

M.
v.
IOM

128th Session

Judgment No. 4151

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs E. M. against the International Organization for Migration (IOM) on 7 December 2017 and corrected on 2 January 2018, IOM's reply of 23 April, the complainant's rejoinder of 6 June and IOM's surrejoinder of 10 September 2018;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to select her for a position.

The complainant, a former IOM official, was employed variously under special fixed-term and fixed-term appointments from 2003 to 2016 in Rome (Italy). On 19 May 2016 she was informed that her one-year fixed-term contract would not be renewed upon its expiry on 22 August.

In August 2016 the complainant requested and was subsequently granted special leave without pay (SLWOP) for a period of six months. In January 2017 she requested and was granted a six-month extension of her SLWOP.

In March 2017 IOM published a special vacancy notice for a position for which the complainant applied. In early May she was informed that she had been shortlisted and shortly thereafter she took a written test. On 11 July the complainant was notified that, on the basis of her written test, she had not been selected for the position.

On 13 July 2017 she submitted a request for review in which she challenged, among other things, the decision of 11 July not to select her for the contested position. On 22 August the complainant's period of SLWOP ended and she was separated from IOM.

By a letter of 11 September 2017 the Regional Director rejected the complainant's request for review. He maintained the decision of 11 July on the basis that the selection procedure had been conducted with full respect for the principle of transparency and in compliance with the applicable rules. On 7 December 2017 the complainant filed a complaint directly with the Tribunal, impugning the decision of 11 September.

The complainant asks the Tribunal to quash the decision of 11 September 2017 and, consequently, the rejection of the written test she took for the contested position. She seeks immediate reinstatement at IOM's office in Rome under a contract of at least 12 months. She claims compensation for the injury she suffered as a result of IOM's actions and reimbursement of all legal expenses she has incurred.

IOM asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies. In the alternative, it requests the Tribunal to find the non-selection decision lawful and to reject all of the complainant's claims for relief.

CONSIDERATIONS

1. The complainant joined IOM's office in Rome as a consultant in 2000 and thereafter worked under a series of one-year fixed-term contracts and special fixed-term contracts, the most recent expiring on 22 August 2016. She was informed in May 2016 that this contract would not be renewed. Before the expiry of the contract, the complainant requested SLWOP and this appears to have been granted on 23 August

2016. It is unnecessary, in this judgment, to explore the legal interaction between the expiry of the contract on 22 August 2016 and the commencement of a period of SLWOP the following day. Subsequently the SLWOP was extended by six months.

2. In early 2017, a special vacancy notice was published for a position for which the complainant applied. She undertook a written test in May 2017. On 11 July 2017 the complainant was informed of the outcome of the test and was told that she had not been selected for the position. The complainant was dissatisfied with her non-selection and on 13 July 2017 she lodged a request for review of the decision not to select her. By a letter dated 11 September 2017, the complainant was informed by the Regional Director that her request for review was rejected.

3. On 7 December 2017, the complainant filed a complaint with the Tribunal in which she identified the impugned decision as the decision of 11 September 2017 referred to in the preceding consideration. IOM contends, correctly, that the complaint is irreceivable. Article VII of the Tribunal's Statute provides that a complaint is irreceivable unless the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations. In the present case, the complainant was entitled to lodge an appeal with the Joint Administrative Review Board against the rejection of her request for review. Paragraph 12 of Instruction IN/217 – entitled "Request for Review and Appeal to the Joint Administrative Review Board (JARB)" – conferred the right to appeal and paragraphs 13 to 75 made detailed provision for the conduct of the appeal and the decision of the Director General following receipt of the JARB's report. Quite apart from the provisions of Article VII of the Tribunal's Statute, Instruction IN/217 itself declares that compliance with it is mandatory. While the complainant addresses in her rejoinder the receivability of the complaint, she does not raise any argument effectively answering the case concerning receivability advanced by IOM.

4. The complaint is irreceivable and, accordingly, must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ