

EIGHTY-SEVENTH SESSION

In re Mshana

Judgment 1874

The Administrative Tribunal,

Considering the complaint filed by Miss Lucy Eutropia Mshana against the World Health Organization (WHO) on 21 April 1998, the WHO's reply of 23 July, the complainant's rejoinder of 30 October 1998, and the Organization's surrejoinder of 1 February 1999;

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 Tanzanian who was born in 1957, joined the staff of the WHO on 16 January 1984 as a secretary, grade SAS.07, in the Regional Health Development Centre at the Regional Office for Africa in Harare, Zimbabwe.

From November 1990 to April 1991, while on leave without pay, she completed several short-term assignments as a secretary, grade G.4 at headquarters. On 1 May 1991 she was reassigned to the office of Governing Bodies and Protocol as a secretary at grade G.4. On 1 August 1993 the complainant was transferred with her post to the Cabinet of the Director-General. On 1 January 1995 the post was reclassified to grade G.5 and she was subsequently promoted to that grade.

On 18 September 1995 the complainant was temporarily assigned to the office of a newly-appointed Assistant Director-General who was to be her direct supervisor. By memorandum dated 30 January 1996 to the Director of Personnel, the Assistant Director-General requested that the complainant's post be formally assigned to her office.

In order to effect the formal transfer, in a memorandum dated 19 February 1996, the acting head of Classification Administration (CSA) asked that a revised post description "reflecting the change of location and duties/responsibilities and taking into account the tasks assigned", be submitted to CSA for its review and evaluation. The complainant's supervisor sent a revised post description (signed and dated 27 February 1996) and attached the official transfer request form which proposed "no change" to the grade G.5.

On 1 March the acting head of CSA replied that since the duties and responsibilities described in the post description were those normally assigned to a post of personal assistant in an Assistant Director-General's office, and classified at a higher grade than the G.5 level of the complainant, the request was considered as a classification review. Such a review would take place during the second quarter of 1996.

A "desk audit" based on the revised post description was begun by CSA, on 5 June 1996. The complainant was interviewed. During her own interview, the Assistant Director-General said that she wanted to reconsider the post description and so the desk audit was suspended. On 4 September 1996 the complainant received written notification from a personnel officer that she was being officially transferred (with her G.5 post) to the Assistant Director-General's office, effective 1 February 1996.

On 23 September 1996 the complainant was asked by her supervisor to rewrite the post description. She responded by memorandum of the same date that she believed that the post description of 27 February 1996 was "as far as possible a correct reflection of [her] duties since September 1995". Subsequently, the CSA decided to conduct a "job analysis" interview in order to determine the complainant's post classification. Both the complainant and the Assistant Director-General were interviewed. On 27 February 1997, a final

post description and classification (secretary, grade G.5) was sent to the complainant.

On 7 March 1997 the complainant appealed to the headquarters Board of Appeal against this classification and she requested her promotion to grade G.7. Effective 24 April, she was reassigned to the post of G.5 secretary in the Division of Drug Management and Policies, and she subsequently appealed against this transfer as well to the Board of Appeal. The Assistant Director-General's office was staffed with an administrative assistant with a post description graded G.6. It was also subsequently staffed with a secretary with a post description graded G.5.

On 21 November the complainant's appeal was heard by the Board. In its report of 16 December 1997 to the Director-General the Board concluded that during her reassignment to the Assistant Director-General's office from September 1995 to April 1997, the complainant had performed duties above her post, similar to those of her successor, whose post description was graded at the G.6 level. It recommended that the complainant be paid an increased salary at G.6 for this period and legal costs upon presentation of the bills. Since the complainant had been reassigned to the Division of Drug Management and Policies with a valid post description graded G.5, the Board recommended the dismissal of her request for promotion to G.7.

By letter to the complainant dated 13 February 1998, the Director-General stated that he did not accept the central conclusions and recommendations of the Board's report. That is the impugned decision.

B. The complainant has three pleas. First, she submits that in this grading decision there were both errors of fact and mistaken conclusions drawn from the facts. She states that she performed the duties and responsibilities of a typical G.7 administrative assistant from 18 September 1995 to 24 April 1997, with grade G.5. She provides many written statements from WHO employees to support her contention that she did the work of a G.7, and with "dedication, competence, and courtesy".

In particular, the complainant contends that the Organization violated the principle of "equal pay for equal work", ⁽¹⁾ according to WHO Manual (1978 version) paragraph II.1.40.2 which states that "posts of approximately equal difficulty and responsibility and requiring approximately the same qualifications should be placed in the same class".

Second, she argues that there were formal or procedural flaws in the classification decision. She contends that she held a post for over a year without a formal classification, contrary to WHO Manual (1984 version) paragraph II.1.59 (recta 55), which states in particular, that "[o]n ... reassignment, Personnel provides the incumbent of the post with a copy of the relevant approved post description" and paragraph II.1.60 which provides that "[a] staff member may be assigned new duties not included in the post description on a full-time basis for a temporary period not exceeding 90 days. If the period exceeds 90 days, a new post description should be established and a classification review undertaken in accordance with paragraphs 80-120 to determine the grade of the post".

Given that she had not received a performance appraisal since April 1995 while employed in the Cabinet of the Director-General, the complainant contends also that the Organization had breached Staff Rule 530.2 which provides that a formal evaluation of staff shall be made "... in no case less frequently than once a year". There were also procedural errors in the "desk audit", and later the decision to undertake a "job analysis", and also with respect to the non-involvement of the Standing Committee on Post Classification Reviews.

Third, she states that there was racially-motivated personal prejudice on the part of "a responsible official", and that this was the reason for her "difficulties surrounding the *de facto* promotion".

The complainant seeks: the quashing of the Director-General's decision of 13 February 1998; a statement that her functions in the Assistant Director-General's office from 18 September 1995 to 24 April 1997 were those of a typical G.7 administrative assistant; an order that the Organization make a new decision regarding her grade for this same period; and costs.

C. In its reply, the Organization states that its grading decision is valid. It argues that its classification of the post to secretary, grade G.5 was a "proper exercise of discretionary authority and was not tainted by any flaw". According to the Tribunal's case law, the grading of posts falls within the discretionary authority of

an organisation, subject to limited review.

The Organization contends that CSA and ultimately the Director-General are responsible for determining the classification of General Service posts. Thus, there was no lack of authority to classify the complainant's post in this case.

The classification process was not marked by mistake of fact or law, or mistaken conclusions drawn from the facts. The Organization contends that its systemic and thorough job analysis and classification evaluation showed that the complainant did not perform the full range of duties and responsibilities of a personal assistant at grade G.7, nor even those of a secretary at G.6. The evidence of the complainant, based solely on written statements by staff members cannot be considered conclusive. Further, the complainant's plea that she performed her duties with "dedication, competence and courtesy" is irrelevant to the grading of her post as it is inconsistent with the basic principles of post classification listed in WHO Manual paragraph II.1.30.

The Organization committed no vital formal or procedural flaw. The desk audit and job analysis were thorough and complied with the basic principles of classification. In accordance with Manual paragraph II.1.170 the involvement of the Standing Committee on Post Classification Reviews is required only when the evaluation concerns a request for the regrading of a post. In the matter of the post description, the Organization contends that there was no wilful delay on its part, therefore no procedural irregularity exists. Also, the complainant cannot invoke a flaw regarding the performance appraisal since she declined to complete the form in July 1998, and in any event, she suffered no harm.

Finally, the complainant's plea of personal prejudice is not supported by evidence.

D. In her rejoinder the complainant submits that the failure to consult the Standing Committee on Post Classification Reviews was a serious procedural flaw, contrary to WHO Manual paragraph II.1.170 which states that the Committee should be consulted during the evaluation when there is a request to regrade a post. The Organization's reply that there was no need to consult the Committee because the grade was not changed is an incorrect application of the existing rules because paragraph II.1.170 refers not to a final decision of the Committee (whether or not a grade will be changed), but to a proposed change in grade.

E. In its surrejoinder, the Organization reiterates its arguments and presses its pleas.

CONSIDERATIONS

1. The complainant, who is of Tanzanian nationality, joined the World Health Organization in 1984. After being selected for a secretarial post at grade G.4, she was promoted to grade G.5 as of 1 January 1995. In September 1995 she was temporarily transferred to the office of a new Assistant Director-General, Mrs A. Koné-Diabi, who requested on 30 January 1996 that the complainant's post be formally assigned to her office. The decision to transfer the post was made on 4 September 1996. However, the transfer neither changed the complainant's grade, nor included a modified post description, despite a post description form and a request for a classification review signed by her supervisor on 27 February 1996. There remained doubt as to the nature of the work that the Assistant Director-General expected from the complainant and the reality of the tasks assigned to her, which she had effectively been carrying out until a "job analysis" was undertaken. Following this analysis, and in spite of objections from the complainant, the post description maintaining the classification as secretary, at grade G.5, was communicated to her by a memorandum of 27 February 1997. From 24 April 1997, the complainant was assigned to a G.5 secretarial post in the Division of Drug Management and Policies.

2. The complainant lodged an appeal with the headquarters Board of Appeal against the post description of 27 February 1997. After in-depth examination and after hearing many witnesses, and while it did not wish to usurp the place of the authorities responsible for classifying posts, the Board found that the post description proposed by the Assistant Director-General on 27 February 1996 was equivalent to that of a grade G.7 administrative assistant assigned to an assistant director-general. It concluded that, according to witness testimony which was unchallenged by the Administration, the complainant had carried out the same tasks in the office of the Assistant Director-General as those performed by her successor, whose post description was classified at grade G.6. It added that the complainant had fulfilled her tasks satisfactorily and that she had grounds for complaint that her evaluations had not been completed on time, and that she

had not received a post description within the time limits set out by a joint reading of WHO Manual paragraphs II.1.70 and II.1.210. The Board noted a negative change of attitude on the part of her supervisor towards the complainant in 1996, but that it was now impossible to reclassify the post because she had been transferred in the meantime. It recommended, in accordance with Article 320.4 of the Staff Rules, which provides that a staff member required to assume the responsibilities of a post of a higher grade than that which he occupies should receive differential compensation, that the complainant should be paid an increased salary at G.6 level for the period from September 1995 until April 1997 and receive costs.

In a decision of 13 February 1998, the Director-General of the WHO refused to review the grading of the complainant and to pay her a higher salary than that of her G.5 grade, while recognising the delay in drawing up her post description, and consequently agreeing to pay her legal costs of 500 United States dollars. That is the decision contested before the Tribunal.

3. As firm precedent has it, for example Judgment 1647 (*in re* Bombo N'Djimbi), which deals precisely with post classification in the WHO, decisions in respect of post classification are at the Administration's discretion and can only be set aside on limited grounds. It does not behove the Tribunal to substitute its own post assessment for that of the Organization's, unless the evaluation was taken without authority, or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the facts.

4. The facts show a degree of uncertainty regarding the real duties fulfilled by the complainant, and it is regrettable and wrong that the post description, which was different from the one initially proposed by her supervisor, was drafted late.

5. To convince the Tribunal that the contested decision was unlawful, the complainant asserts that when assigned to the Assistant Director-General, she performed the duties and responsibilities of a typical G.7 administrative assistant. It was therefore incorrect that her post description of 27 February 1997 maintained her G.5 classification. The complainant adds that the challenged decision was in breach of a rule of procedure, particularly since there had been no involvement of the Standing Committee on Post Classification Reviews prior to the decision. Finally, she states that there was racially-motivated personal prejudice against her, and that in any case, the Organization had violated the principle of "equal pay for equal work".

6. The pleas based on procedural flaws and abuse of authority cannot be allowed. In the first place, the Administration was not obliged to convene the relevant Standing Committee, because paragraph II.1.170 of the Manual provides for intervention by this Committee where a procedure of review of classification is engaged. This was not the case here: neither the complainant's supervisor nor the bodies responsible for staff management initiated such a procedure. In the second place, there is not the slightest evidence to uphold the accusation of abuse of authority in the argument that the contested classification might spring from the personal animosity of her supervisor towards the complainant.

7. The very careful procedure followed to evaluate the duties fulfilled by the complainant in the Assistant Director-General's office was not irregular and, in view of the Tribunal's limited powers in this respect, the Administration's discretion cannot be called into question. That the complainant carried out her duties competently, which is uncontested, is not a ground for reviewing the classification of her post, and the Tribunal recalls in this connection, as it did in Judgment 1647 cited above, that: "grading hinges neither on quality of performance nor on seniority. The sole criteria are the duties and responsibilities of the post. And the grade cannot change unless there is a 'significant change in [their] level'". 8. However, while the post description dated 27 February 1997 is not irregular in itself, and shows a clear understanding of the level of duties fulfilled by the complainant at the time of the decision, the Tribunal notes, as did the Board of Appeal, that the complainant ought to have received her post description as soon as she took up the post, that is on 18 September 1995, but she received it about eighteen months later. The post description proposed by her supervisor in February 1996 included more complicated tasks than those required of a secretary at grade G.5, and it was natural that the complainant referred to this description, even if it carried no legal weight. Moreover, many testimonies considered by the Board bear witness that the complainant, while working with the Assistant Director-General, carried out certain duties which, although not corresponding to those of an administrative assistant at grade G.7, exceeded those normally assumed at grade G.5. The

solution recommended by the Board of Appeal and noted in 2 above, takes account of the Organization's delay in clarifying the situation, and in view of all the elements in the file the Tribunal is in agreement with that solution. Without quashing the challenged decision, the complainant is entitled to compensation equal to the difference between the salary she received, and the salary she would have received if she had held a G.6 grade for the period from September 1995 to April 1997.

9. The complainant shall receive costs set at 5,000 Swiss francs.

DECISION

For the above reasons,

1. The WHO shall pay the complainant compensation as established under consideration 8 of this Judgment.
2. The WHO shall pay the complainant 5,000 Swiss francs in costs.
3. Her other claims are rejected.

In witness of this judgment, adopted on 20 May 1999, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

(Signed)

Michel Gentot
Jean-François Egli
Seydou Ba

Catherine Comtet

1. In the 1992 revision of the WHO Manual the principle is "equal pay for work of equal value".