

## FORTY-FOURTH ORDINARY SESSION

### *In re* DE GREGORI

#### Judgment No. 409

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mr. Maurizio de Gregori on 20 March 1979 and brought into conformity with the Rules of Court on 23 April and the FAO's reply of 29 June 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual section 311.231;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal.

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

A. The complainant joined the staff of the FAO in 1970. On 1 June 1974 he had his post regraded from G.4 to G.5 and on 1 January 1977 was promoted to a G.6 post in the Personnel Division. In June 1974, when his post was regraded, he rose from G.4, step V, to G.5, step III, in accordance with the rules on promotion. But two months later, in August 1974, changes were made in the salary scale and the range of remuneration narrowed. Whereas at the time of his regrading the complainant's remuneration had been 6.4 per cent higher than that pertaining to his former grade, under the new scale it was only 2.9 per cent higher. Had the post been regraded, not in June 1974, but in August, after the new salary scale had come into force, under the same rules for calculation he would have been given one more step. The complainant therefore asked that his new remuneration should be made as much higher than his former remuneration as it had been before. On 27 April 1976 the Personnel Division replied that the step given to him in June 1974 had been determined by correct application of Manual section 311.231. On 19 November 1976 that decision was confirmed on the Director-General's behalf and on 10 December the complainant appealed to the Appeals Committee. The Committee held that the rules had indeed been correctly applied at the time of his regrading, in June 1974, but that the subsequent changes in the salary scale had had consequences contrary to the spirit of those rules, and it recommended the Director-General to calculate the complainant's remuneration on the assumption that his post had been regraded just after those changes, i.e. in August 1974. On 25 January 1979 the Director-General informed the complainant that he did not endorse that recommendation and would not make any *ex post facto* adjustment in his remuneration.

B. The complainant cites the memorandum which he submitted to the Administration and to the Appeals Committee. Referring to the Director-General's decision, he points out that the FAO acknowledged the discrepancies brought about by the changes in the salary scale and in some cases actually had to grant more steps to put things right. The benefits of promotion are not a gift but a reward for taking on more demanding and responsible duties, and the discrepancies wiped out much of that reward. It was quite clear to the FAO when it altered the salary scale that there would be discrepancies. Had it acted on the Appeals Committee's recommendation and adjusted the complainant's salary, that would have set no precedent, since no one else was likely to find himself in the complainant's position. The complainant asks the Tribunal to order the FAO to grant him one more step in his grade with retroactive effect from 1 August 1974 and possibly also interest at the statutory rate on the sums due from that date.

C. In reply the Organization maintains that it correctly applied Manual section 311.231. According to that section, when a staff member is promoted the calculation of his step in the new grade is based upon "the salary scale operative on the effective date of the promotion", and he gets an increase in remuneration greater by the amount of one step in the new grade than that which he would have if he had not been promoted. Before 1 June 1974, the date of his promotion, the complainant's salary (G.4, step V) amounted to 5,106,000 lire a year; after 1 June, when he moved up to grade G.5, step III, it was 5,433,000 lire. The difference - 327,000 lire - was greater than the amount of the salary increase represented by one G.5 step - 170,000 lire. It is true that with the introduction of a new salary scale in February 1975 there was a difference of only 173,000 lire between the salary for G.4, step V (5,882,000 lire) and G.5, step III (6,055,000 lire), but at the time of the complainant's promotion the calculations were correct. That is why the Appeals Committee recommended compensating the complainant *ex gratia*. The FAO could not

allow him such a favour when others were in like case. Adjustments were indeed made in salary increases granted before the new scale came into force, but only in two cases, quite different from the complainant's. In one case a new step was added to the scale; in the other the introduction of the new salary scale made the difference between old and new remuneration less than the amount of a step increase in the new grade under the old scale. The FAO also cites Judgments Nos. 199 (Soo Lee) and 257 (Grafström). It further argues from Judgment No. 202 (Mali) that it was clearly not in breach of the principle of equality. It there fore asks the Tribunal to dismiss the complaint.

#### CONSIDERATIONS:

On 1 June 1974 the complainant was promoted from grade G.4 to G.5. The point at which he entered the higher grade was selected as step III. This selection is determined by the application of the rule MS 311.231 to the salary scales in force at the time of the promotion; the Tribunal is satisfied that the rule was correctly applied or at least that the selection was no less favourable to the complainant than it would have been if determined strictly in accordance with the rule. Shortly thereafter the salary scales were changed, not once but several times. The Organization agrees that, if the complainant had been promoted only two months later in August 1974, he would have been advanced to step IV; and, if he had been promoted in March 1975, to step V. It appears so that in some cases officials junior to the complainant and promoted after him are now at a higher step than he is and consequently enjoying higher pay.

Since the rules, as they were on 1 June 1974, have been correctly applied and the anomaly has been created by a subsequent change, the only question of law that can arise is whether the principle of equal treatment of staff members has been duly observed. The principle is not of course that all staff members must be equally treated; this would mean the abolition of grades. The principle is that all staff members in similar circumstances must be similarly treated. When, as here, there is a change in the rules, the circumstances change and the principle does not apply.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

André Grisel,  
Devlin  
H. Armbruster

Bernard Spy