

EIGHTY-NINTH SESSION

In re Siegfried

Judgment No. 1973

The Administrative Tribunal,

Considering the complaint filed by Mrs Marie-Christine Siegfried against the International Telecommunication Union (ITU) on 27 September 1999 and corrected on 1 December 1999, the ITU's reply of 31 January 2000, the complainant's rejoinder of 10 March and the Union's surrejoinder of 13 April 2000;

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, a Swiss national born in 1949, joined the ITU in March 1971 as a typist at grade G.2 under a short-term contract, which was extended several times until 30 November 1971. From 1 December 1971 to 31 July 1973, she obtained a fixed-term appointment as a shorthand typist at grade G.3. She was given a permanent appointment on 1 August 1973 and was then promoted to grade G.4 on 1 January 1975. Between 1974 and 1996 she was entrusted on several occasions with functions of a grade higher than her own for which, each time, she received a special post allowance.

On 17 September 1998, the ITU published Service Order No. 99, entitled "Personal Promotion", indicating that by Resolution 1106 the ITU Council had resolved inter alia:

"that a personal promotion scheme be implemented in order to give staff in occupational groups with limited career opportunities the possibility of being treated on an equal footing with staff members having more frequent promotion opportunities"

To benefit from the promotion, staff members in the General Service category must fulfil several criteria, including the completion of at least twenty years of continuous service in the ITU, not having been promoted during the last fifteen years and having spent more than three years at the top step of their grade. In addition, the work of the candidates for such promotion must have shown "a superior level of performance, in both quantitative and qualitative terms". This promotion scheme came into effect as from 1 January 1998.

By a memorandum of 21 September 1998, the Acting Chief of the Personnel and Social Protection Department informed the Chief of the Department of Common Services, the complainant's second-level supervisor, that she met the basic conditions for the granting of a personal promotion and requested him to complete the attached form. On 22 September, the Chief of the Publication Composition Service, the complainant's first-level supervisor, completed the form and indicated that she had "always produced work regularly with a good average of output". The Chief of the Department of Common Services countersigned the document and added by hand "promotion recommended". On 1 October, the Appointment and Promotion Board issued an unfavourable opinion concerning the personal promotion of the complainant on the grounds that her performance did not seem to have been of "a superior level". By a letter of 8 October, the Secretary-General informed the complainant that he could not grant her the requested promotion. Having been given no reasons for this refusal, the complainant appealed to the Secretary-General in a memorandum of 2 November requesting him to review his decision. By a letter of 14 December, the Acting Chief of the Personnel and Social Protection Department informed the complainant that the matter would be referred once again to the Appointment and Promotion Board. On 18 December 1998, the Board re-examined the complainant's case and once again issued an unfavourable opinion. It considered that her

"output" had not "exceeded 90 per cent of the average" and that her work could not therefore be considered to have always shown "a superior level of performance in qualitative and quantitative terms". In a letter of 20 January 1999, the Secretary-General informed the complainant that a personal promotion could not be granted to her at that time, but that the Board had proposed to review her situation on 1 January 2001.

By a memorandum of 23 February 1999, the complainant referred the matter to the Appeal Board. She argued that the Appointment and Promotion Board had evaluated her work "without reference to the reports of [her] supervisors" and that the Secretary-General had not yet informed her of the reasons for his second refusal. On 30 April, the Appeal Board issued the opinion that the reasons for refusing her the promotion were based on a mistaken interpretation of her most recent annual report. It therefore recommended the Secretary-General to review his decision. By a letter of 27 July 1999, which is the impugned decision, the Secretary-General informed the complainant that he upheld his decision to refuse her the personal promotion that she was seeking. He explained that the conclusions of the Appeal Board were based essentially on an examination of her last annual report that showed the quality of her work only over a one-year period, which was too short for the present purposes. Moreover, an examination of her annual reports showed that her work had been qualified as "satisfactory", but never "very good", except for the last report. He added that the complainant's case would be re-examined by the Appointment and Promotion Board in 2001.

B. The complainant contends that the impugned decision is unlawful. She criticises the "excessively strict interpretation of the criterion regarding the performance" of candidates for personal promotion, as set out in Service Order No. 99. She says that the annex to the Service Order does not contain any guidelines for the procedure to be used in evaluating the quality of work nor the reference period to be taken into consideration. Broad discretion is therefore left to the Appointment and Promotion Board and to the Secretary-General, but this power has to be exercised within the framework set out in Council Resolution 1106 and the case law of the Tribunal. The purpose of the personal promotion scheme is to offer opportunities for promotion where they do not exist, and the complainant deduces that, by analogy with the procedure applicable for competitions, the quality of the staff member's performance must be assessed "at the period when the personal promotion is envisaged". The training acquired and the attitude of the person concerned over the most recent period must therefore be determining factors in granting or rejecting an application. The same applies to the criteria regarding the period since the last promotion or the granting of the highest step in the grade. As these "decisions" demonstrate that the staff member applying for personal promotion has given full satisfaction, there is no reason for the assessment to cover earlier periods. The Secretary-General therefore applied in the complainant's case an additional requirement to the criteria set out in Service Order No. 99 when he considered that her promotion would only be possible if several of her annual reports contained the assessment "very good".

The complainant also contends that the evaluation of the quality of her work was based on mistaken or incomplete information, particularly since the Secretary-General did not take into account the very long periods during which she had been entrusted with functions of a higher grade and for which she had received a special post allowance. She adds that greater weight should have been given to the recommendation of the Chief of the Department of Common Services. She emphasises that the Appeal Board indicated that she had achieved 98 per cent of the objective set for her.

The complainant asks the Tribunal to set aside the decision of 27 July 1999 insofar as it confirms the refusal of the Secretary-General to grant her a personal promotion for the year 1998 and to order the ITU to promote her to grade G.5 as from 1 January 1998. She claims 10,000 Swiss francs in damages for the delay in her promotion and the moral injury suffered, and 5,000 francs in costs.

C. In its reply the Union submits that the complainant's reasoning is "in flagrant contradiction" with the underlying logic of the personal promotion scheme. It says that any system of promotion is based on an evaluation of the complete profile of candidates and the whole of their career. It is in this respect that the principle of promotion differs from the system of periodic within-grade advancement by step. Reducing the performance assessment for the personal promotion scheme to an exercise equivalent to the one carried out under the provisions for periodic advancement by step would amount to voiding the whole exercise of its justification. When adopting the scheme, the intention was that the performance assessment for personal promotion should be based on criteria requiring "a superior level of performance". If the intention had not been to emphasise this difference with the system of advancement by step, staff members applying for the promotion would not have been required to show that their performance had been "superior". The Secretary-General therefore exercised his discretion within the framework set out in Service Order No. 99. The Union adds that the basic principles on which the personal promotion scheme

was designed were established by the International Civil Service Commission.

The complainant's argument concerning her productivity is irrelevant in the present case as this criterion was not a determining factor in the Secretary-General's decision.

D. In her rejoinder the complainant admits that it is in accordance with Service Order No. 99 to require that a significant period of her career should be taken into consideration and emphasises that she is criticising the Union precisely for not having taken her career and the actual quality of her performance fully into account. She adds that the functions which she has been discharging since 1986 have required a "significant capacity for adaptation" and would have justified a reclassification of her post as they correspond to the requirements of a post at grade G.5. In support of her argument she says that most of the staff members in her service performing the same work as her are in posts at a higher grade.

E. In its surrejoinder the Union points out that the functions corresponding to the complainant's post were reviewed in November 1999 and that the classification of her post was confirmed at grade G.4. It adds that in any event a personal promotion is not intended to correct shortcomings in the classification of a post. Finally, there is nothing in the file which gives the complainant grounds for claiming that the Secretary-General did not take one of the assessment criteria into account.

CONSIDERATIONS

1. The complainant joined the ITU in March 1971 as a typist under a short-term contract which was extended several times. In December 1971 she was given a fixed-term appointment as a shorthand typist at grade G.3 and obtained a permanent appointment in the same functions at the same grade in August 1973. She has been at grade G.4 since 1975.

During her career, the complainant on several occasions received a special post allowance for carrying out work of a grade higher than her own.

2. On 17 September 1998, the Union issued Service Order No. 99 introducing a personal promotion scheme in accordance with Resolution 1106, which had been adopted by its Council in 1997. The Service Order determined the procedures and criteria for granting a personal promotion and indicated that the scheme came into effect as from 1 January 1998. The required criteria were set out in an annex, which provided that:

"1 As conditions for the granting of a personal promotion, it shall be required that:

a) the staff member has completed at least

- 18 years (Professional category)

- 20 years (General Service category)

of continuous service in ITU ...

e) the staff member has shown a superior level of performance, in both quantitative and qualitative terms;

f) the staff member has shown evidence of self-development (capacity for maintaining state-of-the-art expertise in his/her domain of activities, enhancement/updating or acquisition of general and technical skills required not only for the full accomplishment of the tasks of his/her post but also for the enlargement of his/her career prospects);

2 It is clearly understood that a staff member will be considered eligible for personal promotion only if he/she meets all the aforesaid criteria."

3. Since it was considered that the complainant met the basic conditions for claiming a personal promotion, her application was submitted to the Appointment and Promotion Board.

On 1 October 1998, the Board issued an unfavourable opinion concerning the complainant's personal promotion on the grounds that her performance did not appear to have been of "a superior level".

The complainant was informed on 8 October of the Secretary-General's decision not to grant her a personal promotion. In a memorandum of 2 November 1998, she requested the Secretary-General to review his decision.

The Appointment and Promotion Board examined the case once again and confirmed its unfavourable opinion. It recommended that the complainant's application be re-examined in 2001.

On 20 January 1999, the Secretary-General informed the complainant that he had decided once again to refuse her personal promotion.

The complainant referred the matter to the Appeal Board which, on 30 April, considering that the reasons for refusing to grant the complainant a personal promotion were based on a mistaken interpretation of her most recent annual report, recommended the Secretary-General to review his decision. On 28 July 1999, the complainant was informed of the Secretary-General's final decision confirming his refusal to grant her a personal promotion, although it was emphasised that the positive development noted in her last annual report justified the re-examination of her case in 2001.

That is the decision which is impugned in this complaint.

4. The complainant requests the Tribunal to set aside the Secretary-General's decision insofar as it confirms his refusal to grant her a personal promotion for the year 1998, and as a consequence to order the ITU to promote her to grade G.5 as from 1 January 1998; to order the ITU to pay her 10,000 Swiss francs in damages for the delay in her promotion and the moral injury suffered, as well as 5,000 francs in costs.

5. The Tribunal has always held that personal promotion constitutes advancement on merit to reward someone for services of a quality higher than that ordinarily expected of the holder of the post.

The granting of personal promotion is a discretionary decision which, as firm precedent has it, is subject to only limited review and will stand unless it shows a fatal flaw. In a case such as the present one, in which the general rules regarding personal promotions have been adopted and communicated to the staff, the appointing authority is bound by these rules and the Tribunal will consider any violation of them to be a fatal flaw.

6. The complainant contends that the impugned decision is unlawful as a result of what she qualifies as "an excessively strict interpretation of the criterion regarding the performance ... as set out in Service Order No. 99". She says that the Secretary-General's decision did not really take into account her career and the actual quality of her performance, but that the examination of her candidacy was confined to the evaluation contained in her latest annual reports.

However, she does not contest the fact that Service Order No. 99 establishes high requirements regarding the performance of applicants for personal promotion and she admits that taking into account "a significant period" of her career, as was done by the Appointment and Promotion Board and the Secretary-General, is in accordance with these requirements.

7. The Union indicates that the personal promotion scheme which it introduced is designed "to compensate and therefore to reward staff members whose superior level of performance would have been recognised through promotion if they had not been part of an occupational group in which promotion opportunities are extremely limited".

The ITU emphasises that the Secretary-General correctly assessed the complainant's merits, career and performance evaluations as a basis for his decision not to grant her a personal promotion, and that he took into account her successive annual reports, the development of her career and the various special post allowances which she had received, as well as the favourable recommendation by the Chief of the Department of Common Services and the two successive evaluations of her application carried out by the Appointment and Promotion Board.

8. The evidence shows that, in deciding to base his assessment on several elements over a significant period which went beyond the assessments required for periodic within-grade advancement by step, which are generally limited to a specified recent period, that is twelve months prior to the date on which the decision is to be taken, the Secretary-General did not depart from the criteria set out in the annex to Service Order No. 99, and particularly those indicated in paragraph I.1 e) of the annex. Nor did he interpret in an excessively strict manner the criterion concerning the quality of the staff member's performance which, under the terms of the above paragraph, must be

of "a superior level ... in both quantitative and qualitative terms".

9. The complainant contends that the impugned decision is flawed because the quality of her performance was evaluated on the basis of mistaken facts or incomplete information. In her view, the Secretary-General did not take into account the very long periods during which she had been entrusted with functions of a grade higher than her own and for which she had received a special post allowance. She also observes that neither did he take into account the fact that it had not been possible to establish fully her annual reports prior to the year 1997-1998 because the system for evaluating performance in her Service had not become fully operational. She adds that these reports had also been drawn up late and that the quality of her performance should therefore have been assessed through other means.

Finally, she says that the Appointment and Promotion Board and the Secretary-General committed a factual error in their evaluation of her performance in her last annual report. In her view, they should have distinguished between the overall output objective for the Service (25 pages a day) and the personal objective which had been set for her (22.55 pages a day).

10. There is no evidence that the Secretary-General failed to take into account the periods during which the complainant had been entrusted with functions of a grade higher than her own. These periods were taken into account among other elements in reaching a global assessment of the quality of her performance over a significant period.

With regard to the claim concerning the conditions under which the annual reports prior to the year 1997-1998 were drawn up, the Tribunal notes, as did the Union, that these reports had been approved by the complainant and her supervisors and that they had not been challenged. The Secretary-General, in the same way as the Appointment and Promotion Board, was therefore right to consider that these reports contained a sound assessment of the complainant's performance.

As for the last annual report the Tribunal finds, firstly, that this was only one of the elements taken into account by the Secretary-General in reaching his decision and, secondly, that the achievement by the complainant of the objective which had been set for her personally, and which was below the average required to achieve the overall productivity level of the Service, does not amount to any particularly meritorious performance which might justify the granting of a personal promotion.

11. It therefore follows that the impugned decision did not violate any of the general rules concerning personal promotion, nor is it affected by any fatal flaw. The complaint must therefore fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

