

The Administrative Tribunal,

Considering the complaint filed by Mrs A. K. against the World Health Organization (WHO) on 10 December 2002 and corrected on 6 January 2003, the WHO's reply of 4 April, the complainant's rejoinder of 3 May, and the Organization's surrejoinder of 5 August 2003;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, who holds both British and Swiss nationalities and was born in 1952, joined the WHO on 23 April 1990 on a short-term, part-time contract in the Division of Mental Health. Between 1990 and 31 January 2002 she has held numerous short-term appointments, both full and part-time, of varying duration and in a variety of departments, programmes and units. As from April 1998 she has held grade P.4. At the material time the complainant worked in the HIV/AIDS Department of the Family and Community Health Cluster (FCH).

On 7 December 2000 the complainant wrote to the Director-General asking her to take action to create a permanent post for the work the complainant had "been doing for 12 years". In a memorandum of 30 April 2001 the Manager of FCH's Management Support Unit informed the complainant that it would not be possible to grant her request: a major reorganisation was under way in her Department and her skills would no longer be required. Nevertheless, she would be given a six-month contract extension as from 1 August 2001 in order to allow her time to seek alternative employment.

The complainant appealed against this decision on 21 June 2001. In its report dated 3 December 2001, the Headquarters Board of Appeal recommended that the complainant be offered an 11-month contract extension to work within the HIV/AIDS Department.

By a letter of 31 January 2002 she was offered a two-year fixed-term appointment at grade P.4, with effect from 1 February. She accepted this offer in writing. Initially assigned to the General Management Cluster (GMG) to provide support to the Staff Association Secretariat, she was informed by a letter of 25 June 2002 of her reassignment to the Sustainable Development and Healthy Environments Cluster (SDE) as a Technical Officer/Writer; she agreed to this reassignment by signing a copy of the letter. She remains on that post.

Under cover of a letter dated 9 August 2002 from the Managing Director of Human Resources Services the complainant was sent a copy of the Board of Appeal's report and was informed that the recommendation of the Board had been superseded by the Director-General's decision to offer her a two-year fixed-term appointment. In a letter of 19 September 2002 the Managing Director of Human Resources Services confirmed for the complainant that the Director-General, by offering the complainant a two-year fixed-term contract, had decided not to accept the Board's recommendation that she be offered an 11-month contract. The complainant was also informed that she could consider this letter as the Director-General's final decision in the matter. That is the impugned decision.

B. In her complaint the complainant repeats the arguments put forth in her internal appeal. She contends first that there was incomplete consideration or mistake of fact. The reorganisation in her Department had already been completed by the time she was offered the six-month contract renewal and this had no impact on the core functions she performed. Funds were available for the creation of a post in her Department. Also, her contracts had been "extended continuously" over a period of nearly 11 years, making her a *de facto* fixed-term staff member. Secondly, she submits that there was a failure to observe or apply correctly the provisions of the Staff Rules and

Staff Regulations or the terms of her contract, in that, she says, for the "foreseeable future" there is a need for her professional skills in her Department. Thirdly, she says that all conditions for the renewal of contract have been met and so the decision not to give her an 11-month contract in the HIV/AIDS Department was motivated by personal prejudice.

She contends that had she been allowed to stay in the HIV/AIDS Department she would now be in a "priority group" of staff members eligible for the "Long Term Short Term process" whereby fixed-term positions are being created for long serving staff on "false" temporary contracts. She accuses the WHO of having acted in bad faith by not providing her with a copy of the Board of Appeal's report earlier; had she known what was in the report she would not have agreed to the fixed-term appointment.

She requests the Tribunal to order that she be reinstated as a Technical Officer/Writer in the HIV/AIDS Department on a fixed-term contract as originally requested by her in her letter to the Director-General dated 7 December 2000. She also claims moral damages and legal fees.

C. In its reply the Organization notes that the Director-General went beyond the redress recommended by the Board of Appeal when she created a two-year fixed-term post for the complainant. Consequently, the complainant lacks a cause of action and her complaint should be dismissed. It adds that the decision did not cause her any injury; on the contrary, it resulted in a significant improvement in her conditions of service. As to her contention that had she stayed in her Department under short-term contracts she would have been eligible for a fixed-term position there, it says that this is pure speculation on her part.

It rejects her allegations that she worked for the Organization for over a decade and it highlights for the Tribunal each period in which the complainant did not have a contract with the WHO.

The WHO submits that there has been no violation of any staff regulation or rule, nor is the complainant able to prove that her contractual rights were infringed. It denies that personal prejudice motivated the decision not to offer her either a further short-term appointment in the HIV/AIDS Department or to create a post for her in that Department. That decision was taken in the proper exercise of discretionary authority after taking into account programmatic and financial considerations. It points out that the Administration had made concerted efforts to help her identify suitable posts after she was informed that her services would no longer be needed in the HIV/AIDS Department. It has not acted in bad faith.

It notes that the complainant has enlarged her claims since her internal appeal; consequently, these are not receivable.

D. In her rejoinder the complainant presses her pleas. She accuses the Organization of using lies, omissions, and contortions of the truth in its defence. She maintains that there was personal prejudice against her and that she has worked for the WHO for over a decade. She states that there were times when she worked to finish up projects even though she did not have a contract. She says that her situation in the Organization is "still very unclear".

E. In its surrejoinder the WHO reiterates its pleas. The complainant was given a two-year fixed-term appointment to a post fitting her qualifications. By her claims for relief she is trying to determine unilaterally her own assignment in the Organization; this would be contrary to the WHO's Staff Rules and Staff Regulations as well as to the Tribunal's jurisprudence. In any event, she accepted the contract that was offered to her and she is bound by its terms. It refutes the allegations she has made in her rejoinder and denies that it has made any false statements.

## CONSIDERATIONS

1. The complainant has worked with the WHO since 1990 on short-term appointments of varying durations.
2. Chafing under her classification as "short-term staff" under 36 contracts since 1990, the last one being an 11-month extension, she wrote to the Director-General on 7 December 2000, asking for the creation of a permanent post for the work she had "been doing for 12 years", particularly citing her personal circumstances as a single mother of three, the unbearable stress and insecurity of her temporary status which have damaged her health, the absence of appraisals of her work despite her continual requests and the sixth restructuring of her unit under yet another director, most of whom merely ask her to wait "to see how things get organized".

3. After a series of meetings with different officials, she received a memorandum dated 30 April 2001 from the Manager of FCH's Management Support Unit informing her that upon the expiration of her contract on 29 June 2001, she would be offered a new six-month contract beginning on 1 August 2001 with new terms of reference. It was not envisaged that her skills would continue to be required in the restructured HIV/AIDS Department due to unavailability of funds. Nor was it possible to establish a post elsewhere in the FCH Cluster due to budgetary constraints and considerations of programmatic needs.

4. The complainant appealed to the Headquarters Board of Appeal which, in its decision of 3 December 2001, recommended that she be given a further 11-month extension as from the end of her current contract with appropriate terms of reference to work within the HIV/AIDS programme.

5. Notwithstanding the Board's recommendation, the Director-General, in a letter of 31 January 2002, informed her that she was appointed in the GMG Cluster to a P.4 level post for two years, under a fixed-term contract commencing on 1 February 2002. Subsequently, on 25 June, she was reassigned from the GMG Cluster to the SDE Cluster as a Technical Officer/Writer. She accepted in writing both the appointment and the reassignment.

6. A letter dated 19 September 2002, on behalf of the Director-General, confirmed the offer of a fixed-term appointment without competition to a post in another part of the Organization that is not in the HIV/AIDS Department as recommended by the Board of Appeal. The Director-General had agreed with the Board that neither compensation nor moral damages were necessary.

7. This is the decision being impugned by the complainant. The relief she seeks is "reinstatement as technical officer/writer in HIV/AIDS on a fixed term contract as originally requested in [her] letter to the Director-General, WHO", of 7 December 2000 as well as moral damages and legal fees.

8. The Organization contends that the decision assailed neither infringed the complainant's rights nor caused her injury. On the contrary, it improved her conditions of service. She had no contractual entitlement to an offer of a new appointment - let alone an offer of a fixed-term appointment - to a post created for her. The decision to assign her to the SDE Cluster was prompted by a good faith wish to respond to her long-standing request for a fixed-term appointment and it was neither detrimental to her dignity nor in breach of her rights.

9. According to the WHO, the complainant's insistence to be given a post as a Technical Officer/Writer in the HIV/AIDS Department - and nowhere else - amounts to her attempting to unilaterally determine her own assignment. Under Staff Regulation 1.2:

"All staff members are subject to the authority of the Director-General and to assignment by him to any of the activities or offices of the World Health Organization [...]"

Additionally, Staff Rule 565.2 states in part:

"A staff member may be reassigned whenever it is in the interest of the Organization to do so."

10. Since the complainant accepted the offer of a fixed-term appointment and reassignment to the SDE Cluster as a Technical Officer/Writer, she is bound by its terms.

11. The Organization stressed that the remedy sought by the complainant before the Tribunal i.e. "reinstatement as technical officer/writer in HIV/AIDS on a fixed term contract", is different from the relief she asked before the Board of Appeal, principally "[a]n 11 month extension, with [her] original Terms of Reference, in [her] department and [her] cluster for as long as the three conditions for extension [...] are met". To the extent that the complainant has now expanded on her claims, the complaint is irreceivable. The WHO asked that the complaint be rejected and the request for redress be denied.

12. The Tribunal finds that the complaint presents far different and wider claims than in the internal appeal. "According to the case law the scope of claims to the Tribunal may not go beyond that of the claims that formed part of the internal appeal, since any claim that goes further is barred under the rule in Article VII(1) of the Tribunal's Statute that the complainant must have exhausted the internal means of redress" (see Judgment 1149, under 4). Hence, the complaint is irreceivable to the extent that the complainant has now expanded on her claims.

13. As for her claim for "reinstatement as technical officer/writer in HIV/AIDS on a fixed term contract", she no longer has a cause of action. She has already received satisfaction inasmuch as the Director-General has appointed her to a P.4 level post for two years under a fixed-term contract. She was actually reassigned as a Technical Officer/Writer, which is her area of expertise, in the SDE Cluster instead of in the HIV/AIDS Department because this would not have been possible, given a "reallocation of writing/editing duties, and taking into account funding constraints and departmental priorities". To insist on her request would be tantamount to laying down unilaterally the terms of her assignment which is within the power and discretion of the Director-General to decide. The Tribunal will not interfere with such a decision where no abuse of authority on the part of the Director-General has been shown.

14. The complainant deduces personal prejudice on the part of her supervisor and other responsible officials, from her being harassed "in the form of isolation, exclusion, bad mouthing behind [her] back and unfounded accusations which undermine [her] contribution and reputation and cause distress". Such allegations not only are unsubstantiated, but have no objective basis.

In any event, the Tribunal has declared that since only final decisions can be challenged before it, the absence of a final decision on a claim renders the claim irreceivable (see Judgment 2107, under 9).

15. The complainant seeks compensation in lost salary and benefits for the years during which she has been remunerated on the basis of short-term employment while performing work of indefinite duration equivalent to that of a fixed-term staff member. In other words, she claims a retroactive fixed-term status.

16. There is no basis on which the complainant can claim to be treated retroactively as if she had a fixed-term contract. She was recruited as a short-term staff member without having to go through a competition process; she accepted several contract renewals. It was within the discretionary authority of the Director-General to decide during all those years whether to renew each short-term contract or offer her a fixed-term contract; but at all material times, she was a short-term staff member (see Judgment 2107, under 10).

17. She accepted and signed all the short-term contracts. If these were valid and enforceable, and not in breach of any applicable staff rule or principle of international civil service law, the Tribunal has no power to reform them or to remake the bargain which parties themselves have chosen to make (see, for example, Judgment 2097, under 10).

18. If it is sought to have the Tribunal treat those short-term contracts as being null, it must be shown that they have violated some fundamental and overriding principle of law or that her apparent consent thereto was vitiated (see Judgment 2097, under 11). This, the complainant has failed to do.

19. Since the foregoing pleas fail, so do her claims for damages and costs.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

