

SEVENTY-NINTH SESSION

***In re* SALA (No. 2)**

Judgment 1436

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs. Françoise Blanche Alice Sala against the International Telecommunication Union (ITU) on 8 June 1994 and corrected on 22 July, the ITU's reply of 14 September 1994, the complainant's rejoinder of 23 February 1995, the Union's surrejoinder of 7 April, the complainant's further submissions of 25 April and the Union's comments thereon of 10 May 1995;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 11 of its Rules;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a French citizen who was born in 1937, holds a grade P.5 post at ITU headquarters in Geneva. Until February 1993 the Secretariat had a Conferences and Common Services Department with several sections. The complainant was head of the French translation section.

By service order 79 of 13 November 1992 the Secretary-General announced reforms in the Department. As from 1 February 1993 it was split in two: the Conference Department, of which no-one was yet appointed head, and the Common Services Department, headed by Mr. Hans Pieterse.

A notice of 7 December 1992 announced the vacancy of the post of head of the Conference Department and by a letter of 9 December the complainant applied. On learning that the Secretary-General had appointed Mr. Pieterse, she challenged the decision in a memorandum of 11 January 1993. She also said she would be applying for the newly vacant post of head of the Common Services Department as soon as it was advertised.

The post was advertised in a vacancy notice of 19 April 1993. On 26 May the complainant sent in her application, but by a letter of 23 July 1993 the Chief of the Personnel Department told her she had been unsuccessful.

On 25 August 1993 she wrote to the Secretary-General asking him to reconsider that decision on the grounds that the successful applicant was no more competent than she and the ITU's policy on promotion discriminated against women.

The Secretary-General upheld his decision in a letter of 8 October 1993 and the complainant went to the Appeal Board on 6 January 1994. By a memorandum of 7 February 1994 the Deputy Secretary-General informed the chairman of the Board that the complainant failed to meet three of the requirements in the vacancy notice: she had no postgraduate university degree, lacked experience in the automation of an administrative department and had never headed a "large multicultural team".

In its report of 7 March 1994 the Board recommended rejecting the appeal. By a memorandum of 11 March to the complainant - the impugned decision - the Secretary-General upheld his decision.

B. The complainant has only one plea: sexual discrimination. In her submission the reasons the Deputy Secretary-General gave for rejecting her application do not hold water. The diploma she has is recognised as equivalent to a postgraduate university degree and she passed the United Nations competitive examination for translators. She believes that the requirement of formal qualifications applies foremost to outside applicants. The vacancy notice did not require experience in the automation of an administrative department but made it just an advantage. One duty listed in the description of her present post is "participating in the introduction of new working methods, particularly those involving electronic data processing". That she can head a "large multicultural team" is plain

from her present duties and what she used to do as president of the Federation of International Civil Servants' Associations. So the conclusions the Secretary-General drew from the evidence were obviously wrong.

The Union is secretive over recruitment and wont to discriminate against women despite what many official resolutions say. At 31 December 1992, for example, women accounted for only 15.8 per cent of staff in the Professional and higher categories and none of them was above grade P.5.

She asks the Tribunal to quash the decision of 11 March 1994 and the appointment to the post and to order the Union to go through the process of selection properly. She claims moral damages and costs.

C. In its reply the ITU points out that in her memorandum of 11 January 1993 the complainant acknowledged she was "not quite ready" to head the Common Services Department.

It contends that she did not fulfil the requirements in the vacancy notice. She has no postgraduate degree. However good they may be, neither her academic qualifications nor her achievement in the examination for United Nations translators are relevant to any of the duties listed in the notice. The Union might have let that pass had she met all the other requirements, but she did not.

Introducing new working methods in the section she at present heads, even if they include data processing, does not amount to real experience in the automation of an administrative department.

She is not qualified to head a "large multicultural team". The staff in her section are all French-speaking and her experience of staff union work does not make up for her lack of that qualification.

As for her saying that recruitment is not open enough, Rule 20 of the Rules of Procedure of the Appointment and Promotion Board requires that the Board's proceedings be secret.

Lastly, her charges of sexual discrimination are unfounded. The Secretary-General has done his utmost to get women to apply for senior posts.

D. In her rejoinder the complainant says that her remark in the memorandum of 11 January 1993 was prompted by indignation and is irrelevant, the more so since at the time she did not know what qualifications the second vacancy notice would require. The Union does have a policy of discriminating against women and had a duty to explain in what respects the five applicants on the short list were better qualified than she. She asks the Tribunal in accordance with Article 11 of its Rules to order such measures of investigation as it deems fit to get the Union to submit a paper showing that those applicants were better qualified.

E. In its surrejoinder the Union refuses to provide a list comparing the complainant's merits with those of the short-listed applicants. It was for the Appointment and Promotion Board, a joint body, to make such comparison, and the Board took the view that she did not meet the requirements in the notice. Rule 20 of the Board's Rules of Procedure allows unsuccessful applicants to ask why they were turned down.

F. In a further brief the complainant submits that the Appointment and Promotion Board is not a joint body.

G. In final comments the Union admits that no such body considered the complainant's application.

CONSIDERATIONS:

1. By a service order of 13 November 1992 the Secretary-General of the ITU announced reforms in the Conference and Common Services Department. The Department was split into two units, the Conference Department and the Common Services Department. The post of head of the Conference Department was put up for competition. The complainant, who was head of the French translation section, applied, but it was the head of the Common Services Department who won. Though the complainant objected she did not challenge the appointment and said she would be applying for the newly vacant post of head of the Common Services Department when it was put up for competition.

2. The Administration announced that vacancy by a notice of 19 April 1993. The successful applicant was to be in charge of logistics, library services, records, document reproduction and publications (composition, production, electronic publishing and sales). The notice set out the duties and stated the requirements to be a postgraduate

degree, preferably in telecommunications or management; suitable experience, an advantage being experience in the automation of an administrative department; the ability to establish and maintain working relations at all levels and to plan, organise and supervise the work of a large multicultural team; and proficiency in English and French.

3. In her application for the post the complainant said that she met the requirements and she cited resolutions adopted by the General Assembly of the United Nations and recommendations by the International Civil Service Commission on the employment of women in international organisations. As she learned from a letter of 23 July 1993, however, she was unsuccessful. She asked the Secretary-General to review his decision on the grounds that the successful applicant was no more competent and was less experienced than she and that to pass her over twice in favour of men who had less seniority and less experience was to discriminate against women. Upholding his decision, the Secretary-General answered her on 8 October 1993 that he had made his choice on the recommendation of the Appointment and Promotion Board and there was nothing discriminatory about the Union's policy. She then put her case to the Appeal Board. The Board recommended that the Secretary-General should not reopen the competition but took note of his promise to "continue trying to get more women to apply for posts in the Professional and higher categories at the ITU".

4. The complainant had notice in a letter of 11 March 1994 of the Secretary-General's endorsement of the Board's recommendation. That is the decision she is impugning, and her complaint is receivable. She seeks the quashing of the Secretary-General's decision and an award of moral damages. She sees sexual discrimination in the rejection of her candidature and by way of proof cites the irrelevance of the reasons the Secretary-General gave for it. Since she does not know why the Appointment and Promotion Board refused to put her name on the short list she asks the Union to produce a paper showing "how far each short-listed applicant met the stated requirements and was better qualified than she". The Union rejected her because it is determined to keep women out of senior posts as far as it can.

5. The Tribunal does not accept her view that she met all the requirements in the notice of 19 April 1993. She had no postgraduate degree and neither the diploma she does have nor the qualifying competitive examination she took is relevant to any of the areas of work the notice mentions. She had no experience in the automation of an administrative department and had never organised or led a "large multicultural team", even though in the course of her career she had come into touch with senior and other staff of many different nationalities. Although the Appointment and Promotion Board and then the Secretary-General did not treat any one of the criteria in the notice as decisive there was no mistake of fact or of law in their view that she fell short of some of the requirements for head of the Common Services Department, a senior post that called for quite particular administrative attainments.

6. She objects to secretiveness in the Union's procedures for recruitment and promotion and maintains that she was as well qualified as any of the short-listed applicants including the successful one. But the case law is plain: as was said for example in Judgment 1223 (in re Kirstetter No. 2), the Tribunal will not interfere with comparison of candidates in a competition. Only when it appears that the choice rests on a mistake of fact or law or that there has probably been misuse of authority will the Tribunal order the defendant to produce further evidence so that it may review such comparison. In this case the complainant has offered no specific evidence to suggest that the ITU's assessment of the applicants may not have been objective and impartial. So the Tribunal will not order the Union to submit the paper she wants and it disallows her application.

7. Lastly, however regrettable it may be that there are too few women in senior posts at the ITU - and for that matter in most international organisations - the Tribunal is satisfied that the complainant was not discriminated against. There was no breach of the General Assembly resolution of 23 December 1992: the Secretary-General could not have used his authority to get her name put on the short list.

8. Since her pleas in favour of quashing the impugned decision are not sustained, her claims to damages and costs fail too.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

(Signed)

William Douglas
Michel Gentot
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.