

## EIGHTIETH SESSION

### ***In re* NACER-CHERIF**

#### **Judgment 1477**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Ahmed Nacer-Cherif against the International Training Centre of the International Labour Organization (ILO) on 7 February 1995, the Centre's reply of 12 April, the complainant's rejoinder of 13 June and the Centre's surrejoinder of 17 August 1995;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

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, an Algerian who was born in 1945, joined the International Training Centre of the ILO, which is in Turin, as head of its accounting unit at grade P.2 on 1 July 1975. He was transferred from the ILO's office at Algiers, where he had been serving as an administrative and financial assistant at grade G.7 since 1970. The Centre promoted him to P.3 in March 1981 as head of Management Control and appointed him on 1 February 1982 head of Planning and Administration. Since 1988 he has been chief of the Budget and Control Section at grade P.4. In 1992 the Centre created a Finance and Budget Service combining Budget and Control with Finance.

On 22 March 1994 the Centre issued a notice of vacancy, No. 5/1994, inviting internal and external applications for the P.5 post of chief of the Finance and Budget Service. The notice said that the Centre would give preference to applicants already on its staff. The complainant, two other staff members and 134 external candidates applied.

On 24 March the Selection Committee sent the Director of the Centre, at his instructions, proposals for membership of an ad hoc panel to make a preliminary assessment of the candidates.

On 8 June 1994 the panel called the complainant for interview. By a minute of 19 September the Director informed him that one of the external candidates had won. In a minute of 7 October he asked the Director to say why he had been passed over in favour of an external candidate. He saw the Director on 24 October. The Director explained that the Committee had ranked him fifth of six candidates on its short list and that, unlike the successful candidate, he did not, as the notice had required, have an advanced university degree in economics or business administration or an equivalent professional qualification. The Director confirmed those statements in a minute he wrote to the complainant the same day.

In a minute of 21 November 1994 the complainant lodged a "complaint" with the Director under Article 12.2 of the Centre's Staff Regulations. He expressed "doubts about the objectivity of the criteria which led to [his] being put in fifth place" and submitted that since the Selection Committee had not examined his candidature its treatment of him had been "unfair". The Director replied in a minute of 18 January 1995. He said that the Committee, which he had asked for an explanation, had answered that the complainant had not been discriminated against; the Committee had declared that it had been aware that it must come to its own conclusions, independently of the panel, and its members had had complete files on all the candidates. Concluding that the process of selection had been quite "rigorous and exhaustive", the Director rejected his "complaint". That is the decision he is impugning.

B. The complainant pleads breach of paragraphs 3, 4 and 10(b) of Annex H to the Staff Regulations ("Rules for filling of vacancies"), which say that professional experience may do instead of a university degree. The Director did assure the complainant in his minute of 18 January 1995 that lack of an appropriate university degree had not been the main reason for rejecting him; but he made out at the same time that the outside candidate's background was better than the complainant's own and he gave not the slightest explanation of the criteria by which he had reached that conclusion.

Nor did the Director heed what the notice of vacancy had said and what Article 1.2(d)(2) of the Regulations prescribed and give preference to internal candidates.

The Staff Regulations and the Selection Committee's standing orders say nothing of ad hoc panels. So there was breach of Article 0.8 of the Regulations, which forbids making an exception to the rules without the consent of the official concerned.

The complainant questions the impartiality of a member of the panel who, he says, threatened him after he had taken a decision as chief of the Budget and Control Section. He objects to the panel's putting him in fifth place when one of the first four was a grade P.2 official.

He contends that though the Selection Committee was the only body competent to assess the candidates it merely endorsed the panel's conclusions. Only two of its four members saw his application, even though all four had access to the applicants' files.

He seeks the quashing of the decisions to reject his application for the advertised post and to appoint an outside candidate. He claims awards of one United States dollar in token damages for moral and professional injury and of \$1,300 in costs.

C. In its reply the Centre contends that the process of selection was proper.

It observes that the "complaint" the complainant filed on 21 November 1994 said nothing of the "threat" he now imputes to a member of the panel; so the "altercation" was not as bad as he makes out.

Neither in the course of the selection process nor in his "complaint" did he express reservations about the convening of the panel. It was warranted because the chairman was the only member of the Selection Committee who did not hold a lower grade than that of the post, and none of its members had any special knowledge of financial and budgetary matters. The panel's work was confined to preliminary assessment of the candidates' technical qualifications. Its conclusions were plain enough for some of the members of the Committee to see no point in looking at the candidates' files again.

It was not lack of a suitable university degree that prompted rejection of the complainant, though it was relevant in determining his ranking on the short list. The panel took the view that despite "long experience in the Centre" none of the three internal candidates "had the appropriate academic background". The successful candidate's professional qualifications set him above the others in training and experience. Only when applicants are equally qualified do internal candidates enjoy preference. As Article 1.2(a) of the Staff Regulations says: "The paramount consideration in the filling of any vacancy shall be the necessity to obtain a staff of the highest standards of competence, efficiency and integrity".

In any event - says the Centre - the complainant should have been rejected at the start because he had neither the right university degree nor equivalent professional experience.

D. In his rejoinder the complainant argues that though there might have been at least some grounds for having the panel do a preliminary sorting out of candidates it should have looked only at the external ones. Only the Selection Committee may assess internal applicants.

The reason why he did not object in the internal appeal to convening the panel was that he did not yet know that no other body had assessed him and given him a ranking. The Centre's explanation of its reasons for having the panel does not hold water since its members were ignorant of the technical field of the post.

Though he did not mention in his internal appeal the threats from a member of the panel - and there was no mere "altercation" - that was so as not to spread it abroad too much.

He puts his costs at \$2,000.

E. In its surrejoinder the Centre points out that setting up the panel served in achieving the purpose, stated in Article 1.2(a) of the Regulations, of securing staff of the highest standards of competence, efficiency and integrity. The complainant is not saying that the panel's assessment caused him any injury whatever.

The Centre observes that he does not object in his rejoinder to its argument in its reply that the successful candidate was better qualified.

## CONSIDERATIONS:

1. The complainant joined the ILO's office at Algiers in 1970 as an administrative and financial assistant. The Organization transferred him in 1975 to its International Training Centre at Turin. He worked there first at grade P.2, from March 1981 at P.3 and from 1 November 1988 at P.4. By 1992 he had his present job as chief of the Budget and Control Section. The Centre having decided to create a Finance and Budget Service, he applied in 1992 for the P.5 post of chief, which the Centre had put up for competition. After two attempts that eventually petered out the competition at last took place in March 1994, and it was open both to serving staff and to others. It drew 134 outside candidates and three internal ones including the complainant. On the strength of a report by an ad hoc panel the Selection Committee concluded that the three outside candidates that the panel picked were the best. On 19 September 1994 the Director of the Centre told the complainant that he had not been successful and that an outside candidate, Mr. Peter Jones, had been offered the appointment. He lodged an internal "complaint" seeking review, or, failing that, promotion to P.5. But the Director refused his claims on 18 January 1995, and that is the decision he is impugning.

2. There is no doubt but that the complainant has a cause of action. He pleads many flaws in the process of selection: that a university degree was taken to be a sine qua non for the post; the Selection Committee surrendered to the panel responsibility for making a short list, the setting up of the panel was improper, and one of its members was hostile to him; his interview with the panel lasted only a dozen minutes; the Committee did not even look at his file; and the Director gave the staff false hope of promotion by issuing the notice and holding the competition when all along he meant to pick an outsider.

3. Some of those pleas must fail. For one thing, the Tribunal is satisfied on the evidence that, though the wording of the notice is not very clear, those who made the selection did not treat a university degree of the right sort as essential. For another thing, the complainant adduces not a jot of proof of his contention that the Director was bent from the outset on bringing in someone from outside.

4. Much more cogent are his pleas about breach of due process. Taken together, Article 1.2 of the Staff Regulations and Annex H, to which 1.2 refers, mean that when the Centre holds a competition to fill a post the Selection Committee provided for in Article 10.4 must examine the candidates by a process that is spelt out in great detail. In this case the Committee set up an ad hoc body to make a preliminary assessment, and according to the documents it was called an "examining" or "selection" panel. The Director appointed its six members on the Committee's own recommendation, and they included the chairman and one other member of the Committee. So it was distinct from the Committee itself which had four members: one appointed by the Director from the Personnel Office, one named by the Staff Union Committee, and the other two by the Director on the joint recommendation of Personnel Office and Staff Union Committee.

5. The evidence is that it was the panel that followed the various stages of selection prescribed in paragraph 10 of Annex H for internal competitions and in paragraph 12 for external competitions. First, it looked at the records of the 134 external candidates and reduced the number to 29. Then it picked the best three, again on the strength of their written records, and decided to interview them, together with the three internal candidates, who were not covered by the preliminary assessment. After an interview with each of them - the one with the complainant lasted but 12 minutes - it ranked the six remaining candidates, putting the three external ones first and the complainant fifth. The panel reported to the Selection Committee on 23 June 1994 and the next day the Committee unanimously accepted its conclusion that the three external candidates were "the best" and "fully qualified for carrying out the job in question".

6. The Committee reached that conclusion without having seen any of the candidates or looked at the application forms and personal records of the internal ones. It was from two members of the Committee that the complainant learned that the Committee as such had never seen the records, and though the leak may have been a pity he is free to rely on the information. He at once told the Director, and in a minute of 18 January 1995 the Director answered that he had sought an explanation from the Committee on that score but found nothing wrong. He had been told - said the Director - that "the Committee had fully realised it must make up its own mind independently of the panel", that the application forms and personal records had been "at the disposal of the members" of the Committee, and that they had all carefully studied the panel's report.

7. It is plain from the whole process of selection that though the Committee did endorse the panel's report it had neither looked at the individual applications nor seen any of the candidates but had left all that to the panel. Though it is not unthinkable for a selection committee to set up a panel of people whom it believes to be better fitted to assess the technical qualifications of candidates, especially external ones, it may not delegate altogether its authority under the Staff Regulations. It must exercise its own authority and not delegate unless the rules say it may.

8. That is even more important where, as in this case, the membership of the body that purports to delegate affords the staff special safeguards. Since the panel's members came mostly from the management side it was no offshoot of the Selection Committee, even though the Director had consulted the Committee about its membership and, as was said in 4 above, two of its six members were on the Committee too.

9. By letting the panel draw up a short list and endorsing its conclusions without even seeing the candidates on that list or looking at their records the Committee failed to observe its terms of reference under the Staff Regulations. Since the process of selection was therefore unlawful there is no need to entertain the complainant's plea that someone who was both on the panel and on the Committee had made remarks betraying dislike towards him.

10. What redress, then, is to be granted for the flaws in the process? As the Tribunal held in Judgment 1359 (in re Cassaignau No. 4), an organisation must be careful to abide by the rules on selection and appointment. When the process proves flawed the Tribunal will quash any decisions it engendered and order resumption with due heed to the rules, albeit on the understanding that the organisation must shield the successful candidate from any injury that else may flow from the quashing of an appointment accepted in good faith. Here the Tribunal will follow that precedent. In a subsidiary plea the defendant suggests an award of damages, instead of rescission, by way of redress. The Tribunal holds such award to be inadvisable in the circumstances.

11. The conclusion is that the decisions to reject the complainant and to appoint Mr. Peter Jones as chief of the Finance and Budget Service must be set aside. But the Centre shall see to it that Mr. Jones sustains no injury on that account.

12. As to the complainant's claim to token damages for moral injury this judgment affords a remedy for any such injury.

13. Since he succeeds he is entitled to costs in the amount he claims.

#### DECISION:

For the above reasons,

1. The decisions by the International Training Centre of the ILO rejecting the complainant and appointing Mr. Peter Jones as chief of the Finance and Budget Service are set aside.
2. The case is sent back to the Centre.
3. The Centre shall pay the complainant 2,000 United States dollars in costs.
4. His other claims are dismissed.

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

Delivered in public in Geneva on 1 February 1996.

(Signed)

William Douglas  
Michel Gentot  
Egli  
A.B. Gardner

