

assuming that the records and files of different offices in New York, Geneva and Ismailia/Cairo were not readily available in any central place, and taking into account the troubled times in the Ismailia/Cairo area, the Tribunal finds no justification in this case for such a long and unconscionable delay as five years: the administrative details were comparatively simple and there has been no explanation for nearly twenty-five months delay between the conclusion of the Joint Appeals Board's deliberations and its final report. The Tribunal has had several occasions to emphasize that an inordinate delay of this nature not only adversely affects the administration of justice, but on occasions can inflict unnecessary anxiety and suffering to an Applicant. In this case, the Tribunal takes the view that because of the dilatory and casual way in which the Applicant's case was dealt with, she is entitled to some compensation. The Tribunal assesses this compensation at one thousand U.S. dollars and orders the Respondent to pay this amount to the Applicant.

XI. Subject to this award of \$US 1,000, the application is rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Herbert REIS
Member

New York, 1 November 1985

Luis de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 354

(Original: English)

Case No. 347:
Khan

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

Request by a staff member of the United Nations for an order that his post should be reclassified retroactively and for indemnity for the salary lost.—Request for preliminary measures: production of certain documents.

Conclusion of the Joint Appeals Board that it is not competent to consider the request for reclassification of a post.—Conclusion that there were certain administrative shortcomings but no recommendation in support of the application.

Request for preliminary measures rejected.

Applicant's claim that the denial to reclassify his post resulted from the Administration's failure to adhere to the procedure set out in administrative instruction ST/AI/277.—Finding that, while the said instruction does not prescribe any particular form for classification action, the normal practice is to secure the incumbent's signature, which was not done in the Applicant's case.—The incumbent has an interest in the request for reclassification which may improve his promotion prospects, even if he does not have a legal right to, or expectancy of, promotion in the reclassified post.—Conclusion that the procedure followed was defective, which may have damaged the Applicant's interest.—The injury was however mitigated by the Applicant's subsequent promotion.—Applicant's claim of alleged prejudice against him by the Administration, resulting from an altercation which he had in 1972 with his assistant who was the daughter of the then Secretary-General.—The Tribunal holds that claims arising from such an old event are time-barred, but that the Applicant is not precluded from relying on such events as

evidence of continuing prejudice.—Consideration of the evidence submitted by the Applicant.—The Tribunal holds that the Respondent is not obliged to justify his decisions as to the promotion or placement of staff members, though the absence of an explanation and of apparent justification may be suggestive of prejudiced or arbitrary decisions.—Conclusion that it is unnecessary for the Tribunal to decide on the claim of prejudice since the reclassification procedure was vitiated by procedural error.—The Tribunal takes note of staff rule 104.10.

Award of compensation of two months' net salary. All other claims rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Herbert Reis; Mr. Luis de Posadas Montero;

Whereas at the request of Ansar Hussain Khan, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 14 November 1984 the time-limit for the filing of an application to the Tribunal;

Whereas on 7 November 1984 the Applicant filed an application which did not fulfil some of the formal requirements of article 7 of the Rules of the Tribunal;

Whereas on 4 March 1985 the Applicant filed a corrected application, the pleas of which read in part as follows:

“II. PLEAS

“1. The Applicant respectfully requests the Administrative Tribunal,

“2. The Applicant respectfully requests the Tribunal to find that his ‘transfer’ of 23 May 1972 was improperly motivated in fact, as expressing the personal prejudice of the Respondent with regard to the Applicant. . . .

“3. The Applicant further requests the Tribunal to find, in the light of paragraph 44 of the report of the Joint Appeals Board in his case . . . , that the prejudice of the Respondent, even if evinced indirectly and cloaked by discreet, subordinate layers of decision-making, is the only possible explanation for the fact that the Applicant was not offered a single post in the period 1972 to 1979. . . .

“4. The Applicant requests the Tribunal to find that the personal prejudice of the Respondent was the sole and direct cause of his not being appointed to the post of Director of the United Nations Information Centre to be opened in Algiers in 1976, and that the Respondent personally cancelled his appointment, and that in so doing, he misused the administrative authority and discretion vested in him. . . .

“5. The Applicant requests the Tribunal to find, in the light of paragraph 44 of the report of the Joint Appeals Board . . . , and the fact that he had been recommended in 1970 for a Special Post Allowance to P-5 and was occupying a P-5 post at the time . . . , that his formal accession to that grade could reasonably be expected to have had occurred in the next three or four years, and the fact that it did not is due to the prejudicial attitude of the Respondent, as clearly understood and implemented by administrative and executive levels within the Secretariat. . . .

“6. The Applicant requests the Tribunal to find that the Respondent, the Secretary-General of the time, in showing the active, sustained prejudice that he did towards the Applicant by materially damaging and

retarding his career, acted arbitrarily in breach of Staff Regulations 4.1, 4.2, 4.3, and 4.4, and in violation of Article 101 (1) and 101 (3) of the Charter.

"7. The Applicant requests the Tribunal to find that to have improperly maintained him at the P-4 level till the end of 1979, and then begin subjecting his further advancement to an imperfect system of reclassification, was a dereliction of the Respondent's duty to provide Applicant with a reasonable prospect of career, as promised to him in 1950 when he was recruited, and as explicitly understood by the General Assembly at the time with regard to the programme of Junior Professional Trainees. . . .

"8. The Applicant respectfully requests the Tribunal to find that the exercises for the reclassification of the post occupied by him, from P-4 to P-5, conducted in 1979, 1981 and 1982, were vitiated because of procedural and substantive error, and that the reclassification exercise in 1983 can be considered to have been similarly tainted.

"9. The Applicant requests the Tribunal to find that apart from the obvious error, haste, and impropriety with which the reclassification was done, the suspicion cannot be discounted that it was distorted by the patent administrative neglect and prejudice with which the Applicant's case had been marked in the years foregoing. . . .

"10. The Applicant requests the Tribunal to find that, in any case, the reclassification was done only by applying the Tier I or Master Standard of point-rating a post, and that Tier II criteria (Grade Level Standards for Occupations) were not at the Respondent's disposal for the purpose, since they had not yet been developed by the International Civil Service Commission. . . . The whole exercise, even if it were not marred by other defects and distortions, was thus incomplete and inconclusive.

"11. The Applicant requests the Tribunal to find that in this clouded and suspicious situation, the fact that four applications to reclassify the post had been made by the Department of Political and Security Council Affairs without overturning the view of the Office of Personnel, was further proof of the neglect and baulking with which the Respondent had consistently treated the Applicant's case, and that he should have accepted the Department's view. . . .

"12. The Applicant requests the Tribunal to find that the fact that the Applicant was promoted to P-5 in his present post with effect from 1 January 1984 after the change in the Secretary-Generalship *without the post being reclassified to P-5*, shows the pedantic and obstructive nature of the several attempts at reclassification, creates further doubt about their validity, and becomes an additional factor for their rescission *in toto*. . . .

"13. The Applicant requests the Tribunal to find that at no time in 1983 or in 1984 was an appeal by the Applicant, or on his behalf, lodged with the Classification Appeals and Review Committee, that the report of the Joint Appeals Board in Case No. 115 . . . in paragraph 41 erred in concluding as regards reclassification, that 'the matter was therefore *sub judice* with the appropriate appeals body—the Classification Appeals and Review Committee . . .', and in paragraph 42 of the same report, that consequently the Board 'did not deem itself competent to take any stand on the question of the reclassification of the post . . .', and that even if such an appeal had, in fact, been lodged with this Committee, it was not suited by its terms of reference as set out in ST/AI/277 . . . to be the appropriate

body for considering the matter since it was excluded from providing retroactivity. . . .

"B. Orders

"14. In the light of the foregoing findings, whether made wholly or partly by the Tribunal, the Applicant respectfully requests that it make the following Orders:

"(i) that the post occupied by the Applicant be reclassified with effect from 1 January 1980, and that the promotion of the Applicant be made retroactive to that date.

"(ii) that the Applicant be paid an indemnity equal to the difference between the P-4 and P-5 salary to which he would have become entitled had he been promoted in the three or four years after being recommended in 1970 for a Special Post Allowance to P-5, and being placed in a P-5 post, this date for calculating the indemnity to be 1 January 1975 or an alternative date, as settled by the Tribunal.

"(iii) that the Applicant, as a true career officer, be placed forthwith in a suitable post at the level of Principal Officer.

"(iv) that his pension, salary steps and other entitlements be recalculated on the basis of the foregoing Orders.

"(v) that legal costs be remunerated on a submission that Applicant requests the Tribunal to allow him to make later.";

Whereas the Respondent filed his answer on 27 March 1985;

Whereas the Applicant filed written observations on 29 April 1985;

Whereas on 16 September 1985, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas on 7 October and 9 October 1985, the Applicant submitted additional documents;

Whereas on 17 October 1985, the Respondent replied to a question posed by the Tribunal on 15 October 1985;

Whereas the facts in the case are as follows:

Ansar Hussain Khan entered the service of the United Nations on 29 June 1950 after successfully passing an entrance examination for U.N. trainees in Pakistan and was initially offered a two-year, fixed-term appointment as a Junior Professional Trainee. His appointment was extended for a further term of one year and on 29 June 1952 he was transferred to the Department of Security Council Affairs as an Assistant Political Affairs Officer at the P-1, step 3 level. His appointment was further extended and on 1 January 1954 he was granted a permanent appointment.

On 1 April 1954 he was detailed to UNCURK (UN Commission for the Unification and Rehabilitation of Korea) as a Political Affairs Officer and effective 1 May 1954 he was granted an SPA [Special Post Allowance] to the P-2 level. On 1 May 1955 the Applicant returned to Headquarters as an Assistant Programme Officer. On 1 May 1956 he was promoted to the P-2 level as an Assistant Editor at the Department of Public Information. On 1 October 1956 he was transferred to Bangkok as an Information Officer. On 1 October 1959 he returned to New York to work at the offices of the Under-Secretary-General for Special Political Affairs. On 1 July 1960 he was promoted to the P-3 level as a Second Officer and on 1 June 1961 he was transferred to Geneva to the

Narcotic Drugs Division. On 1 May 1969 he was promoted to the P-4 level as a Social Affairs Officer in the Narcotic Drugs Division.

On 24 June 1970 the Director, Division of Narcotic Drugs recommended that the Applicant, who was the incumbent of a P-5 post, be granted a special post allowance to the P-5 level under the terms of Staff Rule 103.11. However, the request was denied on 16 February 1971 by the Deputy Chief, Staff Services, OPS [Office of Personnel] on the ground that "the case does not seem to be of exceptional nature which would give an opportunity to consider it beyond the requirements of Staff Rule 103.11 (e)."

The Applicant was appointed Deputy Executive Secretary of the United Nations Conference for the Adoption of a Protocol on Psychotropic Substances. On 2 July 1970 his functional title was changed to Chief, Commission Secretariat and Information Unit in the Narcotic Drugs Division.

On 29 February 1972 the Applicant's name appeared as "Secretary to the Plenary and General Committee" of the UN Conference to consider amendments to the Single Convention on Narcotic Drugs in an internal document on arrangements for servicing the Conference that would be distributed in conjunction with the organization paper for the Conference. On 3 March 1972 the Director, Division of Narcotic Drugs requested that a corrigendum be issued for that internal document; replaced the Applicant in his functions by the Deputy Executive Secretary of the Conference and appointed the Applicant as Secretary to the *Ad Hoc* Committee on Illicit Traffic in the Near Middle East.

It appears that subsequently the Applicant was offered the post of Director of the Information Centre in Teheran. On 11 May 1972 the Assistant Secretary-General for Personnel Services informed the Applicant that the Administration had taken into account the family considerations which he had raised and had decided to transfer him to the Offices of the Disaster Relief Co-ordinator in Geneva. The Applicant asserts that this transfer resulted from an incident in early 1972 between himself and the daughter of the then Secretary-General, who was employed in the Narcotic Drugs Division at the time her father was in office.

On 16 May 1972 the Applicant was "assigned with [his] post, to the United Nations Disaster Relief Office effective 23 May 1972."

During the course of 1975 the Applicant applied for a series of permanent positions at the Office of the Disaster Relief Coordinator, at the Division of Human Rights, and other departments. He was also proposed for other posts in other offices on the initiative of the Administration. All of these efforts were unsuccessful.

On 8 March 1976 the Applicant was assigned to the Information Service in Geneva "pending a decision on his definitive placement." On 1 January 1978 he was assigned to the Centre against *Apartheid* for a period of one year as the Liaison Officer for the Centre. On 1 July 1979 the Applicant was transferred to the Centre.

According to the Assistant Secretary-General, Centre against *Apartheid's* own statement in a memorandum dated 1 November 1983:

"In 1979, when the Centre against *Apartheid* was being surveyed by the AMS [Administrative and Management Services] [he] recommended the establishment of a Geneva Liaison Office of the Centre (with one officer and one secretary) and a reclassification of [the Applicant's] post from P-4 to P-5. The AMS recommended closure of the office and transfer of the P-4 post to New York. After consideration of the matter in the General

Assembly, the Secretary-General agreed to maintain the *status quo*. Mr. Ansar Khan was retained in Geneva on a P-4 level as an outposted staff member.”

In July of 1980 the Applicant's name appeared on the 1980 P-5 Senior Officer Promotion Register, but in spite of an inquiry by the Chief, Personnel Administration Section, UNOG [United Nations Office, Geneva] on the “possibility [of] implementation” of the Applicant's promotion, the Applicant was not promoted. On 28 April 1981 the Applicant was informed that the Secretary-General had approved the maintenance of his name on the register of staff members eligible for promotion to the Senior Officer (P-5) level, “as opportunity permits.” In a memorandum dated 9 June 1981 addressed to the Assistant Secretary-General, Office of Personnel Services, the Chief, Personnel Services, UNOG informed him that the Applicant's promotion could not be implemented for lack of an available P-5 post and noted in this connection: “This situation not only considerably affects the morale of the staff member and puts into question the value and significance of the Promotion Registers, but also the value of the authority of the Secretary-General who approves the register.” In addition he stated in part: “The fact that the 1981 Senior Officer Promotion Register carries the name of Mr. Ansar Khan once again, is sufficient proof that the staff member is discharging duties at the P-5 level.” On 2 July 1981 the Applicant wrote to the Assistant Secretary-General for Personnel Services to request the implementation of his promotion. On 13 July 1981 the Applicant addressed a memorandum to the Secretary-General reading as follows:

“1. I have the honour to recall that at the beginning of 1972 it was communicated to me that it was your wish that I should accept a transfer.

“2. I accepted, with the responsibility and discretion incumbent upon a member of the Secretariat so addressed in the name of the Secretary-General. I did not think that in moving at the time I might harm my career, because I took your personal interest as surety.

“3. In fact, the transfer was not implemented and it appears that the move was a disciplinary measure of which I was never advised. During the last ten years, there have been a succession of some fifty posts, at appropriate levels, in the Geneva Office, but I have not been assigned to any one of them *up till now*.

“4. I now ask to be apprised of the reasons for the sanction imposed upon me, and its extent and intended duration. Alternatively, if there has been error at the level of implementation, then I ask that I be given proper redress and full compensation. I have already moved the Assistant Secretary-General for Personnel Services on this matter and now seek your direct intervention.”

On 28 October 1981 the Administrative Officer of the Department of Political and Security Council Affairs submitted a “Request for Classification Action Form” for the reclassification of the post of Liaison Officer, Centre against *Apartheid*, Geneva, encumbered by the Applicant, from the P-4 level to the P-5 level. The form was not signed by the Applicant, the space for “signature of incumbent” being left blank.

In a memorandum dated 24 December 1981 addressed to the Assistant Secretary-General for Personnel Services, the Under-Secretary-General, Department of Political and Security Council Affairs, informed him that the Department “face[d] difficulties” with respect to the Applicant's promotion. He

stated that the "need for a Liaison Officer of the Centre against *Apartheid* in Geneva has been continuously affirmed by the Special Committee against *Apartheid*." In addition, the upgrading of the Applicant's post had been "strongly recommended by the Special Committee against *Apartheid* in view of the emphasis placed by the General Assembly on matters concerning the struggle against *Apartheid*". However "the reclassification of the post from the P-4 to the P-5 level was turned down by the Classification Section of the Office of Personnel Services" and under the circumstances, even if a post at a higher level could be redeployed, the Department was not in a position to implement the Applicant's promotion because of the decision of the Classification Section that would have to be appealed. In fact, on 20 January 1982 the Assistant Secretary-General for Personnel Services officially approved the classification of the Applicant's post at the P-4 level.

On 26 April 1982 the Applicant was informed that the Secretary-General had approved the maintenance of his name on the register of staff members eligible for promotion to the Senior Officer (P-5) level "as opportunity permits". In a memorandum dated 28 April 1982, the Chief, Personnel Administration Section, UNOG offered the Applicant an assignment to a P-5 post in the Committee Services and Research Branch of the Centre against *Apartheid*. In a reply dated 6 May 1982 the Applicant refused the offer on the ground that the post that had been offered to him, "despite the higher grade, the scope of the work and the responsibility it carries are much less than the functions from which I was moved in 1972." He concluded: "after a lapse of ten years, it would be wrong for me to assume such duties even on promotion, . . . because it would mean going backwards . . ."

On 25 May 1982 the Chief, Personnel Service, UNOG informed the Assistant Secretary-General for Personnel Services that the Applicant's name had been appearing on the Senior Officer Promotion Register since 1980 and that "for lack of post" the Department of Political and Security Council Affairs had not been able to recommend the implementation of Mr. Khan's promotion. The Chief, Personnel Service, UNOG noted that "[i]n an effort to find a solution to this perennial problem" the Department had explored the possibility of transferring the Applicant to a new P-5 post, but that the Applicant had not agreed to the transfer for a number of reasons. In addition, he stated that "the case of Mr. Khan deserves special consideration" and suggested, in order to implement the Applicant's promotion in 1982, that a new P-5 post be allocated to Geneva in exchange for the P-4 post currently encumbered by the Applicant, until a suitable post could be identified in UNOG or elsewhere.

On 3 November 1982 the Administrative Officer of the Department of Political and Security Council Affairs submitted a further "Request for Classification Action" form to reclassify the Applicant's post from the P-4 to the P-5 level. The Applicant did not sign the form. On 8 November 1982 the Assistant Secretary-General for Personnel Services approved the classification of the post at the P-4 level.

In a cable dated 18 January 1983 the Administrative Officer, Department of Political and Security Council Affairs, informed the Applicant that

"... classification section having turned down new request for upgrading in november 1982, budget division did not support centre's request for reclassification your post in financial implications submitted to g a [General Assembly] (. . . unations)."

In a memorandum dated 31 January 1983 addressed to the Assistant Secretary-General, Centre against *Apartheid*, the Applicant asserted that the "Request for Classification Action" form dated 3 November 1982 submitted by the Department was void because it did not contain his signature. He requested the Assistant Secretary-General to "take immediate steps" to revise the substance of the classification notice and to take appropriate action with the Under-Secretary-General for Administration and Management for special funding for the reclassified post.

On 16 February 1983 the Applicant requested the Secretary-General to review the administrative decision conveyed to him by cable dated 18 January 1983. In a cable dated 20 February 1983 the Assistant Secretary-General, Centre against *Apartheid*, advised the Applicant that:

"AMS undertaking new survey of Centre [against *Apartheid*] including classifications stop will refer your case to them for early decision."

On 22 March 1983 the Acting Chief, Administrative Review Unit informed the Applicant that:

"Administrative Instruction ST/AI/277 dated 10 November 1980, a copy of which is attached for your information, sets up the procedure for the appeal of classification decisions. In accordance with this procedure, your letter of 16 February 1983 to the Secretary-General, with its attachments, is being submitted to the Classification Section for review. If the Classification Section does not concur with your requested change in the post classification, your case will be submitted to the Classification Appeals and Review Committee for advice and the findings and recommendations of this Committee as well as the Secretary-General's decision on the case will be communicated to you."

In a memorandum dated 8 April 1983 addressed to the Assistant Secretary-General for Personnel Services, the Applicant asserted that it appeared "difficult to reconcile my recourse under Staff Rule 111.3 (c) with the possibilities available under ST/AI/277" and requested the Controller, the Under-Secretary-General for Administration, Finance and Management and the Legal Counsel to be jointly consulted on the nature of his request of 16 February 1983.

On 23 May 1983 the Applicant's name appeared on the 1983 Senior Officer (P-5) Promotion Register.

On 30 May 1983 the Applicant addressed a letter to the Secretary-General in which he reiterated that his request for review could not be considered under the procedures set forth in ST/AI/277, because the "Request for Classification Action" form dated 29 October 1981, which had been only recently drawn to his attention, did not bear his signature.

Having received no reply from the Secretary-General, on 25 July 1983 the Applicant lodged an appeal with the Joint Appeals Board.

On 22 December 1983 the Assistant Secretary-General, Centre against *Apartheid* proposed to the Under-Secretary-General, Administration and Management and the Under-Secretary-General, Department of Political and Security Council Affairs that the Applicant be promoted under a special, temporary arrangement whereby the Applicant would be promoted against a post recently reclassified by the General Assembly from the P-4 to the P-5 level. The arrangement was approved by the Director of the Budget and the Applicant was subsequently promoted to the P-5 level effective 1 January 1984.

The Joint Appeals Board adopted its report on 7 May 1984. Its unanimous findings and conclusions read as follows:

"40. The Board notes that Appellant, when lodging his appeal, served at the P-4 level. Since then, Appellant has been promoted and therefore, to a certain extent, the part of his appeal relating to the recognition of his contribution as (senior) Liaison Officer to the tasks of the Centre against *Apartheid* at Geneva, has been met *de facto*. The Board has noted the information, provided orally by Respondent as well as by the Administrative Officer, Department of Political and Security Council Affairs, that the promotion was not 'conditional' and would not be affected by the outcome of the classification appeal procedure.

"(a) *Classification procedure*

"41. The Board noted with surprise that the requests for classification action, submitted in 1981 and in 1982, had not been shown to Appellant with a view to obtaining his signature, as required, and that Appellant had therefore not had an opportunity to comment on the contents of Section A. Mindful of the fact that the procedure for reviewing the classification decision had been engaged,* and the matter was therefore *sub judice* with the appropriate appeals body—the Classification Appeals and Review Committee [CARC], consisting of a Chairperson, two members designated by the Secretary-General and two members, designated by the Staff representatives on the SMCC [Staff Management Coordinating Committee]—the Board did not consider it appropriate to examine the cause of these omissions nor the effect they might have had on the outcome of the reclassification exercises. However, the Board did consider that such an omission was potentially sufficiently important to require the serious attention of the Classification Appeals and Review Committee, both for its relevance to the Appeal under review, and for the precedent which might be set if Respondent's view that Appellant's signature was not required were to be upheld.

"42. Considering the procedure engaged and referred to in para. 41, the Board did not deem itself competent to take any stand on the question of the reclassification of the post.

"(b) *Retroactive promotion*

"43. With regard to the effective date of Appellant's promotion, the Board notes that Appellant declined a transfer to Headquarters which would have led to Appellant's promotion during 1982. The Board furthermore notes that, regrettably, appropriate posts are not always available to promote without undue delay a staff member whose name is included in a promotion register. When such a promotion takes place, it is within the discretion of the Secretary-General to decide to what extent it should be made effective retroactively. While Appellant had a justified expectation to be promoted after his inclusion in the P-5 register, the Board considers that he did not have any statutory entitlement to be promoted within a specified time span.

*Appellant's appeal of 25 July 1983, . . .

Letter of the Acting Chief, Administrative Review Unit, dated 22 March 1983

Memorandum Assistant Secretary-General, Centre Against Apartheid, of 31 October 1983

Memorandum Secretary, CARC of 14 March 1984, addressed to Appellant

Memorandum from Appellant to Administrative Officer, PSCA, of 30 March 1984

“(c) *Procedural breaches and administrative mismanagement, affecting Appellant’s career development*

“44. The Board took note with concern of the multiple difficulties experienced by Appellant in being appropriately placed following his transfer with his post in 1972 from the Narcotic Drugs Division to the UN Disaster Relief Office. The Board further noted with surprise that it took an extraordinarily long time—almost seven years—to place Appellant in an established post carrying with it appropriate functions, notwithstanding efforts made by Personnel Service, UNOG. While it was unable to discern any convincing justification for this strange and unsatisfactory state of affairs, the Board—mindful of the limits of the mandate entrusted to it under the Staff Regulations—does not consider itself competent to rule on possible deficiencies with regard to Appellant’s career development during the period preceding the administrative decision contested by Appellant.

“45. Taking the above into account, and considering that a staff member cannot claim to be entitled to accede to the P-5 level upon service during five years as P-4, the Board sees no grounds for recommending payment of an indemnity as requested by Appellant.

“46. With regard to the request of Appellant referred to in para. . . . ‘that any intention to abolish his post be not allowed to take effect’, it is obviously outside the competence of the Board to comment on the possible future deployment of posts of the Centre. The Board, nonetheless, hopes that in this connection Respondent will give due consideration to the understandable concern of Appellant to being maintained in an established post involving duties commensurate with his experience, seniority and ability.

“*Recommendations of the Board*

“47. Apart from those observations in its findings and conclusions which concern certain administrative shortcomings, the Board makes no recommendation in support of the specific claims put forward by Appellant.”

On 19 September 1984 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board’s report and decided to take no action on the case.

On 4 March 1985, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The Joint Appeals Board erred in concluding that it could not adjudicate the case because the matter of the reclassification of the Applicant’s post was on appeal before the Classification Appeals and Review Committee, and therefore *sub judice*.

2. The Classification Appeals and Review Committee is not a judicial body. It is an administrative review body, whose terms of reference mandate it to rule on classification of posts, for the year in which it is convoked. The Applicant’s grievances date back to 1979/1981 and therefore the Classification Appeals and Review Committee is not competent to hear the case.

3. The Respondent acted in an arbitrary manner and abused his administrative discretion when he wilfully requested the Applicant’s transfer from the Narcotics Division in 1972 and blocked the Applicant’s career for

almost a decade. This conduct constituted a breach of the Staff Regulations and Rules.

4. The Respondent made no serious, fair and objective attempts to place the Applicant in an established post, before and after his name appeared in the Senior Officer Promotion Register.

Whereas the Respondent's principal contentions are:

1. Appeals against decisions concerning the classification of posts are subject to the procedure set out in ST/AI/277. Staff members do not have the right to by-pass this review procedure.

2. The Applicant's allegations that numerous administrative decisions taken during the 1970s were tainted by prejudice are not only unsubstantiated but are also time-barred insofar as they now seek redress for such decisions.

The Tribunal, having deliberated from 15 October to 4 November 1985, now pronounces the following judgement:

I. The Applicant's pleas include a request for a number of preliminary measures by way of additional evidence. His application is well-documented and the Tribunal has had access to his official status and confidential files. None of the additional documents requested appeared to the Tribunal to be necessary for the decision of this case.

II. The Applicant's claim is in respect of the denial of requests made by the Department of Political and Security Council Affairs for the reclassification of his post from P-4 to P-5, arising from the Secretary-General's decision to take no action on two letters addressed to him by the Applicant on, respectively, 16 February and 30 May 1983.

III. The application is based on two salient points:

1. The failure of the Administration to adhere to the procedure for the reclassification of posts set out in Administrative Instruction ST/AI/277, dated 10 November 1980;

2. Prejudice against the Applicant on the part of the Administration.

IV. The alleged procedural defect is that the Applicant was not shown, and did not sign, the "Request for Classification Action" form, and so was deprived of the opportunity of commenting on the accuracy or otherwise of the particulars inserted in the form, including the "Summary of the assigned duties" of the post.

V. The "Request for Classification Action" form dated 28 October 1981 included a job description in which the space for the signature of the incumbent was left blank. The Request dated 1 November 1982 was signed in that space by a Mr. Zybanov "For E. S. Reddy" [Assistant Secretary-General, Centre against *Apartheid*]. Mr. Zybanov also signed "For E. S. Reddy" in spaces provided for the signature of the supervisor and of the chief of the section or branch. Nowhere on either form were the signatures or initials of the Applicant to be found, and the Respondent does not assert that the Applicant was in fact shown the form or given the opportunity to comment on what had been inserted on it.

VI. The Tribunal observes that ST/AI/277 does not prescribe the use of any particular form, or require signature by the incumbent of the post. However, the form actually used includes a Job Description with a space for "signature of incumbent".

VII. There is nothing on the form which might be taken to indicate that the signature of the incumbent may be dispensed with. The Respondent has

indicated, in reply to a question put by the Tribunal, that it is not the normal practice to dispense with that signature.

VIII. The Respondent asserts that it is for the supervisor, not for the incumbent, to insert the required particulars of the job. However, space is evidently provided for the incumbent's signature so that he may see the completed form, satisfy himself as to its accuracy and, if he thinks fit, make objections or remonstrances with a view to its being amended.

IX. That the incumbent has an interest in the request for reclassification is shown by his being given the right to appeal against its refusal, as provided in paragraph 8 of ST/AI/277, effective 1 January 1984.

X. Reclassification of a post may improve the promotion prospects of the incumbent, and he may reasonably hope that this will be so. However, he has no legal right or legal expectancy that this consequence will follow, the reclassification being of the post and not of the incumbent. He may find himself transferred laterally and replaced by a new incumbent of the grade to which the post has been reclassified.

XI. The Tribunal concludes that the procedure followed was defective in a material particular, which might have damaged the interests of the Applicant. The Tribunal notes that whatever injury the Applicant may have suffered was mitigated by his subsequent promotion to P-5 on 1 January 1984.

XII. The Applicant further rests his claim on alleged prejudice against him on the part of the Administration, dating from 1972, at which time he had an altercation with his assistant, who was the daughter of the then Secretary-General. Claims arising out of events so many years ago are time-barred under Staff Rule 111.2 (a), but the Applicant is not thereby precluded from relying on those events as evidence of continuing prejudice on the part of the Administration in denying, in 1982, the request for reclassification of his post.

XIII. The Tribunal has examined the evidence of those events, which suggest that, although some senior officers, including the Chief, Personnel Service, UNOG made efforts to advance his career, he was in all probability disliked by others. The evidence examined includes that before the Joint Appeals Board.

XIV. The Applicant has asserted, in paragraph 7 of his application, that the Respondent was under a "duty to provide Applicant with a reasonable prospect of career" and, in a memorandum of 9 October 1985 to the Tribunal, has described his career as having been "thrown to the winds". The Tribunal notes that the Career Development and Placement Unit in fact made efforts to assist the Applicant in that regard.

XV. The career of the Applicant included a number of events of which he complains. Soon after the altercation referred to in paragraph XII above, in 1972, he was transferred with his post from the Narcotic Drugs Division to the UN Disaster Relief Office. An attempt to have him made UN Director of Information in Algiers was (according to evidence not contradicted by the Respondent) personally vetoed by the then Secretary-General. Over a period of years he fruitlessly applied for several posts. He remained unpromoted at P-4 level for an extraordinarily long period of fifteen years, as to which the Respondent observes that prior to his altercation, the Applicant had also had a period of nine years during which he was not promoted. His name finally appeared on the P-5 promotion register from 1980 onwards but his promotion was not implemented until 1984.

XVI. The Respondent is not obliged to justify his decisions as to the promotion or placement of staff members, though the absence of an explanation and of apparent justification in the circumstances of the particular case may be suggestive of prejudiced or arbitrary decision. However, in the present case, it is unnecessary for the Tribunal to decide whether the Administration was in fact prejudiced against the Applicant since the reclassification procedure was, in this case, vitiated by procedural error.

XVII. In view of the facts of this case, the Tribunal takes note of Rule 104.10 of the Staff Rules, which reads as follows:

“(a) Except where another person equally well qualified cannot be recruited, appointment shall not be granted to a person who bears any of the following relationships to a staff member: father, mother, son, daughter, brother or sister.

“(b) The husband or wife of a staff member may be appointed provided that he or she is fully qualified for the post for which he or she is being considered and that the spouse is not given any preference by virtue of the relationship to the staff member.

“(c) a staff member who bears to another staff member any of the relationships specified in (a) and (b) above:

“(i) Shall not be assigned to serve in a post which is superior or subordinate in the line of authority to the staff member to whom he or she is related;

“(ii) Shall disqualify himself or herself from participating in the process of reaching or reviewing an administrative decision affecting the status or entitlements of the staff member to whom he or she is related.

“ . . .”.

XVIII. Taking into account the procedural error of the Administration and that the Applicant was promoted to P-5 on 1 January 1984, and bearing in mind the full background of the case, the Tribunal awards the Applicant two months net salary. All other pleas are rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

Herbert REIS
Member

New York, 4 November 1985

Luis de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Executive Secretary