

**D. (No. 3)**

*v.*

**WHO**

**121st Session**

**Judgment No. 3583**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr P. D. against the World Health Organization (WHO) on 4 April 2012 and corrected on 14 May, WHO's reply of 22 August, the complainant's rejoinder of 26 November 2012, WHO's surrejoinder of 27 February 2013, the complainant's additional submissions of 12 June, WHO's comments thereon of 17 July 2013, the complainant's further additional submissions of 6 June 2014 and WHO's final comments of 9 December 2014;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant, a WHO staff member, is assigned to WHO's India Country Office in New Delhi as a National Professional Officer (NPO), Administration. He challenges the decision not to accept his claims for the retroactive reclassification of his post.

Following a request made by the complainant, on 1 February 2008 the WHO Representative to India sought a review by the Administration of the complainant's post description (post No. 5.2655 NPO Administration) and requested that the post be classified at grade P-4. In a memorandum of 2 July 2008 the Administration replied that "this

exercise cannot be done” and provided reasons for the decision. In September 2008 the complainant challenged the decision of 2 July before the Regional Board of Appeal (RBA). The RBA recommended that the appeal be dismissed as irreceivable and on 11 February 2009 the Regional Director endorsed that recommendation.

The complainant challenged the decision of 11 February before the Headquarters Board of Appeal (HBA). On 13 August 2009, while the HBA appeal was ongoing, the Director of Human Resources Management (HRD) reversed the decision of 2 July 2008. A desk audit of the complainant’s post was subsequently carried out and, as a consequence of the audit, the Regional Director decided to upgrade the complainant’s locally recruited NPO position from grade NO-C to grade NO-D, which was an increase of one grade, and to promote him accordingly (the “promotion decision”). The complainant was so informed by a letter of 16 March 2010. The effective date of the promotion was initially 6 March 2010, but this was later changed to 12 February 2008, the date of receipt of the 1 February 2008 request for a classification review.

The HBA proceedings were suspended by agreement of the parties from 9 April 2010 to 15 November 2010, when the complainant requested that they be resumed. In an undated report (received by the Director-General on 9 December 2011), the HBA concluded that it was unable to review the promotion decision of 16 March 2010 insofar as it was a final decision that post-dated the decision of 2 July 2008. In addition, the decision of 16 March had substantially changed the complainant’s appointment status since the date of his appeal to the RBA. The HBA limited its review to the issues of moral damages and legal costs; it recommended that he be awarded moral damages in the amount of 2,500 United States dollars and legal costs as incurred until the end of August 2009, up to a maximum of 2,500 dollars.

In a letter of 4 January 2012, which is the impugned decision, the Director-General concluded that, given that a decision had been taken in August 2009 to conduct a review of the complainant’s post, his appeal against the decision of 2 July 2008 was without object. She

also endorsed the HBA's recommendations with respect to moral damages and costs.

As preliminary matters, the complainant asks for oral proceedings and he seeks the production of various documents. He requests the Tribunal to quash the impugned decision and he asks to be promoted to grade P-4 with retroactive effect from the date of his appointment to post No. 5.2655 (21 November 2005), with retroactive payment of all salary, benefits, step increases, pension contributions and any other emoluments he would have received had he been promoted on that date. In the alternative, he asks that his case be sent back to the HBA Committee, with complete Staff Association participation, and that the Committee follow proper procedure pursuant to Staff Rule 1050.2 (2009) and the WHO Manual section II.9.250-370 (2005), and that he be promoted immediately to grade P-4, with full retroactive effect until such a time as the matter is given proper consideration by the HBA Committee, the Director General and WHO. He seeks a "recommendation" that no retaliatory action be taken against him. He claims "actual" damages in the amount of 750,000 United States dollars, moral damages in the amount of 250,000 dollars, 100,000 dollars in exemplary damages, 50,000 dollars in legal costs and expenses, and any other relief the Tribunal deems necessary, just, and equitable.

WHO asks the Tribunal to dismiss the complaint and deny all of the complainant's requests for redress.

#### CONSIDERATIONS

1. The complainant identifies the impugned decision as the decision which the Director-General issued on 4 January 2012. In that decision, the Director-General accepted the recommendations of the HBA to dismiss the complainant's internal appeal on the ground that the decision of 2 July 2008 not to carry out a reclassification review of his post had been overtaken by the decision of 13 August 2009 by which the Director of HRD requested the conduct of a classification review of the complainant's post and that, accordingly, his appeal against the decision of 2 July 2008 was now without object. The

Director-General noted that the reclassification had taken effect from February 2008. She also agreed with the recommendation of the HBA that the complainant be paid 2,500 United States dollars in moral damages and that he be reimbursed for the legal costs that he had incurred in the internal proceedings up until the end of August 2009.

2. The Tribunal observes that the complainant had requested that his post be reclassified from grade NO-C to grade P-4 and that he be promoted accordingly. His post was reclassified to the NO-D grade. The reclassification and his promotion to the NO-D grade were the result of his request of 1 February 2008, which was rendered moot by the subsequent decision of 13 August 2009 by the Director of HRD that a classification review should be initiated as soon as possible. However, it does not follow that the complainant's claims in connection with the reclassification of his post are irreceivable. In this regard it is noteworthy that the Tribunal has stated as follows in Judgment 2856, under 5:

“The Tribunal rejects the Organization's argument that since the claim is now moot it is irreceivable. The Tribunal observes that a plea of mootness is not an issue of receivability. As a matter of law, a claim is moot when there is no longer a live controversy. Whether or not there is a live controversy is a matter to be determined by the Tribunal. Thus, even if a claim is moot it may still be receivable.”

3. The complainant asks the Tribunal to quash the impugned decision of 4 January 2012, which, according to him, ignored his request for promotion to grade P-4. However, that request was rendered moot by the reclassification exercise which was expressly conducted because of the request that was made in early 2008 for the reclassification review. Additionally, the decision which he originally challenged was the decision of 2 July 2008, which was reversed by the letter of 13 August 2009 from the Director of HRD. The fact that the outcome of that review did not meet his expectation for the post to be reclassified to grade P-4 does not obviate the mootness of his request for this order in the complaint. His option, if he disagreed with the new decision which reclassified the post to grade NO-D, of which he was informed by the letter of 16 March 2010, was to appeal that decision. He did not do so.

Thus, this aspect of his complaint is irreceivable for failure to exhaust the internal means of redress.

4. The complainant requests an order that he be retroactively promoted to grade P-4 from the date of his appointment to post No. 5.2655 and that he be paid all related salary and entitlements. In the alternative he requests that the matter be returned to the HBA for reconsideration and that he be promoted to grade P-4 immediately with retroactive effect until the reconsideration is complete. These claims are predicated on the request that was made in early 2008 for the reclassification review. This renders these claims consequentially moot.

5. Moreover, the Tribunal has no jurisdiction to make the order, which the complainant seeks, to recommend to the WHO that no retaliatory action be taken against him (see for example, Judgments 2370, under 19, 2541, under 13, and 3506, under 18).

6. Inasmuch as the complainant's post was reclassified so that he was consequentially promoted with effect from 12 February 2008, the date on which the reclassification request was received by the Administration, he has suffered no injury and there was no operative delay. There is therefore no basis on which the Tribunal would make an award to him of the "actual", moral or exemplary damages that he seeks, over and above the moral damages which he was awarded in the impugned decision. The costs that the complainant was awarded in the impugned decision are reasonable given that he was informed by the communication of 13 August 2009 that the decision of 2 July 2008 was reversed and that a classification review of his post was being undertaken.

7. In the foregoing premises, an order for oral proceedings or for the disclosure of documents is unnecessary as the complaint is unfounded in its entirety and will accordingly be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 29 October 2015, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ