

NINETY-NINTH SESSION

Judgment No. 2469

The Administrative Tribunal,

Considering the twelfth complaint filed by Mr S.R.G. against the World Health Organization (WHO) on 7 June 2004 and corrected on 14 July, the WHO's reply of 21 October, the complainant's rejoinder of 24 November 2004 and the Organization's surrejoinder of 24 February 2005;

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 is a former staff member of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi. In Judgment 2051 delivered on 12 July 2001 on the complainant's eighth case, the Tribunal set aside the selection to post 5.2534 – a post for a clerk III (at grade ND.05) – that the complainant had unsuccessfully applied for. The Tribunal ruled that the Organization “should proceed with a new selection in accordance with the procedure currently applicable”. SEARO therefore issued a new vacancy notice for the post on 11 September 2001. The vacancy notice gave the job title as Assistant at grade ND.05.

The complainant, who held grade ND.04, again applied. He was informed by letter of 13 February 2002 that he had not been selected. The complainant appealed to the Regional Board of Appeal (RBA) against the decision not to “select and promote” him to the post in question. He took issue with the fact that Mr K., the person whose selection was quashed in 2001, had been allowed to continue performing the duties of the post, and had been reselected. The complainant also alleged personal prejudice and flaws in the selection procedure and wanted the new selection made to post 5.2534 to be set aside. The RBA recommended dismissing his appeal. In a letter of 10 April 2003, the Regional Director dismissed the complainant's appeal, but said that particular observations made by the RBA would be taken into account in the future. On 16 June the complainant appealed to the Headquarters Board of Appeal (HBA), claiming, *inter alia*, compensation for “mental injury”. In its report dated 16 December 2003 the HBA concluded that the Administration had not acted inappropriately in keeping Mr K. in the post on an acting basis. It noted that the complainant was contesting aspects of the actual selection procedure, but considered that its role was to ensure that the appropriate procedures had been properly implemented. It recommended dismissing the appeal.

In a letter dated 25 February 2004, which is the impugned decision, the Director-General informed the complainant that he was not satisfied that the selection procedures had been properly implemented, and had decided to allow the complainant's appeal. He added that the selection to post 5.2534 would be set aside, that another competition would be initiated, and that the complainant would be at liberty to re-apply.

A third selection process began in May 2004. Mr K. was then reassigned to another post, still at grade ND.05, as Assistant I. On 7 June 2004 the complainant wrote to the Director-General, contesting the measure to keep Mr K. at that grade; he sought compensation for material and moral damages. The complainant retired on 31 August 2004.

B. The complainant submits that the impugned decision was of no avail to him, because he was nearing retirement. His argument is that the selection of Mr K. to post 5.2534, which he qualifies as “wrongful” and “flawed”, affected his chances of career advancement, particularly as the selection to the post was set aside twice in a period spanning three years. He contends that he suffered material and moral injury as a result. He also believes that an award of substantial compensation is justified as he was no longer in a position to apply for the post again.

He seeks 8,000 United States dollars in damages for loss of “possible career advancement” as well as for the “huge moral and material injury resulting from [the] wrong selection made by the WHO administration to the post of clerk-III, ND.05”. He also claims 1,000 dollars in costs.

C. The Organization argues that the complaint is irreceivable. It points out that the complainant submitted only one claim for relief in his appeal to the RBA, which was that “the selection made to post 5.2534 be set aside”. By his decision of 25 February 2004, the Director-General set aside the selection in question; the complainant has thus obtained satisfaction and his complaint shows no cause of action.

The Organization contends that the sole matter at issue is the complainant’s claim for compensation for alleged moral and material injury. In that regard, it holds the view that his claim of moral injury is irreceivable. While it is true that he claimed compensation for “mental” injury in his appeal to the HBA, he made no such claim for compensation in his appeal to the RBA. Citing the Tribunal’s case law, it asserts that the scope of the claims put to the HBA may not exceed that of the claims put to the RBA. As for his claim of alleged material injury, it was put to neither Board, and is thus an entirely new claim, and, as such, it too is irreceivable.

On the merits, the Organization contends that the complainant’s claim for monetary compensation is not properly founded. It emphasises that the decision he is impugning stemmed from the decision not to appoint him to post 5.2534, which was notified to him in February 2002, and consequently any matters that occurred in the context of a later selection to that post are irrelevant to his claim. It follows that the complainant cannot validly raise matters connected with Mr K.’s reassignment to another post in May 2004; besides which, the decision to reassign Mr K. was a proper exercise of discretionary authority. By now criticising the decision to reassign that official to another post the complainant is contradicting his own arguments.

D. In his rejoinder the complainant states that his request for the setting aside of the selection of Mr K. to post 5.2534 was not the only claim for relief that he put to the RBA. Other particulars were recorded on a separate fly-leaf, but the Secretary of the RBA failed to incorporate it into the appeal documents.

The complainant notes that, in the proceedings before the HBA, the Administration raised no objection to his claim for compensation for “mental” injury and is consequently estopped from doing so now. Because Mr K. stayed at the same grade and step upon reassignment, the complainant claims to have suffered moral injury.

E. In its surrejoinder the WHO maintains its position on all matters. It justifies its decision of May 2004 to reassign Mr K. to a post of the same grade, adding that the decision cannot have caused the complainant injury. As reflected in the Tribunal’s case law, the Organization had a duty to shield Mr K. from any injury that might result from the quashing of an appointment that he had accepted in good faith.

It states that the complainant’s contention that he provided the RBA with additional information on a separate sheet is wholly unsupported. It produces an e-mail of 23 February 2005 in which the Secretary of the RBA denies having received any supplementary information from the complainant.

CONSIDERATIONS

1. This case has arisen from the complainant’s non-selection to post 5.2534, as a result of which he lodged a complaint, his eighth, with the Tribunal in May 2000. In Judgment 2051, delivered on 12 July 2001, the Tribunal set aside the selection made for post 5.2534 and ordered that a new selection process be held. It awarded the complainant 500 United States dollars in costs, which the WHO paid. The Organization informed the incumbent of the post, Mr K., on 20 August 2001 that his selection to the post in question had been set aside and that action was being initiated to start a new selection process. Mr K. was meanwhile kept in the post, on an acting basis.

2. On 13 February 2002 the complainant was informed of his non-selection in the new (second) competition for post 5.2534. Consequently, he filed an internal appeal requesting that the selection be set aside. He appealed first to the Regional Board of Appeal (RBA) on 2 April 2002, and then to the Headquarters Board of Appeal (HBA) on 16 June 2003. Both Boards recommended dismissing his claims. The HBA based its recommendation on the grounds that the Administration had not acted inappropriately in maintaining the previously-selected staff member (Mr K.) in post 5.2534, on an acting basis, pending completion of the second selection process; that the selection procedures had been properly implemented in the second competition held for the post; and that there was no evidence of prejudice either against the complainant or in favour of any particular candidate.

3. Finally, the Director-General, on 25 February 2004, concurred with the HBA's conclusions, but said that he was concerned about those aspects of the process related to the reckoning of each candidate's previous experience by the regional Administration. In the light of these concerns, he decided that the selection of Mr K. to post 5.2534 should again be set aside, and that the regional Administration should hold another competition as soon as possible.

4. In implementation of the Director-General's decision Mr K. was informed, by letter of 10 May 2004, that his appointment to post 5.2534 had been set aside; he was also informed that he would be reassigned to a post of the same grade.

5. On 7 June 2004 the complainant filed the present complaint, claiming financial compensation in the amount of 8,000 United States dollars "due to frustration of his chance of possible career advancement for more than three years", and "huge moral and material injury resulting from [the] wrong selection made by the WHO administration to the post of clerk-III, ND.05".

6. The WHO contends that some of the complainant's claims are irreceivable on the grounds that he has not exhausted the internal means of redress. As for his claim for monetary compensation it is not properly founded, and in any event, the amount claimed is excessive.

7. The Tribunal finds that, by his decision of 25 February 2004, the Director-General granted the relief sought by the complainant, that is the setting aside of the selection made to post 5.2534; the complainant had, therefore, obtained satisfaction. Following the setting aside of the selection made as a result of the second competition Mr K. was reassigned to another post of the same grade. This was a lawful exercise of managerial discretion which cannot be said to show prejudice on the part of the Organization. The assertion of the complainant that he was frustrated in his chances of possible career advancement for more than three years, resulting in huge moral and material injury to him, is a highly subjective assessment of his career prospects and is purely speculative. His claim to damages must therefore fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 6 May 2005, Mr Michel Gentot, President of the Tribunal, Mrs Flerida Ruth P. Romero, Judge, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

Flerida Ruth P. Romero

Mary G. Gaudron

Catherine Comtet