

NINETY-THIRD SESSION

Judgment No. 2119

The Administrative Tribunal,

Considering the ninth complaint filed by Mr S. R. G. against the World Health Organization (WHO) on 29 August 2001, the WHO's reply of 29 November 2001, the complainant's rejoinder of 15 January 2002 and the Organization's surrejoinder of 9 April 2002;

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

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

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

A. Some information on the complainant's career at the WHO's Regional Office for South-East Asia (SEARO) in New Delhi is given in Judgment 1473 on his first complaint and in Judgment 2051 on his eighth complaint. His present grade is ND.4.

On 10 August 1998 SEARO issued a vacancy notice for a post of clerk III, at grade ND.5. The complainant applied for the post (No. 5.2534) but could not attend for an interview. His application was not successful. He appealed against his non-selection, contending, inter alia, that when asked to attend for an interview he was not given adequate notice and that the Organization had not applied the right procedure in conducting the selection process. In his view it should have applied the procedure announced in information circular IC-98-23 of 14 October 1998, which applied to all General Service posts falling vacant on or after 1 November 1998. In his eighth complaint to the Tribunal, he wanted the selection to post 5.2534 to be set aside and a new selection process to be undertaken in accordance with the procedure defined in the circular of 14 October 1998. He sought 10,000 United States dollars for material and moral injury.

In Judgment 2051, delivered on 12 July 2001, the Tribunal allowed his complaint in so far as it concerned the above two pleas. It ordered the quashing of the selection for the post in question, and ruled that the Organization should proceed with a "new selection in accordance with the procedure currently applicable". It awarded the complainant 500 dollars in costs, and dismissed all his other claims. Paragraph 16 of the Judgment required the Organization to shield the successful candidate from any injury resulting from the quashing of his appointment.

The WHO paid the complainant the sum of 500 dollars on 17 July 2001. It reissued the relevant vacancy notice on 11 September. The closing date for receipt of applications was 3 October 2001.

B. The complainant submits that at the date when he filed this complaint the WHO had not yet implemented the Tribunal's ruling. It had neither set aside the selection to post 5.2534 nor initiated a new selection process. He has two pleas.

First, the Organization should have implemented the Tribunal's decision immediately on receipt of Judgment 2051. As a first step, it had to issue the same vacancy notice again and there was no justification for not doing that as soon as it received the Tribunal's ruling. Secondly, the resultant "uncertainty and suspense" was causing him unnecessary moral injury. He was the "senior-most ... contender" for appointment to the post, and the WHO was wilfully refusing to execute the judgment promptly in order to harm his prospects.

The complainant asks the Tribunal to order the WHO to "immediately proceed" with a new selection process, by issuing the vacancy notice, and grant him 4,000 dollars in moral damages, as well as costs.

C. The Organization replies that it executed Judgment 2051 within a "reasonable period of time" thus respecting the general practice for executing judgments advocated by the Tribunal in Judgment 1812. It paid him 500 dollars in

costs a few days after the date of delivery of the judgment - well within the thirty-day limit recommended in the case law for paying sums set by the Tribunal.

On 20 August 2001 the Organization informed the incumbent of post 5.2534 that his selection to the post had been set aside and that a new selection process was being initiated. It issued the vacancy notice on 11 September, two months from the date of Judgment 2051, which was reasonable given the circumstances of the case. The selection file containing the relevant applications was passed over to the WHO Representative in India on 31 October 2001. Interviews had then to be held. Nonetheless, by issuing the vacancy notice it has already satisfied the complainant's central request.

It denies "wilfully" refusing to implement the Tribunal's ruling and disputes the complainant's claim that he suffered injury. His claim on that score is unsubstantiated. Considering the nature of the issues involved it executed the judgment in a timely manner. The Organization needed a certain amount of time. Consultations were necessary between the Regional Office and WHO headquarters, particularly concerning how to shield the incumbent of the post from injury. There had also been minor changes in the post description.

D. In his rejoinder the complainant submits that he has come to the Tribunal not because the Organization did not execute Judgment 2051 but because it did not execute it with "due promptitude and sincerity". It took over 60 days to start the selection process. The delay was unreasonable and "vindictive", and harmed his promotion prospects. The Organization was "jolted into action" only after he filed his complaint with the Tribunal at the end of August 2001. In his opinion there were no special circumstances necessitating the delay. The changes to the post description were purely of an editorial nature. His allegation that he has suffered injury is justified. The person appointed to post 5.2534 is still on the post; a vacancy notice has thus been issued for a post which is not vacant.

E. In its surrejoinder the Organization reiterates that, keeping in mind the circumstances of the case, it executed the judgment in a timely manner and acted in good faith. It says that Judgment 2051 has now been executed in full. The interviews for the post in question were held on 28 December 2001. The Selection Committee met on 1 February 2002 and unanimously recommended a candidate for the post. The Regional Director approved its recommendation on 6 February 2002. The complainant, it asserts, was not found to be the most suitable candidate, and so was not promoted to the post.

It rebuts the complainant's argument that it took too long to issue the vacancy notice. It could not have issued the notice before the incumbent of the post had been informed that the selection had been set aside. Moreover, the complainant himself took time to reapply for the vacancy; his application was received 28 days after the deadline. He was granted permission to make a late application, and was thereby treated with consideration by the Organization.

Nor does the WHO accept the complainant's view that it was "jolted into action". It says it took steps to prepare for the new selection process before the date when it issued the vacancy notice. In any event, it did not learn of the filing of the complainant's ninth complaint until after the new notice was issued. The incumbent of the post in question was asked to carry out the duties of the post until the selection process had been completed. That does not constitute evidence of non-execution of Judgment 2051, and remains consistent with practice upheld in the Tribunal's case law. Although the alterations in the post description were not extensive, they were not trivial: they were needed, for example, because there was a change of supervisor.

CONSIDERATIONS

1. In his complaint, filed on 29 August 2001, the complainant accuses the WHO of non-compliance with the terms of Judgment 2051, delivered on 12 July 2001, in which the Tribunal ruled on his eighth complaint. In that judgment the Tribunal set aside the results of the competition for post 5.2534 in which the complainant had been unsuccessful, and ordered the holding of a new selection process. He claims moral damages and costs.
2. As a necessary step in carrying out the Tribunal's ruling, on 11 September 2001 the Organization issued a new vacancy notice for the post in question.
3. It is common ground that the time needed for execution of a judgment of the Tribunal, other than a judgment requiring the payment of a fixed sum, will vary according to what is found to be reasonable in the circumstances

(see Judgment 1812).

4. Apart from making an unsupported assertion, the complainant has not shown that the time taken by the Organization to institute the necessary formalities for the holding of a new selection process was unreasonable. Nor is there any demonstration that the passing of 60 days from the pronouncement of Judgment 2051 to the issuance of the new vacancy notice has caused the complainant any damage, let alone damage in the amount claimed.

5. While it is no doubt possible that the WHO might have acted faster, the Tribunal is quite unable to say that it failed to act reasonably.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet