

EIGHTY-SIXTH SESSION

In re Ochani

Judgment 1827

The Administrative Tribunal,

Considering the complaint filed by Mr. Parmanand Sachanand Ochani against the World Health Organization (WHO) on 24 January 1998 and corrected on 6 March, the WHO's reply of 9 June, the complainant's rejoinder of 20 July and the Organization's surrejoinder of 30 October 1998;

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

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

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

A. The complainant, an Indian who was born on 28 September 1937, joined the WHO's Regional Office for South-East Asia (SEARO) in February 1988 as a secretarial assistant at grade ND.5 (now ND.4). The Organization dismissed him for misconduct on 5 August 1996 under Staff Rule 1075.1. He would have reached the age of retirement on 30 September 1997.

On 29 January 1996 SEARO put up for competition a post, No. 5.0903, for a secretary II at grade ND.5. The complainant applied. On 19 March he had an interview with the officer in charge of the service. By a letter of 8 May the regional personnel officer told him that he had been unsuccessful.

On 13 June he gave notice of appeal to the regional Board of Appeal. In a brief dated 28 June he contended that he had suffered from the personal prejudice of the regional personnel officer and that the Organization had overlooked certain facts and acted in breach of the material rules.

In its report of 24 February 1997 the regional Board said it had found no evidence of personal prejudice. It did, however, find several flaws in the process of selection which affected all the applicants alike and so it recommended paying token compensation. By a letter of 17 March the Regional Director told the complainant that his appeal was rejected.

On 21 April he went to the headquarters Board of Appeal. In a report of 17 September the headquarters Board recommended rejecting it, and by a letter of 30 October 1997 which is the impugned decision, the Director-General told the complainant that he was endorsing that recommendation.

B. The complainant argues that the Organization failed to take account of his qualifications, experience and satisfactory record of service in the Regional Office. It also overlooked the fact that for five years he had performed duties similar to those of the post put up for competition. He relies on Staff Rule 560.2, which reads:

"... A staff member whose performance has been satisfactory may at any time be considered for reassignment to a post of higher grade for which he has the qualifications."

In his submission it was a wrong decision to reject his application and, to boot, one at odds with Staff Regulation 4.2, which requires that promotion should satisfy the Organization's need to employ people who meet the highest standards of efficiency, competence and integrity. He is unaware of the criteria which the Organization applied in rejecting him for the post and contends that it has no promotion policy.

He says that there should have been no interview: he had already had one when appointed. Moreover, there is no rule of the WHO which requires the holding of an interview for the purpose of promotion. The interview was just a "farce" and "eyewash". After just a few minutes the interviewer found him unfit for the post although he had always had good reports on his performance.

The regional personnel officer showed prejudice and hostility towards him and together with other members of the

staff subjected him to acts of violence.

The WHO took account of a fact that had nothing to do with the process of selection, namely disciplinary proceedings.

It did not keep the time limits in the internal appeal proceedings.

He asks the Tribunal to set aside the appointment of the successful internal candidate to grant him grade ND.5 - albeit, since he has reached the age of retirement "on proforma basis" - to pay him retroactively the difference in earnings from the date at which he was refused promotion, to award him damages in the amount of 100,000 United States dollars, to grant him the same amount for "mental, social and pecuniary loss" suffered by him and to allow him 10,000 dollars in costs.

C. The defendant's preliminary comments in its reply are that according to precedent promotion is at the Director-General's discretion and so no-one has any right to promotion. Moreover, the Tribunal has only a limited power of review in the matter.

The Organization cites a memorandum of 17 June 1994 from the personnel unit of SEARO to all members of the staff informing them of a new process of selection and recruitment. That is the process that was applied in this case and it guarantees objectivity in selection and equal treatment for all candidates.

The defendant says that it took due account of the complainant's satisfactory record of service. But that record is not the only material issue in choosing the right candidate. It also took account of the complainant's qualifications and experience but found that he was not the best candidate. There was therefore no breach of Staff Regulation 4.2 in rejecting his application. Nor does Staff Rule 560.2 confer any right to promotion.

The Organization challenges his statement that he used to perform duties similar to those of post 5.0903 at grade ND.5. It points out that his post was grade ND.4 and carried lesser responsibility. It did not draw mistaken conclusions from the evidence in coming to the view that he was not fit for post 5.0903.

It says that he did not suffer any personal prejudice or act of violence. In any event the incidents he is referring to did not occur at the time when the impugned decision was taken. Likewise the interview took place before 8 April 1996, when disciplinary proceedings began.

The Organization points out that it filed its replies to his internal appeals within the deadline set by the regional and headquarters Boards of Appeal. Besides, that is an issue of concern only to the internal appeal bodies themselves.

D. In his rejoinder the complainant presses his pleas and his claims. He points out that the Organization recruited him in 1988 and is mistaken in applying to him rules on recruitment and selection which did not come into force until 1994. The only material rules are Staff Regulation 4.2 and Staff Rule 560.

In his submission the Organization failed to state the reasons why it found him unfit for the post he had applied for. He says that the WHO was wrong to treat the interview as the only relevant criterion for promotion and it made arbitrary use of the interview. Several staff members have got personal promotion or had their posts regraded in breach of the material rules. In his submission the WHO had decided as early as January 1996 to start disciplinary proceedings against him for dismissal.

E. In its surrejoinder the defendant contends that the process of selection and recruitment at SEARO did apply to the complainant, and it provides for interviews. In January 1996 the WHO had not yet decided to dismiss the complainant. It did not do so until July 1996 on the conclusion of disciplinary proceedings started on 8 April 1996, by which date he had already had his interview for post 5.0903.

CONSIDERATIONS

1. The complainant is appealing against his non-selection for a post, numbered 5.0903 and graded ND.5 in the Regional Office for South-East Asia (SEARO) of the World Health Organization.

2. After publication of a vacancy notice for the post the complainant applied and was interviewed but was screened out at the interview stage because the interviewer found him "unsuitable". His appeals to the regional and

headquarters Boards of Appeal were both unsuccessful.

3. In a scattergun approach the complainant takes issue with almost every aspect of the selection process, including the procedure followed, the qualifications of the interviewer, the conclusions reached, bias and personal prejudice against him, consideration of extraneous factors, the validity of promotion policy and the proceedings before the Boards of Appeal.

4. Most of the complainant's arguments may be quickly disposed of. His attack upon the validity of SEARO's "Selection and Recruitment Procedures", as set out in a memorandum dated 17 June 1994 from the Regional Office to all staff, is wholly without merit. Those procedures were clearly applicable to a promotion such as that sought by the complainant and were properly applied. Likewise, his submission that the interviewer was not qualified and that the entire process was "eyewash" is simple hyperbole. His contention that he was not informed of the factor ratings used to support the conclusion that he was unsuitable is meaningless since the factor-rating system was abolished with the coming into force of the new procedures for appointment and recruitment in 1994. There is no persuasive evidence to support his allegations of bias and personal prejudice.

5. Finally, the complainant's allegations of improper procedures before the regional and headquarters Boards of Appeal and about the roles played by the Regional Director and the Director-General in making the impugned decision are without merit: the procedure before internal appeal bodies is within the purview of those bodies and the authority of the Regional Director and the Director-General flows directly from the applicable rules.

6. The true nature and substance of the complainant's case is that, because he had a satisfactory work history in SEARO and because he considers himself to be well qualified for the post which he sought, his non-selection was necessarily an error. The selection of candidates for promotion is necessarily based on merit and requires a high degree of judgment on the part of those involved in the selection process. Those who would have the Tribunal interfere must demonstrate a serious defect in it; it is not enough simply to assert that one is better qualified than the selected candidate. A good performance record and satisfactory appraisals are almost always a necessary precondition to promotion but the fact that a candidate has them is obviously not a guarantee that he or she is the most qualified candidate. The fact that despite satisfactory performance, qualifications and experience a candidate is not selected for promotion is not evidence that those factors were ignored by those responsible for making the selection. Likewise, satisfactory performance at one grade, in this case ND.4, is not in itself an assurance that a candidate will be able to fulfil the more onerous duties of a higher grade. It may be presumed that every candidate who applies for a post at a higher grade believes sincerely that he or she is qualified for that post, but that does not constitute evidence of such qualification and even less does it provide grounds for setting aside the selection of another candidate.

7. The complainant having failed to demonstrate that the impugned decision was wrong in either law or fact, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner

