. There is, however, another side to this picture of normality and progression as it emerges from the narrative above. On 26 August 1999, the Applicant was transferred back to the ECA headquarters in Addis Ababa as Chief, Food Security and Sustainable Development Division. This was also a post classified at the D-1 level but the Applicant was informed that he would occupy it at his then current grade and level (P-5, step 11). In July 1998, the post which the Applicant then occupied (Chief, SRDC-CA) had been advertised and the Applicant and a senior official of the Cameroon government became contenders for the vacancy. The Applicant was the unanimous nominee of the Departmental Review Panel for the post. It is clear that considerable tensions arose in Yaoundé over the filling of this post, giving rise to extensive controversy outside of the Organization itself. It would not be inaccurate to observe that much of it was focused on the Applicant who, as the Acting Chief, SRDC-CA, was in a sense “centre stage” in all the events. Indeed, it is clear that serious security considerations also arose both for him and his family. These events seem to have led to the Executive Secretary’s decision to reassign the Applicant back from Yaoundé to Addis Ababa in August 1999.

III. This chapter in the story is documented by the communication which the Executive Secretary addressed to the Applicant on 10 May 1999, which referred to “several conversations” which had taken place between the Applicant, the Deputy Executive Secretary and himself concerning the “situation in the SRDC in Yaoundé”, and went on to confirm the decision which had been made to reassign the Applicant to Addis Ababa, communicated orally to the Applicant some weeks earlier. The letter states “you will recall we did agree that this would be in the best interests of you and your family” and ends with the sentence “I would like to take this opportunity to express my profound gratitude and appreciation for the leadership that you have provided for the work of SRDC”. The Tribunal quotes this because the Applicant has repeatedly drawn attention to the fact that this remark and his above-referenced performance evaluations are inconsistent with the Executive Secretary’s subsequent conduct, and go to establish prejudice towards the Applicant.

IV. In July 1999, the Applicant wrote several memoranda to the senior management of ECA eliciting a response dated 8 October from the Executive Secretary. Much of the case which the Applicant has brought against the Respondent revolves around this letter which illustrates that the decision to reassign the Applicant to Addis Ababa was more complex than the brief letter of 10 May would have indicated. In October, the Executive Secretary acknowledged that the decision to relieve the Applicant of his responsibilities in Yaoundé went “beyond considerations of personal safety and security”, and that the Applicant had, in fact, “demonstrated poor judgment in the exercise of his functions as [OIC] of the Centre”, resulting in what the management clearly considered as having serious consequences for ECA. The criticisms of the Applicant are, on the whole, grave and the Applicant

strenuously objects to the adverse comments which he claims are based on “general assertions, not backed with hard and verifiable facts and characterized by a lack of due process, procedural and substantive errors and other extraneous factors”. The letter of 8 October 1999 was addressed to the Applicant and placed in his Official Status file. On 6 December 1999 the Applicant requested (i) review of the administrative decision to move him to Addis Ababa; (ii) an investigation of the accusations contained in the letter dated 8 October 1999; (iii) an investigation into the appointment and promotion exercise for the post of Chief, SRDC-CA; and, (iv) an investigation of ECA’s management for its responsibilities in the safety and security of SRDC staff including himself and his family.

V. Suffice it to note at this point that the Applicant asked specifically for the removal of the letter of 8 October 1999 from his Official Status file, and this issue has been dealt with exhaustively in the processes that followed. There were, however, a number of requests which do not come within the purview of this appeal. For example, requests for “investigations” which he wants conducted into various matters are for the Organization itself to decide on and do not pertain to staff entitlements per Judgement No. 1271 (2005). A staff member has no right to insist on the Administration initiating any investigation, although its failure to do so when requested could, in appropriate circumstances, give rise to inferences upon which a staff member may rely for purposes of advancing his particular claim. In asking, in December 1999, for administrative review of the decision to reassign him from Yaoundé to Addis Ababa - which decision was made in May, and implemented on 26 August - the Applicant is out of time. Nonetheless, in the JAB proceedings, the basis for the decision to reassign the Applicant was dealt with as a pertinent response to the appeal he had brought and, for that reason, the Tribunal will also address this issue later in this Judgement. It is, perhaps, pertinent also to point out that the letter of 6 December is characteristically of a somewhat rambling nature and that the Applicant did not clearly state that he had not been given “full and fair consideration” for the post in contention at the time, namely that of Chief, SRDC-CA. It is clear, however, that subsequent proceedings were carried out on that basis.

VI. Before dealing with the joinder of issues in the JAB, the Tribunal wished to make a general observation on the flawed manner in which the Applicant has focused his grievances, and pursued his appeal. The Applicant confronted the JAB with a statement of appeal of some 835 pages, one video and other photographic material. Whilst no applicant is precluded from adducing relevant evidence he wishes to place in support of his case, the Tribunal wishes to note that the cogency of a case is served by the quality and relevance of the evidence, rather than by the quantity of material attached to an application. (See Judgement No. 1235 (2005).) In his appeal to the Tribunal, the Applicant complains that the muted remarks of the JAB that “its task would have been rendered less burdensome had he made an effort to submit a succinct and focused presentation” was, to quote the Applicant, “uncalled for”. The Tribunal wishes to underscore the obligation of all Applicants to clearly and concisely formulate their claims in respect of perceived rights under the Staff Regulations and Rules which have been allegedly violated. This obligation is not served by a wide spectrum of allegedly evidentiary, or quasi-evidentiary, material including general journalistic articles, which help to create impressions but do not, in fact, advance the Applicant’s case. In fact, it may serve to damage an applicant’s case to the extent that he or she then may not focus

on the precise burden of proof which must be satisfied. To an extent, this is the situation of the Applicant, who has painted broad pictures of dissatisfaction in the Organization, hints at questionable management practices, but falls short of clearly and concisely presenting his own case, although he succeeds in raising considerable doubts whether he was, indeed, fairly treated. It is, indeed, surprising, for example, that he seeks in these proceedings to press for compensation for damage to his household goods. The Tribunal would expect that on such relatively simple matters of procedure, a working Administration would have guided a staff member on the correct track. This case illustrates also the need for legal guidance for staff, even at a fairly senior level, in pursuing what they deem to be their rights, if for no other reason than to save organizational costs.

VII. From the considerable material brought into the record in this case, it is clear that the Applicant had broad policy differences with the senior management of ECA and that he disagreed with the style of management of the Executive Secretary and even with the way the mission of ECA was being implemented. Furthermore, such disagreements may have had some legitimacy. The picture that emerges is one in which both sides seem not to have hesitated to use such weaponry each could muster against the other. The Applicant claims that the management sided with a faction in the host government of the SDRC to make his security a “negotiable” issue and that it initiated an audit into his work in Yaoundé to *post facto* find support for the material used in the letter of 8 October 1999. The Applicant has not himself hesitated to use, for example, commendations received from Heads of State to demonstrate how good, indeed, outstanding, his performance had been, or to use journalistic material to establish that there was general discontent with the way ECA was being run at the time. The Tribunal finds such material only marginally relevant, if at all. The question is, as the Applicant himself puts it, adopting the language of this Tribunal, what “hard and verifiable facts” he has adduced to establish that the decision to transfer him from Yaoundé back to Addis Ababa was made in bad faith and with prejudice against him and constituted a form of harassment.

There are no doubts that, whatever the reasons, the Applicant’s presence in Yaoundé had become controversial at the time and that his safety and security had, in fact, become an issue. Therefore, there were justified reasons for the Executive Secretary to exercise the undoubted discretion vested in him in making a decision to transfer him under staff regulation 1.2. Concerning discretion, the Tribunal has held as follows in Judgement No. 1181, *Abu Kashef* (2004):

“III. In addressing the issue of whether the Respondent’s decision to terminate was properly within the exercise of the Respondent’s managerial discretion, the Tribunal has previously held that the Commissioner-General has the discretion to make managerial decisions with regard to staff members. (See Judgements No. 681, *Maqari* (1994); No. 682, *Dabit* (1994); and, No. 709, *Nabhan* (1995).) This managerial discretion, however, is not unfettered, and “[a]dministrative decisions affecting a staff member must not run counter to certain concepts fundamental to the Organization. They must not be improperly motivated, they must not violate due process, they must not be arbitrary, taken in bad faith or discriminatory”. (See Judgement No. 1134, *Gomes* (2003), citing Judgement No. 981, *Masri* (2000).) Where a staff member seeks to vitiate the Respondent’s decision on the basis of prejudice, improper motive or other extraneous factors, the burden of proving such prejudice or improper motive is on the staff member, who must adduce convincing evidence. (See Judgment No. 834, *Kumar* (1997).) Thus, the

Tribunal must consider whether the Respondent's exercise of discretion was vitiated by any violation of due process or by any arbitrariness, bad faith, discrimination or other such extraneous factors."

If the Applicant's claim is that the management of ECA itself instigated the security situation in Yaoundé to make it, as he alleges, a "negotiable issue" he has failed to prove that. In this regard, the Tribunal recalls the following findings in Judgement No. 1212, *Stouffs* (2004):

"XII. ... [T]he burden of proving that abuse of authority, bias, arbitrariness or other improper motivation or extraneous factors prompted the decision, lies with the Applicant. One may cite, as an example, the case of *Fagan* (Judgement No. 554 (1992)), in which the Tribunal ruled as follows:

'Accordingly, an Applicant alleging that a discretionary administrative decision is tainted by prejudice or improper motivation must adduce convincing evidence. The Tribunal concurs with the JAB's conclusion that the Applicant has not discharged the burden of proving discrimination, unfairness or improper motivation ...' (...).

The Tribunal notes that the Applicant has not adduced evidence in support of her contention of abuse of authority, arbitrariness of the decision or any other improper motivation in the case.

XIII. Lastly, the Applicant has not successfully discharged the burden of proving improper action on the part of the Administration."

In the instant case, the Tribunal agrees with the conclusion arrived at by the JAB on this point. The Applicant did not himself in May 1999 counter the decision to the extent that it was ostensibly based at the time on the safety and security of the Applicant and his family. Indeed, in July 1999, he thanked the Executive Secretary on behalf of his family for having taken their interests into account. Later, the Executive Secretary admitted in writing that the decision was more "complex" and, clearly, there were additional reasons motivating him. Such reason in itself, even without justifications, would not, however, in the view of the Tribunal, be sufficient to vitiate the decision, or to demonstrate that it was made in bad faith. Furthermore, the fact that the Executive Secretary placed on record his appreciation of the work that the Applicant had done whilst he was in Yaoundé, and also that he did not refrain from assigning substantive responsibilities to the Applicant subsequent to his transfer, indicates to the Tribunal a certain open-mindedness as far as the Applicant was concerned. The JAB's conclusion, which has been accepted by the Secretary General, was that the discretionary authority of the Executive Secretary under staff regulation 1.2 was properly exercised. For the reasons set out by the Tribunal, it finds that the JAB's conclusion was correct and the Applicant's plea that the decision to transfer him from the post of Chief, SRDC-CA, was null and void, must therefore fail.

VIII. The Tribunal now comes to the letter of 8 October 1999 and the findings of the JAB on this matter. The Applicant asked for the removal of the letter on 6 December claiming, in effect, that it was an inappropriate "free format evaluation" of his performance. The JAB concluded that it was contrary to the provisions of ST/AI/292 and that placing it in his Official Status file was a violation of his due process rights. The Board recommended its removal and requested the ECA Administration to confirm in writing to the Applicant that it had been removed within six months from 8 July 2004, the date of the report. This recommendation was finally accepted by the

Secretary General in February 2005, but regrettably, to date, the required administrative action has not been taken by the Respondent, as evidenced by the fact that the file submitted to this Tribunal for its purposes still contains the letter. Nor, indeed, is there any evidence that performance evaluations were done for the years 1998 or 1999 to legitimize the judgements and assessments made by the Executive Secretary as regards the performance of the Applicant for these periods which would enable him to exercise his rights of rebuttal.

IX. The Applicant has claimed that he was not fully and fairly considered for the specific vacancy for the post of Chief, SRDC-CA, which was advertised in July 1998 and later re-advertised in 2001. The evidence is sparse but what little there is indicates that his candidature was taken into account although, of course, he was not appointed. Given the circumstances in which the Applicant had been reassigned to Addis Ababa in August 1999, the Tribunal is not surprised that he was not selected.

X. However, the Applicant further claims that, as a result of this letter being in his Official Status file from 1999 onwards, he suffered serious professional, moral and material damage. In essence, he asserts that there was a breach of his due process rights and the Administration's attitude reflected an arbitrary and antagonistic approach towards him. He claims that he has been consistently over-looked for promotion, "over a dozen times due to the existence of the letter of 8 October 1999". He lists a series of vacancies for which he should have been considered. Whilst the Applicant fails to provide further specific details relating to these opportunities, there can be no doubt that with this adverse letter from the Executive Secretary as a part of his Official Status file, it would have been unrealistic for him to anticipate serious consideration for promotion, at least until 2004, when the JAB issued its report. The Respondent has also noticeably failed to make any systematic rebuttal of this contention, and baldly relies on the lack of a legal obligation to promote the Applicant which, of course, is correct but not relevant. The Tribunal has no doubt that the Applicant's career progression was prejudiced for a period of time. As it has held in Judgement No. 1092, *El-Hudhud* (2002):

"Had there been ... complaints, they should have been made against him in the ordinary way so that he would have had an opportunity of refuting or explaining them. If his performance was unsatisfactory, or less than satisfactory, this again should have been disclosed by his performance reports so that he would have had the opportunity to rebut such rating. ... It seems to the Tribunal that, when the Administration establishes and operates a formal performance evaluation system, it must take proper cognizance of its findings when deciding the fate of its staff members and cannot substitute for its results a contradictory assessment made behind closed doors, leaving a staff member in the dark as to the reasoning or grounds giving rise to such findings and leaving the staff member without any opportunity of disputing the basis of those adverse findings." (See also Judgement No. 1292 (2006).)

The Tribunal notes that the Applicant was eventually promoted in 2007.

XI. The JAB granted the Applicant US\$ 5,000 for the violation of his due process rights. The Tribunal considers this inadequate in the circumstances of this case. In the view of the Tribunal, the Applicant deserves to be more fully compensated for the material and moral damage he suffered on account of a persistent violation of his rights. The Administration failed to ensure that his performance evaluation was properly done for the years 1998

and 1999 and thereby denied him the opportunity to exercise his right of rebuttal. Despite his timely request, and the recommendation which the JAB made and its acceptance by the Secretary-General, the prejudicial letter of 8 October 1999 has not been withdrawn to date, albeit it appears to have lost its impact with the passage of time and change of management.

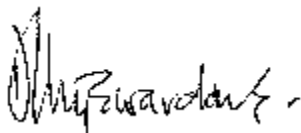
XII. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay, in addition to amounts paid by the Secretary-General pursuant the JAB recommendation, to the Applicant three months' net base salary for the violation of his due process rights stemming from the failure to perform a valid evaluation, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected;
2. Orders the Respondent to pay to the Applicant two months' net base salary for the damages stemming from the failure to perform the necessary administrative action concerning the letter in his Official Status file, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected;
3. Orders the removal of the letter of 8 October 1999 from the Applicant's Official Status file, or fixes the compensation to be paid to the Applicant at US \$ 5,000, if the Secretary-General decides within 90 days of the notification of the Judgement, in the interest of the United Nations, not to remove the letter; and,
4. Rejects all other pleas.

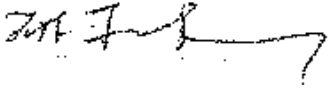
(Signatures)



Jacqueline R. **Scott**
First Vice-President

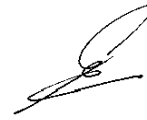


Dayendra Sena **Wijewardane**
Second Vice-President



Goh Joon Seng
Member

Geneva, 27 July 2007



Maritza Struyvenberg
Executive Secretary