





7. On 15 May 2009, the Applicant filed recourse before the APPB against the decision not to promote him at the 2008 session.
8. The APPB reviewed the Applicant's recourse at its recourse session which took place from 22 to 26 June 2009. The Applicant was not recommended for promotion.
9. Through IOM/FOM No. 035/2009 of 28 July 2009, the High Commissioner announced the results of the recourse session. The Applicant was not amongst the staff members who were promoted after the session.
10. On 10 September 2009, the Applicant submitted a request to the Deputy High Commissioner for management evaluation of the High Commissioner's decision not to promote him to the D-1 level at the 2008 promotion session.
11. By memorandum dated 4 December 2009, the Assistant High Commissioner for Protection, on behalf of the Deputy High Commissioner, sent to the Applicant the outcome of her management evaluation, i.e., that the decision not to promote him to the D-1 level had been taken in accordance with the Organization's rules and procedures.
12. On 6 January 2010, the Applicant filed an application before the United Nations Dispute Tribunal.
13. By letter dated 8 September 2010, the Tribunal informed the parties that it intended to raise on its own motion the issue of the legality of the 2008 promotion session and requested that the Respondent provide comments in this regard. The Respondent submitted his comments on 15 September 2010.
14. On 1 October 2010, an oral hearing took place in which the Applicant and Counsel for the Respondent participated.

#### Parties' contentions

15. The Applicant's contentions are:
  - a. He has been serving at the P-5 level for nearly 20 years, he has proven managerial competencies and his performance is excellent. Moreover, he has considerable experience of complex situations.





those who had formerly occupied expert posts. The legitimacy of this interpretation was confirmed by this Tribunal in its judgment Mebtouche UNDT/2009/039. As it happened, the Applicant was not assigned to an

f. Moreover, the issue was duly examined, as recorded in the APPB minutes. The omission was therefore not prejudicial to the Applicant since the Administration ensured that the APPB had a precise knowledge of his situation. In any event, this circumstance was not relevant to his promotion to the D-1 level, since the higher level post he had occupied was at the P-5 level, while the Applicant had already been promoted to the P-5 level in 1998. Therefore, paragraph 150 of the APPB Procedural Guidelines was applied correctly;

g. The High Commissioner did promote to the D-1 level two candidates who were not eligible. The High Commissioner considers that he is entitled to grant promotions outside of the promotion and recourse sessions. The Administration is preparing an amendment of the promotion rules so that they expressly state that the High Commissioner has the right to grant promotions without seeking the advice of the APPB;

h. It follows from paragraphs 13 and 38 of the APPB Rules of Procedure that the Board is in no way obliged to conduct further investigations on the candidates' profile but that it must only review the information available on file;

i. The Applicant has not established that information was deliberately manipulated, nor did he substantiate his allegations and the way the alleged manipulation may have favoured other candidates.

## Judgment

17. It follows from the terms of the application and the management evaluation request submitted by the Applicant on 10 Sepy to to to t

him was submitted for management evaluation and can therefore be duly contested before this Tribunal.

18. Firstly, it is appropriate for the Tribunal to reaffirm that, given the discretionary nature of promotion decisions, the control it has over the legality of those decisions is limited to assessing the regular



seniority and eligibility. However, the principle that similar acts require similar rules required that the amendment measure be taken in accordance with the same procedure by which the Rules and Guidelines had been enacted. In this case, the basic legal instrument governing the promotions procedure at UNHCR was

not promote a staff member if his/her situation has not been examined previously by the APPB.

26. It is clear from the judge's review of the file, with regard to promotions to the D-1 level, that the High Commissioner promoted two non-eligible staff members who, because they were not eligible, had not been considered by the APPB. In granting promotions without such consultations, the High Commissioner committed an irregularity which vitiates necessarily the legality of the decision to deny the Applicant a promotion, since there were a limited number of promotion slots.

27. The Tribunal must therefore rescind the decision not to promote the Applicant.

