

NINETY-FOURTH SESSION

Judgment No. 2206

The Administrative Tribunal,

Considering the complaint filed by Mr T. M. A.-G. against the International Fund for Agricultural Development (IFAD) on 11 July 2001 and corrected on 16 October 2001, IFAD's reply of 29 January 2002, the complainant's rejoinder of 29 April and the Fund's surrejoinder of 9 August 2002;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant, who is of Italian nationality and was born in 1956, joined IFAD in 1988. In 1998 he occupied the position of Media Relations Coordinator, at grade P.4, in the Media Relations Unit of the Economic Policy and Resource Strategy Department (ED). He was "loaned" to the World Meteorological Organization (WMO) for six months from 20 September 1998 and was seconded to the WMO, on a P.5 post, for a two-year period from 8 April 1999. During his secondment restructuring took place in his former department in IFAD. His former unit became the Communications and Public Affairs Unit.

By vacancy announcement 00/08/P of 25 September 2000 IFAD advertised the position of Coordinator (Communications and Public Affairs). The complainant wanted the decision to publish the vacancy announcement to be revoked. He wrote to the Joint Appeals Board on 9 October and on 11 October sent a request for review to the President of IFAD. The President informed him on 5 December that issuance of the announcement complied with the staff regulations and would proceed. On 7 December 2000 the complainant filed an internal appeal, registered as No. 18, in which he appealed mainly against the decision to issue the vacancy announcement. In its report of 14 March 2001 the Joint Appeals Board made several recommendations, which included cancelling the announcement. The organisation withdrew it on 29 March.

Upon the complainant's return to IFAD on 8 April 2001 his previous position no longer existed in the same form and Ms H.-R. was unofficially occupying the P.5 position of Coordinator of Communications and Public Affairs. The Assistant President in charge of ED informed the complainant in a memorandum of 23 May 2001 that, until a P.5 Coordinator was appointed, he was to assume the temporary title of Coordinator of Communications and Public Affairs, at grade P.4, and undertake the duties and responsibilities listed in the terms of reference that were enclosed. Ms H.-R. was sent a similar memorandum. They were to hold the position jointly, share the same job title, but be responsible for different geographical areas.

B. Having received no final decision from the President the complainant infers rejection of his internal appeal and is appealing to the Tribunal against the Administration's failure to adopt and implement the Joint Appeals Board's recommendations.

The complainant has four main pleas. The first is that the Administration refused to recognise him as the legal incumbent of what had become a P.5 post. Prior to his departure on secondment, agreement had been reached that another staff member would assume the title of Acting Media Relations Coordinator and replace him during his absence; the arrangements made at the time were a clear indication that he would have the right to return to the position he had occupied before his secondment. The Administration undertook restructuring without taking

account of his return. It relegated him to a lower position with no management responsibilities, effectively demoting him. Its refusal to allow him to revert to his previous status constituted an infringement of the provisions on secondment set out in the "Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances". Since no official appointment has been made to the post of Coordinator, he assumes that the duties of the "new post" are those of the former Media Relations Coordinator and he is the official incumbent of the post.

Secondly, IFAD's actions were the result of prejudice against him. He was not given functions appropriate to his grade; indeed by sharing responsibilities with Ms H.-R. his duties were reduced by half.

Thirdly, he suffered irreparable damage to his career as a result of the Administration's failure to observe the rules on selection procedures. It was clear from the wording of vacancy announcement 00/08/P that there was bias in favour of Ms H.-R., since it was adjusted to fit her candidature. Although she had not officially been appointed to the Coordinator post she continued *de facto* to occupy that position until after the Joint Appeals Board issued its findings on appeal No. 18.

Lastly, he claims there was breach of his acquired rights through impairment of the essential conditions of his employment.

The complainant seeks the following relief: assignment from 8 April 2001 to the P.5 post of Coordinator of Communications and Public Affairs with all responsibilities associated with the post; payment of the extra salary and emoluments he would have received at grade P.5 from that date; the quashing of the terms of reference given to him on 23 May 2001 for the P.4 post; the quashing of another decision that had intervened to appoint the Assistant President in charge of ED to the position of Coordinator of Communications and Public Affairs; the quashing of the decision to give Ms H.-R. certain liaising duties that were previously part of his remit; compensation for moral injury; interest on all sums awarded to him; appropriate disciplinary measures against the officials responsible for the "prejudicial manipulation" of the restructuring process that led to his demotion; an apology from IFAD; such other relief as is deemed appropriate; and costs.

He raises two other matters in his brief. Firstly, he asks IFAD to produce with its reply every document considered pertinent to his case. Secondly, pending the pronouncement of the Tribunal's judgment on his complaint, he seeks a provisional order compelling IFAD to place him immediately in the P.5 position of Coordinator and to reinstate him in specific areas of his previous liaison work.

C. The Fund replies that the only matters that are receivable are those pertaining to appeal No. 18. Others are irreceivable for failure to exhaust internal remedies. It explains that on 29 March 2001 the President implemented in part the recommendations of the Joint Appeals Board by cancelling vacancy announcement 00/08/P; he thus quashed the decision now on appeal before the Tribunal. It was superseded by the interim decision of 23 May 2001 assigning the complainant a new title. That decision was in turn quashed by one taken on 31 December 2001 to appoint him sole Coordinator of the Communications and Public Affairs Unit on a temporary basis.

Pursuing the matter of receivability, IFAD says that the complainant addressed a second appeal to the President on 28 May 2001 raising the same issues as those in the case at bar, which arguably results in an abuse of process. Moreover, the restructuring of the Economic Policy and Resource Strategy Department has yet to be finalised, which renders his complaint premature and irreceivable on that account too.

On the merits, and as stated in its submissions on the complainant's internal appeal, IFAD contends that the complainant was wrong to assume that the post advertised in the vacancy announcement was "his", or that he had the right to return to any particular post. There is no basis for that in the Inter-Organization Agreement. The new post was the result of changes in the functions of the Unit, and the responsibilities were broader. It emphasises that it never called into question his right to employment within the organisation at the end of his secondment.

IFAD holds that the action taken by the Administration upon the complainant's return from secondment was justified. Citing the Tribunal's case law, it says that the President has a discretion to implement solutions that can reduce conflictual situations among staff. The complainant began a "campaign of disruption" in his unit upon his return from secondment. There were competing claims for the P.5 post; this led to the decision of 23 May to divide up the duties of the Communications and Public Affairs Unit along regional lines, pending further restructuring within the department. It denies giving the complainant any assurances as to the position he would occupy at the

end of his secondment, and says he has adduced no compelling evidence of any promise made to him. It notes the complainant's argument that he deserved advancement in grade, but refers to an incident in 1996 that put his career in jeopardy.

D. In his rejoinder the complainant notes that the Administration has not heeded his specific request for the production of documents. He asserts that the comment made by the organisation regarding his second internal appeal is irrelevant to the present complaint, and should be ignored. He submits that the incident in 1996 referred to by IFAD is of no relevance to the present complaint.

Contrary to IFAD's assertions, he provided ample evidence of the assurances given to him concerning his right to return to his previous functions. IFAD was itself the cause of the conflictual situation, because it failed to abide by the promise or representations made to him. He expands on his argument that it was the post he had occupied since 1994 that was reclassified to P.5. and advertised as vacant in announcement 00/08/P. Relying on the wording of an information circular on job classification, published on 2 September 1998, he claims that he is entitled to promotion to P.5 level as from 1 January 1998.

He puts forward further claims, seeking: a ruling from the Tribunal to obtain "reinstatement" in the P.5 post and "confirmation" that he is the sole and legitimate incumbent; damages for loss of job opportunities; "health damages" as a result of a delayed operation; salary increases over periods he specifies; financial compensation for the loss of benefits he would have had from 1 January 1998 at P.5 level; and additional legal expenses.

E. In its surrejoinder the organisation specifies that the core issue in this case is the complainant's contention that the issuance of the vacancy announcement violated his statutory rights on his return from secondment. It does not concur with any of the complainant's claims for relief.

CONSIDERATIONS

1. In 1998 the complainant held the position of Media Relations Coordinator at grade P.4 in the Media Relations Unit at IFAD. As from September he was loaned for six months to the WMO, to which he was subsequently seconded for two years as from 8 April 1999 on a grade P.5 post. During his absence from IFAD, restructuring was undertaken and the complainant's former unit became the Communications and Public Affairs Unit. Within that Unit a post of Coordinator at grade P.5 was created, as well as two other posts at grade P.4. The President of the Fund decided to advertise the P.5 position of Coordinator internally. A vacancy announcement was issued on 25 September 2000. The complainant considered that he had a right to return to his former position at the end of his secondment and that he should therefore have been reinstated in the position of Coordinator, which was now at grade P.5. On 9 October 2000 he asked the Joint Appeals Board to set aside the decision to publish a vacancy announcement for the post in question. On 11 October he sent a request for review of the decision to the President of the Fund.

2. The President of IFAD informed the complainant on 5 December 2000 that the issuance of the vacancy announcement complied with the staff regulations in force, which provided that an internal competition could take place in the event of the reclassification of a post in order to determine the most qualified staff member. The President also stated that although the complainant had the right to return to the Fund following his secondment, he had no right to be reinstated in a particular post. He nevertheless implied that if the complainant were to apply for the post in question, his application would be duly examined. The President also emphasised that there was no irrefutable evidence that agreements had been made guaranteeing that the complainant would be reassigned to a particular post upon his return from secondment.

3. On 7 December 2000 the complainant filed an internal appeal with the Joint Appeals Board seeking the revocation of the decision to publish the vacancy announcement. He pointed out that he had a right to be reinstated in the post that he occupied before his secondment.

4. In its report of 14 March 2001, the Board made a fairly harsh recommendation to the administration, deploring a lack of clarity in the human resources policy governing appointments and promotions, as well as contradictions in the submissions and explanations of the various departments. It considered the complainant's rights following his secondment and recommended that the vacancy announcement be cancelled. On this issue, the organisation

followed the Board's recommendation. On 29 March 2001 the staff members concerned were informed in an e-mail from the Personnel Division that the vacancy notice had been cancelled. Upon the complainant's return to IFAD on 8 April 2001 after the end of his secondment, discussions took place in an attempt to find a solution reconciling the interests and susceptibilities of the individuals concerned. An "interim" solution was found on 23 May 2001: the complainant and the person holding the position of Coordinator when he returned to IFAD would both be given the "temporary" title of Coordinator of Communications and Public Affairs until a P.5 Coordinator was appointed; each person would be responsible for a different geographical area. By a memorandum of 31 December 2001 the complainant was appointed sole Coordinator on a temporary basis.

5. Meanwhile, the complainant had filed a complaint with the Tribunal on 11 July 2001 asking to be reinstated in the position he had held before his secondment, which was now at grade P.5, and claiming the extra salary and emoluments he would have received, as well as compensation for moral injury. He also asks the Tribunal to order IFAD to investigate the actions of the officials responsible for wrongly preventing his reinstatement in his former post and of those who had harassed him since his return.

6. The Fund raises an objection to receivability, which is essentially valid.

7. It rightly asserts that the complainant's internal appeal, which he lodged during his secondment to the WMO, concerned the legality of the decision to publish a vacancy announcement. On this issue IFAD states that it followed the Board's recommendation and revoked the vacancy announcement. In a complaint filed with the Tribunal on 11 July 2001 the complainant cannot challenge a decision that was revoked on 29 March 2001 before its implementation had even begun.

8. It is true that the briefs submitted by the complainant to the Joint Appeals Board and to the Tribunal go far beyond a mere request to set aside the decision to publish a vacancy announcement in order to fill the disputed post. The complainant appears to contest all of the measures taken following his return to IFAD concerning him or some of his colleagues. However, the Tribunal's jurisdiction, at this stage of the proceedings, is limited to the examination of the claims made by the complainant in his internal appeal filed prior to his return to IFAD. The complainant lodged a second internal appeal with the Joint Appeals Board on 27 July 2001, that is 16 days after he seised the Tribunal. It is most regrettable that the Board suspended its activities and thus neither examined nor processed this new appeal. As the matter stands, the Tribunal can only examine the situation resulting from the decisions taken by the Fund in response to the first internal appeal filed by the complainant on 7 December 2000: the legality of the decisions which were taken after his return to IFAD, and which therefore could not have been challenged in his first internal appeal, cannot be examined by the Tribunal.

9. In view of the foregoing considerations, the claims for a re-examination of the complainant's situation following his return to IFAD are irreceivable, as they are the subject of the other internal appeal which is still pending.

10. The complainant's first internal appeal of 7 December 2000 must be interpreted as a request for recognition of his right to hold the position of Coordinator at grade P.5 following his secondment. In his rejoinder the complainant even points out that he should have been promoted to this post as from 1 January 1998. However, the Tribunal considers that he had no right to be promoted to grade P.5 either before or during his secondment to WMO and that IFAD's sole obligation was to re-employ him after his secondment, without having to grant him the position of Coordinator at grade P.5 which had been created and which in fact had not been filled.

11. The Tribunal will not examine in detail the arguments to the contrary, which are mostly irrelevant, concerning on the one hand the poor management within the organisation and the personal conflicts which, according to the complainant, characterise it, and on the other hand the criticism which, according to the Fund, can be levelled at the complainant concerning past events which have no bearing on the outcome of the dispute. Similarly, the Tribunal can only reject the complainant's claims for damages, and likewise his additional claims, which are largely unrelated to the present case. Lastly, the Tribunal rejects the request for certain injunctions against the Fund and for the hearing of witnesses, which would add nothing to the solution to the present dispute.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

(Signed)

Michel Gentot

James K. Hugessen

Seydou Ba

Catherine Comtet