

**TWENTY-NINTH ORDINARY SESSION**

***In re VRANCHEVA***

**Judgment No. 194**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Dr. Sophia Vrancheva on 14 March 1972, the Organization's reply dated 15 May 1972, the complainant's rejoinder of 19 June 1972, the Organization's surrejoinder of 20 July 1972 and the further observations and documents lodged by the complainant by letter of 20 October 1972;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and WHO Staff Rules 430, 960 and 1010;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. Dr. Vrancheva was appointed on 1 September 1969 as a short-term consultant in the Biological Standardisation Unit of the WHO. On 20 December 1969 she was given a contract of appointment as a medical officer at grade P.4 for the period ending on 31 December 1971. Since she had already spent some time in the service of the Organization, the end of the probation period was set at 31 August 1970.

B. At the end of this probation period the Chief of the Unit, her immediate supervisor, prepared her performance report for the period from 1 September 1969 to 31 August 1970. Although favourable in some respects, the report said that the complainant was somewhat lacking in judgment and experience of particular areas where accuracy and thoroughness were essential; that her output and rate of work were not yet fully satisfactory; that she was not fully effective in her personal relationships; and that she had had occasions of friction with General Service staff. Her supervisor accordingly recommended extension of the probation period by 12 months, to 31 August 1971. In accordance with Staff Rule 430.3 the complainant wrote a memorandum contesting the criticisms in her performance report, and this memorandum was duly appended to the report.

C. In the opinion of her supervisor Dr. Vrancheva's work performance did not improve, and on 27 April 1971 he informed her that he was not prepared to recommend an extension of her contract. In a letter to the Chief of Personnel dated 28 April 1971 the complainant expressed the view that her work was being judged unfairly and that her supervisor had made little or no effort to give her any guidance or Direction in the performance of her duties. She maintained indeed that she had been frequently excluded from performance of work for which she was particularly well qualified.

D. On 26 May 1971 the complainant's supervisor prepared a second appraisal report covering the period from 1 September 1970 to 31 August 1971. In that report he stated that the complainant had not adjusted adequately to her work: "In spite of extensive efforts at instruction by [the Chief of the Biological Standardisation Unit] and other staff members with greater experience, her concept of the international aspects of the BS programme and the nature of the services to member States remains poor. She has also not been sufficiently competent in the operative procedures of this work." Dr. Vrancheva could not endorse this appraisal and on 9 August 1971 she addressed a memorandum to the Director of the Division of Pharmacology and Toxicology, of which the Biological Standardisation Unit formed part, requesting explanations of the criticisms which the report contained. In a memorandum dated 13 August 1971 the Chief of Personnel informed her that in view of the unfavourable appraisal report her appointment would be terminated under Staff Rule 960 on the expiry of her contract, i.e. on 31 December 1971, but added that before a final decision was taken she should submit her written comments on the second appraisal report in accordance with Staff Rule 430. On 17 August Dr. Vrancheva addressed a memorandum to the Chief of Personnel in which she again asked for a clarification of the criticisms contained in her appraisal report. Meanwhile, on 16 August, the Director of the Division of Pharmacology and Toxicology had addressed a

memorandum to the complainant in which he referred to recent conversations between them on the subject and said that both he and the Chief of the Biological Standardisation Unit were ready to discuss her appraisal report with her if she would arrange for a meeting. No such meeting took place. In a letter dated 8 October 1971 to the Chief of Personnel the complainant explained that she had been taken ill on 17 August and that her health still prevented her from discussing this matter with her supervisors.

E. In a letter to Dr. Vrancheva dated 30 September 1971 the Chief of Personnel confirmed that the WHO did not intend to offer her an extension of appointment beyond 31 December 1971. On 15 October the complainant sent the Chief of Personnel written comments on her second appraisal report which contested all the criticisms it contained and were appended to the report. A few days later, on 19 October, she appealed, in accordance with Staff Rule 1010, against the decision not to confirm her appointment and subsequently submitted to the Director-General a detailed memorandum in support of her appeal. On 15 December 1971 the Director-General wrote to the complainant informing her that her appeal was dismissed. This is the decision which she impugns before the Tribunal.

F. In her complaint Dr. Vrancheva, maintains that the criticisms contained in the two appraisal reports are not supported by any specific allegation which is open to refutation. Staff Rule 960, she argues, implies that her work performance should be examined in the light of specific allegations of incompetence which she might attempt to refute. Her requests for clarification of the criticisms of her work received no reply. Staff Rule 430 was not respected in that her supervisor failed to instruct and guide her in learning to perform her functions, discuss his conclusions with her and make specific suggestions for improvement in all aspects of her performance which were not entirely satisfactory. Nor was there any purpose in attaching her comments on her appraisal reports unless those comments were to be taken into account. Yet in her case the decision was already taken before she had submitted her comments. The Director-General committed abuse of authority in basing his decision on her supervisor's allegations of unsatisfactory performance since the large body of documentation which she submitted with her appeal against his decision proved quite clearly that she was fully suited for international service and that the reason for the non-confirmation of her appointment had nothing to do with her work performance. She asks the Organization to make available to the Tribunal a large number of internal files and documents relating to her work in the Biological Standardisation Unit which, she maintains, will demonstrate the extent and quality of her work. She prays that the Tribunal be pleased to order the rectification of the appraisals in her reports of 13 July 1970 and 26 May 1971; quash the Director-General's decision of 15 December 1971 and order that her appointment shall be confirmed and that she shall be assigned to a post suitable for a microbiologist and immunologist; and determine fair compensation to be paid to her by the WHO for the moral and material damage she has suffered.

G. In its reply the Organization refuses to produce the documents requested by the complainant, but offers to produce any particular document which the Tribunal might wish to consult. It rejects the complainant's allegation that she never had an opportunity to refute the criticisms of her work and refers to several occasions on which her supervisor discussed her work performance with her - some of which she mentioned in documents appended to her complaint. Moreover, her written comments on her second appraisal report were also submitted to the Director-General, who took account of them in taking his decision not to confirm her appointment. Secondly, the Organization rejects her contention that the decision was taken for reasons unconnected with her work performance. In his letter of 15 December 1971 the Director-General clearly stated that his decision was based on an assessment of her work performance, and the two appraisal reports afford ample grounds for such a decision, which the Director-General took in the legitimate exercise of his discretionary authority. The Organization accordingly prays that the complaint be dismissed.

#### CONSIDERATIONS:

Without its being necessary to consider the other arguments advanced in the complaint:

Under WHO Staff Rule 960, if, during an initial or extended probationary period, a staff member's performance is not satisfactory, the appointment will not be confirmed but terminated.

Although the reason given for the decision impugned is that Dr. Vrancheva's services were unsatisfactory, no real evidence has been produced to substantiate this allegation. At no stage in the procedure, in spite of repeated requests on her part, was the complainant able to obtain clarification of the specific facets motivating the unfavourable appraisal by the chief of her branch of the manner in which she carried out her duties or performed the particular tasks assigned to her in a field in which she had acquired a reputation both at the Institute for

Epidemiological and Microbiological Research at Sofia and at the University Institute for Medical Microbiology at Geneva; it may be noted that the Organization, in its submission to the Administrative Tribunal, has not supplied any further explanations concerning the complainant's work performance.

In consequence, Dr. Vrancheva's plea that the decision impugned should be quashed as being based on insufficient grounds is well-founded. It is therefore for the Director-General to reopen the case and to consider, by such means as he may deem appropriate and after giving a hearing to Dr. Vrancheva, whether the appraisal made by her immediate supervisor was well-founded and whether the non-confirmation of her appointment could legitimately be based on the provisions of Staff Rule 960 cited above.

Consideration of the claim for compensation is premature at the present stage, since its disposal depends on the decision to be taken by the Director-General.

#### DECISION:

For the above reasons,

1. The Director-General's decision dated 15 December 1971 is quashed.
2. The complainant is remitted to the Director-General for a new decision after a proper examination of the facts.
3. The claim for compensation and the question of costs are deferred for later consideration.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., 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 13 November 1972.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Bernard Spy