

FORTY-NINTH ORDINARY SESSION

In re AYYANGAR

Judgment No. 529

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Seshadri Ayyangar on 23 April 1982, the WHO's reply of 14 July, the complainant's rejoinder of 20 August and the WHO's surrejoinder of 22 September 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rule 230 and WHO Manual section II.1.40;

Having examined the written evidence, 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, a citizen of India, joined the Regional Office of the WHO in New Delhi on 4 October 1956 and has been employed since 1959 in the Reports and Documents Unit. He has had several promotions, and on 1 February 1975 was promoted to grade ND.7. On 19 December 1979 he applied for the reclassification of his post at grade P.2 in accordance with Staff Rule 230 on the strength of the duties set out in his post description dated January 1975 and those he was actually performing. After a lengthy exchange of minutes with the personnel services in New Delhi and at headquarters, and his application not having been granted after 18 months, on 13 July 1981 he appealed to the headquarters Board of Inquiry and Appeal. On 9 July the Chief of Personnel at headquarters informed him that his post had been reclassified from ND.7 to ND.X, and on 21 July the regional personnel officer told him that on the Regional Director's recommendation the Director-General had approved his promotion to ND.X with retroactive effect from 1 June 1980. On 14 August he said that he wished to pursue his appeal because he had got neither the grade nor the date of regrading that he wanted. In its report of 18 December 1981 the Board said that the time taken over the appeal had been "unjustifiably long" but it recommended rejecting the claims. By a letter of 25 January 1982 the Director-General informed the complainant that his appeal was rejected, and that is the decision he impugns.

B. The complainant believes that the decision was based on a misapplication of the rules on classification in the WHO Manual and was arbitrary. In his opinion the WHO failed to take full and objective account of the actual duties of his post, which, for reasons he explains, amply warranted his regrading to P.2. The procedural delays - which the Board described as unjustifiable but without awarding him any compensation - and the Board's recommendations are evidence of personal prejudice against him. He claims reclassification of his post and promotion to grade P.2; the retroactive dating of the reclassification from January 1975, when the post description was established; an award of 1,000 United States dollars in costs; and payment of the difference between his actual remuneration and remuneration at grade P.2 from January 1975 up to the date of reclassification at P.2 as compensation for the material and moral prejudice sustained.

C. In its reply the WHO gives an account of its rules on post classification and observes that any grading is based on a value judgment and therefore a matter of discretion. That does not mean it is arbitrary, and the complainant's case was thoroughly and objectively reviewed by a procedure which the WHO describes at length. An experienced classification officer went to New Delhi in May 1981 from headquarters to review the case of several staff members, including the complainant, and carried out a desk audit of his post, which was then regraded to ND.X. The WHO explains the differences which in its view exist between posts in the two staff categories in the complainant's unit and observes that much of his work is purely administrative. The relevant facts were fully taken into account. Admittedly there was delay in disposing of his case, but that was largely put right by his retroactive promotion. Neither the Board's findings nor the impugned decision were tainted with prejudice. In fact the Board recognised that he was a hard-working and highly regarded official. Not until December 1979 did he start the procedure prescribed in the Staff Rules, and there is therefore no sound reason for dating his promotion before 1

June 1980.

D. In his rejoinder the complainant draws a comparison between his own duties and those of Professional category staff in his unit and again maintains that his duties correspond to grade P.2 and that the rules on classification in Manual section II.1.40 were not complied with. In accordance with the post description he has for several years been performing duties at a grade above ND.7. Since he did not receive back pay for the promotion on 1 June 1980 until September 1981 he suffered financial loss, and the mere regrading at ND.X has caused him moral injury by tarnishing his reputation and prestige. He presses his claims for relief and increases by 2,000 dollars his claim for compensation.

E. The WHO develops its arguments in its surrejoinder. In particular it observes that the complainant's promotion to ND.X cannot be described as humiliating; in fact it is evidence of the Organization's confidence and therefore reinforces the staff member's reputation and prestige. The WHO invites the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS:

1. The complainant was appointed to the post of secretary-stenographer at the WHO's Regional Office in New Delhi on 4 October 1956. His grade was ND.4. By 1 February 1975 his post had been reclassified to that of Administrative Assistant and he had been promoted to ND.7 grade.

On 19 December 1979 the complainant made a request under WHO Staff Rule 230 for the reclassification of his post at Professional level on the ground that the duties and responsibilities attached to the post called for a P.2 grade at least. This request was not granted and the complainant appealed to the WHO headquarters Board of Inquiry and Appeal. The Board recommended rejecting the appeal.

The basic principles of post classification within the WHO are set out in the Organization's Manual as follows:

II.1.40.1 there should be equal pay for equal work;

40.2 posts of approximately equal difficulty and responsibility and requiring approximately the same qualifications should be placed in the same class, given a common title and assigned to the same pay level. In general the number of classes should be kept to a minimum;

40.3 entitlement to a higher grade and pay level must be based on the increased duties and responsibilities of a post;

40.4 unless the duties and responsibilities of a post increase substantially, better performance by a staff member is recognised by reassignment to a better post or by within-grade increases, not by an increase in grade;

40.5 the grading of a post is dependent upon the duties and responsibilities required and not on the qualifications of the incumbent.

The complainant contends that the WHO has failed to adhere to the foregoing principles. He alleges personal prejudice against him; he also alleges arbitrariness and bias on the part of the headquarters Board of Inquiry and Appeal. As to personal prejudice he cites the delay by the Organization in dealing with the request. As to arbitrariness and bias he states that the review by the Board was "indifferent" and that it had predetermined the decision.

2. In the WHO the grading of posts in relation to the nature of the duties carried out is made under a Post Classification Plan. Posts are grouped into classes according to the type of work performed and the level of responsibility required, and within each class the Plan indicates the level of responsibility corresponding to posts at the various grades and the accompanying requirements for education and experience. The assessment of the type of work performed and the level of responsibility is necessarily a value judgment, which can only be done by persons whose training and experience equip them for the task of evaluating and grading posts. The Tribunal, therefore, will not substitute its own assessment or direct that a new assessment be made unless it is shown that the Organization acted in the matter on some wrong principle. The Tribunal does not review a decision of this sort unless it was taken without authority, or violated a rule of form or procedure, or was based on a mistake of fact or of law, or unless essential facts were overlooked, or there was abuse of authority, or clearly mistaken conclusions were drawn

from the facts.

The personal prejudice which the complainant alleges is evidenced, according to him, in the delay in carrying out the reclassification. It does not follow that because the reclassification exercise was protracted the Organization was prejudiced against the complainant. Indeed the reclassification required careful fact-gathering and evaluation which was by its nature time-consuming. As to the allegations of arbitrariness and bias on the part of the headquarters Board of Inquiry and Appeal, these are completely unfounded.

The complainant being unable to show any defect in the decision impugned, the appeal must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner