



UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Case No. 2010-152

Ishak  
(Appellant)

v.

Secretary-General of the United Nations  
(Respondent)

JUDGMENT

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Before:	Judge Kamaljit Singh Garewal, Presiding Judge Luis María Simón Judge Mark P. Painter
Judgment No.:	2011-UNAT-152
Date:	8 July 2011
Registrar:	Weicheng Lin

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JUDGE KAMALJIT SINGH GAREWAL , Presiding.

### **Synopsis**

1. Nasr Ishak (Ishak) was elected to work on a full-time basis as Chairperson of the Staff Council of the United Nations High Commissioner for Refugees (UNHCR) from 15 June 2007 to 30 June 2008. He was considered for promotion in March 2009 from P-4 to P-5 but was unsuccessful. He filed a recourse application on the basis of which a recourse session was held and Ishak was promoted. No grievance remained, but Ishak sought administrative review and challenged certain actions of the Administration which, according to him, denied him a fair consideration for promotion. But as he had already been promoted before he filed the application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), his application was rightly held to be irreceivable, and dismissed. We find no reason to differ. The UNDT Judgment is therefore affirmed. We also find no reason to differ from the UNDT ordering Ishak to pay 2,000 Swiss Francs (CHF) for manifest abuse of proceedings. This award is also upheld.

### **Facts and Procedure**

2. Ishak joined UNHCR in September 1984 in Pakistan. He served subsequently at different duty stations and missions before he was assigned to the UNHCR's Inspector General Office (IGO) in Geneva in January 2004. He was then at the P-4 level.

3. Ishak was reelected as Chairperson of the UNHCR Staff Council in March 2007. So as to enable him to serve on the Staff Council, Ishak was released from his IGO duties from 15 June 2007 to 30 June 2008. He rejoined the IGO with effect from 1 July 2008.

4. In a letter dated 9 December 2008, the UNHCR High Commissioner thanked Ishak for his participation in the Joint Advisory Committee as Chairperson of the UNHCR Staff Council during the period 2007 -2008, and added that Ishak's efforts in

6. On 16 June 2009, Ishak wrote to the Secretary-General requesting administrative

v) the outcome of the management evaluation that the DHC conducted, despite his obvious conflict of interest.

11. In Judgment No. UNDT/2010/085 date d 6 May 2010, Judge Cousin discussed the receivability of Ishak's application. After comparing the decisions of which Ishak requested administrative review on 16 June 2009 with those listed in his UNDT application, Judge Cousin concluded that under Article 8(1)(c) of the UNDT Statute, he could only take into account the decisions identified in Ishak's request for administrative review. Turning to those decisions that Ishak had identified, Judge Cousin considered that they were all preparatory decisions connected to the promotion session, but in no way were they capable of adversely affecting Ishak's legal situation since they modified neither the scope nor the extent of his rights. Furthermore, Judge Cousin believed that Ishak had no further interest in contesting a procedure that ultimately led to his promotion at the time of his application to the UNDT. Judge Cousin reviewed Ishak's conduct throughout the UNDT proceedings and was convinced that he had committed a manifest abuse of the proceedings, for which Judge Cousin ordered Ishak to pay CHF 2,000, which corresponded to part of the salaries paid to the UNHCR legal officers for the time and energy devoted to responding to Ishak's abusive application.

12. The UNDT Judgment was rendered in French. Ishak received the English translation of the UNDT Judgment on 8 September 2010. After he was granted an extension of the time limit, Ishak filed an appeal from the UNDT Judgment on 30 November 2010. The Secretary-General filed an answer on 21 January 2011.

## **Submissions**

### **Ishak's Appeal**

13. Ishak reiterates his contentions as presented in his UNDT application.

14. In his request for administrative review and his UNDT application, Ishak contested a number of administrative decisions taken in preparation for the 2008 promotions and recourse session. This fact was not contested by the DHC.







30. We hold that the UNDT's decision to order Ishak to pay the sum of CHF 2,000 was justified because he filed a frivolous application and continued this application to make all kinds of baseless charges against the fairness of the UNDT, something no justice system should tolerate. The award calls for no interference.

**Judgment**

31. The appeal is without merit and is dismissed, and the UNDT's decision to order Ishak to pay the sum of CHF 2,000 is affirmed.

Original and Authoritative Version: English

Dated this 8<sup>th</sup> day of July 2011 in Geneva, Switzerland.

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Painter

Entered in the Register on this 29<sup>th</sup> day of August 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar