

*Registry's translation,
the French text alone
being authoritative.*

112th Session

Judgment No. 3063

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms R. M against the International Labour Organization (ILO) on 1 June 2009 and corrected on 3 June and the Organization's reply of 8 September 2009, the complainant having declined to file a rejoinder;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this dispute are to be found in Judgment 2837, delivered on 8 July 2009, concerning the complainant's first complaint. Suffice it to recall that by a letter of 29 September 2006 the complainant – who at the material time was a translator in the German Section of the Official Relations and Documentation Branch of the International Labour Office, the ILO's secretariat – was informed of the Director-General's decision not to award her a personal promotion in the context of the 2004-2005 consolidated exercise. In response to the complainant's enquiry as to the reasons for this decision, the Chairperson of the Personal Promotions Committee informed her on 9 March 2007 that the personal promotion exercise was a comparative

process and that other candidates had been considered more suitable, but that her case would be reconsidered “in the 2006 exercise”.

Although her candidature was indeed reconsidered in the context of that exercise, the complainant was advised by a letter of 15 May 2008 that the Director-General, acting on a recommendation of the above-mentioned Committee, had again decided not to award her a personal promotion, but that exceptionally her file would be re-examined in the following exercise. As the Director of the Human Resources Development Department dismissed the grievance which she had submitted in order to contest that decision, the complainant referred the matter to the Joint Advisory Appeals Board on 16 October 2008. In its report of 6 March 2009 the Board recommended that the grievance should be dismissed as groundless. By a letter of 6 May 2009 the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had adopted the Board’s recommendation. That is the impugned decision.

B. The complainant points out that she has never been promoted since she joined the Office in 1987 and she submits, first, that the procedure laid down in Circular No. 334, Series 6, setting out the personal promotion system, lacks objectivity. She also considers that it lacks transparency, because the terms of the circular prevent her from ascertaining whether the assessment of her merit which had to be provided by her responsible chief – on the form mentioned in paragraph 11 of the circular – manifestly contradicts her previous performance appraisal reports.

The complainant further contends that the Personal Promotions Committee overlooked the following “essential” facts: the awarding of external collaboration contracts to retired former colleagues, which had deprived her of the opportunity to perform “at a level above the normal requirements” of her post – the condition required in paragraph 9 of the above-mentioned circular in order to obtain a positive recommendation from the Committee; an e-mail of 2004 from her then second-level supervisor stating that she would henceforth work as a “fully responsible self-revising translator”; the fact that hers

is the only section not to have a grade P.4 translator/reviser; the two special merit increments received during her career; her 22 years of service; and the harassment by her immediate supervisor which led her to file a grievance with the Human Resources Development Department on 16 February 2007 (see Judgments 3064 and 3065 delivered this day, concerning the complainant's third and fourth complaints).

Lastly, the complainant provides several examples of her immediate supervisor's alleged personal prejudice against her and she reports facts which, in her opinion, cast serious doubts on the Organization's objectivity as far as she is concerned.

The complainant requests the setting aside of the impugned decision, redress for the injury that she claims to have suffered and costs in the amount of 5,000 Swiss francs.

C. In its reply the ILO informs the Tribunal that, as part of the procedure initiated in response to the complainant's grievance of 16 February 2007, the Director-General ordered an investigation of the allegations of harassment, which had to be completed by the end of October 2009 at the latest. For this reason, it holds that the instant complaint is premature in this respect. The Organization adds that most of the complainant's submissions refer to "allegations dating back several years" which are therefore time-barred.

On the merits, the defendant submits that, according to the Tribunal's case law, personal promotion is an "optional and exceptional" measure which is subject to only limited review by the Tribunal and that the complainant has not proved the existence of a flaw which might justify the setting aside of the impugned decision.

The ILO further contends that it rigorously abided by the procedure laid down in Circular No. 334, Series 6. It points out that since, under paragraph 11 of the circular, the complainant could not be provided with her responsible chief's assessment, by virtue of the principle of *tu patere legem quam ipse fecisti* no procedural flaw may be said to have occurred in the instant case. It draws attention to the fact that, after examining several documents *in camera*, including the

above-mentioned assessment, the Joint Advisory Appeals Board found that there had been no personal prejudice. The Organization produces that document.

The ILO asserts that all the essential facts were taken into consideration by the Personal Promotions Committee and that the complainant's arguments in this respect are irrelevant. In particular, it explains that the decision to award a number of external collaboration contracts was taken in the interests of the German Section, that the e-mail of 2004 was merely an internal document concerning the ad interim organisation of that section and that the complainant's administrative file recorded her special merit increments. The defendant holds that the role of the above-mentioned Committee is not to investigate the reasons why a candidate for personal promotion does not meet the requisite conditions, but to determine whether or not he or she meets them. In the instant case the Committee ranked the complainant among the six best candidates in the Professional category in the 2006 exercise, but as personal promotion "is the outcome of a comparative exercise at the end of which a very small number of candidates are given such advancement owing to the quotas laid down" by Circular No. 334, Series 6, it was unable to recommend that she should be included in the group of four officials who were ultimately granted the promotion in question. The Organization adds that, when making its recommendation, the Committee disregards the candidate's years of service and bases its decision on the following three criteria: "quality of work, quantity of work and personal attributes applied to the job". Lastly, it submits that the allegations of harassment, apart from being irreceivable, are not corroborated by any evidence.

CONSIDERATIONS

1. Although under ILO Circular No. 334, Series 6, the complainant was eligible to be considered for personal promotion in the context of the 2006 exercise, she was informed by a letter of 15 May 2008 that the Director-General, acting on a recommendation

from the Personal Promotions Committee, had decided not to award her the promotion in question.

As the Director of the Human Resources Development Department had dismissed the grievance which the complainant had submitted to her on 27 May, on 16 October 2008 the complainant referred the matter to the Joint Advisory Appeals Board which, in its report of 6 March 2009, recommended that the Director-General dismiss her grievance as groundless.

2. The complainant impugns the decision of 6 May 2009 in which the Executive Director of the Management and Administration Sector informed her of the Director-General's dismissal of her grievance of 16 October 2008.

She asks the Tribunal to set aside that decision, to order redress for the injury which she considers she has suffered and to award her costs.

3. The Tribunal again notes, as it did in consideration 6 of Judgment 2837 concerning the complainant's first complaint, that by its very nature the decision whether or not to grant a personal promotion is one which is taken at the discretion of the Director-General. As such, it is subject to only limited review by the Tribunal (see, in particular, Judgments 1500, under 5, 1815, under 3, and 2668, under 11). According to this case law, the Tribunal will set such a decision aside only if it shows certain flaws, such as a formal or procedural flaw, or a mistake of fact or of law, or if some essential fact was overlooked, if it was *ultra vires*, if there was misuse of authority, or if a conclusion drawn from the evidence is obviously wrong.

4. The complainant points out that she has never been promoted since the Office recruited her in 1987, despite her "excellent performance record", and she first complains of a lack of objectivity in the personal promotion procedure. She adds that this procedure is not transparent, because the terms of Circular No. 334, Series 6, make it impossible for her to ascertain whether the assessment made by her responsible chief for the purposes of the personal promotion exercise is

manifestly inconsistent with her previous performance appraisal reports.

5. Circular No. 334, Series 6, which was in force at the material time, relevantly provided:

“Assessment of merit

8. The [Personal Promotions Committee] will base its recommendations on:

- (a) an assessment of merit provided by the official’s responsible chief;
- (b) a statement of experience, qualifications and other relevant information provided by the official; and
- (c) a review of the official’s personal file.

9. A positive recommendation by the [Committee] will require a clear demonstration that the official has regularly performed at a level above the normal requirements of the job. Account will be taken of three main criteria: quality of work, quantity of work and personal attributes applied to the job. [...]

Procedure for the award of personal promotions

10. The Personnel Department will determine the officials who meet the years of service and grade requirements and are therefore eligible to be considered for a personal promotion. [...]

11. The responsible chief will be asked to provide an assessment of merit on a standard form [...]. The official will be asked to provide a statement of experience and qualifications on a standard form [...]. Chiefs and officials are not required to show their respective statements to each other. The two statements will be sent to the [Committee]. [...]

12. The [Committee] will review the statements. It will in the first instance determine consistency between the statements and the official’s personal file. In the event of inconsistency, it may seek clarification, in writing or in a personal interview, from or with either the official or the responsible chief. The Board will then submit a recommendation to the Director-General as to whether a personal promotion shall be awarded.”

6. Even though, contrary to the Organization’s submissions, paragraph 11 of the above-quoted circular did not expressly prohibit the forwarding of the assessment provided by the responsible chief to the official concerned, they were “not required to show their respective statements to each other”. The Tribunal considers that the fact that the

responsible chief was not bound to forward his assessment to the complainant cannot be regarded as proof of a lack of transparency and objectivity in the procedure, especially as both statements had to be forwarded to the Personal Promotions Committee, which was obliged to determine their “consistency [...] [with] the official’s personal file”.

It follows from the foregoing that the first plea is without merit.

7. The complainant then submits that facts which she describes as “essential” were overlooked by the Personal Promotions Committee.

(a) She contends that the awarding of external collaboration contracts to retired former colleagues deprived her of the opportunity to perform “at a level above the normal requirements” of her post.

The Tribunal concurs with the ILO that the role of the above-mentioned Committee is not to investigate the reasons why a candidate for personal promotion does not meet the requisite conditions, but only to determine whether or not he or she meets them. The facts on which the complainant relies do not therefore constitute essential facts the overlooking of which would justify the setting aside of the decision by the Tribunal.

(b) The complainant points out that in 2004 her second-level supervisor had stated in writing that she would henceforth work as a “fully responsible self-revising translator”. However, it is not disputed that this statement appeared in what was “merely an internal e-mail, concerning the ad interim organisation of the section in question”. It cannot therefore constitute an essential fact the overlooking of which would vitiate the recommendation of the Personal Promotions Committee.

(c) Neither can the fact that the German Section was the only section not to have a grade P.4 translator/reviser be accepted as an essential fact which the Committee ought to have borne in mind since, as stated above, the Committee’s role is to determine whether or not the candidate meets the conditions for the award of a personal promotion.

(d) The above-mentioned Committee necessarily took account of the special merit increments which the complainant received in 1991

and 2001 because, in accordance with paragraph 8 of Circular No. 334, Series 6, it had to base its recommendations inter alia on an examination of the official's personal file.

(e) The complainant observes that despite her 22 years of service with the Office she has never been promoted.

The Tribunal notes that, in order to be able to make a positive recommendation, the Committee had to consider the three criteria set out in paragraph 9 of Circular No. 334, Series 6, namely "quality of work, quantity of work and personal attributes applied to the job". For this reason, even if the Committee ignored the complainant's years of service, this omission does not warrant the setting aside of the decision by the Tribunal.

(f) The complainant submits that for many years she has been the victim of harassment within her section, but she provides no specific proof of this harassment. She merely states that she filed a grievance related to this subject on 16 February 2007.

This cannot therefore be deemed an essential fact within the meaning of the Tribunal's case law. Hence the complainant's second plea cannot be allowed.

8. Lastly, the complainant complains of the personal prejudice which her immediate supervisor allegedly displayed against her and she reports facts which, in her view, cast serious doubts on the Organization's objectivity as far as she is concerned.

But the Tribunal finds that the complainant has produced no evidence to corroborate her allegations of personal prejudice and she even admits that she is unable to furnish any proof in this connection. As for the Organization's objectivity, she merely expresses doubts.

This last plea will therefore be dismissed.

9. Since all the pleas fail, the complaint must be dismissed without it being necessary to rule on the defendant's objection to receivability.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 18 November 2011, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet