

The Administrative Tribunal,

Considering the complaint filed by Ms G.C. against the Food and Agriculture Organization of the United Nations (FAO) on 10 August 2004, the Organization's reply of 16 November 2004, the complainant's rejoinder of 8 February 2005 and the FAO's surrejoinder of 22 April 2005;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a French national, born in 1946, who has worked for the FAO since 1978. Since 1 March 1989 she has held the grade P-4 position of Economist, Agricultural Economics, in what is now known as the Food Security and Agricultural Projects Analysis Service (ESAF). ESAF is part of the Agricultural and Development Economics Division (ESA) of the Economic and Social Department (ES).

On 9 April 2001 the complainant drafted a document entitled "Note on the moral harassment which I have, over the years, suffered at the hands of my Chief", in which she accused her immediate supervisor, the Chief of ESAF, of frequently adopting a hostile attitude towards her, of showing neither respect for nor understanding of her or her work, of trying to mask existing tensions by adopting a false attitude and of trying to give the impression that she – the complainant – was at fault. She sent this Note to her Division Director – the Director of ESA – on 10 April 2001, copying it to the Personnel Officer responsible for ESAF staff. Referring to the "lengthy discussions" she had recently had with the Director and the Assistant Director-General, she asked both addressees to ensure that her Note would be placed in her personnel file "so that [her] Chief's systematic hostility [would] no longer obstruct [her] career".\*

In September 2001 the Organization published a vacancy notice for the grade P-5 post of Senior Economist in the ESA Division. The complainant applied on 9 October and was called for interview on 15 October.

In a memorandum of 16 October 2001 addressed to the Personnel Officer, the complainant objected to the fact that the Chief of ESAF had been a member of the panel that had interviewed her. She reminded the Personnel Officer that, at the time when she had submitted her Note of 9 April 2001, she had agreed not to lodge any official complaint "in view of the assurances [she had been] given to the effect that [her] career would progress in a normal fashion after the departure of her Chief", who was due to retire. The complainant felt that she had not had the benefit of an impartial interview panel, since her supervisor had been "once again, in a position to express her blatant hostility". Consequently, she asked the Personnel Officer to send a copy of her Note of 9 April 2001 to each member of the Professional Staff Selection Committee (PSSC). The committee would, at the next stage of the selection procedure, examine her Division's recommendations.

Between 2 and 12 November 2001 the complainant sent a series of e-mails to the Personnel Officer to enquire whether the latter had forwarded her Note to the Director of the Human Resources Management Division (AFH) and to the Secretary of the PSSC. The Personnel Officer replied, on 7 November, that the contents of the complainant's memorandum of 16 October were still under consideration by the Office of the Assistant Director-General, ES. Then, on 12 November, the Personnel Officer indicated that in her view the correct course of action was to await the outcome of the Assistant Director-General's inquiry before sending the Note. The complainant disagreed and, two days later, sent a copy of her memorandum directly to the Director of AFH and to the Secretary of the PSSC "for information".

In the meantime, the Assistant Director-General, ES, had asked the complainant's Division Director, who had chaired the interview panel, to comment on the complainant's allegations of partiality. In a memorandum dated 16 November 2001 the Division Director described the procedure followed by the panel, which was in his view "as

fair, transparent and unbiased a process as could be imagined". On 18 January 2002 the Division Director submitted a shortlist of candidates to the PSSC.

By an e-mail of 22 January 2002 the complainant asked the Personnel Officer to provide her with an official reply to her memorandum of 16 October 2001 and to her Note of 9 April 2001. The Personnel Officer replied that in her memorandum of 16 October, the complainant had merely requested that a copy of the same be transmitted to the PSSC, which she had done. As for the Note of 9 April, this had been placed in the complainant's file as requested. The complainant then asked for evidence of the transmission of the two documents to the PSSC. The Personnel Officer replied that she had delivered the memorandum of 16 October 2001 to the Secretary of the PSSC by hand, whilst the Note of 9 April had been dealt with as indicated in her previous message.

On 22 February 2002 a meeting was held between the complainant, the Division Director and the Personnel Officer, at which it was agreed, inter alia, that the Note of 9 April would be transmitted by the Personnel Officer to the Director of AFH with a request that it be treated as an official complaint. The Personnel Officer did so that same day, indicating on the transmittal slip that the complainant, who had "recently decided that she would like [the Director of AFH] to be informed with regard to the content of the note", had "made it clear that she [did] not wish to make an appeal but to register a complaint".

In an e-mail of 14 March 2002 addressed to her Division Director, the complainant responded at length to the comments which the latter had sent to the Assistant Director-General on 16 November 2001 regarding her challenge to the impartiality of the Division's interview panel. In closing, she stated that she would await his reply before deciding what subsequent steps she might take, but nevertheless requested that her e-mail be "forwarded immediately to the PSSC and officially attached to [her] complaint for moral harassment".

In a memorandum of 3 April 2002 the Director of AFH pointed out to the complainant that her intentions were unclear. She suggested that if the complainant wished to lodge a complaint of harassment, she should write to her directly, indicating her allegations and the remedy sought, but that if she wished to resort to the appeals procedure, she should write to the Director-General in accordance with Staff Rule 303.1311. The complainant replied, in an e-mail of 9 April 2002 to which a copy of her Note of 9 April 2001 was attached, that she wished to pursue her original harassment complaint. She also stated that she now wished to formalise her "complaint against persons who received my complaint and not only failed to act upon its content but failed to pass it to the proper authorities (yourself) for appropriate consideration and action". The Director of AFH acknowledged receipt of her complaint on 29 April 2002 and informed her that an investigation would be conducted.

In the meantime, on 18 March 2002 the Director-General had decided to appoint a candidate other than the complainant to the post of Senior Economist. On 24 May the complainant wrote to the Director-General to initiate an internal appeal against that decision. She contended that the selection procedure had been tainted with irregularity, because her "biased supervisor" had been a member of the interview panel, and that she had been denied due process, because the Administration had deliberately avoided forwarding her complaint regarding the composition of the interview panel to the PSSC until the vacant post of Senior Economist had been filled. She requested that the appointment be annulled and that the selection procedure be resumed from scratch.

The investigation by AFH into the complainant's harassment complaint was concluded in August 2002. The Personnel Officer (Legal Matters) who investigated found that the allegations put forward by the complainant in her Note of 9 April 2001, her memorandum of 16 October 2001 and her complaint of 9 April 2002 were not supported by the findings of fact made in the course of the investigation. A copy of the investigator's report was forwarded to the complainant on 8 August by the Chief of the Human Resources Policy, Planning and Systems Service (AFHP), who hoped that the complainant would accept the findings and conclusions made in the report, which he endorsed, and that she would consider the matter closed.

By a letter of 13 August 2002 the Assistant Director-General, Administration and Finance Department (AF), dismissed the complainant's appeal as unfounded. On 9 September 2002 the complainant lodged an appeal with the Appeals Committee, which, in a report dated 14 December 2003, recommended that the appeal be rejected as unfounded. The Director-General informed the complainant by a letter of 13 May 2004 that he had decided to accept that recommendation. That is the impugned decision.

B. The complainant contends that the impugned decision is vitiated by a lack of impartiality on the part of the interview panel. She points out that her working relationship with her immediate supervisor had been "extremely

acrimonious” for a long period of time, and that this fact was well known to both her Division Director and the Assistant Director-General of her Department. She therefore considers that in appointing her supervisor to the interview panel, her Division Director showed complete disregard for the impression of partiality and ill will such appointment would have on her.

The complainant also argues that she was denied due process as a result of the Organization’s failure to take appropriate action in respect of the memorandum of 16 October 2001 by which she objected to the composition of the interview panel. She submits that the transmission of her memorandum to the PSSC was deliberately delayed for two months and that, as a result, her application for the vacant post could not be reviewed objectively. According to the complainant, the PSSC made its recommendation to the Director-General without being fully informed. In this regard, she notes that the Appeals Committee found no evidence enabling it to determine whether her comments were received by the PSSC in time to be considered.

Lastly, the complainant objects to what she describes as the Organization’s deliberate attempts to confuse the issues by referring to her complaint for moral harassment, which in her view has no bearing on the present dispute. For example, she denounces the fact that in rejecting her appeal the Assistant Director-General, AF, raised the issue of harassment, whereas her appeal was based on allegations of absence of impartiality and denial of due process, and that the Organization adopted a similar approach in its submissions to the Appeals Committee.

The complainant does not wish to raise the issue of whether the successful candidate deserved to be appointed to the post in question, and she considers that too much time has now elapsed to recommence the selection procedure. However, she asks the Tribunal to order the Organization to pay her 25,000 United States dollars for denial of impartiality, 35,000 dollars for denial of due process and 25,000 dollars in costs.

C. In its reply the Organization submits that the complainant has completely failed to substantiate her allegations. It draws attention to the fact that, in the course of the investigation by AFH into the complainant’s allegations against her immediate supervisor, all members of the interview panel were consulted on the question of impartiality, and they all expressed the view that the supervisor had shown no bias or prejudice against the complainant during the interview. It adds that the Appeals Committee likewise found no evidence of prejudice on the part of the members of the panel.

The FAO asserts that the selection procedure fully complied with its Regulations and Rules. In this connection it recalls that decisions on appointments, being discretionary in nature, are subject to review only on limited grounds, such as error of fact or of law, or procedural flaws.

With regard to the alleged delay in transmitting the memorandum of 16 October 2001, the defendant Organization points out that under its Regulations and Rules there is no obligation on the Personnel Officer responsible for ESAF staff to submit any information to the Secretary of the PSSC during the interview process. It asserts that the memorandum was received by the PSSC before the complainant’s Division Director submitted the interview panel’s shortlist of candidates to it on 18 January 2002, the complainant herself having forwarded it to the Secretary of the PSSC and the Director of AFH on 14 November 2001. It concludes that her allegation of denial of due process is not supported by the facts.

The Organization denies that it is attempting to confuse matters by raising the issue of moral harassment. It considers that the complaint is essentially based on the same factual allegations as those that were put forward in the Note of 9 April 2001, and points out that the investigation report concerning those allegations also dealt with the issue of impartiality.

D. In her rejoinder the complainant presses her pleas. She submits that the Organization, which in her view bears the burden of proof in this regard, has failed to establish that the interview panel was impartial. She reiterates that the PSSC had already made its recommendation by the time her memorandum of 16 October 2001 was received by its Secretary.

E. In its surrejoinder the Organization observes that the arguments presented by the complainant in her rejoinder are not new and constitute a mere repetition of the position presented in her complaint. It maintains that she has produced no evidence to support her allegations of lack of impartiality and denial of due process.

## CONSIDERATIONS

1. In October 2001 the complainant, who was then employed as an Economist, at grade P-4, by the FAO in its Economic and Social Department (ES), applied for the post of Senior Economist, grade P-5, in the same Department. She was interviewed for the post on 15 October 2001. The interview panel included her immediate supervisor – the Chief of ESAF – and her second-level supervisor, the Director of the ESA Division.
2. Earlier, in April 2001, the complainant had lodged a formal internal complaint of harassment against her immediate supervisor. The complaint was subsequently withdrawn on terms that it remained on the complainant's personnel file. Because the complaint was withdrawn, it was not then forwarded to the immediate supervisor. Nor is there any evidence to suggest that the complaint had come to the supervisor's knowledge at any time prior to the final deliberations of the interview panel. However, the Division Director, who was also chairman of the interview panel, was aware that the complainant had lodged a formal complaint and that it had later been withdrawn. He had also received a number of complaints from the complainant with respect to her immediate supervisor's behaviour.
3. The complainant was surprised that her immediate supervisor was a member of the interview panel, believing that she had retired from the Organization. In fact, although the supervisor had reached compulsory retirement age, her term had been temporarily extended. The complainant made no complaint as to the panel's composition at the time of her interview, but the next day (16 October) she wrote to a Personnel Officer, referring to her earlier formal complaint of harassment and claiming that, because of her supervisor's membership on the interview panel, she had been denied an impartial evaluation of her candidacy. She requested that a copy of her harassment complaint be sent to each member of the PSSC, which was responsible for making a recommendation to the Director-General after it received a shortlist of candidates from the interview panel.
4. The Personnel Officer to whom the complainant wrote on 16 October informed her that she thought her memorandum should be forwarded to the Assistant Director-General, ES, for his comments before being sent, along with other relevant documents, to the PSSC. There was an exchange of e-mails between the complainant and the Personnel Officer over the next several weeks and, on 14 November, the complainant herself sent an e-mail to the Secretary of PSSC, attaching a copy of her memorandum of 16 October. It was not until February 2002 that the complainant was eventually informed that her memorandum had been hand-delivered to the Secretary of PSSC in the middle of December.
5. In the meantime, the Personnel Officer had referred the complainant's memorandum of 16 October to the Assistant Director-General, ES, who in turn sought the comments of the chairman of the interview panel, the complainant's second-level supervisor. The latter reported that the interview process had been fair, transparent and unbiased. As it happened, the complainant's name was on the shortlist forwarded on 18 January 2002 by the interview panel to the PSSC. The PSSC endorsed the candidates on 19 February in the same order as that recommended by the panel. On 18 March 2002 the Director-General appointed a person other than the complainant to the P-5 post.
6. On 24 May 2002 the complainant appealed to the Director-General with respect to his decision of 18 March 2002, claiming that she had been denied an impartial selection process by reason of the presence of her immediate supervisor on the interview panel. Her supervisor, she claimed, had demonstrated "hostile and prejudicial treatment of [her] work and person" over a period of years. The complainant also claimed that she had been denied due process by reason of the failure to transmit her memorandum of 16 October in a timely manner to the PSSC. She asked that the appointment of the successful candidate be annulled and that the selection process be repeated with an unbiased panel. In the meantime, the complainant had reinstated her earlier complaint of harassment and that complaint had been referred for investigation. Although the complainant objected, it was decided that that investigation should be concluded before her appeal was dealt with. For reasons that are not entirely clear, the investigation dealt both with the claim of harassment and the question whether there was a lack of impartiality in the interview process.
7. Following receipt of the investigation report, the Director-General rejected the complainant's appeal as unfounded. She then appealed to the FAO Appeals Committee which noted, amongst other things, that "the documents had not revealed any evidence of prejudice [...] on the part of the [...] members of the Panel" and recommended that the appeal be rejected as unfounded. The Director-General accepted that recommendation and the complainant was so informed by a letter dated 13 May 2004. That decision is the subject of the complaint before the Tribunal. Because of the passage of time, the complainant no longer seeks to have the appointment of

the successful candidate set aside. Instead, she asks for damages for the lack of impartiality in the selection process and for the denial of due process, loss of self esteem and the worsening of her workplace environment. She also asks for costs.

8. It is well settled that candidates are entitled to equal treatment in a competition for an advertised post (see Judgment 1990). It is an important aspect of the principle of equality that all candidates be considered objectively. Necessarily, a person's candidacy should not be evaluated by a person whose impartiality is open to question on reasonable grounds. The rule applies not only to those making or participating in the actual decision but also to those who have an advisory role, for they may exert influence on the ultimate decision (see Judgment 179).

9. To say that a person should not participate in the selection of candidates for an advertised position if his or her impartiality is reasonably open to question is not to say that a person should not have had a professional relationship with, or even supervisory responsibility for, one or more of the candidates. However, if the relationship goes beyond the proper bounds of a professional or supervisory relationship, there may well be reasonable grounds to question the impartiality of the person concerned.

10. Although it has at all stages been clear that the complainant was asserting that there was a relationship between her and her immediate supervisor that went beyond the bounds of a proper professional and supervisory relationship, the question whether the relationship was such as to provide reasonable grounds to question the impartiality of her supervisor was not addressed by the Director of ESA in his report on the interview process. Nor was it specifically addressed in the investigator's report or in the report of the Appeals Committee.

11. The complainant has, at all stages, asserted that there was an acrimonious relationship between her and her immediate supervisor, describing it in her rejoinder as a "harsh, unfriendly, strained and stressful rapport for more than a decade". To substantiate that claim, she has produced various e-mails, a performance appraisal report for the period ending 31 December 1993 and the report of the Appeals Committee that later dealt with her complaint of harassment. It is convenient to refer at once to the 1993 appraisal report in which her immediate supervisor praised the complainant's work, stating amongst other things that she "worked conscientiously to ensure that high quality results would be achieved". However, she also noted that the complainant "is extremely sensitive and has a sharp temper which she calls her 'Mediterranean temperament'. She sees this as a natural feature of her character and does not perceive it as an obstacle to good working relations with her colleagues". The complainant's then second-level supervisor endorsed the immediate supervisor's comments with respect to the complainant's work. Concerning interpersonal relations, he stated that he had asked the complainant and her immediate supervisor "to speak together without delay should any difficult situation arise with another colleague".

12. The sensitivity and sharp temper remarked upon by the complainant's immediate supervisor in the 1993 performance appraisal report is evident in the many e-mails forwarded by the complainant to her immediate supervisor and produced in support of her contention that she was denied an impartial selection process. The e-mails were sent in the period 2000 to 2002 and contain various complaints, including complaints as to the supervisor's failure to provide information or to consult. There are also complaints as to the giving of contrary instructions and the bypassing of the complainant to give instructions with respect to matters for which the complainant was responsible.

13. The Appeals Committee which examined the complainant's claim that she was denied an impartial selection process noted the "intense emotion" in the correspondence forwarded by her to her immediate supervisor. Furthermore, the Appeals Committee which subsequently dealt with the complainant's claim of harassment said of the correspondence then before it that the complainant's "language, tone and style were often inappropriate and hostile". On any view, the tone of the correspondence directed by the complainant to her immediate supervisor was neither professional nor that which might ordinarily be expected in correspondence sent by a subordinate to his or her supervisor.

14. Seemingly, a number of the complainant's e-mails were not answered by her immediate supervisor. When answered, the answers given were appropriate in tone and language, although the supervisor sometimes disputed the complainant's perception of events and, on one occasion, specifically acknowledged that the complainant lacked confidence in the supervisor's good will towards her and her work. On that occasion, the supervisor suggested that they should speak together so that they could better understand each other.

15. The Appeals Committee that dealt with the complainant's claim of harassment noted "a degree of lack of

functional rapport between the [complainant] and her supervisor, a tense relationship and a breakdown in communication between the two". These findings may be accepted but, at best, they establish no more than that the immediate supervisor was faced with a difficult situation which might have been better handled. They certainly do not establish that, in the difficult circumstances which to a significant extent were of the complainant's own making, the relationship between her and her immediate supervisor went beyond the proper bounds of that to be expected between subordinate and supervisor. Accordingly, the claim that the complainant was denied an impartial interview panel must be dismissed.

16. So far as concerns the claim that the complainant was denied due process because her memorandum of 16 October 2001 was not forwarded to the PSSC until the middle of December, it should be noted that it did not make its recommendation until February. In the absence of any evidence to the contrary, it must be assumed that the Committee had regard to all material presented to it, including the complainant's memorandum of 16 October 2001, before making its recommendation. Accordingly, the claim that the complainant was denied due process must also be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

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\* Registry's translation from original in French.