

The Administrative Tribunal,

Considering the complaint filed by Mrs Z. P. against the World Health Organization (WHO) on 17 December 2002 and corrected on 31 January, the Organization's reply of 6 May, the complainant's rejoinder of 13 August and the WHO's surrejoinder of 3 October 2003;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant, a British national born in 1950, joined the WHO in 1973 as Clerk-Stenographer, grade G.3, in the Budget and Finance Office. She was promoted on a number of occasions and in June 1997 she was assigned to the post of Administrative Assistant, grade G.6, in the Division of Mental Health and Prevention of Substance Abuse.

In November 1998 various support functions were decentralised with the creation of a number of Management Support Units (MSUs). At the same time, approximately 100 new posts were created, including eight generic posts designated as Personnel Assistant, grade G.6, with common post descriptions. According to the Organization, the purpose of creating generic posts with generic post descriptions and similar functions was "to ensure consistency and facilitate mobility and rotation". The complainant was appointed to one of those posts in the Non-communicable Diseases Cluster. Following the merger of that cluster with another, she was appointed to another generic Personnel Assistant post at grade G.6 in the General Management Cluster (GMG). She continues to hold that post.

One of the other generic G.6 Personnel Assistant posts was established in the Family and Community Health Cluster (FCH). That post was later re-graded as a non-generic G.7 post by the Executive Director of that cluster following a classification review. That re-grading, which took effect from 1 March 2000, lies at the core of the present complaint.

Following the re-grading of the FCH post, the Executive Director of GMG became concerned that reviewing the grading of MSU posts in isolation and departing from generic post descriptions would profoundly affect the MSU design, and that the classification review procedures then in force were ill-suited to MSU posts and particularly to generic posts. In August 2000 six Personnel Assistants, including the complainant, wrote requesting clarification as to whether their posts could be considered non-generic or needed reclassification in the light of the re-grading of the FCH post. They received no reply.

In October 2000 the Executive Director of GMG decided that there should be a review of all MSU personnel posts and, in January 2001, an external consultant was appointed to carry out desk audits and to make recommendations in relation to those posts. It became apparent in the course of that review that the generic post descriptions did not match the duties performed and it was therefore decided that new generic post descriptions would be developed, reflecting actual duties performed as determined by the desk audits. Revised generic post descriptions were issued by the Human Resources Services department (HRS) in November 2001, but at the same grade and with no generic post of Personnel Assistant at grade G.7. Subsequently, in February 2002, new classification review procedures for generic posts were announced in Cluster Note 2002/4, and Standing Committees were established in July to deal with review applications.

On 16 November 2001, after new generic post descriptions had been issued, the complainant requested that her

tasks and post description be redefined in the same manner as for the FCH post and that her post be reclassified as G.7 with effect from 1 March 2000 in line with that post. In her request, she noted that although the FCH post description had been revised, "it still basically comprised the same work and tasks as the previous generic post description". She also noted that the staff in the GMG Cluster comprised "over 2.5 times as many as those in FCH".

In response to her request for reclassification, the complainant was informed by memorandum of 3 December 2001 that procedures for classification review of generic posts would be issued in the near future and that, once they had been issued, she should apply in accordance with those procedures. Thereafter, on 12 December, she repeated her request, stating that "the basic difference" between her post and the FCH post was that she did "the same work but for 2.5 times as many staff members/posts". She also pointed out that future classification procedures were irrelevant to her request, which related to action taken 21 months earlier. Further, she referred to the considerations relevant to post classifications and claimed that failure to reclassify her post "would clearly constitute personal prejudice".

The Manager of the complainant's MSU responded to her renewed request for reclassification by memorandum dated 31 January 2002. In that memorandum he referred to Manual paragraph II.1.30.3, informing her of its provision that a change in grade should only occur when there has been a significant change in the level of duties and responsibilities. He added that, in his view, the revised generic post description accurately reflected her current duties and responsibilities but that, if she so wished, she could request a review in accordance with the relevant procedures.

On 1 February 2002 the complainant filed a Notice of Intention to Appeal to the Headquarters Board of Appeal. This notwithstanding, there was further correspondence as to the conduct of a review, with the complainant reiterating that it should be conducted by reference to the FCH post description and the Administration replying that her classification review request would be processed when she completed form WHO 81 and provided a description of her current duties.

The Board reported on 15 July 2002, recommending an immediate classification review of all eight posts originally classified as generic Personnel Assistant G.6 posts. With regard to the complainant's post, the Board recommended that such review should be conducted "in close comparison with that of the FCH post [with] special attention being paid to the justification for and effects of the changes introduced into the post description of [the latter post]". It also recommended that any resulting reclassification of the complainant's post should take effect from 1 May 2002. Further it recommended reimbursement of her legal costs up to a maximum of 2,500 United States dollars.

The recommendations of the Board were not accepted by the Director-General, although it was stated in the letter of 20 September 2002 conveying her decision that there should be a classification review of the complainant's post. However, it was said that, before the review could take place, it was necessary "to receive [...] the information that [was] awaited from [her]" and that the review would "be undertaken in accordance with the standard procedures for classification reviews as described in Cluster Note 2002/4, and not in comparison with the post stipulated by the Board". The question as to retroactivity was reserved and the recommendation as to the payment of legal costs rejected. That is the impugned decision.

B. The complainant contends that the Administration violated the terms of her appointment and Manual paragraph II.1.30 by failing to reclassify her post at the same time as it reclassified the FCH post. Referring to the case law, she argues that the Administration had a duty to review the classification of her post within a reasonable time, yet she has waited for more than two years since her first request.

She also argues that in taking the impugned decision the WHO breached Staff Rule 1230.1.2 by failing to consider relevant facts, including her duties and responsibilities as compared to those of the holder of the FCH post. The Organization singled out and reclassified only one of the eight generic posts, thereby ignoring the fact that the incumbents of those posts were all engaged under the same post description and conditions of employment. In so doing, it failed to treat the generic post-holders equally.

She considers that the impugned decision contravened Staff Rule 1230.1.1, because it was tainted with personal prejudice and ill will: the Organization reclassified only one of the original eight Personnel Assistant posts and then "engaged in dubious actions to avoid reclassifying the other seven posts". She perceives bias in favour of the incumbent of the FCH post in the fact that the latter was alone in benefiting from reclassification of her post, and prejudice against herself in the Organization's "constructive rejection" of her request for reclassification.

Lastly, the complainant submits that the impugned decision is flawed because "the Staff Rule upon which it was based is inherently at odds with the nature and purpose of generic posts". She considers that generic posts undermine the classification system, because staff members performing tasks which under a conventional classification system would entitle them to a higher grade are prevented from obtaining it by the fact that their post is labelled generic.

She seeks immediate reclassification of her post to grade G.7 with effect from 1 March 2000 and other consequential relief, including moral damages, compensation for delay and payment of her legal costs. She also requests a public hearing in which to present oral argument.

C. The WHO replies that since it has not refused to reclassify the complainant's post, but has in fact agreed to conduct a classification review as soon as she provides a description of her current duties, the complainant has no cause of action. Moreover, the complainant has failed to provide that description and no final decision has been taken. For these two reasons, it considers that the complaint is irreceivable.

Rejecting the allegation that it has failed to review the classification of the complainant's post within a reasonable time, it argues that it is the complainant's own failure to provide the necessary information that has held up the reclassification process.

Additionally, the WHO asserts that it has not discriminated against the complainant because her situation differs in fact and law from that of the holder of the FCH post. Further, it denies the allegations of ill will and personal prejudice.

D. In her rejoinder the complainant reiterates her arguments on the merits. With regard to the Organization's objection to receivability, she submits that the WHO did take a final decision, since it implicitly rejected her request for a classification review based on the post description of the FCH post.

E. In its surrejoinder the Organization maintains its position on all issues, emphasising that there is no anomaly if, as a result of a classification review, a generic post becomes non-generic because its post description no longer matches the duties actually performed by the incumbent.

## CONSIDERATIONS

1. Before turning to the questions raised by the pleadings, it is convenient to note the Staff Rules relating to reclassification. WHO Manual paragraph II.1.110 provides in pertinent part:

"Staff members who feel that their post is not properly classified may, at any time, request a review by sending a memorandum to HRS/Central Services (cluster or regional personnel officer) through the supervisor, accompanied by a description of the current duties of the post prepared on form WHO 81."

Paragraph II.1.110.1 states:

"Where the occupied post is covered by a generic post description a memorandum outlining additional duties is adequate as an initial step."

2. Paragraphs II.1.30.1 and II.1.30.2 provide, respectively, that "there should be equal pay for work of equal value" and that "posts of approximately equal difficulty and responsibility should be placed in the same grade". The notion of equal pay for work of equal value is expanded in paragraph II.1.30.4 in its provision that:

"the grading of a post depends upon the assigned duties and responsibilities required and not on the qualifications, job performance, seniority or other characteristics of an incumbent."

Additionally, paragraph II.1.30.3 stipulates that a change in the grade of a post should result only when a significant change in the level of duties and responsibilities has occurred.

3. There is an obvious tension between the directive in paragraph II.1.30.3 that a change in grade should result only when a significant change has occurred in the level of duties and responsibilities and the overriding requirement of

equal pay for work of equal value. At least that is so if, as contended by the complainant, a post has been wrongly classified since its creation.

4. If a classification review of the complainant's post were to be conducted on the basis that it would not be re-graded unless there had been a significant change in the level of her duties and responsibilities, it is arguable that that course would offend the principle of equality.

5. The principle of equality requires that persons in like situations be treated alike and that persons in relevantly different situations be treated differently. In most cases involving allegations of unequal treatment, the critical question is whether there is a relevant difference warranting the different treatment involved. Even where there is a relevant difference, different treatment may breach the principle of equality if the different treatment is not appropriate and adapted to that difference.

6. So far as concerns remuneration or grading, if remuneration is dependant on grade, the only relevant consideration is whether the work in question is work of equal value. This much is recognised in Manual paragraph II.1.30.1. It cannot be relevant, for example, that, in one case, the post in question is a generic post and that, in the other, it is not. Nor can it be relevant that one post has been re-graded in accordance with established or standard procedures and the other has not.

7. It is the duty of international organisations to ensure that they abide by the principle of equality and, particularly, that they comply with its requirement that there be equal pay for work of equal value. And if their rules and procedures do not ensure adherence to that principle and its requirement of equal remuneration, it is their duty to initiate procedures that do, whether by way of general rule or some specific procedure for the particular case.

8. It is arguable that a classification review of the complainant's post addressing only the question whether there had been a significant change in her duties and responsibilities would breach the principle of equality because it would preclude reference to the FCH post, which may well be a comparable post. However, that has not yet happened. All that has happened is that the WHO has indicated the course it will follow if and when the complainant submits a classification request in the proper form. It is in that context that the issues presented by the pleadings must be analysed.

9. Once it is understood that, by its letter of 20 September 2002, the WHO has indicated how and when it will conduct a classification review, it becomes apparent that there is no advantage to be gained from a public hearing or the presentation of oral argument. The questions whether that letter constitutes a final decision and, if so, whether it is attended by reviewable error are questions of law that can be decided by reference to the written submissions. And even if those questions were to be decided in favour of the complainant, oral argument would not be necessary on the question of relief. That is because the only relief that could be granted would be the setting aside of the impugned decision with an order to conduct a classification review on the basis requested by the complainant. Accordingly, the request for a public hearing and the presentation of oral argument is disallowed.

10. The receivability of the complaint depends upon identification of the precise decision made by the Director-General. It is true that the Director-General has not refused either to re-grade the complainant's post or to conduct a classification review. What has been decided is how and when that review will be conducted. In particular, it has seemingly been decided that the review will not be conducted on the basis of a comparison of the complainant's post with the FCH post, but only "in accordance with the standard procedures for classification reviews as described in Cluster Note 2002/4," and only when the complainant provides the required information.

11. It is theoretically possible to describe the decision in question as a decision not to conduct a classification review except in accordance with the standard procedures and after the complainant has provided the required information. That is merely to state the obverse of the decision in question, namely, to conduct a review in accordance with the standard procedures when the complainant furnishes the information required. It is a decision which has no present consequences for the complainant and may yet result in the relief which she seeks. It is not a final decision. A final decision will only be made when the WHO grants or denies the reclassification of the complainant's post. Accordingly, the complaint is irreceivable.

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet