

SIXTY-EIGHTH SESSION

***In re* LARIBI**

Judgment 1002

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Ahmed Abdelkader Laribi against the African Training and Research Centre in Administration for Development (CAFRAD) on 12 December 1988, the Centre's reply of 14 February 1989, the complainant's rejoinder of 3 April and the Centre's surrejoinder of 24 May 1989;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 1.6, 2.1, 3.11, 4.4, 4.6, 5.7, 8.1, 9.2 and 9.3 of the Staff Regulations of the Centre;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, a Tunisian born in 1947, was seconded from his country's agency for technical co-operation to CAFRAD headquarters in Tangier on 1 April 1975 as an "attached" staff member. He was put on a grade G.4 post as an assistant documents clerk in the library and granted a series of fixed-term appointments.

From the outset he sought reclassification in the Professional category. A minute of 12 February 1976 informed him that the Director-General regarded his duties as "corresponding to semi-Professional status" and regraded him at G.6. As from 1 April 1978 he was graded G.7. But he was still dissatisfied and pursued his claim to further upgrading, to no avail, in letters he addressed to the Chairman of the Governing Board, to successive Directors-General and to others.

He followed a training course in the United States for seven months in 1979.

By a letter of 4 June 1982 the Director-General informed him that he was appointed head of the acquisitions and exchange section of the documents division; if he completed several months' probation successfully he would be promoted to grade P.1. But nothing appears to have come of that; in any event the complainant remained at G.7 and continued to press his claim.

In December 1985 the Director-General informed him that because of his stubborn and aggressive pursuit of his claim his appointment would not be renewed on its expiry at 31 March 1986. As things turned out, however, he did get it renewed.

Article 4.4 of the Staff Regulations requires the making of annual reports on the performance of officials. In June 1987 the acting Director-General gave the complainant a good report on his work from 1 July 1986 to 30 June 1987, a period in which he had been transferred to head the Arabic documents section of the General Administration Department. The report concluded: "The official amply deserves promotion to the Professional category in keeping with the Staff Regulations, particularly Articles 1.6 and 4.6* (*Article 1.6 ("Classification of posts") provides: "Posts shall be graded on the basis of the duties and responsibilities of the job to be done, and not on the basis of their incumbents' education and experience ...". Article 4.6 says that a "fixed-term official who has already served at least three years in a given grade may be promoted" either by transfer to a more highly graded post or by the upgrading of the post he holds.) The case of Mr. Laribi should be considered and submitted, if need be, to the Executive Committee at its next meeting".

The Director-General imposed a written reprimand on him on 30 March 1988 for insolence.

The matter of his grading was referred to the Committee on 24 June 1988 and then to the Governing Board. By a

minute of 14 September the Director-General told the complainant that on the Committee's recommendation and with the Board's approval he was regraded P.1, step 9, as from 1 July 1988. He got that decision on 26 September 1988, and it is the one he impugns.

On the same day he got another minute, dated 22 September, from the Director-General informing him of the Director-General's intention of dismissing him under Articles 5.7(b) and 9.2 of the Staff Regulations on the grounds of unauthorised absence from duty for over fifteen days.

B. The complainant traces at length the history of his many attempts over the years to have his grading reviewed and contends that the decision to promote him to P.1 should have been taken at the outset of his career. In the end the Governing Board was driven to acknowledge that the duties he had been performing all along pertained to the Professional category. He alleges that he was promised promotion on completion of his training in the United States. He maintains that he has been the victim of especially unfair treatment since 1979, and he cites the "replacement of confidential and other minutes and reports in favour of his promotion", "threats to end his appointment arbitrarily", the reprimand and the notice of dismissal.

He asks the Tribunal (1) to order (a) that his promotion to P.1, step 9, take effect as from 1 April 1975, the date at which he took up duty; and (b) that he be granted, in accordance with Article 3.11(a) of the Staff Regulations ("Payments"), arrears of pay amounting to 590,201 dirhams, or 64,655 United States dollars at the rate of exchange applied by CAFRAD; (2) to award him a further sum of 394,435 dirhams, or \$21,366, in damages for moral injury, to offset the decline in rates of exchange since 1 April 1976 and to cover his costs; and (3) to declare void all measures that have injured his dignity and good name, such as the replacement of minutes, the threats of termination, the reprimand and the notice of dismissal, and to award him damages under that head amounting to twice the sum claimed in (1)(b) above, or another \$129,310.

C. In its reply the Centre observes that the complainant has no arguments to support his claim to promotion as from 1975 and has failed to show any breach of the Staff Regulations or of the terms of his appointment. What the Director-General gave him *ex gratia* in the minute of 12 February 1976 was promotion to grade G.6 on the grounds of a "semi-Professional status" that was not provided for in the Staff Regulations anyway. The complainant failed to challenge that decision at the time or indeed any of the other administrative decisions he is objecting to. Since he has therefore failed to exhaust the internal means of redress his complaint is irreceivable under Article VII(1) of the Tribunal's Statute.

Besides, it is devoid of merit. The decision to promote him in 1988 was taken only on the strength of his long experience. There was no question of promoting him in 1975, when he was not yet qualified for the Professional category under Article 2.1(c) of the Staff Regulations, which reads: "Every Professional official shall be required to possess a degree awarded by a recognized university, or its equivalent in experience". He has also failed to establish that he was promised promotion on completion of the training in the United States in 1979; besides, he did not qualify then either.

D. In his rejoinder the complainant alleges breach of the terms of his appointment and of many provisions of the Staff Regulations. He submits that the decision he impugns is a final one because it was taken by the Governing Board, the highest authority of the Centre, and was not subject to appeal: his complaint is therefore receivable.

As to the merits, he observes that on the Centre's own admission "semi-Professional status" is not provided for in the Staff Regulations. It therefore acted in breach of the Staff Regulations in determining his grading on the strength of such description of his status. Since, as it acknowledged, he did not belong in the General Service category it should at the time have put him in the Professional category. He cites in support of his claim the text of a confidential report on his duties and minutes signed by the Director-General in 1983, 1984 and 1985.

If the decision to promote him was based solely on his experience it was contrary to Article 4.6(b): "No other circumstances, most notably prolonged service at top step of a grade, shall constitute grounds for a grade promotion". As Article 1.6 makes plain, posts are supposed to be graded "on the basis of the duties and responsibilities of the job". Besides, he cannot tell from the text of the impugned decision what post he was promoted to. The Centre overlooks his educational attainments, which he describes, and which from the outset fully met the standard required for the Professional category. He has never founded his claim solely on his training in the United States.

He presses his claims.

E. In its surrejoinder the Centre submits that no argument in the complainant's rejoinder weakens the case in its reply. As to the merits it reaffirms that in 1976 he was not qualified under Article 2.1(c) for a Professional category post. In any event it is plain from Article 4.6(a) that promotion is not a right but is bestowed at the Director-General's discretion.

CONSIDERATIONS:

Receivability

1. The decision the complainant is impugning was taken by the Director-General on 14 September 1988 on a recommendation the Executive Committee of the Centre had made and the Governing Board had approved, and the complainant had notice of the decision on 26 September.

2. Article VII(1) of the Tribunal's Statute provides:

"A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations."

And Article 9.3 of the Staff Regulations of the Centre reads:

"Any official who considers that he has been treated inconsistently with the provisions of these regulations or with the terms of his contract of employment, or that he has been subjected to unjustifiable or unfair treatment by any other official, may request by written appeal that the issue be reviewed by the Representative Committee (Article 8.1) with a view to its definitive settlement."

3. The complainant has not lodged any "written appeal" within the meaning of Article 9.3 against the decision of 14 September 1988 and the Representative Committee has not been convened under Article 8.1(b) of the Staff Regulations to review his case.

His complaint is irreceivable because he has failed to exhaust the means of redress available to him under the Staff Regulations and is not challenging a final decision.

The merits

4. Since his complaint is irreceivable there is no need to go into the merits.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 23 January 1990.

(Signed)

Jacques Ducoux
Mohamed Suffian
H. Gros Espiell
A.B. Gardner

