

The Administrative Tribunal,

Considering the seventh complaint filed by Mr H.C. S. against the World Health Organization (WHO) on 5 January 2006 and corrected on 15 February, the Organization's reply of 18 May, the complainant's rejoinder of 19 June and the WHO's surrejoinder of 25 July 2006;

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, an Indian national born in 1951, joined the Organization's Regional Office for South-East Asia (SEARO) in May 1981 as a Janitor at grade ND.02. As from April 1983 he worked as an Equipment Operator, first at grade ND.02, then at grade ND.03, and in August 1995 he was promoted to the grade ND.04 post of Clerical Assistant in the Travel Unit.

On 28 November 2001 the complainant submitted to his supervisors a request for reclassification of his post from grade ND.04 to grade ND.05. The request was endorsed by his first-level supervisor in December 2001, but in the event it was not processed further because his second-level supervisor considered that there was no justification for a reclassification at that time. On 14 March 2003 the complainant resubmitted his request, this time addressing it directly to the Personnel Department. However, he was informed by letter of 20 March that he was being reassigned to the post of Clerk II in the Text Processing and Printing Unit (TPP) with effect from 24 March 2003. As a result of that reassignment, the classification of his post in the Travel Unit was not reviewed.

On 31 March 2003 the complainant lodged an appeal against the reassignment decision, contending that it had been taken so as to avoid upgrading his post and that it was tainted with personal prejudice on the part of his second-level supervisor and/or the Administration. In a report dated 19 September 2003 the Regional Board of Appeal found that, whilst the complainant's allegations of prejudice were not fully substantiated, the possibility of prejudice on the part of his second-level supervisor could not be ruled out, given the "inordinate delay" incurred in reaching a "decision on the request for upward reclassification". The Board considered that the Administration ought to have dealt with that request before reassigning the complainant to another post. It therefore recommended that his request for reclassification be considered afresh and that, pending a decision thereon, the complainant be assigned back to his post in the Travel Unit. The Regional Director accepted these recommendations and informed the complainant accordingly by letter of 5 November 2003.

The complainant resumed his functions in the Travel Unit on 11 November, and on 19 December a desk audit of his post was carried out. On 7 January 2004 the Personnel Officer wrote to inform him that a review of the classification of his post, conducted by means of the said desk audit, had confirmed that his post was "well within the range applicable for GS.4 grade". By a letter of 8 January she notified him that he would shortly be reassigned to the post of Clerk II in the TPP Unit. This reassignment took effect the following week.

On 3 March 2004 the complainant lodged a second appeal with the Regional Board of Appeal. On the one hand he challenged the outcome of the classification review, contending that it was "a sham", tainted with personal prejudice, and that the WHO post classification standards had not been properly applied; and on the other hand he challenged the decision to reassign him again to the TPP Unit, arguing that it had been taken without consideration of his particular abilities and interests and hence in breach of the Staff Rules. In a report dated 28 September 2004 the Regional Board of Appeal recommended that the appeal be dismissed. The Regional Director informed the complainant by letter of 1 November that he accepted that recommendation.

The complainant decided to pursue his appeal before the Headquarters Board of Appeal, which issued its report on 6 July 2005. The Board found no flaw in the classification review and held that there was insufficient evidence that

the complainant's reassignment to the TPP Unit had been based on personal prejudice. However, it considered that that reassignment did not appear to be in the interests of either the Organization or the complainant, since the latter was "not qualified to carry out the tasks in the Post Description". It therefore recommended that he be either trained to perform his new duties, or reassigned to a post for which he fulfilled the requirements, or reassigned to his original post in the Travel Unit.

By a letter of 30 September 2005, which constitutes the impugned decision, the Director-General informed the complainant that he agreed with the recommendation of the Headquarters Board of Appeal and that he had instructed SEARO to act accordingly. Further to that decision, the Regional Personnel Officer wrote to the complainant on 3 January 2006 stating that a new post at grade ND.04, to which he could be appointed, was to be created in the Travel Unit and that training would be provided for him if required. The complainant was reassigned to that post on 4 April 2006.

B. The complainant contends that the Organization has shown prejudice against him. He asserts that no action had been taken to implement the impugned decision at the time when he filed his complaint. The measure announced in the letter of 3 January, namely his reassignment to a new post in the Travel Unit, was different from the measures recommended by the Headquarters Board of Appeal; moreover, it was designed to prevent any further review of the classification of his original post by dividing the duties formerly attached to it among two posts.

In dealing with his request for reclassification, and in transferring him to the TPP Unit, the SEARO Administration likewise sought to frustrate his attempts to obtain the reclassification of his original post in the Travel Unit. The processing of his request was delayed not only by his second-level supervisor, who "sat over the case file", but also by the Personnel Department, which, despite the considerable delay already incurred, asked him to start the process afresh instead of instructing his supervisor to forward the original request.

The complainant also sees prejudice in the decision to transfer him – twice – to a post in the TPP Unit without regard for his abilities and interests. He considers that the outcome of the desk audit, which he describes as a "perfunctory interview" carried out by a Personnel Officer who had insufficient training and experience to evaluate his post, was predetermined. According to the complainant, the fact that he has still not been offered a career service appointment, which he also attributes to the prejudice of the SEARO Administration, illustrates the serious disadvantage suffered by him as a result of his transfer to the TPP Unit.

He also draws attention to what he views as a breach of the principle of equal treatment: whereas his request for reclassification was delayed for two years, during the same period many similar requests from other staff members were dealt with in a matter of days.

Lastly, the complainant alleges several violations of the Staff Rules and Staff Regulations. Recalling the findings of the Headquarters Board of Appeal, he submits that the decision to reassign him to the TPP Unit contravened Staff Rule 510.1, in that his particular abilities and interests were not taken into account. He asserts that his reassignment was also contrary to Staff Rule 565.2, because the interests of the Organization were likewise ignored, and to Staff Regulation 4.2, which provides, in pertinent part, that "[t]he paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity". He adds that the impugned decision, based on the recommendation of the Headquarters Board of Appeal, is flawed because whilst the Director-General implicitly recognised a violation of the Staff Rules, he granted no relief in respect of the resulting prejudice.

The complainant asks the Tribunal to set aside the impugned decision of 30 September 2005 and to order the defendant to reassign him to his original post in the Travel Unit. He also requests that the defendant be ordered to conduct a classification review of that post "through a regular Desk Audit by an expert from WHO Headquarters". In the event that the outcome of such review results in reclassification of the post from grade ND.04 to grade ND.05, he asks to be promoted in accordance with Staff Rule 560.2. In addition, he claims "compensation for serious material and moral injury" and an award of costs.

C. In its reply the WHO contends that as a result of his reassignment on 4 April 2006 to a new post in the Travel Unit, and given that the impugned decision has not infringed his contractual rights or otherwise adversely affected him, the complainant no longer has a cause of action. It recalls that reassignment to the Travel Unit was one of the options recommended by the Headquarters Board of Appeal. Whilst the complainant could not be reassigned to his original post, which is now occupied by another staff member, he has been assigned to a post carrying the same

grade and a similar level of duties and responsibilities. Rejecting the argument that this measure was intended to defeat any further claim for reclassification, the Organization explains that it determined, in the exercise of its discretion in the matter, that the amount of work in the Travel Unit warranted the creation of a new post.

In response to the complainant's assertion that no action had been taken to implement the impugned decision prior to the filing of his complaint, the Organization states that he was notified of the proposed measure by the SEARO Administration on 21 December 2005, and that he received the Personnel Officer's letter of 3 January 2006 before he submitted his brief to the Tribunal.

The WHO considers that there is no legal basis for the complainant's request for a review of the classification of his former post, since the review undertaken in December 2003 fully complied with the applicable rules and procedures and was conducted by a Personnel Officer who possessed the requisite experience and training. It emphasises that the Headquarters Board of Appeal found no flaw in the classification review procedure. Referring to the case law, it recalls that the Tribunal exercises only a limited power of review over decisions relating to the grading of a post. Regarding the delay incurred in the processing of the complainant's initial request for reclassification, the Organization observes that he obtained satisfaction on this matter through the decision taken by the Regional Director following his first appeal to the Regional Board of Appeal.

According to the WHO, the decision to reassign the complainant to the TPP Unit was taken as part of a pilot project to implement job rotation amongst General Service staff, and he was one of 27 staff members reassigned on that basis. It therefore dismisses as wholly unfounded the argument that his reassignment constituted a form of prejudice against him, or that it was designed to prevent consideration of his request for reclassification. It also rejects the complainant's allegation of unequal treatment, which, it says, is not supported by any evidence. As for his non-selection for a career service appointment, it states that he was considered for such an appointment, but that in view of the limited number of career service appointments that can be awarded each year, the fact that he was not selected can hardly be interpreted as evidence of bias on the part of the SEARO Administration.

Concerning the alleged violations of the Staff Rules and Staff Regulations, the Organization reiterates that the complainant's reassignment to the TPP Unit was done as part of its staff rotation pilot project and in the interest of improving the efficiency of the Organization. The post to which he was reassigned carried the same grade as his post in the Travel Unit and neither post required specialised qualifications. According to the WHO, there is no evidence to indicate that the complainant was unable to perform his duties and, on the contrary, his performance evaluation for the period in question indicated that he "me[t] all expectations". In any case, the rationale behind any staff rotation policy is precisely to provide staff members with an opportunity to acquire new skills and thus to progress in their career.

D. In his rejoinder the complainant reiterates his arguments. He considers that he has simply been "thrown [...] back to square one", without any compensation for the moral and material injury caused by his reassignment to the TPP Unit. He limits his claims in view of the changed circumstances resulting from his reassignment to the Travel Unit on 4 April 2006, but continues to claim compensation and an award of costs.

E. In its surrejoinder the WHO maintains its position and produces evidence to support its contention that the creation of a new post in the Travel Unit was both necessary and in the interest of the Organization.

CONSIDERATIONS

1. The complainant joined the WHO's Regional Office for South-East Asia (SEARO) in 1981. By 1995 he held the post of Clerical Assistant at grade ND.04 in the Travel Unit. His November 2001 request for a classification review of his post went unanswered as did follow-up enquiries. He resubmitted this same request to the Personnel Department on 14 March 2003. Six days later, he was notified of his reassignment to the post of Clerk II in the TPP Unit at the same grade effective 24 March 2003.

2. The complainant appealed to the Regional Board of Appeal against the decision to reassign him to the TPP Unit. The Board noted the "inordinate delay" in arriving at a decision concerning the request for a reclassification of the post in the Travel Unit and that the Administration should have disposed of the matter prior to reassigning the complainant. In his letter of 5 November 2003, the Regional Director stressed that the reassignment resulted from the implementation of a job rotation policy and was not intended to deprive the complainant of any

reclassification action. The Regional Director also accepted the Board's recommendations and directed that the requested review be undertaken expeditiously and that pending completion of the review the complainant be assigned back to his former post in the Travel Unit.

3. On 7 January 2004 the Personnel Officer informed the complainant that the classification review done according to the International Civil Service Commission's Global Classification Standards confirmed that the post should remain at the same grade. The next day the complainant was informed that he was being assigned back to his earlier TPP post.

4. In March 2004 the complainant appealed to the Regional Board of Appeal against the outcome of the classification review and the decision to reassign him. The Regional Director accepted the recommendation of the Board that this appeal should be dismissed. In January 2005 the complainant appealed to the Headquarters Board of Appeal against this latter decision.

5. The Headquarters Board of Appeal found that the complainant's reassignment to the TPP Unit was not in either the complainant's or the Organization's interests. The Board recommended that the complainant should be either trained to perform the tasks in the TPP Unit, or reassigned to a post for which he fulfilled the requirements, or reassigned to his original post in the Travel Unit. With regard to the complainant's allegations of personal prejudice, the Board found that the classification review had been carried out properly and was not flawed and that there was insufficient evidence of personal prejudice in relation to the reassignment to the TPP Unit.

6. On 30 September 2005 the Director-General accepted the Board's recommendations and directed SEARO to act accordingly. The complainant lodged his complaint against this decision with the Tribunal on 5 January 2006. It should be noted that on 3 January 2006 the Regional Personnel Officer advised the complainant about the creation of a new post at grade ND.04 in the Travel Unit to which he could be reassigned and that he would be given the necessary training on new procedures and systems if required. The complainant accepted a reassignment to that post on 4 April 2006.

7. The WHO contends that the complainant's reassignment – which he accepted – to the newly-created post in the Travel Unit at the same grade and with a similar level of duties and responsibilities constitutes a satisfaction of the claim. As well, the Organization maintains that the complainant's contractual rights have not been infringed nor has he been adversely affected. On this basis, the WHO submits the complainant has no cause of action and, therefore, his claim should be dismissed in its entirety.

8. Although the reassignment to the Travel Unit addresses one aspect of the relief being sought, the claims for relief arising from the allegations of personal prejudice and breach of the Staff Rules and Staff Regulations remain outstanding.

9. The complainant points to a host of actions as evidence of personal prejudice on the part of the Administration. At the core of the complaint is the complainant's assertion that the Administration did everything it could to frustrate the reclassification of his post in the Travel Unit. The administrative actions evidencing personal prejudice include the two-year delay in responding to his request for a reclassification; reassignment to a different post instead of an apology for the delay; a "perfunctory" classification review by an individual without the necessary qualifications or experience; unequal treatment in comparison to other staff members who had likewise requested a classification review; a further reassignment to a post for which he lacked the necessary skills and in which he could therefore not succeed; failure to include his name on the list of career service appointments; and dividing his former Travel Unit post into two posts to preclude a claim for reclassification.

10. Although as pointed out by the Headquarters Board of Appeal the delay in responding to the request for reclassification was unfortunate and disrespectful of a staff member, there is nothing in the record to suggest that it was motivated by personal prejudice. Nor is there anything to support the assertion that the complainant's first reassignment to the TPP Unit was part of an administrative strategy to undermine his request for reclassification. Instead, the record shows that this reassignment, like the subsequent one, was part of a staff rotation pilot project that was applicable to a number of staff members and was under discussion sometime prior to its implementation.

11. It is not in dispute that a classification review, a highly technical exercise, must be conducted by an individual having the requisite training and experience. The complainant's position that the Personnel Officer who conducted the review in the present case did not give adequate time and attention to the task is largely based on the

fact that the relevant interview only lasted one hour. In light of the Organization's response that one hour is the usual amount of time allocated, and in the absence of any evidence regarding the Personnel Officer's training or experience, the complainant's submissions on this point fail.

12. With regard to his claim of unequal treatment, the complainant has offered no evidence of a difference in treatment or that different procedural rules were applied to other staff members requesting reclassifications.

13. As to his name not appearing on the 2005 list of career service appointments, the complainant submits that the fact that his supervisor in the TPP Unit did not recommend him for an appointment, even though he satisfied all the relevant requirements, further evidences the bias of the Administration. The WHO disputes this, stating that the complainant was considered along with all other eligible staff members. Having regard to the positive evaluations the complainant received in 2004 and 2005 from his supervisor and the limitation placed on the total number of career service appointments available each year, there is no evidentiary basis from which it could be inferred that personal prejudice played a role in the complainant's name being left off the list.

14. Finally, in the face of the Organization's evidence that an additional post was created to address the increased workload of the Travel Unit, the complainant's assertion that this was done to thwart any possibility of a reclassification of his former post does not amount to more than conjecture on the part of the complainant.

15. When considering an allegation of personal prejudice, an examination of each incident in isolation may not reveal a broader pattern of conduct that is rooted in prejudice. However, in the present case, even when considered cumulatively, the evidence does not support a finding of personal prejudice.

16. In terms of the complainant's claim to compensation for material and moral injury arising from his reassignment to the TPP Unit in violation of the Staff Rules and Staff Regulations, the Tribunal notes that the Director-General accepted the Headquarters Board of Appeal's conclusion that Staff Rule 510.1 had not been taken into consideration at the time of the reassignment in that the reassignment did not appear to be in the interests of either the Organization or the complainant. For this reason, the Director-General instructed SEARO to implement one of the three options recommended by the Board. As a result, the complainant was offered and he accepted a reassignment back to the Travel Unit. However, as the complainant has not adduced any evidence of disadvantaged career prospects or other injury stemming from his earlier reassignment to the TPP Unit, this claim must fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Giuseppe Barbagallo

Dolores M. Hansen

Catherine Comtet