

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**S.**  
**v.**  
**WHO**

**131st Session**

**Judgment No. 4352**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms P. S. against the World Health Organization (WHO) on 17 October 2018 and corrected on 1 December 2018, WHO's reply of 1 March 2019, the complainant's rejoinder of 29 April and WHO's surrejoinder of 29 July 2019;

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 challenges the appointment of another candidate to a position for which she applied and the rejection of her requests for the reclassification of her former position, the payment of the difference in salary resulting from such reclassification, and an award of moral damages for harassment and the loss of a career opportunity.

The complainant joined the WHO Country Office for India in 2005. After having worked under temporary contracts, she was selected in 2009 for the fixed-term position of Assistant (Accounts), at grade G-5. Effective 19 October 2014 she was granted a continuing appointment.

On 30 July 2014 the WHO Representative to India requested the reclassification of the complainant's position to grade G-6, as approved by the complainant's first-level supervisor at the time, Mr D., in light of the "additional" and "higher level" responsibilities she had assumed.

On 23 March 2015 WHO issued vacancy notice WRO/VN/2015/12 for the position of Executive Associate (Finance), at grade G-7, in its Country Office for India. The complainant applied for this position. At the end of the selection process, the General Service Staff Selection Committee (Selection Committee) unanimously recommended for selection the top-scoring candidate, Mr T. This recommendation was approved by the Director of the WHO Regional Office for South-East Asia (Regional Director, SEARO), following which Mr T.'s appointment was announced to the staff of the Country Office for India by an email of 27 July 2015.

In August 2015 the complainant reported that she had been harassed by Mr D. since 2010. Effective 26 October 2015, she accepted a lateral reassignment to the position of Executive Assistant (Finance and Programme). On 18 November 2015 she submitted an appeal to the Regional Board of Appeal (RBA) challenging the appointment of Mr T. to the position of Executive Associate (Finance). In addition to setting aside Mr T.'s appointment, carrying out a new selection process and awarding her damages for the loss of career opportunities, the complainant requested the reclassification of her own position from September 2010 to October 2015 and payment of the difference in salary resulting from such reclassification, together with interest, on the basis that she had performed professional-level duties during that period. She also requested moral damages for the harassment and prejudice that she had allegedly endured since 2010.

On 17 February 2016 the complainant filed a formal complaint of harassment against Mr D. On 9 May 2016 she was promoted to a G-6 grade position following a competitive process.

Following the RBA's recommendation of 30 June 2017, the Regional Director, SEARO, decided to dismiss the complainant's appeal. The complainant was relevantly informed by a letter of 19 July 2017. On 21 October 2017 she lodged an appeal with the Global Board of Appeal (GBA). In its report of 4 June 2018, the GBA stated that the Regional Director's decision not to select the complainant for the position of Executive Associate (Finance) had been taken in accordance with WHO Staff Regulations and Staff Rules and that it had not identified any flaws, irregularities, mistakes of fact or law, or evidence of unfairness, personal prejudice or bias against the complainant. The GBA also stated that the complainant's claims regarding the reclassification of her

former position, her 2015 and earlier performance assessments, and the harassment she had allegedly suffered were outside the scope of the appeal. It recommended that the appeal be rejected.

By a letter of 2 August 2018, the Director-General notified the complainant of his decision to endorse the GBA's recommendation. That is the impugned decision.

On 13 February 2018 the complainant was advised that, further to a review of her harassment allegations and given that Mr D. had in the meantime separated from WHO, it was not possible to proceed with an investigation and the Internal Oversight Services therefore considered the matter closed.

The complainant asks the Tribunal to order the reclassification of her former position from September 2010 to October 2015 and to award her the differential/extra pay that would become due to her as a result of such reclassification, together with interest. She also asks the Tribunal to set aside Mr T.'s selection for the position of Executive Associate (Finance), to order WHO to rerun the selection process for said position in accordance with the applicable rules, and to carry out an audit of Mr T.'s selection and appointment. She claims 100,000 United States dollars in compensation and/or moral damages for the harassment, bias, and prejudice she suffered, 50,000 dollars in compensation for the loss of career opportunities, and 20,000 dollars in legal and administrative costs.

WHO asks the Tribunal to dismiss the complaint as irreceivable in part for failure to exhaust internal remedies and as devoid of merit in the remainder.

At the request of the Tribunal, WHO forwarded a copy of the complaint to Mr T. He provided his comments thereon on 14 February 2019.

## CONSIDERATIONS

1. This complaint stems from a vacancy notice WHO issued on 23 March 2015 for the position of Executive Associate (Finance), at grade G-7, at the WHO Country Office for India. The competition was open to qualified internal applicants holding temporary, fixed-term and continuing appointments, and external candidates. The complainant submitted an application for the position and she was one of the candidates shortlisted for the written test and was one of the five

remaining candidates invited for an interview. On 27 July 2015, the complainant was informed that Mr T. was the successful candidate.

2. In the present complaint, the complainant contests the selection process for the Executive Associate (Finance) position and the result of the process. The complainant also advances claims regarding WHO's failure to reclassify her former position, her first-level supervisor's, Mr D.'s, unfavourable performance assessments, and the harassment to which she was allegedly subjected by him. She also alleges bias, prejudice, malice by her first-level supervisor and bad faith on the part of the Administration.

3. Before considering the merits of the complaint, it is convenient to deal with WHO's position in relation to the receivability of the complaint. WHO does not take issue with the receivability of the complaint to the extent that it concerns the selection process for the Executive Associate (Finance) position and the result of the process. However, WHO takes the position that the complainant's claims in relation to the reclassification of her former position, her performance assessments and the alleged harassment are beyond the scope of the present complaint and are irreceivable. WHO notes that in her 18 November 2015 statement of appeal to the RBA, the complainant stated that "[t]his appeal is against the decision of the office of WHO-Representative to India, communicated by [the Administrative Officer] WHO Country Office for India [by] email announcement dated July 27, 2015, to the [complainant]". She added that the decision she was challenging was the "[r]esult of Selection against [v]acancy [n]otice # WRO/VN/2015/12". Thus, the scope of the present complaint is confined to the selection process conducted for the Executive Associate (Finance) position and its result.

4. The complainant disputes WHO's position that these claims are beyond the scope of the complaint. The complainant points out that she raised the issue of the reclassification of her former position in her RBA and GBA appeals. As well, she exhausted all the administrative channels and internal means of redress concerning her request for the reclassification of her former position. As to the harassment claim, the complainant argues that her non-selection for the Executive Associate (Finance) position was linked to the harassment by her first-level supervisor, Mr D. She adds that because of work pressure and frail

health she was not able to lodge an appeal against the decision to close her harassment complaint.

5. In her appeal to the RBA, the complainant observed that as of September 2010 she was asked to take on additional responsibilities and from that time until her reassignment in October 2015, she handled work of a “professional nature”. She added that there was no recognition of this work or a reclassification to a senior position. In her claims for relief in the RBA appeal, the complainant requested the reclassification of her former position retroactively to September 2010 and compensation for the differential in salary and interest. Although the complainant’s submissions to the GBA are not included in the record, in its 4 June 2018 report, the GBA observed that in addition to her non-selection for the Executive Associate (Finance) position, the complainant also complained about the failure to reclassify her former position. The GBA’s report also sets out the complainant’s claims for relief that include the same request regarding the reclassification of her former position in her appeal to the RBA.

6. The fact that in her appeals to the RBA and the GBA the complainant referred to the reclassification of her former position and sought the retroactive reclassification of her former position in her claims for relief does not bring her reclassification claim within the scope of the present complaint directed at the selection process for the Executive Associate (Finance) position. It follows that her claim in relation to the reclassification of her former position is irreceivable. As to the complainant’s harassment claim, she acknowledges in her pleadings that she had not lodged an internal appeal against the decision to close her formal harassment complaint. Thus, as she did not exhaust the internal means of redress, her claim of harassment is irreceivable. Additionally, as the complainant did not lodge internal appeals against her performance assessments, the internal means of redress were not exhausted and her claims in this regard are irreceivable.

7. Turning to the merits of the complaint, the complainant submits that the selection process and Mr T.’s appointment to the Executive Associate (Finance) position, at grade G-7, violated the applicable provisions in the WHO Staff Regulations and Staff Rules, and the Selection Guidelines for General Service Staff in the WHO South-East

Asia Region (Selection Guidelines). First, the complainant submits that the vacancy notice for the Executive Associate (Finance) position violated Staff Rule 560.1. The complainant observes that the successful candidate, Mr T., was “promoted” from a G-5 temporary staff appointment to a G-7 fixed-term appointment. She contends that Staff Rule 560.1 only applies to staff members holding fixed-term or continuing appointments, and not to staff members holding temporary staff appointments. However, in this case, the vacancy notice for the Executive Associate (Finance) position stated that the competition was open to internal candidates up to two grades below (ND5). Accordingly, this allowed temporary staff to apply for the G-7 fixed-term position, effectively a promotion, in contravention of Staff Rule 560.1.

8. Staff Rule 560.1 states that a “[p]romotion is the advancement of a staff member with a continuing or fixed-term appointment to a post of higher grade, as a result either of the reclassification of the post he occupies or of reassignment to a different post”. This rule is directed at staff members holding fixed-term or continuing appointments and states the two ways these staff members may be promoted to a higher grade, namely, by reclassification of the incumbent’s post or by reassignment to a different post. Having regard to the obvious and ordinary meaning of this rule, it is evident that it has no application to the competitive procedure for the selection of a staff member for a vacant post. The Selection Guidelines specifically provide at section 2.4 that “[a]pplications are open to all qualified candidates irrespective of grade”. Thus, it is clear that, at the material time, competitions for General Service staff appointments were open to staff members holding temporary staff appointments irrespective of their grade.

9. Second, the complainant submits that the Selection Committee for the Executive Associate (Finance) vacancy was not constituted in conformity with section 3 of the Selection Guidelines that requires a Selection Committee to have a Staff Association representative as one of its members. She observes that a Staff Association representative was not present at her interview on 30 April 2015 and, given that the Selection Committee members were not introduced, it was not clear who was present and in what capacity. The complainant points out that in keeping with WHO’s practice the Chapter Coordinator is nominated as the Staff Association representative at the time of the composition of

the Selection Committee. As the Chapter Coordinator, Ms M., was one of the qualified candidates who had applied for the Executive Associate (Finance) position, she could have nominated another Staff Association member to take her place on the Selection Committee. However, contrary to what is required in section 4.2 of the Selection Guidelines, the Administrative Officer acting as the secretary of the Selection Committee did not contact the Chapter Coordinator to nominate a member of the Staff Association to take her place. Accordingly, the Selection Committee was not constituted in accordance with the Selection Guidelines.

10. The complainant also takes issue with WHO's position that Dr S., a member of the Country Office for India Staff Association, nominated Mr W. as the Staff Association representative when he was contacted by the Administrative Officer regarding the nomination of a representative due to the fact that the Chapter Coordinator was an applicant for the Executive Associate (Finance) position. The complainant notes that when she contacted Dr S. by email on 14 October 2015 regarding the Staff Association's nomination to the Selection Committee, he replied the following day that he had never been approached for a nomination as the staff representative on the Selection Committee. The complainant adds that the Chapter Coordinator and another Staff Association member copied on the email to Dr S. also stated that they had not been consulted.

11. The GBA requested clarification from the parties regarding their conflicting statements about the nomination of Mr W. as the Staff Association representative. In response, WHO submitted a "Note for the Record", dated 13 April 2015, signed by the Administrative Officer acting as the secretary of the Selection Committee in relation to the vacancy notice for the Executive Associate (Finance) position. WHO also submitted the Administrative Officer's May 2018 confirmation of his statement in the 13 April Note for the Record regarding Mr W.'s nomination as the Staff Association representative on the Selection Committee. The Note for the Record states:

"The undersigned contacted Staff Association Member of [Country Office for] India Country Chapter, Dr [S.] in regard to the nomination of Staff Association representative as the Chapter Coordinator, Ms [M.] was an applicant for the above mentioned position. Dr [S.] nominated Mr [W.] to participate as Staff Association Representative in the selection panel."

12. It is convenient to deal firstly with the issue raised by the complainant concerning the nomination of the Staff Association representative. This issue requires a weighing of the evidence adduced by the parties. The Note for the Record is the Administrative Officer's report of the action he took in the exercise of his responsibility to constitute the Selection Committee, as provided in section 4.2 of the Selection Guidelines for retention in the Administration's file. As the date of the Note for the Record is the same as the date of the closure of the vacancy notice for the Executive Associate (Finance) position, it is highly likely that the Note for the Record was a contemporaneous record of the action the Administrative Officer had taken to obtain a nomination for the Staff Association representative on the Selection Committee. In contrast, Dr S.'s statement was his recollection as to whether he had been contacted to nominate a representative six months earlier. Without in any way questioning Dr S.'s credibility, a contemporary record of an event is more reliable than a recollection as to whether something occurred some six months earlier. As well, there is no evidence that would call into question that the Administrative Officer's action was in good faith. Lastly, the 15 October 2015 responses of the Chapter Coordinator and another Staff Association member are irrelevant, given that the matter at issue was whether the Administrative Officer had contacted Dr S.

13. The complainant's position that the Selection Committee was not constituted in accordance with section 3 of the Selection Guidelines is unfounded. First, the complainant's assertion that a Staff Association representative was not present at her 30 April interview is at odds with the 30 April 2015 Selection Report. As evidenced in the Selection Report for the Executive Associate (Finance) position, Mr W. was the Staff Association representative on the Selection Committee and participated in the selection process. In particular, this report includes the Confidential Interview Report for the complainant's interview dated 30 April 2015 that was signed by Mr W. on that same day as a member of the panel. Second, contrary to the complainant's assertion, the Selection Guidelines do not prescribe a procedure for the nomination of a Staff Association representative to sit on a Selection Committee at Country Offices. In relevant part, section 4.2 of the Selection Guidelines only requires the Administrative Officer at a Country Office to "constitute [...] the [Selection Committee]". Third, the complainant's assertion that Mr W.



was the immediate supervisor of Mr T. and as such would have a conflict of interest is incorrect. As the GBA found, Mr W. was not Mr T.'s supervisor and, in fact, Mr T. and the complainant had the same first-level supervisor, Mr D.

14. The complainant also alleges that Mr T. benefited from the "undue advantage" accorded to him by the Administration. In her pleadings, the complainant describes Mr T.'s employment history with WHO beginning with his April 2012 appointment under a Special Services Agreement up to his temporary staff appointment at grade G-5. She also points to breaches of the Staff Rules and the Guidelines for temporary staff appointments by the Administration in favour of Mr T. However, she has not adduced any evidence in support of her description as to what transpired within that period of time. In fact, in his comments in response to the invitation from the Tribunal, Mr T. noted multiple errors in the complainant's version of the facts and her allegations in relation to the breaches of the Staff Rules and the Selection Guidelines. This, coupled with the fact that there is no evidence to link Mr T.'s employment history with the selection process for the Executive Associate (Finance) G-7 position and its result, there is no need to give any further consideration to this allegation of "undue advantage".

15. The complainant also alleges that the contravention of Staff Rule 560.1 in the vacancy notice allowing staff members holding temporary staff appointments to apply for the Executive Associate (Finance) position, was to give Mr T. an "undeserved privilege". As the Tribunal concluded in consideration 8, above, that allowing temporary staff members to apply for a vacancy notice did not contravene Staff Rule 560.1, this allegation is unfounded.

16. In this same vein, the complainant submits that the lowering of the experience requirement for a G-7 appointment in the vacancy notice for the position of Executive Associate (Finance) provided an undue advantage to Mr T. The complainant points out that in relation to the required experience, the vacancy notice stated: "Essential: Extensive (minimum 7 years) and progressively responsible experience in accounting, budgeting and finance functions. Desirable: Relevant experience in UN organization, an asset." The complainant observes that the vacancy notice "avoided" indicating any essential service in a United Nations

organization. The complainant maintains that the “dilution” of the experience requirement was to favour Mr T., while earlier and subsequent vacancy notices were issued in accordance with standard norms and guidelines. This submission is also unfounded. It is observed that, as the GBA noted in its report, “3 vacancy notices related to finance, similar to the G-7 [Executive Associate (Finance)] [v]acancy, required UN or international organizations’ experience as desirable; 6 of 20 vacancy notices required UN or international organizations’ experience as essential and those were related to programmatic activities and human resources”. The GBA also noted that “the essential experience requirements of the G-7 [Executive Associate (Finance)] [v]acancy corresponded to ICSC [International Civil Service Commission] Experience Requirements for Benchmark [General Service] posts as per Classification Standards”. The GBA concluded that “the G-7 [Executive Associate (Finance)] [v]acancy requirements corresponded to the ICSC essential experience requirements and to [the] SEARO standard practice”.

17. In her pleadings, the complainant identifies a number of instances in relation to the reclassification of her post, her reassignment and her performance assessments that she submits clearly show bias, and/or prejudice, and/or malice toward her by her first-level supervisor, Mr D. The complainant also submits that the selection process was tainted with personal prejudice and bias by Mr D., as evidenced by his unfavourable performance assessments. It is well settled in the case law that the complainant bears the burden of proving allegations of bias, prejudice and malice (see, for example, Judgment 3380, considerations 8 to 10). However, in the present case, the complainant has simply identified events that have occurred over time and she has not adduced any evidence in support of her allegations. Thus, there is no basis on which to assess the complainant’s allegations of bias, prejudice and malice on the part of Mr D.

18. In view of the above findings, the Tribunal concludes that the selection process for the position of Executive Associate (Finance) was conducted in accordance with the relevant Staff Regulations and Staff Rules and the Selection Guidelines. The Tribunal also concludes that the selection process did not involve bad faith on the part of the Administration. Accordingly, the complaint will be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 19 October 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ