**NINETY-THIRD SESSION**

**Judgment No. 2131**

The Administrative Tribunal,

Considering the complaint filed by Mrs C. E. against the World Health Organization (WHO) on 25 May 2001, the WHO's reply of 27 August, the complainant's rejoinder of 26 October 2001, and the Organization's surrejoinder of 24 January 2002;

Considering Articles II, paragraph 5, and VII 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. The complainant, a British national born in 1948, joined the staff of the WHO in June 1981. She held a series of short-term appointments with the Organization until her appointment was converted to a fixed-term appointment on 1 October 1986. At the material time she held an appointment as a Technical Assistant at grade G.6 on post No. 1.2228.7 in the Division of Drug Management and Policies (DMP).

On 25 June 1991 a vacancy notice for post No. 1.3217 was issued for a Technical Assistant at grade G.7 in the Secretariat Committee on Research Involving Human Subjects; the vacancy notice was later cancelled. On 16 July 1993 the Director of DMP wrote to the complainant stating that, given the quality of support she had been providing, her post description should be revised to accommodate all the functions contained in the G.7 post 1.3217 and to merge this with the key functions in her current G.6 post. He hoped the new post would be graded G.7 without further administrative consideration. He asked her to continue to assume the duties of post 1.3217, along with those of her own post as she had been doing over the past year, until "the necessary administrative action" could be taken. On 30 July he submitted an updated post description for post 1.2228.7 and requested a classification review. On 30 November 1993 the Head of Classification Administration (CSA) replied to the request, informing the Director of DMP, inter alia, that the classification review of post 1.2228.7 was foreseen for the end of the first quarter of 1994.On 31 December 1993 post 1.3217 was abolished.

On 3 February 1994, while classification review of post 1.2228.7 was still pending, the complainant requested "extra pay" in accordance with Staff Rule 320.4, as she had been carrying out the duties of a "post of a higher grade". The Chief of the Division of Personnel Administration rejected her request on 17 February 1994, on the grounds that it was not possible to authorise payment of extra pay while her post was under a reclassification review.

The Head of CSA and the Director of DMP met on 23 February 1995 to discuss whether the complainant's post could be considered a P.2 post or should stay as a General Service post. The Director of DMP submitted a revised post description to the Head of CSA on 16 March. The latter replied on 4 July that if the post was to be considered as a professional post, some of the clerical duties would need to be reassigned to another post; on the other hand, if it was to be maintained in the General Service category, it would be unlikely that the grade would change. On 4 October 1995 the Head of CSA wrote a memorandum to the Director of DMP confirming that in a conversation the previous day they had decided not to pursue the reclassification of post 1.2228.7.

In response to a further request for reclassification that had been made in her 1997 appraisal report, on 17 December 1997 the Head of CSA asked for an updated post description of the complainant's post. On 16 June 1998 the Director of DMP forwarded to him the revised post description and asked that a review of the complainant's duties be carried out. On 29 June the Head of CSA requested further information necessary for the classification review and on 13 October 1998 the Director of DMP sent him the requested information.

On 31 July 1999 the Director of DMP retired. The Division was disbanded and in its place the Health Technology and Pharmaceuticals cluster was formed. In August the complainant contacted the Ombudsman regarding her pending request for reclassification of her post. On 2 September an official in the Management Support Unit (MSU) of that cluster informed the complainant that no decision would be taken until it had been discussed with the new Team Coordinator of Quality Assurance & Safety: Medicines (QSM). The complainant replied on 3 September, asking for a desk audit of her post to be carried out. On 3 November she met with the Programme Manager of the MSU and the Ombudsman to discuss the reclassification of her post; the Programme Manager reiterated the information given to the complainant on 2 September. On 9 November 1999 she wrote to the Programme Manager, asking that action be taken on the request for reclassification of her post, which had been submitted in June 1998; she indicated that if no action were taken by 10 January 2000 she would assume that her request had been refused in accordance with Staff Rule 1230.8.2. The Programme Manager replied on 26 November, informing the complainant that a new QSM Coordinator would take up his duties on 6 December but that a review of her post would not take place before February 2000.

On 4 January 2000 the Director of the Department of Essential Drugs and Medicines Policy (EDM) indicated that he was "very supportive" of the reclassification of the complainant's post and on 7 January the QSM Coordinator wrote to the Programme Manager, asking that arrangements be made for it to be reclassified. On 28 February 2000 the complainant appealed to the Headquarters Board of Appeal.

On 15 September it was decided that the complainant's post should be reclassified from grade G.6 to P.2; she was informed of the decision in a memorandum dated 21 September. The ramifications of promotion from the General Service to Professional category were explained to her and she was asked to indicate whether she accepted the promotion; she did so with reservation of her rights. She was promoted to grade P.2 with effect from 1 September 2000.

In its report dated 21 November 2000, the Board of Appeal recommended the retroactive reclassification of the complainant's post to P.2 as of 1 July 1995 and the payment of all the corresponding sums due, plus interest at 8 per cent, as well as compensation in the amount of 1,500 Swiss francs for the undue delay in implementing the reclassification of the post. It also recommended the reimbursement of legal costs upon the presentation of bills. In a letter of 23 February 2001 the Director-General informed the complainant that she did not agree with all of the Board's recommendations and had exceptionally decided retroactively to promote her as of 1 December 1998. She agreed to the reimbursement of legal fees up to 1,000 Swiss francs upon the presentation of bills; she did not agree to the payment of damages or interest. That is the impugned decision.

On 27 July 2001 the complainant was paid the corresponding contractual entitlements of her reclassification.

B. The complainant contends that there was undue and unreasonable delay in the reclassification of post 1.2228.7. The Director of DMP had asked her on 16 July 1993 to accommodate all the functions contained in post 1.3217, which was a G.7 post, and on 30 July he requested that the Administration carry out a classification review of her post 1.2228.7. The reclassification procedure was not followed up after post 1.3217 was abolished, but she had continued to carry out the duties and responsibilities of the now-defunct higher graded post. It was not until early 1995 that a desk audit was undertaken on her post. She states that as of 16 March 1995 a "proposal" was made to "the competent authorities within the WHO's Administration" to reclassify her post to grade P.2, but that these authorities did not act on the proposal by giving it their "final approval". She submits that this was in breach of the Organization's Staff Regulations. The complainant asserts that between 16 March and 1 April 1995 the Administration had sufficient time to act on this proposal and therefore her promotion to grade P.2 should have "normally" taken place as of 1 April 1995. She emphasises that "at no time and in no manner whatsoever" had she given up the pursuit of the reclassification of her post. In her opinion, it only came to a "preliminary end" because she filed an internal appeal.

She argues that the Organization violated Staff Rule 320.4 when it refused to grant her request for extra pay; besides, it was based on an error of law. In July 1993, at the request of her Director, she assumed the duties of post 1.3217 as well as her own. Under Rule 320.4 she should have been awarded extra pay, representing the salary differential between G.6 and G.7, as of the fourth month after the date she was requested to perform the duties of the higher graded post. Taking into account that post 1.3217 was abolished as of 31 December 1993, she should have been granted extra pay from October to December 1993.

She submits that she suffered moral injury as a result of the Administration's actions. From the time she assumed

the duties of post 1.3217 up to the time her post was reclassified, on 15 September 2000, and she was promoted, the Organization had breached the principle of equal pay for work of equal value.

She claims: (a) the quashing of the Director-General's decision of 23 February 2001; (b) the reclassification of post 1.2228.7 to grade P.2 effective as of 1 April 1995; (c) all the allowances, grants and entitlements normally due to a P.2 staff member at the "appropriate step-level" within that grade; (d) the difference between the sums due to her in conformity with (c) above, as from 1 April 1995 and those actually paid to her from that date until the actual date of implementation of her new post description at the P.2 grade authorised on 15 September 2000; (e) correction of her personnel records to bring them into conformity with claims (a) through (d); (f) "extra pay" under Staff Rule 320.4 for the period October to December 1993; (g) moral damages appropriate for the injury suffered because of the "unreasonably delayed process" of reclassifying her post; (h) "full compensation" for the period 1 October 1993 to 15 September 2000; and (i) adequate reimbursement of legal costs.

C. The Organization replies first that the complainant's claim to extra pay under Staff Rule 320.4 is not receivable, as she did not pursue her request after it was rejected in February 1994. Her claims for fifteen months salary and full compensation are also not receivable, as these are beyond the scope of her internal appeal. It questions what she intends by "full compensation".

On the merits, the Organization contends that the initial effective date for the complainant's reclassification and promotion was established in accordance with the relevant Staff Rules and the Tribunal's case law. The classification review was completed in September 2000 and after obtaining the complainant's assent to be moved from the General Service to Professional category, the promotion was made effective from 1 September 2000. Subsequently, the Director-General changed the effective date to 1 December 1998 in good faith, as an exceptional measure. The reclassification cannot be seen in isolation; it was part of "an office overhaul that affected all staff". The case law has affirmed that in such contexts, although the process might be considered "regrettably slow", there is no justification for the reclassification to take effect retroactively.

It rejects the complainant's claim that the reclassification should have taken place in 1995, and asserts that it was she who was not interested in pursuing the reclassification at that time. The WHO refers to a statement written in August 2001 by the complainant's former Director, in which the latter states that the complainant expressed to him that she would have been interested in having her post reclassified to grade G.7, but not to the professional category. Based on this information, in October 1995 her Director and the head of CSA decided not to continue with the reclassification process, as such a reclassification would have required the complainant's agreement and she had already expressed her unwillingness to move to the professional category.

The Organization observes that the complainant did nothing to pursue the reclassification of her post between October 1995 and July 1997 when she made the request in her appraisal report. Furthermore, she acknowledged in July 1995 that her post description had to be redrafted in order for the reclassification to proceed and that in her submissions to the Board of Appeal she asked for a classification review based on a job description from 1998. The Organization argues that it follows, therefore, that her claim for the retroactive reclassification of her post as of 1 April 1995 has no merit.

The refusal of the extra pay did not violate any Staff Rules and was not based on an error of law. There was no breach of the principle of equal pay for work of equal value; the WHO refutes that the principle applies in the way that the complainant has argued. It rejects her claim that she has suffered moral injury and reiterates that there was no unjustified delay in the reclassification of her post. The Organization points out that the Director-General agreed to reimburse legal costs up to a limit of 1,000 francs but that no bills have been presented for reimbursement.

D. In her rejoinder, while affirming that the Organization has deposited the monies owed to her from the retroactive reclassification of her post, the complainant points out that this was done only after she had filed the present complaint. She questions the good faith of the WHO in this regard and alleges that the Organization has attempted to obfuscate the issues and she refutes the relevance of the case law the WHO has cited in its reply.

She denies that the reclassification process was dropped in 1995 at her request and submits that the August 2001 statement from her former Director is merely an attempt by the WHO to produce "evidence" to support its assertions. While she might have expressed that she was not "overjoyed" at moving from the General Services to Professional category because of possible financial implications, the WHO should not have interpreted this to mean that she was not interested in pursuing the reclassification. At the material time her Director told her he would get

clarification of the financial implications of changing categories. The memorandums between her Director and the head of CSA in October 1995 on the abeyance of her post reclassification were not copied to her and she states she was not informed of their decision. She contends that by not telling her at that time she was unable to contest the decision; this constitutes a grave error of law.

She argues that her request for extra pay should be seen in the context of the reclassification process, particularly as she was informed that it could not be awarded while the reclassification review was ongoing. She did not appeal at the time because she assumed that the request would be satisfied when her post was reclassified; the Board of Appeal found this explanation reasonable. She explains what she means by her claim for "full compensation".

She presses her other arguments and she adds a claim for interest at the rate of 8 per cent per annum on all sums due to her. She modifies her claims (c), (d) and (e) to take into account the payment received by the Organization for the reclassification retroactive to 1 December 1998.

E. In its surrejoinder the Organization maintains that a staff member does not have the right to a promotion as of a particular date, but that nevertheless, in good faith, it decided to make her promotion retroactive to 1 December 1998. It reiterates that the complainant's claim to have 1 April 1995 be the effective date of her reclassification is untenable and it reasserts that her post was not reclassified in 1995 because she was not interested in moving from the General Service to the Professional category; the Organization's Staff Rules require the consent of the staff member in such situations. It asserts that the written statement made by her former Director "is credible and logical". It presses its other arguments.

The WHO reiterates its plea that the complainant's claim for extra pay is irreceivable and that in asking for full compensation the complainant is merely trying to have her post retroactively reclassified fifteen months earlier than 1 April 1995; in any event, this claim goes beyond the scope of her internal appeal and is also irreceivable.

## CONSIDERATIONS

1. The complainant, who was first employed by WHO in 1981 on short-term appointments, became a clerk at grade G.4 in 1986 on a fixed-term appointment. After a reclassification of her post on 1 August 1989, she was promoted to G.6 as a Technical Assistant on post 1.2228.7.

2. While a subsequent classification review of that post was pending, the complainant requested on 3 February 1994 "extra pay" for assuming the responsibilities since 16 July 1993 of post 1.3217, which had been at a higher grade than her own; she based her request on Staff Rule 320.4 which provides:

"A staff member may be officially required to assume temporarily the responsibilities of an established post of a higher grade than that which he occupies; such temporary arrangements shall not be continued for more than 12 months. As from the beginning of the fourth consecutive month of such service, the staff member shall be granted non-pensionable extra pay normally equal to, but not exceeding, the difference between his current pay, consisting of net base salary, post adjustment and allowances, and that which he would receive if promoted to the post of higher grade."

On 31 December 1993 post 1.3217 was abolished.

3. In his reply of 17 February 1994, the Chief of the Division of Personnel Administration said that since a reclassification request for her post 1.2228.7 was submitted on 30 July 1993, it was not possible for him to authorise payment of extra pay. It was foreseen that the reclassification would be dealt with towards the end of the first quarter of 1994.

4. Following a discussion between the Head of CSA and the Director of DMP concerning a review of the complainant's post, the former sent a memorandum to the Director of DMP on 4 October 1995 concerning a discussion they had had the previous day and stating inter alia: "… at your request, Post No. 1.2228 will not be submitted to the Standing Committee on the Classification Review of Posts". There is no written record of that discussion. Yet, it is important to determine whether the Director of DMP took the initiative to decide that the post should no longer be reclassified and if so, whether the complainant was consulted on the matter.

5. To clarify this matter, the defendant Organization requested the Director of DMP, who had retired, to comment on the complainant's statement that she was not consulted or informed of the decision not to pursue the reclassification of her post in 1995. In a statement of 6 August 2001 the former Director of DMP explained that, after receiving a memorandum in July 1995 from the Head of CSA informing him of the status of the reclassification process, he had met with the complainant to discuss the issue. The latter supposedly told him that she was not interested in pursuing the reclassification. She said that she would have been interested in being promoted to G.7 but not in being promoted to the Professional category because she had understood it would be financially disadvantageous. He added that "since the reclassification could not proceed without [the complainant's] agreement, the outcome was the discontinuation of the reclassification process".

6. The complainant appeared to concur with this conclusion at the material time as is reflected in her subsequent full statement of appeal dated 14 March 2000. In this statement, she referred to the advice of the Head of CSA following a desk audit and review of her post description, observing: "… that the situation was difficult, that no G7 posts were being created and that [the Division of Personnel Administration] would offer [her] a P2 as a matter of routine. This offer would not necessarily reflect the duties which [she] was carrying out and could also be disadvantageous with regard to pension and salary".

7. Additionally, she had intimated the same concerns about the P.2 post in her rejoinder to the Administration's reply before the Board of Appeal, in which she stated:

"It is true that [she] was not overjoyed at having her post reclassified disadvantageously (grade P.2) but this is an irrelevant detail as [she] had requested that her post be upgraded to G.7."

8. On this point, however, the complainant denies that she asked that the reclassification process be stopped and the Administration, she asserts, at the material time had no concrete evidence to prove the contrary. She had always considered her reclassification requests as ongoing.

9. On 17 December 1997, more than two years after the meeting between the Head of CSA and the Director of DMP, the former wrote to the latter asking that the complainant's post description be updated. This was after the receipt of the complainant's annual appraisal report dated 10 July 1997 in which she had made the same request.

10. A revised post description was submitted by the Director of DMP on 16 June 1998 to the Head of CSA, who then requested more information to complete the classification review and advised that the review would be in the fourth quarter of 1998. The Director of DMP transmitted the requested information to the Head of CSA on 13 October 1998.

11. Following further inquiries by the complainant on the status of the reclassification of her post, intervention by the Ombudsman and an appeal by the complainant to the Board of Appeal, the Director-General, on 23 February 2001, rendered her decision in a letter to the complainant, enclosing a copy of the Board's report. The Director-General did not agree entirely with the conclusions or recommendations of the Board. She said:

"I have made the following decisions on an exceptional basis, taking into consideration all of the relevant facts and the Board's report: Since your post has in the meantime been reclassified to P.02, effective 1 October 2000, an adjustment for its retroactive effect to 1 December 1998 will be made together with payment of corresponding contractual entitlements. This date is arrived at based on your request for classification review made in 1997, the documentation submitted in 1998 pursuant to the request of CSA, and in keeping with CSA's estimation that the review of the post could be completed by the fourth quarter of 1998. Your legal costs, incurred at the Rejoinder stage of your appeal, will be reimbursed up to CHF 1,000 upon presentation of bills."

The Director-General did not agree with the Board's recommendation to pay interest on any of the amounts awarded or to grant 1,500 francs in damages.

12. On 25 May 2001 the complainant filed a complaint asking, among other things, that that decision be quashed; that the post 1.2228.7 be classified retroactively to grade P.2 with effective date 1 April 1995; that she be granted immediately all the allowances, grants and entitlements normally due to a P.2 staff member as from 1 April 1995 to 30 November 1998 (as amended by complainant in her rejoinder dated 26 October 2001); that she be paid the difference between the sums due to her in conformity with the preceding demand and those already paid to her from 1 December 1998 (as amended in her rejoinder); that she be given the "extra pay" due to her from October to

December 1993 and an additional one-time amount equal to a monthly salary normally due to a G.7 staff member for each of the fifteen months from 1 January 1994 to 31 March 1995; "full compensation" for the period from 1 October 1993 to 15 September 2000; adequate reimbursement of costs for legal counsel and payment of 8 per cent interest per annum on all sums due (as amended in her rejoinder).

13. On the issue of the date on which the classification of her post 1.2228.7 to grade P.2 should become effective, the complainant insists that it should be retroactive to 1 April 1995, the date on which she says it "ought normally to have been reclassified". To be sure, the Head of CSA had received, on 16 March 1995, a revised post description reflecting the duties and responsibilities assigned to the post. He had explained to the complainant's supervisor the implications of changing the post in question from the General Service to the Professional category. He then awaited the Director of DMP's decision to proceed with the reclassification, which did not materialise.

14. However, the complainant herself admits in her brief, where she insists that she never asked that the reclassification process be stopped, that "the official duties were still not clearly defined and the redrafted 1995 post description would have no reason to be submitted to the Standing Committee on the Classification Review of Posts until further corrections had been made".

15. Even if it had been referred to the Standing Committee, it would have taken some time for that Committee to review the pertinent documentation such as the present and proposed post descriptions, the classification review report prepared by CSA, work samples and comments submitted by the incumbent and her supervisor.

16. Moreover, it is important that, in mid-March 1995, the complainant herself was undecided as to whether she should remain in the General Service category at grade G.6 or be promoted to the Professional category at grade P.2. On balance, the evidence favours a finding that the complainant did not want her post to be reclassified to grade P.2 in 1995. Therefore, the Organization was justified in suspending the reclassification process.

17. With the request from the complainant to reclassify her post, the Head of CSA resumed moves for a classification review in December 1997.

18. This was, however, overtaken by a reorganisation with all its attendant difficulties and unsettling effects. No decision could be made without consulting the new Team Coordinator of QSM and the complainant herself, who seemed to have reservations about accepting a promotion to the Professional category.

19. By the impugned decision the Organization appears to concede that there was undue delay in reaching the classification decision. The complainant has thereby suffered moral damages for which she is entitled to compensation which the Tribunal sets at the sum of 1,000 Swiss francs.

20. As she receives partial satisfaction, the complainant is entitled to her costs in the amount of 2,000 francs.

## DECISION

For the above reasons,

1. The WHO shall pay the complainant 1,000 Swiss francs in moral damages and 2,000 francs in costs.

2. Her other claims are dismissed.

In witness of this judgment, adopted on 9 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

Updated by PFR. Approved by CC. Last update: 22 July 2002.