

NINETY-SEVENTH SESSION

Judgment No. 2356

The Administrative Tribunal,

Considering the complaint filed by Ms G. M. P. against the Food and Agriculture Organization of the United Nations (FAO) on 25 March 2003, the FAO's reply of 30 July, the complainant's rejoinder of 30 September 2003, and the Organization's surrejoinder of 23 January 2004;

Considering Article II, paragraph 5, 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. The complainant, a British national born in 1947, joined the FAO in 1970 at grade G-3. At the material time she held grade G-4 as a Clerk/Stenographer in the Forest Products Division. She took early retirement on 31 August 2003.

On 15 February 2001 the complainant was temporarily assigned to perform the duties of a vacant G-5 secretarial post in the Forest Harvesting, Trade and Marketing Branch. When a vacancy announcement for this post was issued on 21 May, the complainant duly applied; there were 14 other applicants. The complainant's application was not successful.

By a memorandum dated 31 May the Officer-in-Charge of the Branch requested the Director of the Forest Products Division to approve a special post allowance for the complainant, who had been carrying out the duties of a post of a higher grade. The Director did so the same day. On 27 June the Director decided to reassign the complainant to duties at the G-4 level, effective 1 July 2001.

In a memorandum to the Director dated 29 August 2001, the complainant objected to negative written comments the former had made regarding her work performance and asked him to reconsider them; she was concerned that these comments would prejudice her chances of being selected for the G-5 post. The former responded to her by a memorandum of 6 September, in which he reminded her that she had only been temporarily assigned to the post in question and that she had been removed because her performance did not meet the expectation for a staff member at that grade.

On 20 September 2001 the complainant appealed to the Director-General claiming, inter alia, the removal of documents containing negative comments concerning her performance from her personnel file, as well as damages for the humiliation she suffered and the injury caused to her career. By a letter of 5 November the Assistant Director-General in charge of the Administration and Finance Department rejected the appeal as unfounded. On 30 November 2001 the complainant filed an internal appeal to the Appeals Committee submitting the same claims. In its report to the Director-General dated 5 December 2002 the Appeals Committee recommended that the negative correspondence, related to alleged shortcomings in the complainant's performance, be removed from her file. However, considering that there had been no breach of any procedures nor of any statutory provisions concerning either her transfer from a temporary post or her non-selection for the G-5 post, and finding that the correspondence in her file had not caused her any injury, it recommended that her other claims be rejected. The Director-General endorsed these recommendations in his decision of 19 February 2003. That is the impugned decision.

B. The complainant says she was given satisfaction on her internal appeal insofar as her request that correspondence bearing negative remarks be removed from her personnel file. However, her request for damages was denied even though she had been subjected to public humiliation and had her prospects of promotion to grade G-5 impaired. She contends that she has suffered health problems.

She considers that awarding her a special post allowance for performing the duties of the G-5 post in June 2001 implied satisfaction with her performance over 25 years; thus removing her from the post after four months was humiliating. She points out that she worked in the same division as the officials who interviewed her for the post, so these officials were aware of the circumstances and of the now-removed negative evaluation; it is possible that this information affected her chances. These officials also had the same Director as she. She questions whether her Director was prejudiced against her. She says that she does not contend, as the FAO had implied, that she had an automatic right to the post over the other candidates.

She claims damages for moral injury and as compensation for the damages caused to her health and to her career prospects. She also claims costs.

C. The FAO replies that the complainant has no cause of action. The Organization submits that it was justified in temporarily reassigning her to a post with G-5 duties, just as it was within its rights to remove her from that post because she did not meet the expected standards for a G-5 level post. It says that she is ultimately resting her case on the contention that she suffered damages because of her non-selection for the post. It maintains, however, that the FAO acted in accordance with the applicable statutory provisions and that the decision taken was a discretionary one. Furthermore, she has not provided any proof of damages or of any wrongful act on the part of the Organization. It denies that she was publicly humiliated. In any event she has already been given satisfaction, as the negative information has been removed from her personnel file.

It points out that the decision to reassign her was taken by her Director within his proper authority. As such it is open only to limited review. In addition, as it argued in its reply to her internal appeal, her temporary assignment to the duties at the G-5 level did not imply any rights to a promotion at that level, and she cannot claim any rights over other applicants based on this assignment. She is wrong to suggest that any rights could be derived from the payment of a special post allowance.

D. In her rejoinder the complainant states that the issue is not the decision taken by her Director to transfer her from the post she had been temporarily covering, but the reasons he gave for doing so. She contends that these reasons damaged her reputation and humiliated her. Incorrect allegations about shortcomings in her work, which have since been removed from her file, did indeed hurt her prospects for promotion to the G-5 post, as everyone on the divisional screening panel had the same Director as she, so they knew that he was the one who had removed her from her temporary assignment. She maintains that the Director was prejudiced against her and she provides examples. She contends that his decision to reassign her was based on a mistake of fact.

She denies having said that her temporary assignment to duties at the G-5 level implied a right to promotion. She does contend, however, that the reasons given for taking her off the temporary assignment “were a deliberate attempt to disqualify [her]”. She reiterates that she has not been given satisfaction, as she was not awarded the damages she had claimed. She provides copies of medical certificates as proof of how the humiliation and harassment she suffered affected her health.

E. In its surrejoinder the Organization rejects the complainant’s allegations and maintains that she has no cause of action. It denies that her medical certificates are proof of any humiliation or prejudice against her, and it asserts that it cannot be held responsible for her health problems. Furthermore, it points out that the correspondence regarding her reassignment was confidential, as were the reasons for it. Thus, she cannot argue that she has been publicly humiliated as a result of the negative correspondence. If she truly believed that her health problems were work-related then she should have taken the appropriate steps to have them recognised as such. It notes that she did not do so.

The FAO submits that she has not provided any evidence to support the allegation that there was bias surrounding the selection procedure for the G-5 post: in fact, her allegations are founded entirely on speculation.

CONSIDERATIONS

1. The complainant, who has now retired from the Organization, challenges a decision taken by her supervisor, the Director of the Forest Products Division, to reassign her to duties as a Clerk/Stenographer at the G-4 level, after having been temporarily assigned by him to perform the duties of a vacant secretarial post at grade G-5.

2. On 15 February 2001 the complainant had been temporarily assigned to the vacant G-5 secretarial position in the Forest Harvesting, Trade and Marketing Branch of the Division, for which a vacancy announcement had been issued. The complainant was granted a special post allowance, effective 1 June 2001 until the filling of the post, for carrying out the duties of a post of a higher grade. On 27 June the Director decided, on the basis of his assessment of the complainant's performance during her temporary assignment, to reassign the complainant to duties at the G-4 level effective 1 July 2001.
3. On 29 August 2001 the complainant sent a memorandum to the Director objecting to his negative comments on her work performance and asked for reconsideration. She considered that her unfair removal from this vacant post to which she had applied would prejudice her chances of being selected.
4. The Director replied in writing on 6 September clarifying those instances of her performance which had been at issue and, since her performance did not meet expectations for staff performing at the G-5 level, he also confirmed his decision to reassign her to another post. He recalled that she had never been formally appointed to the G-5 position, but had been only temporarily assigned, and he pointed out that payment of a special post allowance did not imply that she had carried out the higher level duties satisfactorily.
5. The complainant's appeal of 20 September 2001 against that decision was rejected as unfounded by the Assistant Director-General in charge of the Administration and Finance Department.
6. On 30 November 2001 the complainant lodged an appeal with the Appeals Committee in which she requested in particular:
 - (i) the removal of the negative evaluation of her performance from her personnel file; and
 - (ii) compensation for damages to her career, reputation and health, as well as for the humiliation suffered and damage to her pensionable remuneration.
7. In its report to the Director-General dated 5 December 2002, the Appeals Committee noted that it was not within its mandate to make its own assessment of the work or conduct of the complainant, but it was nevertheless of the view that most of the shortcomings noted by her Director were of minor importance. The Committee had the impression that there was a problem of communication between the complainant and her Director. The Committee then reviewed the evidence to determine whether the shortcomings which had led to her removal from the G-5 position had prejudiced the possibility of her being promoted. It concluded that the selection proceedings had been transparent and that no prejudice against the complainant could be determined.
8. As for the special post allowance, the Committee concluded that the Director's decision was in line with the rules in force. Although the request for a special post allowance until the filling of the post may have led the complainant to believe that she would carry out the G-5 duties until the completion of the selection proceedings, the decision of the Director to remove her from this position earlier for unsatisfactory performance did not constitute a breach of the FAO's rules and regulations.
9. As for the complainant's request that the negative evaluation of her work be removed from her personnel file, the Committee noted that the FAO had submitted that "no evaluation relating to the period in question is present in the [complainant's] personnel file". It observed, however, that the memorandum dated 6 September 2001 regarding the issue of a special post allowance contained a negative evaluation of the complainant's performance, and was copied to the complainant's personnel officer. The Committee recommended that, "[i]n view of the limited nature of the shortcomings", the memorandum as well as any other communication relating to the relevant shortcomings should be removed from the complainant's file.
10. The Committee rejected the other claims as unfounded.
11. On 19 February 2003 the Director-General accepted the Committee's recommendations that the memorandum of 6 September 2001 be removed from the complainant's personnel file, and that her other claims be rejected as unfounded. That is the impugned decision.
12. The complainant submits that removing the relevant correspondence from her personnel file does not remove the public damage done to her. She states that in the 25 years she has been working for the FAO, she has never had a negative evaluation. She explains that removing her from her post after only four months was

humiliating and that it impaired her prospects for promotion. The decision came one month after her special post allowance was approved, which, she submits, implied satisfaction with work done and constituted financial expectation. The reasons given for the removal constituted a negative evaluation of her work and the internal divisional staff who interviewed her for the vacant post knew what had happened and might have been conditioned by the negative evaluation of the Director of their Division. She contends that she was further humiliated because the duties of the job she was then moved to were not commensurate to her G-4 grade.

13. The complainant states that promotions do not come easily in the FAO, and that there has been a tendency to downgrade General Service vacant posts and to demand higher qualifications. In her case, 25 years of work did not lead to a promotion due to the difficulty in promoting secretaries within the Organization, as well as the small number of higher grade posts. She questions whether her Director held a prejudice against her because she had been redeployed as a result of a redeployment exercise within the FAO. She claims an award of damages for moral injury and prejudice, and for serious injury to her feelings.

14. The complainant's suggestion of bias in the selection process is entirely speculative and is not supported by any evidence. The Appeals Committee carefully examined the relevant documentation regarding the selection procedure and concluded that "the selection proceedings had been transparent" and "no prejudice against the [complainant] could be determined". That was a finding of fact which the complainant had the burden of demonstrating to be clearly wrong. She has failed to do so.

15. As for the payment of the special post allowance, it is meant to financially reward a staff member for carrying out duties of a higher-level post, and the complainant is mistaken when she equates the payment with a positive assessment of her work.

16. There remains the question of the complainant's claim for damages arising from the inclusion in her personnel file of the negative memorandum from her Director dated 6 September 2001. While there is no evidence whatsoever to support the complainant's claim that she was humiliated and that her future career prospects were adversely affected by this memorandum, the fact remains that the Appeals Committee found, and the Director-General accepted, that the document should be removed from her file. That necessarily implies an acceptance by the Organization that it had acted wrongly in putting it there in the first place. This entitles her to a nominal award of moral damages which the Tribunal evaluates at 500 euros. As she partially succeeds, she is also entitled to an amount of 100 euros for her costs. All other claims are dismissed.

DECISION

For the above reasons,

1. The Organization shall pay the complainant moral damages in the amount of 500 euros.
2. It shall also pay her costs in the amount of 100 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 19 May 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice President, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 14 July 2004.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 July 2004.