

The Administrative Tribunal,

Considering the complaint filed by Ms A. M. against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 8 August 2002 and corrected on 9 September, the Organisation's reply of 18 October, the complainant's rejoinder of 28 November 2002 and the OPCW's surrejoinder of 24 January 2003;

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, who was born in 1960 and has Croatian nationality, saw a vacancy notice on the Organisation's website concerning a General Service post for a Technical Clerk, at grade GS-4, based in The Hague. She applied for the post from Croatia - where she was then residing - on 12 June 1998 and was interviewed in the Netherlands the following month. By a letter of 12 August the Organisation offered her the post as "a local fixed-term appointment for the duration of 3 years", inviting her to indicate her acceptance of the offer by signing and returning a copy of the letter, which she did on 13 August. The Organisation then drew up a letter of appointment dated 24 August, likewise referring expressly to a local fixed-term appointment. This letter of appointment was signed by the complainant on 1 September 1998, which was the date when the appointment took effect.

On 17 December 1998 the complainant sent a memorandum, entitled "Appeal", to her first and second-level supervisors explaining why she believed she had been given local status by mistake. She asked them to assist her in obtaining international status or, exceptionally, the benefits attached to that status. On 29 April 1999 her memorandum was forwarded to the Deputy Director-General, who referred the matter to the Director of Administration. By a memorandum of 14 May the Director of Administration informed the complainant's first-level supervisor that it was not possible to change the complainant's status from local to international. He pointed out that she had been properly informed of the local status of the post throughout the recruitment procedure, and that there had been no need to attach international status to the post to attract qualified candidates.

The complainant's first-level supervisor informed her of this decision, but then protested against it in a memorandum of 28 May 1999 to the Director of Administration. The latter reiterated his refusal in a memorandum of 8 June, referring again to the complainant's voluntary acceptance of a status of which she was properly informed, and explaining that the policy instituted by Administrative Directive ADM/PER-7, whereby international status is granted only for positions which cannot be filled by local recruitment, had been applied consistently since its adoption on 22 August 1995.

On 10 June 1999 the complainant submitted a request for review of the decision to the Acting Director-General, who instructed the Organisation's legal adviser to examine the matter. In his report dated 12 August 1999, the legal adviser noted a lack of clarity in the applicable rules and stressed the need for a new administrative directive on local and international recruitment to avoid any impression of subjectivity or arbitrariness in the application of the Organisation's recruitment policies. However, he drew no conclusion as to the legitimacy of the decision not to change the complainant's status.

In the meantime, one year after her initial appointment, the complainant had applied successfully for another General Service post in the same Branch. This second appointment was at grade GS-5 and took effect on 18 August 1999. It was likewise offered and accepted as a local appointment. Consequently, she considers that her complaint also extends to her appointment at GS-5.

The Director of Administration replied to the complainant's request for review on 10 December 2001, denying her request to change her recruitment status. On 30 January 2002 she filed an internal appeal against the decision of 10 December 2001. In its report of 3 May 2002 the Appeals Council found that the Organisation had correctly recruited the complainant under a local fixed-term contract.

By a memorandum of 14 May 2002, the Acting Director-General informed the complainant that he had decided to accept the Appeals Council's recommendation that her local recruitment status be maintained. That is the decision under challenge, although the complainant cites the decision of 10 December 2001 as the impugned decision.

B. The complainant has two principal pleas. Firstly, she submits that she was not informed of the local status of the post during the recruitment procedure. She assumed that the designation of the appointment as "local" in the letter of appointment was a mistake which would be corrected later. In her application letter she agreed to pay her expenses for the interview, because she believed that the post was to be treated as local for the purposes of the recruitment procedure, but that if an international candidate were selected the resulting appointment would carry international status. It was in the same frame of mind that she signed the subsequent letter of appointment, which also referred to the local status of the post, although she points out that she could scarcely have done otherwise, since the letter of appointment was given to her on her first day at work, and by then she had moved her family from Croatia to the Netherlands.

Her second plea is that under the applicable rules she ought to have been granted international status, and that in accordance with a general principle of international law, those rules should prevail over conflicting and less favourable terms of her contract.

The conditions governing local and international recruitment are set out in Administrative Directive ADM/PER-7, which was issued pursuant to Staff Rules 4.1.03 and 4.1.04. Paragraph 2(a) of the said Directive provides as follows:

"A staff member recruited to serve in any post classified within the General Service category is locally recruited unless the post for which the staff member has been recruited is one which requires specific skills, and which is authorised by the Executive Secretary [now the Director-General] to be filled by international recruitment."

The complainant argues that the two criteria established by the foregoing provision, namely a need for specific skills and the authorisation of the Director-General, are "bipolar" in the sense that if the first criterion is satisfied, the second cannot in good faith and without arbitrariness be denied by the Director-General. In support of her view that the post required specific skills she refers to the legal opinion provided by the Organisation's legal adviser, who stated that the "only basis upon which the complainant could have been preferred over a local candidate was if the post had called for 'special skills' and that the complainant had these skills". Having been preferred over a local candidate, the complainant draws the conclusion that she possessed the necessary "specific skills". She also refers to the memorandum of 29 April 1999 in which her first-level supervisor described to the Deputy Director-General the reasons why she, "and not a local candidate", was selected for the post.

Subsidiarily, the complainant argues that the Organisation breached the principle of equal treatment, since other staff recruited before and after her from outside the Netherlands for similar appointments in the General Service category had been given international status.

Lastly, she refers to a paper published on 1 April 2002 by the US Department of State in which the Director-General in office at the time of her recruitment was criticised *inter alia* for displaying "blatant favoritism [...] with respect to which employees get the coveted 'hired abroad' vs. 'hired locally' benefits".

The complainant asks the Tribunal to quash the decision of 10 December 2001; order the OPCW to change her recruitment status from local to international with effect from the date of her initial recruitment, or alternatively, from the date she took up her GS-5 post; grant her all "applicable rights" arising from such international status, with interest on amounts paid; and award her costs.

C. The Organisation replies that the complaint is irreceivable. With regard to the complainant's initial appointment at grade GS-4, it acknowledges that by agreeing to treat her letter of 17 December 1998 as a request for review despite the fact that it was not forwarded to the Deputy Director-General until 29 April 1999, it waived the deadline for this first stage of the internal appeal procedure. However, insofar as the complainant was clearly informed of

the local status of the appointment and accepted it by signing her contract without reservation, it considers that she has no cause of action in respect of her initial appointment. As far as the second appointment, at GS-5, is concerned, the Organisation submits that the complaint is irreceivable for failure to exhaust the internal remedies, since there is no evidence that the complainant ever challenged the local status of her second appointment.

Subsidiarily, the Organisation asserts that the complainant was aware of the local status of the post throughout the recruitment procedure and that it fully complied with all the applicable procedural requirements. Firstly, her letter of application confirmed her awareness of the local status of the appointment. Secondly, the local status was necessarily mentioned during the pre-interview briefing, which primarily concerns the terms of the appointment and hence the salary and benefits in particular, but she did not query the nature of the appointment at that briefing or indeed during the subsequent interview. Thirdly, she received an offer of appointment referring expressly to the local status of the post, which she signed without reservation. Fourthly, the contract itself - i.e. the letter of appointment - clearly stipulated that the appointment was on local terms, and this was likewise signed by the complainant without reservation. Lastly, the complainant submitted no claims for reimbursement in respect of expenses incurred either at the interview stage or during her subsequent move to the Netherlands, which, according to the Organisation, confirms that she knew that with locally-recruited status she would not be entitled to such reimbursement.

The Organisation denies that it breached the equality principle. It argues that the cases of international recruitment mentioned by the complainant can be distinguished from her case, and that they represented proper applications of the rules established by Administrative Directive ADM/PER-7.

It dismisses her allegations concerning the former Director-General as irrelevant, opportunistic and unsubstantiated.

D. In her rejoinder the complainant presses her pleas on all issues. She denies having been informed of the local status of the post during the pre-interview briefing. She produces a draft administrative directive (ADM 13) dated May 1994, indicating that "staff members who have been recruited outside the country of the duty station shall normally be regarded as international (non-local) recruits".

She observes that the Director of Administration stated in his memorandum of 10 December 2001 that her current post at grade GS-5 is also a local post and that she knew that she would have local status when she signed the corresponding contract. The Acting Director-General's decision of 14 May 2002 confirmed that position, and it follows that her present complaint relates to both appointments.

E. In its surrejoinder the Organisation maintains all its previous arguments.

CONSIDERATIONS

1. When the complainant applied from Croatia for the post of Technical Clerk, grade GS-4, at the OPCW in the Netherlands, in the last paragraph of her letter of application she wrote the following:

"I understand the subject post would be treated as a local recruit post. Therefore, I wish to inform you that I am prepared to pay my travel and other expenses should I hopefully be one of the short-listed candidates."

2. She attended both a pre-interview briefing and an interview on 29 July 1998. There is a dispute between the parties as to whether the issue of local as opposed to international status was raised and they have presented conflicting evidence with regards to what was said and by whom during these interviews. In the light of the overwhelming documentary evidence, the Tribunal does not find it necessary to resolve the contradictory versions.

3. On 12 August 1998 the complainant was offered the post for which she had applied. The letter offering it to her read as follows:

"On behalf of the Director-General, I am pleased to offer you a local fixed-term appointment for the duration of 3 years [...]."

4. The complainant and her family moved to the Netherlands, and on 1 September 1998, the complainant's first day

of work, she signed the letter of appointment for the GS-4 post. It stated as follows at paragraph 1:

"On behalf of the Director-General of the Organisation for the Prohibition of Chemical Weapons, I am pleased to offer you a LOCAL FIXED-TERM APPOINTMENT [...]."⁽¹⁾

5. The complainant states that she was not informed of the local status of the contract. She quotes from a letter from her first-level supervisor, present during the interview, and a legal opinion to the Organisation as support for her belief. She states that she thought the reference to a local fixed-term appointment was a mistake, but that she had no choice but to sign the letter of appointment, having already moved to the Netherlands. She also states that between August 1998 and August 2001 she made several inquiries into her employment status and requested that the OPCW change her status to international, rather than local. Specifically, on 17 December 1998, the complainant formally requested that her status be changed from local to international.

6. On 2 September 1999 the complainant signed a new contract for a GS-5 post, also specified to be a local appointment.

7. On 10 December 2001 the Director of Administration denied the complainant's request to be granted international status. Her subsequent appeal resulted in an unfavourable recommendation from the Appeals Council and on 14 May 2002, the Acting Director-General accepted the Appeals Council's recommendation and upheld the decision to maintain the complainant's employment status as local, rather than international. That is the impugned decision.

8. The complainant argues that, based on her understanding of the difference between international and local posts in the United Nations system, and based as well on the OPCW Staff Regulations and Rules, she was justified in her belief that her position would be granted international status, since she was recruited outside the mission area and since the website vacancy notice did not mention the local status of the post. That position is simply impossible to sustain in the light of the complainant's repeated signature of documents clearly and unambiguously stating that she was being offered and was accepting a local staff post.

9. While her letter of application for the GS-4 post might be viewed as ambiguous with regard to whether the complainant understood the job itself to have local status at the time of her initial interview, the Organisation clearly communicated that status to the complainant in its letter dated 12 August 1998. If the recruitment status had been as important to her as she now alleges, she should have immediately raised with the Organisation any alleged ambiguity or error contained in that letter and enquired as to the precise status attached to the post she was offered. Instead, she apparently decided to move herself and her family to the Netherlands in the hope that the situation would resolve itself after she had commenced her employment. She then signed two separate contracts of employment clearly specifying that her appointment was to have local status.

10. In support of her argument that she was treated unequally compared to other employees in a similar position, the complainant points to the Organisation's alleged practice of "favoritism, arbitrariness and abuse of power". She cites the US Department of State which in its 1 April 2002 paper states as follows:

"The Director-General's management of the Technical Secretariat's personnel and finances has been disastrous. [...] For example: [...] blatant favoritism has been displayed with respect to which employees get the coveted 'hired abroad' vs. 'hired locally' benefits."

11. That document, whether or not it is true, does not prove that the complainant was the victim of favouritism. Nor is it proved by the fact that other employees were appointed with international status to other positions at the time. The fact is that the complainant clearly and unambiguously applied for and then accepted a local-status position with the Organisation. The latter was under no duty not to employ her simply because she was not in fact a local resident and it did everything reasonably possible to inform her of her status in useful time. There is nothing in the applicable staff rules or in the Organisation's administrative practices to support the view that either the post should have been classified as international or that the complainant's special skills were such as to make it so. If she was truly in error as to her situation, she has only herself to blame.

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

1. The block capitals are in the original.