

**NINETY-SEVENTH SESSION**

**Judgment No. 2369**

The Administrative Tribunal,

Considering the complaint filed by Mr N. S. T. against the Food and Agriculture Organization of the United Nations (FAO) on 8 July 2003 and corrected on 26 August, the FAO's reply of 10 November, the complainant's rejoinder of 30 December 2003, and the Organization's surrejoinder of 29 March 2004;

Considering Article II, paragraph 5, 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, a Fijian national born in 1956, joined the service of the FAO on 18 October 1999 as an Integrated Natural Resources Officer at grade P.3 in the Sub-Regional Office for the Pacific Islands under a three-year fixed-term appointment; this appointment was subject to the successful completion of a one-year probationary period.

In a Probationary Performance Appraisal Report signed on 20 July 2000 the complainant's supervisor – the Sub-Regional Representative – noted that the complainant had difficulty in understanding his own role within the Organization and he found the complainant's performance to be lacking. He recommended that the complainant's probationary period be extended by six months in order to give him time to improve his performance. The complainant countersigned the report on 24 July, adding a note that the situation was "very clear" and that his performance would be much better by the next reporting period.

On 28 February 2001 his supervisor informed the complainant that he was recommending that he be separated from service on the grounds that his performance had remained unsatisfactory. In accordance with FAO regulations, the complainant was given five working days to comment. He contested the reasons in an e-mail message of 8 March, stating that his supervisor was biased against him, had not provided him with any effective assistance, and had interfered with his efforts to carry out his approved work plan. He accused him of distorting the truth. The same day the complainant's supervisor denied the allegations in a memorandum to the Director of the Personnel Division.

In a memorandum to the Director-General dated 29 March, the Director of the Personnel Division concurred with the Sub-Regional Representative's recommendation to separate the complainant from the service of the FAO. She requested the Director-General's approval. In a letter of 9 April the Director of the Personnel Division informed the complainant that, on account of his unsatisfactory performance, he would be separated from service upon completion of his extended probationary period, that is on 17 April 2001.

The complainant appealed against this decision to the Director-General on 6 June 2001. The Assistant Director-General in charge of the Administration and Finance Department replied on the Director-General's behalf on 31 July 2001. Noting that the complainant's poor performance had been brought to his attention even before the Probationary Performance Appraisal Report, he informed the complainant that his appeal to the Director-General was rejected and that he could appeal to the Appeals Committee in accordance with the statutory provisions. The complainant did so on 30 September 2001.

In its report to the Director-General dated 29 October 2002 the Committee found that the complainant's allegations were not substantiated and that there had not been any breach of the statutory provisions. It noted, however, that the complainant's technical division at Headquarters had never received any information on his work during the

probationary period. It recommended dismissing the appeal as unfounded. The Director-General did so in a letter dated 6 January 2003. That is the impugned decision.

B. The complainant says that the Director-General's letter and the Appeals Committee's report are based on lies that come from his supervisor, and that he cannot understand how his supervisor's assertions could have been taken seriously after he had "exposed the great number of incorrect information" used against him. He contends that the issue of "sabotage and blocking" carried out by his supervisor was never addressed by either the Director-General or the Appeals Committee. The Organization twisted the facts of the case before the Committee and it did not adequately address all the allegations in his appeal. In any event, the decision was unjust because he was not given a fair opportunity to state his case.

He claims that his supervisor prevented him from carrying out his duties and undermined his professional integrity. He alleges that the Probationary Performance Appraisal Report contains incorrect information, which he considers to be lies, and these have been repeated in the memorandum recommending that his appointment not be confirmed. Furthermore, the report should never have been considered valid, because he was coerced into signing it. His supervisor was biased against him, misled him, and gave him false assurances that the report would not be used against him. This should invalidate the evaluation of his work.

He requests oral hearings as he believes that this is the only way for the Tribunal to truly understand his arguments. In addition to asking for the impugned decision to be quashed, he makes several claims for damages and other compensation, amounting to 1,500,000 United States dollars.

C. In its reply the Organization submits that it separated the complainant from its service after an extended probationary period on the grounds of unsatisfactory performance and in accordance with Staff Regulation 301.0913 and Administrative Manual paragraph 305.5241. Such decision is discretionary and therefore open only to limited review.

The FAO states that the Probationary Performance Appraisal Report signed by the complainant, as well as the subsequent recommendation by his supervisor, constitute ample evidence of his unsatisfactory performance. It asserts that the report contains an objective assessment of the complainant's performance. At no stage did the Organization act in an improper way towards the complainant. His immediate supervisor found the complainant's performance lacking in quantity and quality, his work plan had not been implemented and it was felt that the complainant had not understood his role in the Organization.

The complainant has not provided any evidence to support his allegations that his supervisor misled him or was biased against him. The FAO considers that his allegations constitute grave personal attacks which are inconsistent with standards of conduct for international civil servants.

It points out that the complainant was given an adequate hearing before the decision was taken not to confirm his appointment. At the time his Probationary Performance Appraisal Report was being prepared, he was informed of his unsatisfactory performance and his probationary period was extended for six months to allow him to improve. When his supervisor informed him by a memorandum that he intended to recommend separation from service on the grounds of unsatisfactory performance, the complainant was given five working days to provide his comments thereon. He did so. His supervisor, in turn, submitted his own observations to the Director of the Personnel Division. The Organization took its decision only after examination of the evidence, and in full regard to the applicable rules and procedures.

D. In his rejoinder the complainant expands on his allegations concerning his supervisor's bias against him. He says that the central issue of the case is the abuse of power by his supervisor, "supported by prejudice, fraud, trickery and a lot of lying", and not his work performance. He notes that the Organization has changed its reason for separating him from service, now adding that he was unsuitable for international civil service. He contends that the decision was taken without authority and that there have been a number of procedural or formal flaws.

He adds an additional claim for 500,000 dollars in punitive damages.

E. In its surrejoinder the FAO submits that the complainant has not added any substantive elements to his arguments, nor provided any independent evidence of his allegations. It objects to the new claim of punitive damages, pointing out that this claim is not only groundless, but that it was "submitted too late".

It points out that it has never maintained that the complainant's performance was not the central issue in his separation from service; it questioned his suitability for international civil service in the light of events subsequent to his separation from service; it stresses that the reason he was separated from service related to his poor performance.

The decision was taken by the proper authority following a recommendation by his direct supervisor. It was the latter who was in a position to evaluate properly the complainant's performance. Upon the expiry of the extended probationary period it was considered that his performance did not warrant confirmation of appointment.

## CONSIDERATIONS

1. The complainant was appointed on 18 October 1999 to the FAO's Sub-Regional Office for the Pacific Islands at grade P.3, under a three-year fixed-term appointment, subject to a one-year probationary period. In July 2000 he was assessed for the first time in a performance appraisal report. His supervisor, the Sub-Regional Representative, noted that the complainant had great difficulty in understanding FAO rules and procedures as well as his own role and had not been able to implement his work plan; he recommended extending the complainant's probationary period for a further six months. On 28 February 2001 the Sub-Regional Representative informed the complainant that since the initial appraisal his performance had remained totally unsatisfactory and that, in the interest of the FAO, a recommendation was being sent to the Office of the Director-General for his appointment to be terminated at the end of the probationary period. The complainant immediately contested the reasons given in that recommendation, stating that he "withdr[e]w [the] signature" he had placed on his performance appraisal report. He was informed in a letter of 9 April 2001 from the Director of the Personnel Division that he would be separated from service upon completion of his probationary period, that is on 17 April 2001. He filed an appeal with the Director-General on 6 June 2001, which was rejected on 31 July 2001, then brought the matter before the Appeals Committee, which on 29 October 2002 recommended dismissing the appeal. The Director-General accepted this recommendation in a decision of 6 January 2003, which the complainant impugns before the Tribunal.

2. In support of his complaint, he reiterates the arguments he presented unsuccessfully in the course of the internal appeal procedure. He strongly attacks his former supervisor, whom he accuses of bias against him, and contends that neither the Appeals Committee nor the Director-General considered his arguments seriously and thoroughly and that, as a result, the procedure was flawed. Afraid that the Tribunal might not appreciate the scope of his pleadings on the basis of written submissions only, he requests a hearing for himself and his counsel.

3. The Tribunal finds all the information it needs to settle this case in the written submissions and sees no need to hold hearings. It considers, furthermore, that, contrary to the complainant's allegations, both the Director-General and the Appeals Committee examined all his arguments, even if they did not reply to each and every one of his allegations, so that the procedure cannot be said to have been flawed.

4. On the merits, the defendant rightly points out that the Tribunal exercises only a limited power of review over the assessment made by an administration when deciding to terminate an appointment on the completion of what it deems to be an unsatisfactory probationary period. According to paragraph 305.5241 of the FAO Administrative Manual: "Confirmation of the appointment of staff members [...] is dependent upon satisfactory completion of their probationary period including such elements as (i) satisfactory performance of the duties and responsibilities assigned to them, and (ii) satisfactory conduct and suitability for the International Civil Service". The Tribunal will interfere with decisions taken under this provision only where there has been an error of law or of fact, or a clearly mistaken assessment of the qualities of the persons concerned or abuse of authority.

5. The complainant contends that the impugned decision was taken on the basis of a performance appraisal report and related comments by his supervisor which contained incorrect information and even lies, and that he signed the appraisal report of July 2000 only in response to pressure from his supervisor and to the assurance he was given that the report would not be used against him. More generally, he asserts that the Sub-Regional Representative, his supervisor, was biased against him, that he deliberately prevented him from implementing his work plan and that he gave incorrect information regarding his performance.

6. These arguments cannot succeed: the appraisal report drawn up after the complainant's first months of activity gave a detailed account of the shortcomings noted in the performance of his duties and the improvements

the management expected of him, which justified extending his probationary period. When the complainant signed the appraisal form, he added the words “[t]hings are getting very clear to me now” and promised that his performance would be “much better by the next assessment period”. Although he subsequently asserted that he had only signed the form because of pressure from his supervisor, these allegations are not supported by any evidence, and the fact that the complainant purported, in an e-mail dated 8 March 2001, to withdraw his signature and that he asks the Tribunal for permission to do so, in no way invalidates the disputed appraisal. Even though it is clear from the submissions that the relations between the complainant and his supervisor were very bad, there is no clear evidence to support the complainant’s allegations that he was overloaded with work, given conflicting instructions or prevented from implementing his work plan. It is certainly regrettable that, as the Appeals Committee pointed out, the complainant’s technical division at Headquarters was not kept abreast of the complainant’s work performance, but it was consulted before the decision to dismiss him was taken. When the complainant himself was informed of the intention to terminate his appointment, he was allowed enough time to submit comments, which he did. There is no evidence in the file to support the accusations of lies and abuse of authority. Moreover, the defendant’s accusations of threats made after the impugned decision have no bearing on the outcome of the dispute.

7. Since the claim for the impugned decision to be set aside fails, the complainant’s claims for damages must also be rejected.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 21 May 2004, 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 14 July 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet