

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

J. (C.P.)

v.

WHO

128th Session

Judgment No. 4147

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. P. J. against the World Health Organization (WHO) on 29 September 2017 and corrected on 11 October 2017, WHO's reply of 15 January 2018, the complainant's rejoinder of 9 March and WHO's surrejoinder of 5 July 2018;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant contests the decision not to retain his candidature for a post of Budget and Finance Officer.

The complainant joined WHO's Regional Office for South-East Asia (SEARO) in 1981. In July 2014, while serving as an Administrative Officer at grade P-4, he applied for the position of Budget and Finance Officer, at grade P.5. The vacancy notice for that position listed, under the heading "Required Qualifications", the possession of an "Advanced university (postgraduate) degree in business administration, finance, or related field" as "Essential" and that of a "Professional certification as Chartered/Certified Public Accountant" as "Desirable". Ultimately, the complainant was unsuccessful, as his candidature was eliminated at the

pre-screening stage without being placed on the shortlist, and another candidate was appointed to the subject post.

By an email of 17 March 2015, the complainant was notified that his candidature had not been retained. On 22 April the complainant enquired: (i) whether WHO considered the Institute of Chartered Accountants of India as a recognised/accredited institution of higher courses; and (ii) whether it recognised the degree awarded by said institution as equivalent to an advanced university degree or a Master's degree. On 4 May 2015 the Administration responded that: (i) in accordance with Information Note 24/2014 on "Standards of higher education for jobs in WHO", WHO only recognised educational qualifications obtained from the institutions listed in the World Higher Education Database, updated by the International Association of Universities/United Nations Educational, Scientific and Cultural Organization, and that the Institute of Chartered Accountants of India was not on that list; and (ii) as per the Hiring Manager, who was responsible for the shortlisting of candidates, the qualification of a "Chartered Accountant" obtained from the Institute of Chartered Accountants of India was not a substitute for or equivalent to a Master's degree.

On 11 May 2015 the complainant lodged an appeal with the Regional Board of Appeal (RBA) arguing that the decision not to retain his candidature was based on an incomplete consideration of facts, in particular his educational qualifications, a failure to correctly apply the Staff Regulations and Staff Rules, and prejudice on the part of the Administration. In its report of 10 December 2015, the RBA recommended that the appeal be dismissed. By a letter of 25 January 2016, the Regional Director, SEARO, notified the complainant of her decision to accept the RBA's recommendation. On 13 April 2016 the complainant lodged an appeal with the Headquarters Board of Appeal (HBA). The HBA submitted its report on 26 May 2017 recommending that the appeal be dismissed in its entirety. By a letter of 25 July 2017, the Director-General informed the complainant that he had decided to accept the HBA's recommendation. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision as well as the decision to select another candidate for the subject post. He claims compensation under various heads, costs and any other relief the Tribunal deems appropriate.

WHO asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant commenced his employment with WHO in 1981. At the material time, he held a grade P.4 Administrative Officer position. In July 2014 he submitted his application for the grade P.5 position of Budget and Finance Officer. In March 2015 he was informed that the selection process was completed and that his “candidature was not retained for [the] position”. He was subsequently informed that his candidature was eliminated at the pre-screening stage without being placed on the shortlist for consideration by the Selection Panel on the ground that he did not have a postgraduate degree, an essential educational requirement in the vacancy notice for the post. The complainant unsuccessfully challenged his non-selection for the post of Budget and Finance Officer before the RBA. His appeal from the Regional Director’s decision to the HBA was also unsuccessful. Before the Tribunal, he impugns the Director-General’s 25 July 2017 decision in which the latter accepted the HBA’s recommendation and dismissed the appeal.

2. Relevantly, according to the vacancy notice, the required minimum educational qualification for the Budget and Finance Officer position, listed as “Essential” in the vacancy notice, was an “Advanced university (postgraduate) degree in business administration, finance, or related field”, and the “Desirable” qualification was a “Professional certification as Chartered/Certified Public Accountant”. In relation to experience, the essential requirement was “[a]t least ten years of professional experience in financial management, 5 years of which are in managerial or supervisory role” and “[e]xperience in the preparation and presentation of analytical financial reports”. It is convenient to add

at this point that the complainant is and was, at the material time, a certified Chartered Accountant.

3. The complainant submits that in view of his certification as a Chartered Accountant, he met the essential education requirement in the vacancy notice. He advances several arguments in support of his submission that will be dealt with in turn. First, he contends that as a matter of established practice candidates certified as Chartered Accountants have been considered by WHO/SEARO as eligible candidates for professional positions at grades P.4 and P.5 requiring a Master's degree as a minimum educational qualification. The complainant points to two instances in which this has occurred. It is observed that he has not adduced any evidence from which it can be inferred that in those cases it was accepted that Chartered Accountant certification met the minimum requirement of a postgraduate degree. More importantly, those cases pre-date the coming into force of Information Note 10/2014 of 7 March 2014, entitled "Harmonization of Selection Process for Longer-Term Positions in the Professional and Higher-Level Categories", which was applicable to "all advertised fixed-term vacancies for positions in the professional and higher-level categories issued from 15 March 2014". In Chapter V, Section B, paragraph 30, Information Note 10/2014 provides that in the in-depth evaluation of pre-screened candidates "the Hiring Manager is only permitted to use the criteria specifically stated in the vacancy notice" and "[i]nitially, candidates are assessed against the minimum requirements only [...]". Even if there was an established practice, as described by the complainant, it was overtaken by the coming into force of Information Note 10/2014.

4. Second, the complainant points to the Association of Indian Universities' recognition that a Chartered Accountant "degree" is equivalent to a postgraduate degree in commerce and allied disciplines. It is observed that the Association's letter of 20 March 1984 to the Institute of Chartered Accountants of India states that graduates who have passed the final examination of the Institute of Chartered Accountants of India will be treated as having completed a postgraduate degree in commerce or allied disciplines "for [the] purpose of registration to Ph.D".

Given the limited nature of the recognition, it does not assist the complainant's position in this case.

5. Third, the complainant argues that he also had four years of work experience in substitution for the Master's degree requirement. Information Note 13/2010 of 23 April 2010, entitled "Guidelines on Standard Minimum Requirements for Professional Posts", provides in paragraph 2 that "[f]or internal WHO and UN system candidates with a first university degree, 4 years of work experience relevant to the vacancy may be substituted for a Master's level degree". However, it also provides that these four years "cannot then also be included in calculating required relevant work experience". The HBA noted that, as the complainant had slightly more than twelve years of relevant work experience, the required advanced university degree could have been substituted with four years of relevant professional experience. However, as the HBA found, the four years could then not be included in the calculation of the required work experience that would result in the complainant having just over eight years of work experience which was below the minimum requirement of ten years. Thus, if four years of professional experience were used to substitute the educational requirement, the complainant would still not have met the required minimum qualifications set out in the vacancy notice.

6. Fourth, the complainant claims that the Hiring Manager failed to have regard to the instruction in paragraph 320 of Section III.3.3 of the WHO eManual that "Desirable" educational qualifications are to be considered as over and above the essential minimum educational requirements. This claim is unfounded. This provision in the eManual concerns the calculation of a staff member's salary at the time of initial appointment and has no application to a determination as to whether a candidate meets the minimum educational qualifications for a particular post.

7. Fifth, the complainant claims that the Administration failed to provide him with the names and qualifications of the shortlisted candidates, as he requested for the purpose of supporting his claim.

In Chapter II, Section E, paragraph 7, Information Note 10/2014 states that “[t]he deliberations and discussions of the Selection Panel are strictly confidential and should not be disclosed outside the Panel, either immediately after the meetings or at any later stage. A breach of confidentiality may lead to the imposition of disciplinary measures”. In the present case, WHO provided the complainant with redacted copies of all the relevant materials including the Candidate Rating Table, the Selection Panel Candidate Rating Table and the Selection Report. The Tribunal notes that the disclosure of the names and qualifications of the shortlisted candidates would have constituted a violation of the confidentiality provision in Information Note 10/2014.

8. The complainant also submits that there was an incomplete consideration of the facts and non-compliance with applicable rules and procedures, and as a result he was denied an equal opportunity to compete for the subject post. In particular, the Hiring Manager’s Guide for screening candidates was not applied; the Selection Panel did not properly review the shortlist of candidates; and the Administration committed a fatal flaw when it applied Information Note 24/2014 of 10 October 2014 in its consideration of his candidature, because that Information Note post-dated the vacancy notice for the post of Budget and Finance Officer. The complainant also asserts that his non-selection for the Budget and Finance Officer post was due to a conspiracy and bias on the part of the Administration.

9. In keeping with the consistent case law of the Tribunal, the complainant bears the burden of demonstrating that there was a serious defect in the selection process which had an impact on the consideration of his candidature (see Judgment 4023, consideration 2). The complainant has not adduced any persuasive evidence that would support a finding that there was an incomplete consideration of the facts, non-compliance with applicable staff regulations and staff rules or other regulatory materials, or that Information Note 24/2014 was applied in the consideration of his candidature. Moreover, the complainant’s assertions of bias and conspiracy are also without any evidentiary foundation.

10. As to the complainant's submission that the Director-General's impugned decision was not adequately motivated, the Tribunal has consistently held that when the executive head of an organisation accepts and adopts the recommendations of an internal appeal body, she or he is under no obligation to give any further reasons in his or her decision than those given by the appeal body itself (see Judgment 2092, under 10).

11. Lastly the complainant submits that there was an inordinate delay in the internal appeal process. The complainant points out that, although the RBA concluded its meeting on 14 October 2015, it only submitted its report to the Regional Director 64 days later on 17 December 2015. The complainant contends that this delay was in violation of the time limit in paragraph 13.1 of the SEARO RBA's Rules of Procedure, which requires the RBA to submit its report to the Regional Director within ten working days of the closure of its consideration of the case. This contention appears to conflate the closure of the hearings and the closure of the consideration of the appeal and is, therefore, unfounded. Paragraph 12.3.3 of the SEARO RBA's Rules of Procedure states that "[t]he Chairman shall declare the hearings closed when he/she is satisfied that they have accomplished their purpose and the Board shall then consider the appeal in camera". Paragraph 13.1 provides that the ten days' time limit for the RBA to submit its report to the Regional Director is from "the closure of consideration of the case in camera" and not from the date of the conclusion of the hearings. As the RBA report was signed by the Chairperson and the members of the Board on 10 December 2015 and transmitted to the Regional Director on 17 December 2015, there was no violation of the time limit.

12. The complainant advances an analogous argument in relation to the HBA. The Rules of Procedure of the HBA mirror those of the RBA in that they also require that within ten working days from the closure of the HBA's consideration of the case, the Chairperson of the HBA shall present the HBA's report to the Director-General. The complainant notes that the HBA concluded its meeting on 27 March 2017 but did not submit its report to the Director-General until 60 days

later on 26 May 2017. However, as the consideration of the case was concluded on 24 May 2017 and the Chairperson of the HBA submitted the report to the Director-General on 26 May 2017 there was no violation of the relevant rule.

13. The complainant also points out that it took just over two years from the date he lodged his appeal to the date the Director-General issued the impugned decision. The Tribunal observes that the length of time taken to process the internal appeal is largely attributable to the two-level internal appeal process. It is also observed that but for the unexplained delay of seven and one-half months between the closure of the pleadings in the HBA appeal and the date the HBA took up its review of the case, there were no significant delays in the overall internal appeal process. The consistent case law of the Tribunal has it that the amount of compensation for unreasonable delay will ordinarily be influenced by the interrelated considerations of the length of the delay and the effect of the delay (see Judgments 3160, under 17, 3582, under 4, 3688, under 12, and 3879, under 5). In the present case, the complainant has not articulated what impact the delay has had on him. Accordingly, no award of moral damages will be made.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 22 May 2019, Ms Dolores M. Hansen, Judge presiding the meeting, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ