

The Administrative Tribunal,

Considering the complaint filed by Mrs H.J. T. against the International Fund for Agricultural Development (IFAD) on 6 January 2004 and corrected on 14 January, IFAD's reply of 16 February, the complainant's rejoinder of 7 April and the Fund's surrejoinder of 11 May 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 is an Austrian national and was born in 1944. She joined the staff of IFAD in 1984 as a Project Controller, at grade P.4. In 1991 she was promoted to grade P.5 and obtained a contract of indefinite duration. At the material time the title of her post was Country Portfolio Manager.

By a vacancy announcement of 19 May 2000, IFAD advertised the post of Director of Africa I Division, in the Programme Management Department (PD), at grade D.1. It was a two-year fixed-term assignment, with Rome as the duty station. Under the heading "Qualifications and Experience" the announcement specified, inter alia, an "advanced university degree or equivalent in economics, agricultural economics, development management or similar fields". The complainant applied on 18 June. She was one of four shortlisted candidates.

In a memorandum of 27 October 2000 to the Director of Human Resources, the Assistant President in charge of the Programme Management Department discounted one of the shortlisted candidates and summarised the qualifications and experience of the remaining three. He said he was refraining from making a recommendation at that stage. The Appointments and Promotions Board (APB) met on 9 November 2000 to review the applications of the candidates. By a letter of 17 January 2001 the complainant was informed that the Board had decided to appoint another candidate to the position. By an Information Circular of 5 February staff were informed that an external candidate from Guinea had been appointed to the post.

By a memorandum of 31 January 2001 to the President of IFAD the complainant requested a review of the decision not to select her for the post. Having received no reply, on 24 March 2001 she filed an appeal with the Joint Appeals Board (JAB). She sought official recognition that she was the best qualified candidate for the D.1 post and requested promotion to a position with rights and responsibilities equivalent to those of the post she had applied for, as well as an award of damages. A mediation process was initiated, but the outcome was not conclusive. On 28 February 2002 IFAD filed a reply to the complainant's appeal submitting that it was devoid of merit.

While the complainant's case was pending, the JAB suspended its activities. It resumed its functions in February 2003. On 14 July it notified its report on the complainant's case to the President of IFAD. The Board's findings were in the complainant's favour. It recommended, inter alia, that she be paid damages and be appointed "to a D1 grade". The President of IFAD informed her by a memorandum of 13 October 2003 that there was no basis for concluding that the decision she had appealed against was flawed, and that there was therefore no justification for an award of compensation, be it financial or otherwise. That is the impugned decision.

B. The complainant maintains that contrary to arguments put forward by IFAD during the internal appeal proceedings she has a cause of action. The decision not to select her for the post affected her career expectations, and she was denied "full and fair consideration" for the post.

She takes issue with the fact that the internal appeal process was inordinately long. The delay was particularly discriminating as she was to reach retirement age in May 2004. Although the President apologised for the delay in the impugned decision, she believes that IFAD should offer her a suitable amount in compensation.

She also submits that the decision to appoint the external candidate constitutes abuse of the President's discretionary power and was flawed by procedural irregularities. The complainant argues that the selected candidate did not possess the academic qualifications specified in the vacancy announcement, inasmuch as he did not have an advanced university degree in any of the stipulated subjects, whereas she herself had a doctorate in Economics and Social Sciences and thus fully met the stipulated requirements. IFAD also acted in breach of procedures defined in the Human Resources Handbook, notably because it selected an external candidate in preference to a fully qualified internal one, without giving any justification for doing so. Furthermore, by selecting a male candidate it disregarded the provision concerning gender balance and the requirement to give special attention to equal opportunity for women, in particular for a D.1 post. While recognising that IFAD's rules do not require that she should be given a written explanation for her non-selection, she contends that the organisation nonetheless had an obligation to inform her of the reason why it had rejected her application.

The President, she argues, did not consider all the relevant facts before taking the impugned decision. In its report the JAB had criticised the Administration on several grounds, for one thing because it failed adequately to pursue "mediation and reconciliation" with her. Those criticisms were ignored. She asks for the production of the report produced by the mediator on her case, as well as the report drawn up by the APB when it reviewed the candidates for the post.

Her claims for redress are as follows. She wants the Fund to acknowledge that she was the best qualified candidate for the D.1 post; promote her to grade D.1 retroactively to 5 February 2001, the date when the external candidate was appointed to the post; and pay her financial compensation on account of "professional" and moral injury. She also claims costs.

C. In its reply IFAD concedes that there may have been lapses in the internal appeal process, but observes that these were attributable to the fact that the JAB suspended its activities for nearly a year. It adds that, as is upheld in the Tribunal's case law, if the complainant was of the opinion that the Board was unable to issue a recommendation within the statutory time frame, she could have appealed directly to the Tribunal. By not doing so, she implicitly accepted the delays and has failed to show that she suffered any injury.

IFAD states that some of the complainant's arguments are based on her own interpretation of a draft of the memorandum of 27 October 2000 from her supervisor to the Director of Human Resources; it holds that the memorandum was confidential and that the complainant came by it in an improper way.

It submits that the President's decision to appoint an external candidate to the D.1 post was well founded in law. The APB concluded that the external candidate selected was better qualified for the post than the complainant, particularly as he had "direct 'hands-on' experience in project implementation". Furthermore, the decision was discretionary and it was the President's duty to ascertain that the organisation's interests were safeguarded at all times. In this instance, his intention was to ensure that the highest standards of efficiency, competence and integrity were secured. According to the case law, it is not enough for the complainant merely to allege that she had the relevant experience and qualifications; it does not necessarily follow that she is the best qualified for the post. The complainant, moreover, has not shown that the recommendation adopted by the APB was flawed or contrary to the applicable rules. The Board did indeed consider the gender issue, but in choosing the external candidate it also complied with the provision on equitable geographical distribution laid down in the "Agreement establishing the International Fund for Agricultural Development".

In response to the complainant's argument that reasons must be given if an external candidate is chosen in preference to an internal candidate, it states that those reasons do not have to be given in writing and substantive feedback was given to her orally following the APB's recommendation. The Fund even contacted the former members of the Board to obtain their comments on her application.

On the matter of the complainant's request for documents, it states that the mediator did not produce a report on her case. The APB, too, did not draw up a report as there is no written requirement for one. The organisation is of the opinion that it cannot be required to produce documents that do not exist. It has, however, partially complied with the complainant's request by supplying the written recommendation produced by the APB.

D. In her rejoinder the complainant enlarges on her pleas. In her view the lack of a report from the mediator shows that the mediation process was deficient; she deems that to be a procedural irregularity which affected her right to a fair hearing.

She does not agree that the delay in the appeal procedure was entirely attributable to the suspension of the JAB's activities; she believes delay also arose because of the defendant organisation's repeated requests for extensions of time limits. Moreover, the additional feedback from the former members of the APB was obtained only in 2004, three years after she filed her appeal, and she sees that as further negligence on the part of the organisation.

With regard to the memorandum of 27 October 2000 drafted by her supervisor, she denies having committed any impropriety, arguing that it had become accessible online. She points out that the copy she has produced with her submissions is not a draft but "an original signed by [her supervisor]".

E. In its surrejoinder the Fund states that the complainant is wrong in assuming that she had any "right" to a mediation process. The rules governing internal grievance procedures do not confer any such right on staff members.

With regard to the delay in the appeal procedure, it asserts that its motions for extension of time limits were filed in accordance with the applicable rules. IFAD refutes the complainant's accusations of negligence in connection with the obtaining of additional feedback in 2004. It points out that it had already complied with the rules, since the reasons for appointing an external candidate were given to the complainant orally following the recommendation issued by the APB in 2000.

CONSIDERATIONS

1. The complainant joined IFAD in 1984. She retired in May 2004 at which time she held a post at grade P.5 as Senior Portfolio Management Adviser. Her complaint is directed against a decision of 13 October 2003, taken by the President of IFAD to reject the recommendations of the Joint Appeals Board – thereby confirming her non-selection for the post of Director of Africa I Division at grade D.1.

2. Following a vacancy announcement, the complainant applied for that post on 18 June 2000. She alleged that her academic background and professional experience fully complied with the requirements of the post. On 15 September the complainant was informed that she had been shortlisted for the post and would be invited for interviews. On 27 October the Assistant President in charge of the Programme Management Department wrote a memorandum where he summarised the main qualifications of three of the applicants, including the complainant, and concluded that he was refraining from making a recommendation at that stage and was seeking a decision from the APB. He also stated that:

"The [Programme Management Department Directors] as a team gave a marginal advantage in favour of [the complainant]. However, when asked individually, each candidate was favoured by at least one Director. In my assessment, the candidates have quite different characteristics from each other and none is absolutely outstanding over the others."

3. On 9 November 2000 the APB selected by consensus an external candidate for the post. The complainant was informed of this on 17 January 2001 and on 31 January requested a review of the decision. No response having been received to her request, she appealed to the JAB on 24 March 2001. Following some unsuccessful attempts at mediation, about which the record is confused, the reply to the complainant's appeal was not filed until 28 February 2002. On 8 April 2002 the JAB suspended its activities for almost a year, only resuming them in February 2003.

4. On 14 July 2003 the JAB submitted its report; it commented on what it considered to have been offensive language regarding the academic qualifications of the complainant; it detected some irregularities in the procedures and suggested, without making a clear finding to that effect, that the Fund had acted in bad faith. The Board recommended that IFAD: recognise the complainant as a fully qualified candidate for the post (but not that she be appointed to it); acknowledge that the organisation did not provide any written explanation as to why an external candidate was chosen; and pay her damages in an amount equal to at least one year's salary and grant her an appointment at grade D.1.

5. In the impugned decision the President apologised for the delay in responding to the complainant's concerns and promised further feedback from the APB (which was provided only in January 2004); he rejected, however, the JAB's finding of bad faith and accordingly refused to award her damages or other compensation.

6. The first point raised by the complainant is that the internal appeal procedure took far too long. The appeal was filed on 24 March 2001 and the final decision of the President was dated 13 October 2003. To this the Fund makes two replies: first, that the complainant implicitly accepted the delays because she did not appeal directly to the Tribunal once she had decided that matters were dragging before the Joint Appeals Board; secondly, that a large part of the delay was due to the JAB itself and its suspension of operations during most of the year 2002. Neither argument is persuasive. It is true that according to the case law a complainant may come directly to the Tribunal when the internal procedure takes too long (see Judgment 2196 and the cases cited therein), but the fact that a complainant does not take advantage of this cannot be held against him or her. Likewise, whether the delay was due to IFAD's tardiness (as a very large part of it clearly was) or to the malfunctioning of the JAB is simply irrelevant in light of the organisation's duty to provide to the members of its staff an efficient internal means of redress. The complainant is entitled to damages. (See Judgments 2072 and 2197.)

7. In her second plea the complainant submits that the selected candidate did not possess the educational qualifications set out in the vacancy announcement. The announcement called for an "advanced university degree or equivalent in economics, agricultural economics, development management or similar fields". The selected candidate is described as having an MSc degree in Engineering Design and also a BSc equivalent in Mechanical Engineering. In addition, he took courses in Economics, Business Law and Accounting. While the complainant has a doctorate in Economics and Social Sciences, it was well within the discretionary power of the APB to recommend, and the President to appoint, the successful candidate whose Master's degree and additional courses were enough to qualify him in their judgement.

8. It is convenient to consider the complainant's next two pleas together. They relate to an alleged failure to give her the preference to which she was undoubtedly entitled both by reason of her being an internal candidate and by reason of her gender. The latter point also engages the United Nations General Assembly resolution 53/119 of 5 February 1999.

9. It is well settled that preferences such as those mentioned must be given effect to where the choice has to be made between candidates who are evenly matched. On the other hand, they have no role to play where there is a significant and relevant difference between the candidates. The complainant sees evidence of such equality in the memorandum of 27 October 2000, cited above, from the Assistant President in charge of the Programme Management Department. The Tribunal disagrees. The memorandum expresses the views of only one member of the APB and makes it clear that there was disagreement and that all the shortlisted candidates had different strengths and weaknesses. The evidence of the members of the APB – although not included with their original recommendation, as it should have been, and despite the inherent weakness of testimony given so long after the facts – appears trustworthy, and is not contradicted. That evidence is to the effect that when members of the APB met and discussed the candidates they came to the conclusion that the selected person was the best qualified, notwithstanding the requirement to give preferential treatment to females and internal staff members. At the time, the successful candidate was Chief of the Africa II Division and Western Africa Regional Office with the United Nations Office for Project Services – a position at the D.1 level. He was managing a staff of 28 people and was responsible for the supervision of 135 projects financed by bilateral and international development agencies and institutions, including the defendant organisation. The APB was of the collective opinion that his practical experience in the field, his management skills and his intrinsic knowledge of rural development in Africa were more pertinent for the post than the complainant's more limited experience. Among the criteria required to be applied by the Fund was the necessity of equitable geographical distribution. The successful candidate was a native sub-Saharan African, a group which was under-represented in the senior ranks of IFAD at the time.

10. The impugned decision was discretionary and is subject to limited review. The Tribunal would only intervene if it was taken without authority, or in breach of a rule of form or of procedure, or if it rested on an error of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence. Moreover, the Tribunal will exercise its power of review with special caution in such cases and will not replace the organisation's assessment of the candidates with its own. (See, for example, Judgments 2362 and 2365.)

11. In the circumstances, the complainant has not shown that the selection was vitiated by an error of a type which would entitle the Tribunal to intervene.

12. Lastly, the complainant contends that IFAD has not informed her of the reasons for rejecting her application. This requirement is found in general terms in the Tribunal's case law but much more specifically in the

organisation's Human Resources Handbook – in section F.10 of Annex 1 to Chapter I, which says that:

“When outside recruitment is recommended full information as to the reasons behind recommending external candidates in preference to internal candidates should be provided.”

13. The APB recommendation is silent on the matter and the evidence shows that, at best, the complainant was given only partial and incomplete oral reasons for the failure to give her preference, long after the internal appeal proceedings had been exhausted and the complaint to the Tribunal instituted. If reasons for a non-selection decision are to have any use at all they must be given in time for an unsuccessful candidate to decide what, if any, recourse should be sought. Here, they were not and the plea is well founded.

Before concluding the Tribunal must deal with two relatively minor points:

(a) The complainant has asked for the production of two documents, namely the report of the mediator and the report giving the reasons for the APB's recommendation. The Fund has shown that such documents do not exist and the remedy cannot be granted.

(b) IFAD seeks to sanction the complainant for having received and used a “confidential” document. The Tribunal is satisfied that the document in question was available to staff online and that no claim to confidentiality can be sustained.

14. In summary, the complainant fails in her attack on the selection decision itself but succeeds on two collateral pleas, namely the inordinate delay in the internal appeal procedures and the failure to provide timely reasons behind the recommendation of the APB. These failures by the Fund entitle the complainant to a substantial award of moral damages which the Tribunal sets at 10,000 euros. She is also entitled to her costs in an amount of 2,500 euros.

DECISION

For the above reasons,

1. The complaint is allowed.
2. IFAD shall pay the complainant the sum of 10,000 euros in moral damages, and costs in the amount of 2,500 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 5 November 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet