

THIRTY-NINTH ORDINARY SESSION

In re PRICE

Judgment No. 326

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan American Health Organization (PAHO) (World Health Organization) by Mr. Hoyt Glenn Price on 13 October 1976, the PAHO's reply of 30 November 1976, the complainant's rejoinder of 1 February 1977, the PAHO's surrejoinder of 14 February, the complainant's communication of 3 March and the PAHO's statement of 21 March 1977 that it did not wish to reply;

Considering Article II, paragraph 5, and Article VIII of the Statute of the Tribunal, PAHO Staff Regulations, particularly Regulations 4.2, 4.3 and 4.4, PAHO Staff Rules, particularly Rules 310.1, 430.1.a, 430.1.d, 430.2, 430.3, 430.4, 460.2, 460.3 and 465.3, and the WHO Manual, particularly paragraphs II.3.90, II.3.260, II.3.300, II.3.310, II.3.320 and II.3.330;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

- A. The complainant joined the staff of the Pan American Sanitary Bureau, the secretariat of the PAHO, on 18 January 1954 as an administrative assistant in the Supply Office. He has since held a series of progressively more responsible posts in that office and reached grade P.3. From 25 July 1975 to 27 April 1976 he was acting chief of the Supply Section. His annual reports from 1954 to 1970 attested to his satisfactory performance. In 1958 he was given a "career service appointment". For reasons beyond his control he was given no annual report from 1970 to 1975 and he tried to have that put right, but to no avail.
- B. The chief of the Supply Section had left at the beginning of 1975, and his post, No. 0219, had fallen vacant. No notice of vacancy was posted nor any selection committee convened to consider candidates. The post went to a Mr. Nielsen, who at the time was suffering from terminal cancer. Mr. Nielsen had to give up work in April 1975 and died in July. The complainant then became acting chief of the Supply Section (see A above).
- C. On 8 October 1975 a notice of vacancy was published for post No. 0219 and on 21 November the complainant applied. On 19 February 1976 he gave information asked for by the Personnel Office and on 24 February some facts about his qualifications which he believed were not recorded in his personnel file. These two communications were, it seems, not notified to the selection committee, and no representative of the Administration or the Personnel Office on that committee interviewed him. The head of his department, who was to have sat on the committee, was relieved of doing so.
- D. On 8 March 1976 the complainant was told by confidential letter that his application for post No. 0219 had been unsuccessful. He appealed to the Board of Inquiry and Appeal. In its report of 21 May the Board recommended, first, that the selection committee's choice for the post should be accepted but, secondly, that because of the complainant's many years of valuable and loyal service consideration should be given to promoting him to an appropriate step in the P.4 grade, as his supervisors had already recommended. By letter of 8 July 1976 the Director told the complainant that he endorsed the Board's first recommendation but not its second one, which touched on a matter subject to the regrading procedures. That is the decision the complainant impugns.
- F. The complainant takes the view that according to Staff Rule 460.2 he had reason to expect promotion to post No. 0219 and that the selection committee which met to consider applications for the post was not impanelled in accordance with the relevant Manual provisions. There had been incomplete consideration of the facts since he had had no annual report for five years. He asks the Tribunal to declare that he was entitled to promotion to post No. 0219 at the P.4 level both because of the expectation given to him under Staff Rule 460.2 and because of his proven performance; to quash the decision taken as a result of the recommendations made by the selection committee, which was improperly impanel led to consider candidates for the post, in breach of PAHO Manual paragraph II.3.500; to order that the complainant's personnel file be brought up to date in accordance with Staff

Rule 430; to award him \$20,000 as compensation for the damage to his professional reputation; and to award him costs.

F. The PAHO observes that appointment to a post is a decision which falls within the Director's discretion and the Tribunal may exercise only its limited power of review. The Director made no mistake of fact or of law and all provisions of the Staff Regulations and Staff Rules were respected and properly construed. The selection committee was in no way swayed by the fact that the complainant had had no annual report for some years. It followed the correct procedure. In any event the choice of someone else for the post cannot harm the complainant's professional reputation. The PAHO asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

1. The complainant has served in the Supply Office of the Pan American Sanitary Bureau in Washington for more than twenty years and on the death of the chief of the Supply Section on 25 July 1975 was designated as acting chief. The substance of his complaint is that his application for the vacancy was rejected in accordance with a recommendation made by a selection committee. The complainant contends that the proceedings of the committee were defective in three respects.

2. In the first place the complainant contends that the selection committee was not properly constituted in accordance with paragraphs 310 and 320 of the Manual. Paragraph 310 requires each regional office to establish a regional senior staff selection committee and/or other appropriate selection committee to make selections for posts up to and including grade P.5. Paragraph 320 specifies the composition of senior staff selection committees, but leaves it to the regional Director to determine the composition of any other regional election committee. In this case and in accordance with his usual practice the regional Director set up a selection committee whose composition he determined himself, and it was not the composition specified for a senior staff selection committee. The question is therefore whether the regional Director was obliged in this case to appoint a senior staff selection committee. The complainant's contention that he was seems to be based on a provision relating to headquarters selection committees which specifies that there must be a senior selection committee for all posts at grades P.4 and above at headquarters. However, in the opinion of the Tribunal, paragraph 310 leaves it to the discretion of the regional Director to decide whether in any particular case the selection is to be made by a senior committee or by such other committee as he thinks appropriate, and the provisions relating to headquarters committees do not impose any fetter on his discretion by implication or otherwise.

3. In the second place the complainant relies upon Staff Regulation 4.4. This is one of several regulations referring to various matters to which selection committees must have regard in making their choice subject to "the paramount consideration ... of securing the highest standards of efficiency competence and integrity". Staff Regulation 4.4 provides that "without prejudice to the inflow of fresh talent at the various levels, vacancies shall be filled by promotion of persons already in the service of the Organization in preference to persons from outside". It is impossible to give any precise meaning to this requirement. The Organization must rely upon the members of a selection committee to pay what they consider to be due regard to these and other factors mentioned in the regulations. It would only be in a case in which it could be shown that a factor had been wilfully disregarded that the Tribunal could begin to entertain any complaint. In the present case the members of the committee were all familiar with the complainant's claim based on his service and it is not suggested that the successful candidate was lacking in talent and ability.

4. Thirdly, owing to a breach of duty by the complainant's supervisor no appraisal reports relating to him had been filed as required by the regulations for the five years between 1970 and 1975. In this respect the complainant contends that the material before the selection committee was incomplete. All the members of the selection committee gave evidence before the Board of Inquiry and Appeal. They all said that they had been advised of the complainant's excellent performance and that the absence of appraisal reports did not enter into their deliberations.

5. The Tribunal is concerned only with matters arising out of the decision complained against, i.e. the decision of the Director on 8 July 1976 to uphold the recommendation of the selection committee. The Tribunal has no power to interfere with such a decision except upon limited grounds such as the alleged irregularities of procedure with which it has dealt in the preceding paragraphs. Since these allegations have not been made out the decision of the Director must stand.

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 21 November 1977.

M. Letourneur
André Grisel
Devlin

Roland Morellet