

FORTY-NINTH ORDINARY SESSION

In re SEHGAL

Judgment No. 531

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Sardari Lal Sehgal, dated 31 July 1981, and brought into conformity with the Rules of Court on 10 September, the WHO's reply of 20 October 1981, the complainant's rejoinder and additional communication of 8 January 1982 and the WHO's surrejoinder of 18 February 1982;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, WHO Staff Rules 230, 320.2, 410.4, 560.2 and 1230.1.1, 2, 3 and 4 and WHO Manual sections II.1.40, 80 and 90, and II.7, Annex A;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant was appointed to the WHO's South East Asia Regional Office (SEARO) in New Delhi in 1959 as a secretary-stenographer at grade ND.4. He joined the Reports and Documents Branch (RDOC) in December 1974, still at grade ND.4. as a secretarial assistant. In 1978 it was decided to upgrade several posts of ND.4 secretarial assistants to ND.5. A Selection Committee was set up to consider the 38 secretarial assistants, including the complainant, for promotion to the ND.5 posts. In its report of 1 May 1979 to the Regional Director the Committee put the candidates in three categories of merit and excluded the third ("just average") from consideration. The complainant, with two others, was put in the third and so was not promoted. He appealed to the Regional Board of Inquiry and Appeal, which recommended promoting him to ND.5 with effect from 1 May 1979. The Regional Director having rejected the recommendation on 3 April, he appealed to the Headquarters Board of Inquiry and Appeal, which agreed with the Regional Director's conclusions but recommended awarding him 2,500 Swiss francs as compensation for stress and expenses incurred. By a letter of 29 April 1981, notified on 6 May, the Director-General informed the complainant that he accepted the recommendation. The complainant rejected it, however, and is impugning the decision of 29 April. Having made a further appeal to the Regional Board on 22 January 1981, he was promoted on 18 June 1981 to grade ND.5 with retroactive effect from 1 July 1980 and granted 750 United States dollars as compensation and costs.

B. The complainant has the following arguments. (1) There was personal prejudice on the part of senior officials, in particular a Mr. George, the Administrative Officer to the Regional Director, and a Dr. Mutalik, the President of the Staff Association who, he says, was prejudiced in favour of a Mr. Kumar. (2) There was, as the Regional Board held, incomplete consideration of the facts by the Selection Committee. Since the Committee discussed in detail in its report the merits of two of the candidates - Mr. Kumar and another - it ought also to have considered the complainant's instead of putting him in the lowest category without adequate explanation. The Regional Director accepted the Board's findings, including that one, and ought therefore to have offered the complainant redress. His record of service, which he describes as "unblemished", is better than that of Mr. Kumar, who did get the promotion. The minutes of the Selection Committee submitted to the Board were incomplete and the complainant asks that the WHO produce the full version. (3) The WHO Staff Rules and Manual, in particular Staff Rule 560.2 and Manual section II.1.40, were not observed, or were misapplied, and so were the WHO's post classification standards: as the Regional Board found, staff had been promoted before the revision of the job descriptions warranting the ND.5 grading. Lastly, the complainant cites medical reports as evidence of a sharp decline in his health since May 1979 due to stress caused by the dispute. He invites the Tribunal to quash the Director-General's decision, order his promotion with effect from 1 May 1979, and award him 30,000 United States dollars as damages for the "sharp deterioration of health standards, career prospects, loss of reputation, humiliation and harassment", \$7,500 as costs and \$5,000 as interest on the sums due. He also claims payment of "transport charges" immediately and in the future.

C. The WHO observes that, the complainant having been promoted to grade ND.5 with effect from 1 July 1980, the

only remaining period when he might have held the grade was from 1 May 1979 to 30 June 1980. It produces the full text of the Selection Committee's minutes. It answers the arguments in B above. (1) There is no evidence of personal prejudice. Not being on the Selection Committee, Mr. George could not have influenced its conclusions, and there is nothing to suggest that Dr. Mutalik's support for Mr. Kumar was based on anything but the latter's performance. (2) The Committee did not need to discuss all the candidates just because it discussed two of them. It had all the relevant data, and the fact that there was discussion about putting two of them in the first or second category did not require discussion about whom to put in the third. Besides, there is no reason to suppose that the complainant's case was inadequately discussed. (3) A finding that the revised post descriptions should have been approved before the promotions does not invalidate the Selection Committee's conclusions or the decisions based thereon. The claim for damages for deterioration in health is exaggerated because the decisions taken were not wrong and because the complainant was covered by health insurance anyway. The claim for transport charges is irreceivable on the grounds of failure to exhaust the internal means of redress. The WHO invites the Tribunal to dismiss the complaint.

D. In his rejoinder the complainant develops his arguments. In particular he adduces evidence in support of his contentions that he was more deserving of promotion than Mr. Kumar, that he was the victim of personal prejudice, that the Selection Committee could not in the time it took to do its work have considered properly all the candidates for promotion, axid that his health has suffered because of the dispute. He presses his claim for full compensation for moral injury and all his other claims. In an additional communication he asks that the WHO disclose various documents, including correspondence, Mr. Kumar's appraisal reports and the "original minutes" of the Selection Committee (he alleges that the version produced by the WHO is still incomplete).

E. In its surrejoinder the WHO observes that promotion is a matter of discretion and subject to review by the Tribunal only if certain principles have not been respected. In fact they have been: in particular, all the facts were taken into account and no clearly mistaken conclusions were drawn from them. Comparison with Mr. Kumar is irrelevant. If the complainant is alleging that his health has suffered, there is no reason to suppose that he is still suffering stress after obtaining his promotion: his claim is time-barred and, in any case, he has not exhausted the internal means of redress. Lastly, the WHO refuses to produce the documents he mentions.

CONSIDERATIONS:

1. The complainant seeks relief by way of a determination by the Administrative Tribunal that his promotion to the ND.5 grade should take effect from I May 1979.

His complaint arises out of his non-selection for promotion when 22 of his colleagues, all junior in service to the complainant, were promoted on the recommendation of an ad hoc Selection Committee from ND.4 grade to ND.5. He blames his non-selection on (i) personal prejudice on the part of Mr. J.C. George, Administrative Officer to the Regional Director, and Dr. G.S. Mutalik, President of the Staff Association, SEARO; (ii) incomplete consideration of the facts by the Selection Committee; (iii) violation of Staff Rules and WHO Manual sections; and (iv) failure to observe correctly the WHO Post Classification Standards.

On appeal to the Regional Board of Inquiry and Appeal, the Board concluded that there had been incomplete consideration of the facts by the Selection Committee and recommended that the complainant be promoted with effect from 1 May 1979. The Regional Director rejected that recommendation.

The complainant then appealed to the headquarters Board of Inquiry and Appeal, which did not find that the comparison of the records of performance and length of service of the complainant with those of other ND.4 staff members represented sufficient grounds for the reclassification of the complainant or for promotion to ND.5. It recommended that the appeal be rejected. It recommended, further, that in the event of an ND.5 post becoming vacant the complainant's performance and length of service should be closely examined. Lastly it recommended an award for the stress and expense incurred by the complainant.

The Director-General accepted the headquarters Board's recommendations and it is from that decision that the complainant has appealed.

2. In regard to the allegation of personal prejudice, the Regional Board noted that the complainant did not submit any documents nor did he call witnesses in support of his allegation. The Board concluded that in the absence of a hearing it was not possible to determine whether there was personal prejudice against the complainant by a staff

member.

The complainant now seeks to summon as witnesses before the Tribunal Mr. George and Dr. Mutalik whom he has accused of being prejudiced against him. In the circumstances of this case the Tribunal will not accede to the request.

3. In regard to the allegation of incomplete consideration of the facts, the complainant maintains that once the Selection Committee gave special consideration to two candidates it should have done the same for all the remaining candidates. The Committee had divided all the candidates into categories A, B and C. The complainant was placed in C category and was not being considered for promotion. The special consideration which was given to the two candidates related to whether they should be in category A or category B. It did not confer on the complainant any right to be considered.

4. In regard to the violation of Staff Rules and WHO Manual sections, the complaint is that the selection of the 22 secretarial assistants for promotion before the completion of the revised job descriptions of the posts that would warrant an ND.5 grading was irregular. According to the minutes of the Selection Committee, the Committee's task was "the screening of candidates for the upgraded posts of Secretarial Assistants". The fact that revised job descriptions had not been completed could in no way affect the correctness of the conclusions of the Selection Committee. In other words, although there has been a breach of staff rules, the complainant has not been prejudiced thereby.

5. The complainant claims the sum of US\$30,000 as "damages suffered by the complainant on account of prejudice in terms of sharp deterioration of health standards, career prospects, loss of reputation, humiliation and harassment for no fault of his and tension due to continuing prejudice and the administrative action complained of". As the Tribunal is of the opinion that he has not shown that he suffered prejudice at the hands of the Organization's staff or that the administrative action taken by the Director-General was irregular, this claim will be disallowed, as will the claim for interest.

6. The complainant's last claim is for the reimbursement of transport charges and a direction by the Tribunal to the Regional Director, SEARO, to make arrangements for the payment of future claims of this kind. These are claims made under the WHO Staff Health Insurance plan. Disputes over entitlements under the plan must be submitted, in accordance with Rules 530 and 560 of the Staff Health Insurance Rules (Manual section II.7, Annex A), first to an insurance officer and Surveillance Committee and finally to the Medical Review Committee. Since in accordance with Article VII(1) of its Statute the Tribunal will not entertain claims where the complainant has not exhausted his local remedies, this claim is irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner