

TENTH ORDINARY SESSION

In re DADIVAS

Judgment No. 60

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization drawn up by Mrs. Priscilla O. Dadivas on 14 May 1960, the reply of the Organization of 24 August 1960, the supplementary memorandum of complainant dated 14 September 1960, complainant's amended complaint dated 10 July 1961, submitted by leave of the Tribunal, after a new decision of 17 April 1961, following a stay of proceedings granted to the Organization, the reply of the Organization to the amended complaint, dated 21 December 1961, and the additional information which the Tribunal ordered to be produced by the Organization, the further memorandum of complainant in lieu of oral arguments dated 20 February 1962 and the reply thereto of the Organization dated 14 March 1962;

Considering Article VIII of the Statute of the Tribunal, Articles 220.3 and 470.1 of the Staff Rules of the Organization;

After examining the documents in the dossier, no oral proceedings having been either requested by the parties or ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. On 1 January 1952, after a three months trial period, Mrs. Dadivas was appointed by WHO, as a Grade M.3 official, in its Western Pacific Regional office. On 1 July 1953, complainant was placed in Grade M.4 with a salary scale ranging from 4,320 to 6,240 pesos.

New salary scales came into force on 1 January 1957. Those officials whose remuneration would have been reduced as a result of the coming into force of the new salary scales were given the benefit of transitional measures. Complainant was amongst them and retained the salary which she was earning at the end of 1956, namely 5,220 pesos per annum, but ceased to be eligible for the further salary increment provided for under the old scale.

A post description dated 15 January 1960 described complainant as budget clerk, Grade M.4, although according to the local classification plan then in effect, budget clerks were in Grade M.5.

B. From 1959 onward, complainant sought to preserve entitlement to the further increments provided for under the salary scales in effect prior to 1 January 1957. To this end, she appealed in turn to the Regional Appeals Board and to the Headquarters Board of Enquiry and Appeal. Finally, on 15 February 1960, the Director-General confirmed the decision depriving complainant of any entitlement to the salary increments to which she had laid claim.

C. On 14 May 1960, complainant appealed to this Tribunal and requested either that the new salary scales should be so adjusted that she might reach "substantially" the 6,240 pesos ceiling, or that she should continue to enjoy the benefits of the old salary scale. She also claimed the benefit of the difference between the salary attaching to Grade M.3 and that attaching to Grade M.4 for the period during which she was in Grade M.3. Finally, she claimed costs.

In an additional complaint of 14 September 1960, she requested that she should be placed in Grade M.5 as from 1 January 1957, and that she should receive the corresponding salary.

D. While the case was pending, the Organization decided, on 27 January 1961, to grant complainant her claim of 14 May 1960. As a result complainant received the difference between her M.3 salary and an M.4 salary for the period during which she was in Grade M.3, and received the salary increments provided for under the old salary scale, bringing her salary to 6,000 pesos for 1957, 6,180 pesos for 1958 and 6,240 pesos (maximum of the old scale) as from 1959. However, the Organization rejected her claim for regrading from M.4 to M.5.

By further memorandum of 10 July 1961, complainant reasserted her claim for regrading, which the Organization prayed to be dismissed.

IN LAW

I. Complaint of 14 May 1960

The Tribunal records the fact that the Organization complied with complainant's submissions. In respect of that complaint complainant is entitled to costs (see Wakley, No. 53).

II. Complaints of 14 September 1960 and 10 July 1961

1. On Receivability

The Organization does not raise any question of receivability but the Tribunal is bound to consider it on its own motion.

The complaints of 14 September 1960 and 10 July 1961 were filed after the time limit of 90 days. The relief claimed in these complaints is different from that claimed in the complaint dated 14 May 1960. However, complainant did not modify the substance of her original claim, nor did she widen it. In her first complaint she requested in particular that the January 1957 salary scales should be so adjusted as to enable her to reach "substantially" a maximum salary of 6,240 pesos. In her subsequent complaints, she requested to be regraded in M.5, so that she might be enabled to reach a maximum salary which is now at the 6,550 pesos level. "Substantially", that is to say within a 5 per cent. margin, the two claims are aiming at the same salary ceiling. In the circumstances, the submissions of 14 September 1960 and 10 July 1961 are receivable. The fact that, in arguing her case in connection with her complaint of 14 May 1960, complainant had claimed to be regraded M.5 and that she had submitted an appeal to the same effect to the Headquarters Board of Enquiry and Appeal, lend further support to this conclusion.

2. On the Merits

On 14 September 1960, complainant asked to be placed in Grade M.5 as from 1 January 1957. The substance of this submission was not affected by her assertion of 10 July 1961 that regrading should take place "at least" in January 1960. Three separate periods must be distinguished.

(a) From 1 January 1957 to 31 December 1959

Complainant does not claim nor establish that during this period her duties and responsibilities justified her being graded M.5, and it must therefore be concluded that she was correctly graded. Moreover, she has not established that other officials had been regraded M.5 although they performed exactly the same duties as she did. Hence she cannot complain of discrimination.

Moreover, in the absence of financial or moral prejudice, the complaints of 14 September 1960 and 10 July 1961 should be dismissed in so far as they relate to the first period. If complainant had been regraded M.5 on 1 January 1957, she would have been entitled to 5,280 pesos for the year 1957 (Step 9), and 5,460 pesos for 1958 and 1959 (Step 10 - see Art. 220.2 of Staff Rules), having regard to the fact that she had a 5,220 pesos salary at the end of 1956. It is the 5,220 pesos salary which should be taken as a basis, and not that of 6,000 actually paid by the Organization in 1957, since the latter sum had been accepted on the understanding that it was a ceiling and not a basis for further claims. In fact the sums of 5,280 pesos for 1957 and 5,460 pesos for 1958 and 1959 are below those which complainant in fact received for those years, i.e. 6,000 pesos for 1957, 6,180 pesos for 1958 and 6,240 pesos for 1959. There was thus no financial prejudice. On the other hand, the mere fact of belonging to a given grade does not carry any prestige value, unlike the use of a title, such as "secretary" for instance (see Sharma, No. 317). Thus there is no moral prejudice.

(b) From 1 January 1960 to July 1961

In the post description of 15 January 1960, complainant was called "budget clerk, M.4". Undoubtedly a mistake was made since budget clerks were graded M.5 under the Job classification then in effect. It falls to be considered whether the title "budget clerk" was in error attributed to complainant or whether she was wrongly placed in Grade M.4. It is difficult to come to a conclusion by comparing the functions of complainant as described in the post description of 15 January 1960 with the descriptions of the classification plan. No doubt the duties assigned on 15

January 1960 to complainant who was required in particular to maintain records of budget allotments and to check the availability of funds, seem a little less exacting than those of a budget clerk, who under the classification plan had not only to perform the aforementioned duties but also to collect information in relation projects and to prepare budget reviews and draft analyses. On the other hand, according to the description of 15 January 1960, complainant's duties differed even more considerably from those of an accounts clerk II, who under the classification was merely required to record transactions and calculate salaries. What dispels all hesitations, however, is the fact that at the present time, when no error is alleged, complainant still holds the title of budget clerk, in accordance with the July 1961 classification plan. The duties of complainant have not changed since 1960 and the new classification plan did not substantially modify the description of the duties of budget clerks. Thus, if the Organization made a mistake on 15 January 1960, it was not in describing complainant as a budget clerk but in placing her in Grade M.4. In fact, complainant belonged to Grade M.5.

It follows that, as from 1 January 1960, complainant was entitled to a salary of 5,280 pesos, that is, the salary she would have received on 1 January 1957 had she been regraded on that date as indicated above. However, she has no cause to claim this amount, which was less than the 6,240 pesos paid in 1960. On the other hand her position was altered in July 1960 when the new salary scales came into force. According to these scales, Step 9, on which she was in the old scale, now corresponded to 6,335 pesos; moreover, having become entitled to an increment on 1 January 1961, she would have reached the salary level of 6,550 pesos. She is entitled to these amounts, which exceed those she in fact received.

(c) After July 1961

Under the new classification plan which came into effect in July 1961, budget clerks were graded M.4, and complainant was accordingly downgraded, and the effects of this change on her salary must be determined.

Under Article 220.3 of the Staff Rules "on reduction in grade, the salary of a staff member will normally be fixed at that step in the lower grade which corresponds to his current salary, or at the step nearest below if there is no exactly corresponding step". Although it deals with downgrading, the foregoing provision does not apply in this case. At the end of June 1961, complainant was entitled to an annual salary of 6,550 pesos, whereas the maximum in the new grade is only 5,475 pesos. Complainant's salary therefore cannot be fixed at a corresponding step in the new trade. Moreover, the provision of Article 220.3 which states that if there is no step "exactly" corresponding to the former salary the new salary should be fixed at the step nearest below, is intended to deal with a case in which the salary earned before downgrading falls between two steps of the new scale or exceeds its maximum level by not more than the difference between two steps. The use of the word "exactly" justifies this restrictive interpretation. Article 220.3 is therefore inapplicable in complainant's case, since the salary to which she was entitled before downgrading exceeds the maximum of the new scale by an amount corresponding to five steps in that scale. There is therefore no regulation applicable to complainant, and she is entitled, notwithstanding the new classification, to continue receiving as from July 1961, the annual salary of 6,550 pesos which the Tribunal has already found to be due to her until the end of June 1961.

DECISION

1. Acquiescence of the Organization to the claim for the preservation of complainant's former salary scale is recorded.
2. The decision of 17 April 1961 to the effect that complainant was properly placed in Grade M.4 as from 1 July 1960 is quashed.
3. Complainant is entitled to an annual salary of 6,335 pesos as from 1 July 1960 and of 6,550 pesos as from 1 January 1961.
4. The costs incurred by complainant in this action, the amount of which shall be taxed by the President of the Tribunal, shall be borne by the Organization.
5. The remainder of the complaint is dismissed.

In witness of this judgment, delivered in public sitting on 2 May 1962 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine

Updated by SD. Approved by CC. Last update: 30 May 2008.