

EIGHTY-NINTH SESSION

In re Newhall

Judgment No. 1954

The Administrative Tribunal,

Considering the complaint filed by Ms Jenny Newhall against the Pan American Health Organization (PAHO) on 2 February 1999 and corrected on 18 March, the PAHO's reply of 28 June, the complainant's rejoinder of 11 August and the Organization's surrejoinder of 22 October 1999;

Considering the comments submitted by Ms P. on 24 January 2000 at the Tribunal's request, the complainant's observations thereon of 23 February and the Organization's final comments of 17 March 2000;

Considering Article II, paragraph 5, 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, a Bolivian national born in 1957, joined the staff of the PAHO in 1978. She holds a career-service appointment and is currently a G.5 with the Analysis and Strategic Planning Unit.

On 5 June 1997 a vacancy notice was issued for a G.6 post - 4162 - as an office technician in the Division of Health and Human Development. The post required, *inter alia*, "very good knowledge of English and Spanish" as well as "word processing in English and Spanish in accordance with established standards". The complainant, one of twelve applicants, applied for the post on 6 June. Ms P., a short-term consultant with the PAHO from November 1992 until 7 October 1997, was one of the other candidates; she was treated as an internal candidate throughout the selection process. Her mother tongue is English.

The Selection Committee met on 14 October 1997. It did not request any additional information regarding Ms P. nor did it question her qualifications. None of the applicants was tested for typing or language skills during the selection process. The Committee unanimously recommended Ms P. for post 4162.

On 23 October the Personnel Department informed the complainant that Ms P. had been recommended for the post. She was officially assigned as of 27 October 1997.

The complainant appealed to the Headquarters Board of Inquiry and Appeals against the appointment of Ms P. to post 4162, claiming that Staff Regulation 4.4, which requires that "vacancies shall be filled by promotion of persons already in the service of the Pan American Sanitary Bureau in preference to persons from outside", had been violated. Although the Board concluded that Ms P. was an external candidate at the critical date, *i.e.* that of the Selection Committee meeting, it found that Staff Regulation 4.4 did not apply because she was unanimously considered better qualified than all the other applicants. Based on these findings the Board did not recommend cancelling the appointment or beginning a new selection process.

By a letter of 3 November 1998 the Director of the PAHO informed the complainant that he had "accepted the conclusions and recommendations of the Board of Appeal to confirm the selection of Mrs P.". That is the impugned decision.

B. The complainant argues first that the successful candidate did not meet the minimum requirements of post 4162 and contends that this violates the Tribunal's case law and the principle of the merit system of employment. Ms P.'s typing and Spanish language skills were never tested. The complainant points out that on an evaluation form dated 1994 Ms P.'s grasp of Spanish was indicated as "marginal" and that in 1999 she was enrolled in a Spanish class which was only at the intermediate level; therefore, it is impossible that Ms P. possessed a "very good knowledge of Spanish" at the time of appointment.

Secondly, the report of the Board of Inquiry and Appeals concluded that Ms P. was an external candidate, since her contract as a consultant had ended one week before the Selection Committee met. Therefore, the complainant should have been given preference in accordance with Staff Regulation 4.4. She disputes the Board's conclusion that Staff Regulation 4.4 did not apply, arguing that it was based on unverified information regarding the successful candidate's qualifications.

Finally, since the PAHO has admitted that it did not verify the successful candidate's qualifications, it should have for that reason alone and as a matter of principle, set aside the appointment and repeated the selection process.

The complainant asks the Tribunal to find that Ms P. did not meet the requirements for Spanish proficiency and for word processing in both English and Spanish, that she was an external candidate and that Staff Regulation 4.4 should have been applied, and to order that her appointment to post 4162 be set aside and a new selection process begun. In addition, she claims payment of damages and costs.

C. In its reply the PAHO states that it adhered to all the applicable rules and procedures in the selection process. It rebuts the complainant's argument that the successful candidate should have been tested for proficiency, stating that, since "typing tests are administered for entry level (G1-G3) secretarial post where the candidate does not have a record with the Organization", none of the candidates was tested. Furthermore, short-term consultants are hired for specific skills and expertise which they are presumed to possess. Post 4162 is a G.6 post and Ms P.'s abilities were attested to by her employment record and evaluations over four years with the PAHO.

The defendant further submits that Ms P. met all the minimum requirements of post 4162 and that the complainant has based her allegations about Ms P.'s language skills on an evaluation of 1994, made three years before the selection for the post. Ms P.'s 1996 Personal History Form, which required her signature confirming its accuracy, reflected that she possessed the Spanish skills necessary for the post. The defendant also points out that Ms P. was given consecutive contract renewals.

The PAHO argues that the complainant was not chosen for the post because she was not the best qualified. Ms P. was considered a superior candidate because of her graduate training and her excellent performance during her four years of work in the Division. The complainant's educational background and other skills were not sufficient to put her on the short list. The defendant also points out that neither the two other short-listed candidates, nor any other candidate, has challenged the selection and appointment of the successful candidate.

It denies that Staff Regulation 4.4 was applicable to this appointment. It only applies in instances of a tie between external and internal candidates, "where all other things are equal". Ms P.'s educational background and work experience made her the most qualified candidate and the Selection Committee unanimously recommended her selection. The PAHO adds that to consider Ms P. as an external candidate while she was on a mandatory contract break for short-term consultants "misconstrues PAHO rules and regulations, and would result in a travesty of basic logic and justice".

Furthermore, the defendant states that the complainant provides no evidence that she was better qualified than Ms P. or that the information on Ms P.'s Personal History Form was inaccurate.

D. In her rejoinder the complainant claims that the question is not whether Ms P. met the requirements of the post, but rather what actions the defendant took to check her qualifications. She presses the argument that Ms P.'s qualifications were never objectively verified. Consequently, it was not possible to find her to be the most qualified candidate and Staff Regulation 4.4 should have been applied. The complainant objects to the fact that the PAHO relied heavily on subjective evaluations of Ms P.'s qualifications: concrete indicators are better for evaluating candidates than words such as "wonderful" and "very good". She highlights the inconsistent policy that the PAHO has taken as to whether Ms P. was an internal candidate at the time of the Selection Committee meeting.

E. In its surrejoinder the PAHO maintains that all rules and procedures were properly applied in the selection of the successful candidate. The complainant confuses the difference between testing and verification of a candidate's qualifications. Qualifications of candidates with a work history at the PAHO can be checked by a variety of methods other than tests, whereas those unknown to the PAHO must often be tested. There was no need to test the successful candidate because she had a solid work history at the PAHO. The complainant has focused only on the language and typing requirements for post 4162, disregarding the fact that other skills, such as very good

organization, coordination, research and analysis, were also minimum requirements for the post.

F. In comments on the pleadings submitted at the Tribunal's request Ms P. points out that the complainant does not know her personally nor is the complainant familiar with her work and objects to the fact that, nevertheless, the complainant is "permitted to taint [her] professional reputation". As for her language skills, she states that she was required to pass a Spanish proficiency test as part of her Master's degree and that she has lived one year in Spain. She provides the Tribunal with other factors relevant to her professional abilities.

G. In her observations the complainant admits that she knows Ms P. by reputation only. Despite the fact that Ms P. had been given the opportunity by the Tribunal to submit evidence of her qualifications and achievements, her letter makes claims that are once more not supported by evidence. Since Ms P. was given a copy of the complaint, she should have been aware that "the issue of verification lay at the heart of the matter".

Although the complainant presses her claim that the selection of Ms P. should be set aside, she also expresses the hope that the PAHO will take steps to ensure that Ms P. suffers no material injury as a result, as it was the Administration that did not properly adhere to its own selection procedures.

H. In its final comments the PAHO objects to the fact that the complainant's counsel has tried to use the further submissions to continue arguments on the merits. It was the Organization's understanding that the Tribunal's invitation was to give Ms P. an "opportunity to express her personal views on the Complaint", and it was not for the complainant to comment on the merits. It contends that there was no need for Ms P. to attach copies of any diplomas or certificates to her letter, as such information can be found in her personnel file.

CONSIDERATIONS

1. The complaint relates to the selection process for a vacant post in the Division of Health and Human Development at the PAHO, to which the candidate recommended by the Selection Committee was appointed.
2. The complainant argues that the successful candidate, Ms P., did not have a very good knowledge of Spanish at the time of her appointment. The complainant cites a 1994 appraisal report which indicated that Ms P.'s grasp of Spanish was only marginal. She mentions the fact that as of 1999 Ms P. was enrolled in an intermediate level Spanish class. The complainant also claims that Ms P.'s language and typing skills were not objectively verified by testing; in addition, Ms P. was listed as an internal candidate during the selection process when she was really an external candidate.
3. The Organization replies that none of the candidates was tested for language or typing skills at the time of selection. It says that during her employment with the Organization for four years, Ms P. had been able to use the Spanish language and word processing to the satisfaction of all known to her. Her supervisor in the Division of Health and Human Development, confirmed in a memorandum of 30 April 1998 that her proficiency in the Spanish language and the typing duties associated with the post fulfilled the terms of the job description which he had assisted in drafting.
4. The Organization claims that Ms P. was listed as an internal candidate on the basis of her continuous short-term contracts during four years prior to selection. Her previous contract expired one week before the Selection Committee meeting. In the selection process the Director of the Division concerned was sent a list of all the candidates by the Department of Personnel and was asked to draw up a short list. Ms P. was one of three preferred candidates who completely fulfilled the requirements of the post. The complainant was not one of the preferred candidates. The Selection Committee, which met on 14 October 1997, unanimously recommended Ms P.
5. The complainant has not proved that Ms P. did not meet all the requirements of the post.
6. The only question is whether it is relevant that Ms P. was listed as an internal candidate when her short-term contract had run out a week before the Selection Committee meeting. In the opinion of the Tribunal it is immaterial. Staff Regulations 4.2 and 4.4 provide:

"4.2 The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence, and integrity ...

4.4 Without prejudice to the inflow of fresh talent at the various levels, vacancies shall be filled by promotion of

persons already in the service of the Pan American Sanitary Bureau in preference to persons from outside."

7. The correct interpretation of Staff Regulation 4.4 is that persons already in the service of the Organization have priority only if their qualifications appear to be equal to those of other candidates (see Judgment 107, *in re* Passacantando). Since the complainant was found not to be as well qualified as Ms P., she cannot rely on Regulation 4.4.

8. The complaint therefore fails.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet