

EIGHTY-SEVENTH SESSION

In re Gupta (No. 6)

Judgment 1861

The Administrative Tribunal,

Considering the sixth complaint filed by Mr Shiv Raj Gupta against the World Health Organization (WHO) on 7 September 1998, the WHO's reply of 16 December 1998, including comments invited by the Tribunal from Mr J.M. Mago, the complainant's rejoinder of 17 March 1999 and the Organization's surrejoinder of 30 April 1999;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant's career in the WHO is described in Judgment 1473, dated 1 February 1996, on his first complaint. At the material time his grade was ND.4.

On 7 November 1996, the Administration of the Regional Office for South-East Asia (SEARO) in New Delhi issued a vacancy notice, with the reference SEAR 96/29, for a post of assistant I at grade ND.5 in the Fellowships Unit. The number of the post was 5.1320. The complainant applied for the post on 21 November 1996.

On 9 January 1997, the Ad Hoc Selection Committee examined a first short list of applicants prepared by the Fellowships Officer, responsible for the Fellowships Unit, and requested him to submit a second short list. On 25 February, the Selection Committee decided to hold a test for the candidates included by the above official in the second short list of 13 February, in order to assess their computer skills. By a memorandum of 6 March, the Regional Personnel Officer invited the persons concerned to take the test on 12 March. On 10 March, the complainant sent a memorandum to the Regional Director requesting him to take action against this decision. The Personnel Officer replied in a letter of 11 March that the holding of the test was in conformity with the procedure required by the vacancy notice. The complainant did not take the test.

By a letter of 2 April, the Administration informed the complainant that he had not been selected. On 28 May, he lodged an appeal against this decision with the regional Board of Appeal. The Board issued its report on 8 September. It recommended the Regional Director to dismiss the complainant's appeal, which he did in a letter dated 23 September. The complainant lodged an appeal with the headquarters Board of Appeal on 10 November 1997. On 5 May 1998, the Board transmitted its report to the Director-General and recommended him to dismiss the complainant's appeal. By a letter of 5 June 1998, which is the impugned decision, the Director-General accepted this recommendation.

B. The complainant contends that the official responsible for the Fellowships Unit, the Fellowships Officer, favoured the candidate who was selected, namely Mr Mago. He cites a memorandum from the official responsible, dated 25 February 1997, in which he explained that the selection criteria for the post of assistant were not the same as in the past and that the person selected would have to be well-versed in computer skills. Similarly, he says that the remarks made by the Fellowships Officer concerning the complainant's interview show that official's bias against him.

The complainant also pleads that the selection and recruitment procedures established in a memorandum by the Administration dated 17 June 1994 were breached. The memorandum states that tests are conducted for entry level candidates for certain posts with specific requirements. The complainant deduces therefrom that no test can be held in the case of the promotion of existing staff members. Moreover, he claims that the post put up for competition did not meet the requirements thus described, particularly since computer skills were not essential, but merely desirable. In addition, the Administration made the test central to the selection process when, in accordance with the above memorandum, it should also have considered the other skills of the candidates.

In the view of the complainant, footnote No. 6 to vacancy notice 96/29, which states that a test may be held for the post, cannot be used to justify the holding of the test, since the footnote appears in all vacancy notices and is never put into effect. In the material case, the test was held to facilitate the selection of the candidate chosen previously by the Fellowships Officer.

He adds that that official influenced the Selection Committee and that no test was held for this type of post either before or after the test which he did not attend, with the exception of post No. 5.0047, held by Mr Deepak Chopra.

The complainant asks the Tribunal to order the quashing of the selection process and of the appointment of Mr Mago, the holding of a fresh selection process in accordance with the existing policy and prescribed procedures, and to grant him 10,000 United States dollars as compensation for the moral injury suffered, as well as costs.

C. In its reply, the Organization submits that the complainant offers not a shred of evidence that the Fellowships Officer was predisposed to have Mr Mago appointed. The latter was selected because he was the most suitable candidate for the post which had been put up for competition. Computer skills were an essential requirement of the post. Since the complainant did not have the required skills, it was logical that he was not selected, although the Organization had nevertheless considered his other qualifications.

The Organization explains that the comments made by the Fellowships Officer in relation to the interview are not evidence of his prejudice, but demonstrate his objective assessment of the complainant's candidacy.

It was not for the complainant to decide whether or not the duties of the post required computer skills, but for the official responsible for the Unit which had put the post up for competition.

Under the terms of the memorandum of 17 June 1994, nothing prevents the Administration from holding a test to "verify objectively" the skills of the candidates. The Organization observes that posts Nos. 5.0047 and 5.1320 are of a specific nature and there have been no competitions for similar posts since.

In his comments attached to the reply, Mr Mago states that he possesses higher qualifications than the complainant and that, by not appearing for the test, the latter had clearly shown his inferior feelings. He explains that knowledge of computers is essential for the functions of the post.

D. In his rejoinder, the complainant says that the Fellowships Officer should only have submitted one short list.

He considers that the comments made by Mr Mago require no comment, since they merely reiterate the views of the Administration.

He submits that the position of the Administration is contradictory, since it states first that only candidates who take the test successfully would be considered, then that all the selection criteria for all candidates were taken into consideration before any decision was taken.

He says that the duties of a post have to be determined by the Regional Director, and not by the officer responsible for putting the post up for competition.

He reiterates his arguments concerning the selection procedure and affirms that the memorandum of 17 June 1994 is a comprehensive and exclusive policy statement which does not admit further interpretation.

E. In its surrejoinder, the Organization reaffirms that it followed the selection procedure. It explains that the holding of a test and the consideration of the other skills of the candidates are not contradictory and that the applicable rules do not limit the number of short lists.

CONSIDERATIONS

1. The complainant joined the Regional Office for South-East Asia (SEARO) of the World Health Organization in New Delhi on 12 July 1979 as a clerk-typist at grade ND.3. Following several appointments within SEARO, he was reassigned on 1 July 1992 to the Budget and Finance Unit and promoted to grade ND.4. On 1 January 1994, he was awarded a career service appointment with retroactive effect from 1 July 1993.

2. On 7 November 1996, SEARO issued a vacancy notice - SEAR 96/29 - for a post of assistant I at grade ND.5,

with the number 5.1320, in the Fellowships Unit. On 21 November 1996, the complainant applied for the post and, by a letter of 2 April 1997, the Organization informed him that he had not been selected.

3. The complainant lodged an internal appeal against this decision. After the appropriate procedures had been followed, the Director-General of the WHO finally rejected the complainant's appeal by his decision of 5 June 1998. The complainant then filed his complaint with the Tribunal.

The complainant seeks the quashing of the selection process and of the appointment of the selected candidate, a fresh selection process in accordance with the prescribed procedures, the payment of 10,000 United States dollars as compensation for the moral injury suffered, and costs.

4. The complainant contends that the Organization repeated in respect of this competition the same illegalities and arbitrariness which he had already challenged in his fifth complaint which the Tribunal rules on in Judgment 1860 also delivered this day.

In asking for the impugned decision to be set aside, the complainant has two pleas, namely: (a) the prejudice of the Organization towards him; and (b) the breach of the selection and recruitment procedures by the Organization.

*(a) The prejudice of the Organization
in respect of the complainant*

The complainant reiterates the arguments made in his fifth complaint and refers to the memorandum of 25 February 1997 which mentioned that computer skills would be necessary for the post of assistant. He alleges bias by the Fellowships Officer, responsible for the Fellowships Unit where the vacant post was. This predisposition, in the view of the complainant, is due to the official's "enchantment with computer operations" and the fact that he had "no eyes or ears for anything else". With regard to the complainant's allegations and the above memorandum, the Tribunal refers to 5 of Judgment 1860.

The only new element in this case consists of the report of the regional Board of Appeal, which recommended the dismissal of the appeal by two votes to one. The member of the Board who voted in favour of the appeal, referred to a form completed by the Fellowships Unit which contained the comment that the complainant was "very arrogant and not very popular" and mentioned the sick leave which he had taken. Even if they are correct, these facts are not grounds for considering that the selection procedure was tainted with partiality.

*(b) Breach of the selection and
recruitment procedures*

The complainant reiterates his pleas concerning the irregularity of holding interviews with candidates and in relation to the computer test. In this regard too, the Tribunal refers to 5 of Judgment 1860.

5. For these reasons, the complaint must fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 May 1999, Mr Michel Gentot, President of the Tribunal, Mr Julio Barberis, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

(Signed)

Michel Gentot
Julio Barberis
Seydou Ba

