

The Administrative Tribunal,

Considering the complaint filed by Mr J. M. against the Food and Agriculture Organization of the United Nations (FAO) on 26 November 2002 and corrected on 20 December 2002, the FAO's reply of 11 April 2003, the complainant's rejoinder of 26 May, and the Organization's surrejoinder of 3 September 2003;

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. The complainant is an Indian national born in 1942. At the material time, his duty station was Bangkok, Thailand. He retired from the FAO in March 1999 at grade P.5.

Further to recommendations regarding the Regional Office for Asia and the Pacific (located in Bangkok) made in a report dated March 1996 following a fact-finding mission to address organisational issues, the post of Chief of the Operations Branch in that office was downgraded from D.1 to P.5 in order to bring it into line with a new grading policy for field offices. The incumbent of the post at that time kept the grade of D.1 on a personal basis. The complainant occupied the post from 1 September 1997 until his retirement on 10 March 1999.

Two days before his retirement he wrote to the Regional Representative for Asia and the Pacific, requesting that his post be retroactively upgraded to grade D.1. One of the reasons he put forth in support of his request was that the post previously had been graded at the D.1 level. The former replied on 11 March 1999 that it was not within his authority to decide on such a request and that he had accordingly forwarded it to FAO's headquarters in Rome, along with his comments.

Having sent a letter to headquarters on 17 June 2000, the complainant received a reply from the Assistant Director-General in charge of the Administration and Finance Department dated 11 August 2000. The latter informed the complainant that his post had been properly graded at the P.5 level and that, therefore, his request could not be granted. On 11 October 2000 the complainant appealed to the Director-General against this decision. The same Assistant Director-General replied to the complainant on 8 December 2000 that the decision communicated to him on 11 August had been upheld. The complainant filed an appeal with the Appeals Committee on 23 February 2001.

In its report dated 9 May 2002 the Committee concluded that the appeal was not sufficiently grounded and recommended that it be dismissed. The Director-General did so in a letter to the complainant dated 19 August 2002. That is the impugned decision.

B. The complainant says that he had been directly appointed to the post in question and at that time he was led to believe his assignment was at grade D.1. It was not until several weeks after he took up his duties that he had received a copy of the "Notice of Personnel Action" showing that his assignment had been made at grade P.5. However, it is clear that his duties and responsibilities were beyond those of the P.5 level. He had raised this matter informally with his supervisors on several occasions but when this did not result in any action on their part he decided to act formally and wrote to the Regional Representative for Asia and the Pacific.

He argues that the downgrading of his post was not carried out in accordance with the standards set out in the Staff Regulations but was motivated "by a biased determination in order to conform with certain policy decisions with respect to the staffing" in disregard to the staff member's rights. The FAO failed to give due and appropriate consideration to both his and his predecessor's requests for a post classification review. Additionally, the post

description for his post, which was unsigned as well as undated, showed a lesser degree of duties and responsibilities than those actually assumed by him.

He did not receive a copy of his post description in order to initiate a timely post review, even though he had asked for it. This and other procedural flaws have affected his rights to due process. He questions the authenticity of some of the documentation provided to him and he requests that the "real documents" be given to him.

There was an unexplained delay in providing him with documentation that was essential for his appeal and so he was forced to submit an incomplete memorandum of appeal in order to meet the filing deadline. Even the Appeals Committee noted that he had the right to receive such documentation prior to filing his appeal. However, the Committee had refused to grant him an extension until he had received the requested documentation.

He claims the retroactive reclassification of his post to grade D.1 as from 1 September 1997 until 10 March 1999. He also claims legal costs.

C. The FAO replies that the complainant has no cause of action; he neither challenged the grade at which he was appointed nor did he follow the appropriate procedures to request that his post be upgraded. The Organization considers that he commenced the duties of his post "unconditionally". The complainant has provided no proof to support his statements that he was led to believe that his post assignment was to be at a higher grade. Nor has he provided any proof regarding his allegations that he had raised the matter of his post classification "informally". If he had wanted to challenge his post classification he should have availed himself of the procedures set out in the Staff Rules when he took up his duties, rather than waiting until two days before he retired. The FAO notes that the complainant made no formal request for his post description until long after he had already retired.

The Organization contends that the alleged procedural flaws in establishing the post's grade are irrelevant to the case at hand because the complainant was not the incumbent at the time the post was downgraded from D.1 to P.5. In any event, it submits that the procedure followed was an appropriate one. He has offered no proof that the duties of his post were at a higher level.

There were no flaws in the appeals procedure.

D. The complainant rejoins that his cause of action has been clearly explained in his complaint and that he has suffered a loss of revenue and pension rights because the Organization did not grade his post properly. He questions the validity of the report of the fact-finding mission.

He had not formally challenged the grade of the post because he preferred to try to resolve the matter informally, and in keeping with that spirit he did not put anything down in writing. But the Staff Rules provide that a staff member has two years to claim any allowance, grant or payment due, so his request for upgrading his post falls largely within that time limit.

He contends that even if the post was downgraded when he was not yet the incumbent, it was not done properly; the post being inappropriately graded, there is a breach of the principle of equal pay for work of equal value. He submits that he has offered proof that the post was incorrectly graded but the FAO has rejected the post evaluation that he has submitted.

E. In its surrejoinder the Organization maintains that the post in question was downgraded following a proper evaluation and procedure. The complainant accepted his assignment to this post unconditionally. He did not challenge either his transfer to the post or the grading within the applicable time limit, which in this case would have been 90 days. He has misunderstood the staff rule which provides a two-year time limit under which to make claims. The rule does not apply in this case. He has failed to provide proof that "he should have been compensated at the D.1 level".

CONSIDERATIONS

1. The complainant joined the FAO in 1970 and eventually reached grade P.5. On 3 April 1996 he was notified by the Director of the Personnel Division, that, further to the restructuring of the Organization, his post of Senior Country Project Officer, at grade P.5, had been identified for relocation from FAO's headquarters in Rome to the

Regional Office for Asia and the Pacific, in Bangkok. Consequently, the complainant was transferred to Bangkok with the same grade and title. In September 1997 he was assigned to the post of Chief of the Operations Branch which he occupied until he retired on 10 March 1999.

2. On 8 March 1999, more than 17 months after he was appointed to the post of Chief of the Operations Branch at grade P.5, and a mere two days prior to his retirement, the complainant wrote to the Regional Representative for Asia and the Pacific requesting that his post be regraded to the level of D.1 and that he be retroactively granted grade D.1 with all the benefits that would derive from it. His request having been refused, he appealed to the Director-General on 11 October 2000. In his letter of appeal, he argued that he performed duties and assumed responsibilities at the D.1 level during his occupancy of the post. He requested retroactive recognition that the post should have been at the D.1 level. He also requested payment of all salaries and benefits including contributions to the United Nations Joint Staff Pension Fund, proportionate with the D.1 grade for his period of service in the post. In a letter dated 19 January 2001, the complainant requested the FAO to provide him with a copy of his post description at headquarters, as well as that of the post in Bangkok both for himself and his predecessor. He also requested a copy of the report and conclusions of the fact-finding mission, which took place in 1996, to which the Organization had referred in their correspondence.

3. On 23 February 2001 the complainant filed his memorandum of appeal with the Appeals Committee and pointed out that the Organization had not responded to his letter of 19 January. The FAO sent substantially all the documentation requested by the complainant on 9 April. The complainant was granted an extension of 30 days from the receipt of the documents to allow him to submit an addendum to his memorandum of appeal in light of these documents, which he did on 11 May 2001. In a report dated 9 May 2002 the Appeals Committee recommended to the Director-General that the appeal be dismissed as unfounded. The Committee held, unanimously, that there were no elements in favour of the complainant which led him to expect an upgrading. The Committee also emphasised that, even if there had been any merit to his request for his post to be graded at the D.1 level, he had not undertaken any steps to seek an upgrading in line with the official rules and regulations and had only initiated a formal procedure a few days before his retirement. The Committee further noted that the post had been downgraded prior to the complainant's assignment to it. Lastly, it stated that although the late and incomplete forwarding of documentation was regrettable, it was of the opinion that such delay and incompleteness did not have a substantial impact on the case.

4. By a letter of 19 August 2002 the Director-General informed the complainant that, upon review of the report of the Appeals Committee, he concurred with its recommendations in rejecting his appeal as unfounded. That is the impugned decision.

5. The complainant argues that there existed several procedural flaws in the FAO's decision to establish the post in question at the P.5 level; that a properly conducted classification evaluation would have determined that the post's proper grading was D.1; and that there were defects in the appeals procedure which have affected his right to due process. The facts and the record simply do not bear him out.

6. The downgrading of the post took place, it should be remembered, prior to the complainant's appointment to that post. It was part of a major reorganisation exercise, the objective of which was to decentralise many of the operational and administrative support tasks and responsibilities from FAO headquarters to several regional offices. During this reorganisation, the Technical Cooperation Department recommended the transfer of the post of Chief of the Operations Branch to the Regional Office for Asia and the Pacific and its classification at grade P.5. The proposal was sent to the Establishments Committee for endorsement. The Committee endorsed the proposal and recommended to the Director-General to transfer the post as proposed, which he did. In its final report of 9 October 1997, the Establishments Committee graded the post at P.5 retroactively as from 1 May 1996 in Bangkok. The incumbent of the post at the time the post was downgraded maintained his grade at the D.1 level on an *ad personam* basis. When the complainant took up the post it was at grade P.5.

7. The complainant did not challenge his assignment to a P.5 level post when he commenced his duties. The FAO had not received any submission from the complainant with respect to the post grading until two days prior to his retirement. Nor did he avail himself of the prescribed procedures regarding post reclassification. In particular, Manual paragraph 280.333(ii) states:

"(ii) A staff member wishing reconsideration of the classification of his or her post should discuss the matter first with the supervisor and administrative officer; he or she may then submit the request, with a revised post

description and appropriate justification to the division director. The division director will request Personnel Division to review the classification of the post if he/she deems that such action is justified."

8. This procedure would have been the appropriate course of action if the complainant felt that his post's grading did not adequately reflect the actual duties and responsibilities carried out by him. He has not followed it.

9. Furthermore, the alleged procedural flaws in the decision to establish the post in question at the P.5 level are simply not established by the record. The recommendation to downgrade the post was reviewed both by the competent division and the Establishments Committee. Both entities deemed the proposal appropriate and endorsed it. In line with his authority in these matters, the Director-General acted on the proposal. There is absolutely no evidence in the file that would suggest any procedural irregularity. Moreover, there is no evidence that the decision, which is subject only to limited review, was flawed in such a manner as to permit or require the Tribunal to interfere. The allegation that the appeals procedure was flawed and biased to the detriment of the complainant is also without any factual basis. While it may be unfortunate that he did not receive the requested documentation a little earlier, he was given all the time necessary to take account of it in his final submissions to the Appeals Committee. The fact that some of the documents may have consisted only of extracts of relevant portions or may not have been certified has not been shown to have caused him any prejudice.

10. The report of the Committee was thorough and detailed and dealt adequately with all the questions submitted to it. The Director-General made no error in endorsing it.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet