UNITED NATIONS

ADMINISTRATIVE TRIBUNAL

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ADMINISTRATIVE TRIBUNAL

Judgement No. 401

Case No. 430: UPADHYA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto; First vice-president, presiding; Mr. de Posadas Montero; Mr. Jerome Ackerman;

Whereas at the request of Shail Upadhya, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended the time-limit in which to file an application to the Tribunal until 31 March 1987 and 30 April 1987;

Whereas on 30 April 1987, the Applicant filed an application, the pleas of which read as follows:

"Pleas

The appellant's pleas are essentially unchanged from those contained in his appeal to the Joint Appeals Board* with the following additions in light of subsequent developments:

(1) Payment of compensation prior to the determination of the merits of the case, as per Article 9, para. 2 of the Statute, in view of the inordinate delay in the Respondent's reply to his appeal to the Joint Appeals Board.

(2) Compensation for adverse publicity generated by the appellant's case and the resultant notoriety conferred on him, thereby further worsening his situation in the Organization".

"*Conclusions and relief sought: [before the JAB]

[The appellant's] Department's discriminatory treatment has denied the Appellant of his entitlement to be duly considered for promotion and also denied him his career development guaranteed under Article IV of the Staff Regulations and Rule 104.14(f)(iii). It has caused the Appellant great mental suffering, humiliation, loss of self-esteem and considerable embarrassment in front of his colleagues, not to mention the severe setback to his career. The psychological and physical toll from years of discriminatory treatment is incalculable and is sure to leave a permanent mark. The Appellant is seeking the reversal of the setback to his career development and a restoration of his seniority going back to the year when he was first by-passed for promotion to P-5, i.e. in 1977. The Appellant is also seeking the following financial damages suffered as a consequence of discrimination:

(a) Back wages calculated on the basis of salary increments he would have received since 1977 had he been promoted and his career development been allowed to proceed unhindered by discrimination; or had there not been the repeated failure of the department to take positive action;

(b) Pension benefits that would have accrued had his promotions come through when they should have;

(c) Damages commensurate with the suffering endured and taking into account the prevailing practice in cases similar to his;

(d) Compensation for hindrance to his career development and in his professional advancement and intellectual growth by virtue of his being retained in such a painstaking and boring function beyond the maximum period stipulated in the AMS [Administration and Management Services] report."

Whereas the Repondent filed his answer on 31 July 1987;

Whereas the Applicant filed written observations on 9 October 1987;

Whereas on 9 October 1987, the Applicant requested the Tribunal to ask the Respondent for the report of the Panel of Inquiry into Rumors of Corruption in the Secretariat established by ST/IC/80/83;

Whereas on 16 October 1987, the Tribunal requested the Respondent to provide the Tribunal with all the documentation concerning the Applicant's complaint before the Panel to investigate allegations of Discriminatory Treatment in the UN Secretariat;

Whereas on 20 October 1987, the Respondent submitted a series of documents concerning the Applicant's complaint before the Panel, but not the Panel's file itself, since the file was treated on a confidential basis pursuant to ST/AI/308, paragraph 16;

Whereas on 23 October 1987, the Applicant submitted additional documents;

Whereas the facts of the case are as follows:

Shail Kumar Upadhya entered the service of the United Nations on 9 August 1961. He was initially offered a probationary appointment as an Assistant Officer at the P-1 Step II level, and was assigned to the Department of Political and Security Council Affairs, PSCA. On 1 August 1963 he was offered a permanent appointment and was promoted to the P-2 level as an Associate Political Affairs Officer. On 1 July 1967 he was promoted to the P-3 level as a Political Affairs Officer. On 17 February 1969 he was reassigned from the Disarmament Affairs Division to the Security Council and Political Committees Division within PSCA. Effective 1 June 1972, he was detailed to UNCURK [United Nations Commission for the Unification and Rehabilitation of Korea] and was stationed in Seoul, Korea for a period of two years as a Political Affairs Officer. During the course of his assignment in Korea, on 11 August 1972, the Applicant instituted a recourse procedure before the Appointment and Promotion Committee because his name had not been included in the 1972 P-4 Promotion Register. He was however, unsuccessful in this regard. The Secretary-General approved the inclusion of the Applicant's name in the 1973 First Officer P-4 Promotion register. His promotion was implemented effective 1 January 1974, and he returned to Headquarters on the same date.

The record of the case shows that from 1976 onwards the Applicant applied unsuccessfully through the Career Development and Placement Section of the Office of Personnel Services for a series of jobs in other departments.

On 6 December 1977, the Chief, Peace and Security Studies Section, PSCA, recommended to the Under-Secretary-General for Political and Security Council Affairs that the Applicant be promoted to the P-5 level in the course of the 1978 promotion review. The Department, however, took no action on the matter and the Applicant's name was not included in the 1978 Senior Officer P-5 Promotion Register. On 13 October 1978, the Applicant instituted a recourse procedure before the Appointment and Promotion Board to request the Board to include his name on that Register, but was unsuccessful in this regard.

The Applicant asserts - and his assertion, not disputed by the Respondent, is confirmed by the Panel on Discrimination in its report - that on 21 January 1980, the new Chief, Peace and Security Studies Section, PSCA, recommended that the Applicant be promoted to the P-5 level in the course of the 1980 promotion review. The Department, however, took no action on the matter and the Applicant's name was not included in the 1980 Senior Officer P-5 Promotion Register. The Applicant instituted a further recourse procedure before the Board, but was again unsuccessful.

In January 1981, the Applicant filed a complaint with the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat on the ground that he had been personally discriminated against, in that he had been treated less fairly and had been denied promotion or transfer opportunities that had been accorded to other staff members who had worked in his Section and in his Department. In a memorandum dated 23 April 1981, the Coordinator of the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat transmitted a report of the investigation conducted on the Applicant's complaint to the Assistant Secretary-General for Personnel Services. The Panel concluded that the Applicant had "been treated in a discriminatory way; that in spite of his

requests to be transferred within the Department no concerted effort was made to that end; and that he [had] been retained continuously in a function that held no prospect for career advancement."

The Panel noted that:

"... given the demanding nature of the work, in 1970 an Administrative Management Survey team recommended that staff of the Section should be given the option of rotation of functions within the Department after five years in the Section. Mr. Upadhya has not been so rotated. In the past seven years, movement of personnel in the Section [was] as follows:

- Mr. ..., transferred from the Official Reports and Proceeding Section to PSSS as Chief of Section, after being promoted to D-1;

- Mr. ..., transferred to the Political Affairs Division and promoted to D-1;

- Miss ..., transferred to the Centre against Apartheid after being promoted to P-4;

- Mr. ..., recruited to succeed Miss ... as P-3 and promoted to P-4 in 1978;

- Mr. ..., transferred from the Council and Committee Services Section as Chief of PSSS, after being promoted to D-1;

- Mrs. ..., left the Section to join the Council and Committee Services Section but rejoined PSSS after being promoted to P-5 - in the post that was left vacant for two years".

In addition, the Panel recognized:

"... that staff members have no right to automatic promotion. However, it believes that they are entitled to maintain an expectation to promotion. The fact that Mr. Upadhya was twice recommended by two different Chiefs of Section would indicate that his expectations were reasonable. In addition, the fact that his work was judged good or satisfactory and that he was maintained in his

> 'temporary' assignment would also indicate that those expectations were not discouraged. The reason for his non-promotion - other than 'availability of posts' which clearly did not apply for two years - or non-transfer should have been explained to Mr. Upadhya or otherwise reflected in his personal records, which are accessible to him.
>
> The Panel concludes that Mr. Upadhya has been treated unfairly by his Department and recommends that the Office of Personnel Services play an active role in ensuring that Mr. Upadhya has a fair chance for career development either in or outside his present Department."

Not having been included in the 1981 Senior Officer P-5 Promotion Register, on 27 May 1981 the Applicant instituted a further recourse procedure before the Appointment and Promotion Board. In order to support his recourse, the Applicant informed the Board of the Panel's conclusions and recommendations. The Applicant was once again unsuccessful.

In a memorandum dated 5 June 1981, the Assistant Secretary-General for Personnel Services informed the Under-Secretary-General for Political and Security Council Affairs, of the conclusions of the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, and asked him to "provide the Office of Personnel Services with the Department of Political and Security Council Affairs' plan for Mr. Upadhya's future career development within [his] department." In a reply dated 2 October 1981, the Under-Secretary-General for Political and Security Council Affairs' successor stated:

> "For several months now, discussions have been taking place with the various organizational units in this department with a view to determining whether a suitable post could be found within the Department. I have to inform you that no such post has been found. In addition, the Director of the Security Council and Political Committees Division raised the possibility of a transfer to another part of the Secretariat informally with the Career Development and Placement Unit but as yet no post has been found.
>
> The Department is of the view that a transfer to another part of the Secretariat would be in Mr. UPADHYA's

> best interest and in the interest of the Secretariat as well. It would also be in accord with Mr. UPADHYA's request that he be transferred. I would therefore appreciate if the necessary steps be taken to that end."

On 5 February 1982, the Assistant Secretary-General for Personnel Services wrote to the Under-Secretary-General for Political and Security Council Affairs to impress upon him that while the Office of Personnel Services would persist in its efforts to place the Applicant, in view of the Panel's findings and the Applicant's excellent grounding in the work of the Department of PSCA, the primary responsibility for his career development rested with the Department of PSCA. She added:

> "With this in mind, before the Office of Personnel Services takes any action to submit to the Appointment and Promotion Board the Department of Political and Security Council Affairs' recommendation on Mr. ... for the P-5 post in the Security Council and Political Committees Division, I should be grateful if you would instruct that serious consideration be given to the candidature of Mr. Upadhya.
>
> ... ".

On 10 May 1982, the Applicant wrote to the Assistant Secretary-General for Personnel Services referring to the Report of the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, and requesting that promotions to the P-5 level within PSCA and throughout the Secretariat be frozen until his promotion was effected on the ground that "the implementation of a decision regarding discrimination is not confined to the department in question but is the responsibility of the administration as a whole." In a reply dated 2 June 1982, the Officer-in-Charge for Personnel Services explained that such a course of action as the Applicant had requested was not possible and assured the Applicant that the Office of Personnel Services was making every possible effort "to find [him] a suitable position which [might] eventually result in [his] promotion".

Not having been included in the 1982 Senior Officer P-5 Promotion Register, on 27 May 1982 the Applicant instituted a further recourse procedure to request the Board to include his name in that Register.

In a memorandum dated 27 May 1982, the Applicant asked the Secretary-General for a review of "the continued inaction of the Department of Political and Security Council Affairs in failing to implement the recommendations contained in a report of the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat". Not having received a reply from the Secretary-General, on 26 July 1982, while the recourse procedure was taking its course before the Appointment and Promotion Board, the Applicant lodged an appeal with the Joint Appeals Board.

On 16 September 1982, the Applicant was informed that he had been unsuccessful in his recourse before the APB.

On 19 May 1983, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had approved the inclusion of his name on the register of staff members eligible for promotion to the Senior Officer P-5 level. Since the Department of Political and Security Council Affairs did not implement the Applicant's promotion immediately, on 9 November 1983, the Assistant Secretary-General for Personnel Services wrote to the Under-Secretary-General for Political and Security Council Affairs to find out what was the Department's position with respect to the implementation of the Applicant's promotion during the 1983 register year.

On 10 November 1983, the Permanent Representative of Nepal to the United Nations wrote to the Secretary-General to ask him to intercede on behalf of the Applicant, in order that his long over-due promotion be implemented. On 19 March 1984, the Office of Personnel Services authorized the implementation of the Applicant's promotion to the P-5 level effective 1 June 1983.

On 9 December 1985, the Representative of the Secretary-General in the JAB filed an answer to the statement of appeal that had been filed in July 1982.

The Joint Appeals Board adopted its report on 26 August 1986. Its considerations and conclusions read as follows:

"Considerations

Competence of the Joint Appeals Board

46. The Panel noted that there were two principal issues which had to be addressed in this appeal (i) whether the appellant had appealed an administrative decision within the context of Chapter XI of the Staff Rules and (ii) whether the appellant possessed a substantive claim for which he could seek redress before the Joint Appeals Board.

47. With regard to the first issue, the Panel noted that its terms of reference were circumscribed by the Staff Rules in force at the time the appellant addressed his initial request for review to the Secretary-General of 27 May 1982. ...

48. The Panel noted that the appellant is appealing the continuous failure of his department to recommend him for promotion and also criticizes the manner in which the Appointment and Promotion Board has failed to independently assess the appellant's eligibility for promotion despite the Grievance Panel's positive recommendation on the appellant of 1981, notwithstanding which, the 1982 P-5 Promotion Register did not list the appellant's name among those eligible for promotion. The appellant asserts that the pattern of discrimination he allegedly received in the Department of Political and Security Council Affairs commenced in 1973, when he was listed on the P-4 Promotion Register, but his promotion was not implemented until the following year, thus causing him to lose seniority. The appellant also contends that the was bypassed for promotion to the P-5 level since 1977.

49. The Panel observed that its competence was circumscribed by the provision of Staff Rule 111.3 and it was not competent to consider claims arising from events which took place in 1973 and 1977 since these were now time-barred. Had the appellant wished to file an appeal against DPSCA's alleged failure to implement his promotion to the P-4 level on the basis of prejudice during the year in which his name appeared on the First Officer (P-4) Promotion Register, he should have done so within the compelling time-limits imposed by Staff Rule 111.3. This also applied to the

appellant's claim of discrimination where he pinpoints the year during which he should have been promoted to the P-5 level as 1977. These claims were now time-barred. However, the appellant was not precluded from relying on those events as evidence of a continuous pattern of discrimination by the Department resulting in a failure to recommend the appellant for promotion or its subsequent failure to implement his promotion to the P-5 level.

50. The Panel noted that one of the respondent's preliminary objections to the Panel's competence referred to the fact that the appellant had not appealed a specific administrative decision within the context of Chapter XI of the Staff Rules. The Panel referred to the appellant's letter of appeal to the Joint Appeals Board of 26 July 1982 according to which the appellant is appealing the continued inaction of the Department of Political and Security Council Affairs in failing to implement the recommendations of the Grievance Panel. The appellant refers to Information Circular ST/IC/82/23 of 28 April 1982 as the administrative decision which he is appealing. ST/IC/82/23 is addressed to all members of the staff and lists all those staff members approved by the Assistant Secretary-General for Personnel Services for inclusion in the 1982 Senior Officer (P-5) Promotion Register. The Panel noted that the appellant, whose name did not appear on the list, refers to this information circular as the notification necessary to appeal an administrative decision within the one-month time-limit according to the Staff Rules then in force.

51. The Panel noted that the appellant had submitted a recourse to the Appointment and Promotion Board in accordance with the terms of ST/IC/82/73 on 27 May 1982. The Appointment and Promotion Board had informed the appellant of its decision that the additional information presented by him did not afford grounds for amending its previous decision not to include him in the P-5 Promotion Register by letter of 16 September 1982. Accordingly, the Panel decided that it was this administrative decision affecting the appellant's terms of employment which established its competence for the purposes of Staff Rule 111.3(a).

52. With regard to the second issue referring to the appellant's substantive claim of personal discrimination resulting in his department's failure to recommend him for

promotion to the P-5 level despite seniority in grade, proven competence, availability of posts and a positive finding of discrimination by the Grievance Panel in 1981, the Panel wished to make the following observations:

(1) The Joint Appeals Board Panel had been constituted in June 1986 to consider a claim initiated by the appellant in July 1982. The respondent filed a written reply to the appellant's statement of appeal three years later in December 1985. After the appellant opted for oral rather than written obervations in April 1986, the appeal was technically ready for consideration by the Panel. During this long period of time the appellant's substantive grievance was rectified in the sense that he was granted on 19 March 1984 a promotion to the P-5 level with effect from 1 June 1983. As a result. the Panel decided that there was at present no substantive claim for which the appellant could seek redress before the Joint Appeals Board since the issue was now moot. However, the Panel observed that, had the respondent's reply been more timely in its submission, a duly constituted Panel would have been competent to address the appellant's claim of personal discrimination and this delay, in the Panel's view, was indeed regrettable.

(2) Having decided that it was not competent to address the appeal, the Panel thought that it should, nonetheless, reiterate that promotion is not an automatic entitlement of staff members who have performed for a certain number of years in a particular function. Moreover, it does not become automatic by the mere fact of being placed on the promotion register.

53. The Panel recommends that since both the appellant's department and the appellant are in agreement that a transfer out of the Department of Political and Security Council Affairs would be in their mutual interest, the Office of Personnel Services should continue in its efforts to find a suitable post for the appellant within the Organization commensurate with his proven competence, experience and seniority. Aside from the above, the Panel makes no further recommendations in this appeal."

On 25 September 1986, the Assistant Secretary-General for Personnel Services informed the Applicant that:

> "...
>
> The Secretary-General has taken note of the Board's report, and particularly of its decision that it is not competent to consider the appeal. He has, however, taken note of the recommendation made by the Panel in paragraph 53 of the report, which will be pursued with the responsible officers in the Career Development and Placement Unit.
>
> ...".

On 30 April 1987, the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant's failure to report to the Head of his Department sensitive military information which he acquired during his assignment in Korea, caused all the Applicant's subsequent career problems within his Department. Staff members should be impartial and not ordered to perform tasks that compromise their oath of office.

2. The then Secretary-General chose to ignore the Applicant's case in order to protect his re-election for a third term. The Applicant's continued presence in the Department of PSCA was perceived as a nuisance by the then Secretary-General.

3. The unwanted and uninvited publicity of the case in the press has caused the Applicant considerable embarrassment and humiliation.

4. The delays by the Respondent in the Joint Apppeals Board proceedings amount to a denial of justice and for this the Applicant should be compensated.

5. The Applicant's promotion in 1983 will not compensate for the Applicant's pain and suffering and for the fact that every subsequent promotion will be deferred.

Whereas the Respondent's principal contentions are:

1. Staff members have no right to nor any legal expectancy of promotion, promotions being within the discretionary powers of the Secretary-General.

2. The Applicant's claim for monetary compensation for injury caused by discrimination should be rejected since the Applicant has not discharged the burden of proving that he was discriminated against nor is the finding of discrimination by the Grievance Panel supported by evidence.

3. As the proceedings by the Administration were not vitiated by irregularity to the detriment of the Applicant's procedural rights, the Applicant's claim for compensation is unfounded.

4. The Applicant's claim for compensation for the wrong suffered as a consequence of the extremely delayed response of Respondent to the JAB should be rejected because he suffered no loss as a result of that delay.

The Tribunal having deliberated from 15 October 1987 to 12 November 1987 now pronounces the following judgement:

I. The Tribunal first considered the conclusion of the JAB that, because of a three-year delay on the part of the Respondent in replying to the Applicant's appeal, and his promotion in 1984 effective 1 June 1983, the JAB was not competent to consider the Applicant's claims of discrimination. Although the Tribunal recognizes that the passage of time and the intervening promotion rendered moot the question whether the JAB should recommend promotion as a remedy for discrimination that might have been found by it, that did not exhaust the range of further recommendations, depending upon how the JAB would have assessed the related matters raised by the Applicant. Had the JAB considered the issue of alleged continuing discriminatory treatment against the background of the report of the Panel to Investigate Allegations of Discriminatory Treatment (Panel), the JAB could have concluded that it should recommend more, by way of remedial action, than promotion to P-5 effective 1 June 1983. The JAB might also have considered whether the

three-year delay by the Respondent in answering the statement of appeal - which the JAB deemed regrettable - in itself warranted recommended remedial action. For it is hardly a sufficient deterrent to such an extraordinary unjustified delay merely to describe it as regrettable. In short, the Tribunal finds that the JAB took an excessively narrow view of its own competence to deal with the problems presented to it, and that this was not in keeping with the rationale underlying its advisory functions. Although the Tribunal concludes that the narrow issue of promotion is now moot, the Tribunal is nevertheless competent to consider matters related to it.

II. During oral proceedings before the JAB and in his written pleadings before the Tribunal, the Applicant contends that the discrimination he has suffered stems from his assignment to UNCURK, South Korea in 1972 when he was improperly asked by a superior in PSCA, but refused to transmit "sensitive" information regarding matters in South Korea to PSCA. With respect to his UNCURK assignment, the Applicant says that he reported directly to the Chef de Cabinet in the Office of the Secretary-General and not to PSCA. Although the Tribunal notes the existence of some seemingly confirmatory evidence regarding this contention, it also notes what appears to it to be a more important point - namely, that this particular contention by the Applicant was, so far as the Tribunal can determine, not submitted by the Applicant to the Panel when the Applicant sought relief from that body. Since, as will be seen below, the Tribunal considers the findings of the Panel to be of central importance in this case, the Tribunal, without minimizing the seriousness with which this now untimely contention should have been treated had it surfaced in 1972, finds that no useful purpose would be served by attempting to explore it further 15 years later in 1987, and for this reason, the Tribunal rejects the Applicant's request for the production of witnesses.

III. The Panel in 1981 issued its findings which concluded inter alia that the Applicant had been treated unfairly in being by-passed for promotion,

and recommended that OPS play an active role in ensuring him a fair chance for career development within or outside his Department. While the Panel might have explained more clearly than it did, the rationale underlying its conclusions and might also have been more specific with regard to the remedy it was recommending, the fact remains that it investigated the Applicant's claims carefully and satisfied itself that they were sufficiently meritorious to warrant a determination of unfair treatment. The Tribunal considers such a Panel determination highly significant in two respects. First, it is fundamental that no staff member should be subjected to discriminatory treatment and it is of the utmost importance to the integrity of the Organization that prompt action be taken to remedy such treatment when it is found to have occurred. Otherwise the impression becomes inescapable that little more than lip service is being paid to the principles of fair treatment which it is the function of the Panel to vindicate. Second, it is equally fundamental that, after a Panel determination of discrimination, the victim must not be retaliated against for having claimed discrimination, and strong efforts should be made by the Administration to avoid even the appearance of such retaliation. Otherwise, a strong disincentive will have been created against the exposure and uprooting of discriminatory practices.

IV. Following the Panel's finding that the Applicant had been discriminated against, there was thus an especially heavy burden on the Administration to provide a prompt and effective remedy, and if one was not forthcoming to provide clear and convincing evidence of justifiable reasons for this. It is simply not sufficient, in the face of a finding of discrimination in connection with the promotion process, for the Administration to argue that no staff member has a right to a promotion. Although that may be correct as an abstract proposition, it is also true that a staff member has a right not to be discriminated against in connection with a promotion. And it was the responsibility of the Administration to act in a fashion that showed convincingly the absence of discrimination or retaliation when after 23 April 1981, the date of the Panel's findings, a period of almost three years elapsed before the Applicant was promoted.

V. The Tribunal is unable to find in the record any adequate explanation for the repeated instances of inability or unwillingness on the part of the Administration to take effective action to remedy in a meaningful fashion the unfair treatment which the Panel found the Applicant had been subjected to prior to 1981. To be sure, OPS made efforts in the right direction during the period in question, but the Applicant's Department, without any understandable explanation or justification appears to have thwarted those efforts at every turn, thus creating a basis for a strong inference of retaliation.

VI. Indeed, in July 1982, the Executive Assistant to the Secretary-General who had been contacted in December 1981 by the Applicant about his plight, acknowledged that the Applicant had displayed remarkable patience in the face of discriminatory treatment at the hands of the Applicant's Department and the Executive Assistant urged that "someone in OPS take real action in this case ...". The response from OPS was that it could not "succeed without the co-operation of the substantive departments concerned".

VII. Thereafter, the Applicant's name was placed on the 1983 P-5 promotion register approved by the Secretary-General on the recommendation of the Appointment and Promotion Board, but the Applicant's Department did not implement his promotion in 1983. According to the Applicant and not disputed by the Respondent, it appears that the Department filled a vacant P-5 post within PSCA with another staff member whose name did not appear on that register. On 9 November 1983, the Assistant Secretary-General for Personnel Services wrote to the Under-Secretary-General for PSCA to enquire "what was PSCA's position with regard to the implementation of Mr. Upadhya's promotion during the 1983 register year", since it was his "understanding that the Board recommended the inclusion of his name in [that] register against a P-5 post which was available in the Outer Space Division at the time of the review". The Tribunal has not seen any explanation in the record for this occurrence, and notes that the Applicant's promotion was not

implemented until after the Assistant Secretary-General for Personnel Services, by a communication dated 11 January 1984, called to the attention of the Applicant's Department that:

> "... the competent review bodies would most likely require detailed explanations in cases of non-implementation of promotions, in particular when reviewing staff at the same grade with similar qualifications recommended by [the Department] for inclusion in the 1984 promotion register."

VIII. The Tribunal finds that the Administration acted in derogation of the Applicant's rights stemming from the determination of unfair treatment made by the Panel in 1981. As indicated above, it was of cardinal importance that the Panel's decision and the Applicant's rights be vindicated promptly and effectively. If the Administration had reason for uncertainty as to the validity of the Panel's findings, their meaning or their effect, or remedial action, it should have immediately directed appropriate inquiries to the Panel. It did not do so. Instead, such issues were raised for the first time before the JAB and this Tribunal. Having proceeded in that fashion, it was incumbent on the Administration, at the very least, to explain with adequate supporting evidence the reasons justifying the various denials of promotional opportunities for which the Applicant was qualified and the selection of others for such posts. This was not done either. Instead the record reveals either no explanation at all, or mere unsubstantiated statements on the lack of suitable posts. The Tribunal considers this as having unjustly hindered the Applicant's career and as having had an unjustly adverse effect on his reputation within the Organization. In addition, this injury was compounded by the Respondent's unjustified delay for three years in answering the statement of appeal before the JAB.

IX. In view of the foregoing, the Tribunal strongly urges that in the future the Administration monitor carefully the Applicant's career to ensure not only that it is in no way prejudiced by the events which gave rise to this proceeding, but that he receives the fair treatment to which he is entitled.

X. The Applicant has requested back pay, seniority and adjustment of future pension benefits based on his assertion that he should have been promoted to P-5 in 1977. The Tribunal denies these requests since it is not feasible at this date to determine precisely when or to what position the Applicant would have been promoted if there had been no unfair treatment prior to 1981, or if the Panel's determination had been acted upon effectively and more expeditiously by the Administration. Accordingly, it would not be possible to try to remedy the discrimination by creating a hypothetical seniority date for the Applicant.

The Applicant also requested the payment of compensation before a determination on the merits by the Tribunal. The Tribunal rejects this request since it would have required not only a prejudgement of the case but pure speculation on the part of the Tribunal. Finally, the Applicant requested compensation for adverse publicity. The Tribunal rejects this request since it is by no means clear to what extent the publicity was adverse or that the Administration caused the Applicant's situation to be publicized.

XI. The Tribunal, having found that the Applicant's rights were infringed as set forth in paragraph VIII above, awards as compensation to the Applicant for the injuries he has sustained, the amount of $12,000.

XII. All other pleas are rejected.

(Signatures)

Mr. Roger PINTO
First Vice-President

Mr. Luis de POSADAS MONTERO
Member

Mr. Jerome ACKERMAN
Member

R. Maria VICIEN-MILBURN
Executive Secretary

New York, 12 November 1987