

## SEVENTY-SIXTH SESSION

### *In re* HO

#### Judgment 1308

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Jong Nak Ho against the World Health Organization (WHO) on 8 December 1992 and corrected on 15 January 1993, the WHO's reply of 8 March, the complainant's rejoinder of 12 April and the Organization's surrejoinder of 25 May 1993;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and WHO Staff Rules 510.1 and 1230.8.1;

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 Pan American Health Organization (PAHO) in Washington D.C. serves as the World Health Organization's Regional Office for the Americas. The complainant, a citizen of the United States born in 1934, joined the PAHO in 1972 as a clerk in the Department of Finance and Accounts at grade G.5. PAHO promoted him to G.6 in 1974 and to G.7 and then to G.8 in 1975. It reclassified his post in 1977 and made him finance officer at P.2. On 1 March 1984 he became an official of the WHO. He was promoted to grade P.3 as finance officer in the Imprest Accounts Unit of the Department of Finance and Accounts.

Early in 1990 the Regional Director had a private firm look into the management of the department. In a report of 27 March 1990 the firm recommended, among other things, revising the organisation chart. At a meeting with supervisory staff in July 1990 the Regional Director handed out a new organisation chart and told the complainant that he was to be put on another post at grade P.2. By a memorandum of 31 July he asked the chief of department to explain why he was to have a post at a lower grade; he said he would like one of the available P.3 posts in the Staff Benefits Section of the department. In a memorandum of 2 August the chief of department told him that inasmuch as there was no suitable P.3 vacancy his assignment to a P.2 post would be "logical"; nevertheless he would keep his P.3 grade.

A memorandum of 6 August that the chief sent to everyone in the department said that "the new basic structure of the Department is final" although there were still "many things to be done" before the new staffing plan could come off.

Replying in a memorandum of 24 August 1990 to further queries from the complainant, the chief of the Office of Administration confirmed his new assignment and said that the reclassification of his post and his request for assignment to another P.3 post would be considered later.

The complainant appealed on 20 December 1990 to the Regional Board of Appeal in Washington. In its report of 16 May 1991 the Board held his appeal to be irreceivable on the grounds that there had been no final decision and he had suffered no loss in grade. The Regional Director having endorsed that view, he put his case to the headquarters Board of Appeal in Geneva on 20 August 1991. In October 1991 the chief of Personnel approved the complainant's revised post description, which set his grade at P.3. In its report of 10 July 1992 the headquarters Board described the appeal as premature and recommended rejection. In a letter of 31 August 1992, which the complainant impugns, the Director-General endorsed the Board's recommendation.

B. The complainant submits that his transfer to another unit amounted to a downgrading and was in breach of the terms of his appointment. The Organization has a duty under Staff Rule 510.1 to take account of an official's "particular abilities and interests" before deciding on transfer. Yet it failed to consider his seniority and good record and his interest in other available P.3 posts.

He alleges breach of his right to a hearing in that the Administration failed to discuss the prospect of transfer with him. Instead it sprang "de facto demotion" on him and so caused him humiliation and distress.

He seeks the quashing of his transfer, assignment to a post that matches his grade and seniority, moral damages in the amount of 50,000 United States dollars and costs.

C. In its reply the WHO submits that the complaint is irreceivable because the action complained of was not final: Staff Rule 1230.8.1 says that action is final only "when it has been taken by a duly authorized official and the staff member has received written notification". A directive, No. 78-10 of 4 May 1978, further stipulates that final action on appointment status and employment conditions shall be a decision "by the Chief of Personnel on behalf of the Organization". Whatever information the complainant may have got about the reform of the department he had no notice from the chief of Personnel of his transfer or changes in his duties and grade. On the contrary his supervisor made it plain that there were "many things to be done" before the reorganisation took effect. At most the impugned decision might be seen as just one step in a complex procedure of which only the eventual outcome would be challengeable.

In subsidiary submissions on the merits the WHO denies the complainant's allegation that it reclassified his post from P.3 to P.2. Not only has he produced no evidence of any personnel action or final decision but the memorandum of 24 August 1990 which he supplies contains an assurance from the chief of his department that "In the meantime, there would be no change [in his post] from its present P.3 status". In fact the Administration confirmed on 11 October 1991 that the duties and responsibilities of his post warranted P.3.

Even supposing there was a decision to transfer him to another post, it did take account of his abilities and interests since his original post and the revision of October 1991 cover the same area, finance and accounts. Inasmuch as his post remained at P.3 throughout the material period he has not sustained any injury. There being neither final decision nor injury, the complaint is vexatious.

D. In his rejoinder the complainant contends that he has been transferred from a post of "finance officer" in which he supervised imprest accounts to one of "accounts officer" in which he is supervising operations in the Headquarters Services Unit. The only reason why there was no personnel action was that the Administration "intentionally" refrained from issuing one. But the duties and supervisory responsibilities set out in the revised post description of October 1991 are "quite different". Although the WHO may not have reduced his grade it has lowered his status: instead of reporting to the chief of section he now reports to a unit chief whose grade is the same as his own. He presses his claims.

E. In its surrejoinder the WHO observes that the rejoinder raises no new questions of fact or of law that call for comment. What is at issue is not the rank of the supervisor the complainant reports to but whether the chief of Personnel notified any final decision to him which had the effect of putting him at a lower grade. On that score he himself admits that he has not been downgraded.

#### CONSIDERATIONS:

1. The complainant joined the Pan American Health Organization (PAHO) in 1972 as a finance clerk at grade G.5. In 1984 he became an official of the WHO, though he remained in the PAHO in its capacity as the WHO's Regional Office for the Americas. He was thereupon promoted to P.3 as finance officer and put in charge of imprest accounts in the department of Finance and Accounts. This complaint is about his transfer to other duties in the context of a reorganisation of the department and in circumstances that he considers make that transfer tantamount to downgrading.

2. An outside firm which the Regional Director had commissioned to study the management of the department submitted a report in March 1990 recommending reforms. On 24 July 1990 the Regional Director met the senior staff of the department and distributed a new organisation chart. The complainant was appointed supervisor of the Headquarters Services Unit, the functions of which were different from those of the Imprest Accounts Unit, and put on a post that was graded P.2.

3. In a memorandum of 31 July 1990 to the chief of department he expressed dissatisfaction; sought clarification about the functions of the Headquarters Services Unit and his new duties; asked whether he was being downgraded to P.2 and what the basis and reasons were for reassigning him to a P.2 post; and, observing that two P.3 posts were available in the Staff Benefits Section of the department, applied for transfer to one of them.

4. He was told to go to his new unit on 1 August 1990 and duly did so. During that month the two parties amply

discussed the changes orally and in writing. In a memorandum of 2 August the chief of department explained to him that the "realignment of functions" was "a direct result of the significant technical changes in data transfer methodology from field to Headquarters" and was intended to make for greater efficiency in the department, and he asked the complainant to see two other officials so as to "develop an appropriate description of duties". For the time being, the chief of department went on, grade P.2 was "considered appropriate ... for the duties and responsibilities assigned" to the complainant's new post, though he would continue to hold grade P.3. His transfer to a P.3 post in the Staff Benefits Section was rejected on the grounds that in view of his skills and experience his "continued assignment to an operational accounting position" was thought to be in the Organization's best interests. The complainant replied in a memorandum of 14 August to the chief of the department and also wrote a memorandum on 22 August to the chief of Administration again asking for transfer to one of the two P.3 posts in the Staff Benefits Section. After further discussion the chief of Administration confirmed in a memorandum to him of 24 August that "next summer we would re-evaluate the question" as to whether or not reclassification of his post was required, but that "in the meantime, there would be no change from its present P.3 status"; as for the two P.3 posts in the Staff Benefits Section, they were "not options at this time".

5. Treating the memorandum of 24 August 1990 as a final decision, the complainant appealed in December 1990 to the WHO's Regional Board of Appeal in Washington alleging "irregular transfer, demotion of duties, and failure to bring new post to a selection committee". In its report dated 16 May 1991 the Regional Board held that his appeal was irreceivable because no final decision had been made and no description of his post issued. The Regional Director endorsed that view in a letter to him of 2 July 1991.

6. On 20 August 1991 the complainant appealed against that decision to the WHO's headquarters Board of Appeal in Geneva. While that appeal was pending, the description of his post was issued on 11 October 1991. In its report, which is undated, the headquarters Board agreed that the complainant's appeal to the Regional Board had been irreceivable and the Director-General accepted its view in the decision of 31 August 1992 that he now impugns.

7. It is not in dispute that the reorganisation of the department and the reassignment of the complainant were in the Organization's interests: his grievance was that he was being downgraded. The memorandum of 24 August 1990 from the chief of Administration informed him that although there would in the meantime be no change in the grading of his new post the question would be reviewed in the summer of 1991. That makes it plain that no final decision had yet been taken on grading his new post P.2 and that the two Boards of Appeal were therefore correct in holding his appeal to be premature and irreceivable. That being so, his complaint too must be declared irreceivable under Article VII, paragraph 1, of the Tribunal's Statute because what he is challenging is not a "final" decision.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

José Maria Ruda  
P. Pescatore  
Mark Fernando  
A.B. Gardner