

## THIRTY-FOURTH ORDINARY SESSION

### ***In re* DE SANCTIS**

#### **Judgment No. 251**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Luigi De Sanctis on 8 May 1974, and brought into conformity with the Rules of Court on 10 June 1974, the Organization's reply of 19 September 1974, the complainant's rejoinder on 18 December 1974 and the Organization's surrejoinder on 10 February 1975;

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

Having examined the documents in the dossier, or all proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. The complainant joined the service of the FAO on 6 February 1967 at grade G.9 on a fixed-term appointment. He was then granted a series of fixed-term appointments of which the last expired on 7 November 1972. On that date he left the FAO.

B. While still on the FAO staff, in the hope of obtaining a permanent appointment the complainant applied for a vacant G.3 post as a statistical clerk. The applications were examined by the Special Inter-Departmental Selection Committee (SISCO), a body set up by the FAO at a time of serious financial difficulties in an attempt to relieve those difficulties. SISCO recommended appointing the complainant to the post in preference to the candidate proposed by the division concerned. As it was entitled to do under the prescribed procedure, the division with the vacant post appealed against SISCO's recommendation to the Director-General. After considering the views expressed by SISCO and by the division the Director-General decided not to accept the former's recommendation.

C. By a memorandum of 19 November 1972 the complainant appealed to the Director-General against his decision to appoint someone else to the vacant post. By letter of 1 December 1972 the Director-General dismissed the appeal. The complainant then appealed to the FAO Appeals Committee. In its report of 3 January 1974 the Committee recommended that the Organization should reconsider the complainant's situation to determine whether it could not grant him continuous employment. Failing that, the Committee recommended paying him a larger sum than the five months' salary already offered to him "ex gratia", because of the length of his service and the unusually high number of short-term appointments he had been given. By letter of 7 February 1974, which repeated the offer to pay him five months' salary, the Director-General said that he could not accept the Appeals Committee's recommendations. The complainant is impugning the decision of 7 February 1974.

D. The complainant believes that it was unfair to appoint someone else since he had greater seniority and better qualifications than the successful candidate. He sees a connection between the appointment of that candidate and the failure to renew his own appointment and believes that he was a victim of prejudice. He also believes that the Director-General acted improperly in refusing to endorse the Appeals committee's unanimous recommendation to consider converting his fixed-term appointment into a permanent one. In his claims for relief he asks the Tribunal to order the Organization to offer him a permanent appointment.

E. In its reply the Organization first points out that the complainant had no "right" to a permanent appointment. His allegation of unfair treatment is unfounded. The Organization maintains that it did its utmost to enable the complainant to apply for all vacancies which occurred, that it extended his appointment by over four months even though there was not vacancy for him to fill and that it has offered him an "ex gratia" payment of five months' salary. The Director-General's decision to appoint someone else fell within his discretionary power was taken after examination of all the information available, was fully justified and lawful and was not tainted with any procedural

irregularity. The Organization therefore prays that the Tribunal dismiss the complaint.

#### CONSIDERATION:

As to the decision not to extend the complainant's appointment:

1. Dismissing an objection raised by the Organization, the Tribunal will consider the merits of the decision not to renew the complainant's appointment. In a minute of 19 November 1972 the complainant appealed to the Director-General against the appointment of another staff member to post No 6224-9001, for which he had applied, referring to the absence of any official notification of the extension or termination of his appointment, which had expired several days earlier. On 1 December 1972 the Director-General dismissed the appeal, pointing out to the complainant that the termination of his appointment had been notified to him by telephone on 7 November 1972, and later by a registered letter which had been returned to the sender, and now formed the subject of a second letter. On 16 December 1972 the complainant appealed to the Appeals Committee against the Director-General's decision to confirm the appointment of another staff member to post No 6224-9001 and against the decision to terminate his own appointment. In its report of , January 1974 the Appeals Committee expressed views on both claims. On 7 February 1974, in refusing to endorse the Appeals Committee's recommendation, the Director-General implicitly dismissed the complainant's two claims. It thus appears from the procedure followed in the Organization that the internal means of redress were exhausted with regard to the decision not to renew his appointment and the appointment to post No 6224-9001 On both points the complaint is therefore receivable.

2. A decision not to extend a fixed-term appointment or not to convert it into an appointment of indeterminate duration falls within the Director-General's discretionary authority. Hence the Tribunal may quash it only if it was taken without authority, violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with misuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

3. In this case the decision not to extend or convert the complainant's appointment is not tainted with any irregularity which entitles the Tribunal to interfere. That decision is based on the abolition of the complainant's post - made redundant by the installation of three computers - and that is a plausible reason for not extending an appointment which has expired. Nor is that decision at odds with the assurances which the Director-General is alleged to have given to the effect that fixed-term appointments would be converted into permanent ones after three years' service: such assurances cannot be regarded as obliging the Organization to keep staff members who have become redundant. Whether or not the impugned decision complies with Italian law is immaterial since the terms of appointment of the FAO's staff members are determined exclusively by its own rules. Considering the length of his service the complainant might have expected to be kept on; but it does not follow that the Director-General exceeded his discretionary authority in taking a decision which there is no reason to doubt was in accordance with the interests of the Organization in his charge. Besides, although the complainant's appointment was to expire on 30 June 1972, he remained on the staff and was remunerated until 7 November 1972. Moreover, it is open to him to accept the Organization's "ex gratia" offer of five months' salary in compensation.

As to the decision not to appoint the complainant to post No. 6224-9001:

4. Like the decision not to extend the complainant's appointment, the decision as to whether to appoint him to a vacancy is discretionary. Hence the Tribunal may not as a rule intervene unless the decision is tainted by one of the flaws mentioned in paragraph 2 above

5. The complainant objects that he was not invited for interview in the division in which he had applied for a post. This objection is unfounded. There is no provision which entitled him to such an interview. Moreover, as a result of his other applications for posts officials in the division in question had had an opportunity to question him personally.

The complainant's main argument is that he has served the FAO for longer than the successful candidate and, unlike the latter, has a university degree. In choosing from among several candidates, however, length of service and university education are not the sole criteria. In fact the most important one is fitness for the vacant post. Although the complainant regularly received his salary increments his work was not always fully satisfactory, as appears from the dossier and is suggested by the failure of his many applications. On the other hand, the successful candidate had been trained for the vacant post and had proved himself fully fit for it. In the circumstances, even

though the decision may be open to question, the Director-General did not draw any clearly false conclusion; from the dossier.

DECISION:

For the above reasons,

The complaint is dismissed.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 5 May 1975.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet