

The Administrative Tribunal,

Considering the complaint filed by Ms S. R. M. against the World Trade Organization (WTO) on 14 June 2006 and corrected on 17 July, the Organization's reply of 6 October 2006, the complainant's rejoinder of 5 January 2007 and the WTO's surrejoinder of 9 March 2007;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. WTO Staff Rule 106.15(a), concerning eligibility for an education grant, is worded as follows:

“Subject to presentation of satisfactory evidence, an internationally recruited staff member assigned to a country which is not the country of the recognized home shall receive a[n] [...] education grant for each child for whom the staff member provides the main and continuing support and who is in full-time attendance at a school, university or similar educational establishment.”

According to Staff Rule 109.3(a), entitled “Home leave”:

“An internationally-recruited staff member whose recognized home is not situated in the country of the duty station shall be eligible for home leave once every two years and for the payment of the costs of travel to the country of the recognized home. [...]”

The complainant, who was born in 1965, is Indian by birth. She had to relinquish her Indian nationality after she became a Swiss citizen through naturalisation on 1 June 1988. She is the mother of two children.

On 1 February 1988 she was recruited locally by the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade (ICITO/GATT) to fill a General Service category post as a Statistical Assistant. She was employed under a series of short-term contracts, then under a fixed-term contract commencing on 1 October 1988. On 1 July 1990 she was appointed to a grade P.2 post, also under a fixed-term contract. She received a permanent appointment with effect from 1 January 1996. Her contracts were governed by the Staff Regulations of the United Nations and Staff Rules (hereinafter UN Staff Regulations and Staff Rules) until 31 December 1998, the date on which the Commission ceased to exist.

A Notice to the Staff bearing the reference OFFICE(05)/6, issued on 19 January 2005, informed the staff that the Administration had decided to review the recruitment status of fixed-term and regular staff members who believed that their recruitment status had been erroneously determined at the time of their first appointment. On 13 February the complainant filled out the form in Annex III to the said notice, which was entitled “Request for international status”. By a memorandum of 29 July the Director of the Human Resources Division informed her that she should have been redesignated as an international recruit upon her promotion to the Professional category and that it had consequently been decided that her recruitment status would be changed with effect from 1 August 2005.

The complainant then requested confirmation that she would receive the allowances and benefits mentioned in UN Staff Rule 104.7(a), which provides, in pertinent part, that:

“The allowances and benefits in general available to internationally recruited staff members include: payment of travel expenses upon initial appointment and on separation for themselves and their spouses and dependent children, removal of household effects, non-resident's allowance, home leave, education grant and repatriation grant.”

She received a reply informing her that her entitlements would depend on her recognised home country. On 2 September the Director of the Human Resources Division notified the complainant that it had been concluded that her recognised home should be Geneva and that, since her duty station was also in that city, she did not meet the requirements of WTO Staff Rule 106.15(a) in order to be eligible for an education grant, or those of Staff Rule 109.3(a) to be eligible for home leave. By a memorandum of 16 September the complainant asked the Director-General to review this decision. On 14 October the latter confirmed the Administration's decision.

On 11 November 2005 the complainant lodged an appeal with the Joint Appeals Board. In the report that it issued on 8 March 2006, the Board concluded that the complainant was not eligible for the benefits she was claiming. By a letter of 20 March 2006, which constitutes the impugned decision, the Director of the Human Resources Division informed the complainant that the Director-General had decided to accept the Board's conclusion.

B. The complainant submits that she is entitled to an education grant and to home leave since, pursuant to UN Staff Rule 105.3 concerning home leave, India should have been recognised as her home country from the outset. She accepts that the benefits she is claiming may be granted only to internationally recruited staff members serving at a duty station outside their home country; as she has been granted the status of an international recruit, in her opinion the question to be addressed is whether she is serving in a duty station outside her home country. She therefore endeavours to demonstrate by means of several examples that in July 1990 her closest ties were with India and not Switzerland. She emphasises that when she was recruited on 1 February 1988 she held an Indian passport, which she retained after obtaining Swiss nationality in June 1988 and which was still in her possession on 1 July 1990 when she was promoted to the Professional category. Moreover, some administrative documents showed that she had dual nationality, since the WTO had not decided in favour of just one nationality as it ought to have done under UN Staff Rule 104.8(b).

The complainant submits subsidiarily that there are compelling reasons to accede to her request for she satisfies the three criteria mentioned in UN Staff Rule 105.3(d)(iii), which stipulates, in pertinent part, that:

“The [Director-General], in exceptional and compelling circumstances, may authorize:

a. A country other than the country of nationality as the home country, for the purposes of this rule. A staff member requesting such authorization will be required to satisfy the [Director-General] that the staff member maintained normal residence in such other country for a prolonged period preceding his or her appointment, that the staff member continues to have close family and personal ties in that country and that the staff member's taking home leave there would not be inconsistent with the purposes and intent of staff regulation 5.3.”

She considers that she provided the Administration with proof of her ties with India, but accuses it of not assessing the facts objectively and of a lack of transparency. Furthermore, in her opinion, the Director-General has not exercised his discretion appropriately.

The complainant further submits that as an internationally recruited staff member with Swiss nationality she is the victim of a breach of the principle of equal treatment and a victim of discrimination compared with staff members who do not have Swiss nationality and who are eligible for an education grant. She accuses the Administration of having committed an error of fact by not addressing all her arguments, by not adopting a coherent position throughout the procedure and by not fully substantiating its decision.

She asks the Tribunal to quash the decision of 20 March 2006 and to order that she be awarded all the benefits due to internationally recruited staff members, in particular home leave and an education grant, with effect from 11 November 2005. She also seeks an award of costs and such other relief as the Tribunal deems appropriate.

C. In its reply the WTO contends that, in order to determine the complainant's nationality and home country, it is necessary to refer to the provisions applicable on 1 July 1990, in other words the UN Staff Regulations and Staff Rules. It adds that these texts were correctly applied. UN Staff Rule 104.8 did not apply to the complainant because she did not have dual Indian and Swiss nationality when she was recognised as an international recruit. Indeed, by the time she was promoted to the Professional category, she had lost her Indian nationality because she had become a Swiss citizen by naturalisation. She cannot rely on errors committed by the Administration, which at one time considered that she had dual nationality. Since on 1 July 1990 her home country was the same as that of her duty station, it was decided that she was not entitled to the benefits she is claiming. In addition, the Organization endeavours to show that there was no compelling reason in the complainant's case to make an

exception and to recognise that her home was in a country other than Switzerland.

The defendant Organization denies that there has been any discrimination or any breach of the principle of equal treatment and asserts on the contrary that the complainant has been treated fairly, since internationally recruited staff members with Swiss nationality are in a different situation in fact and law from international recruits who do not have Swiss nationality. The WTO contends that the complainant has not proved that certain facts were not taken into account or that the Director-General abused his discretionary authority.

D. In her rejoinder the complainant presses her pleas. She maintains that her ties with India are very close and argues that this is shown in particular by the fact that she has acquired overseas citizenship of India.

E. The Organization reiterates its position in its surrejoinder. It explains that, on the basis of all the information at his disposal, the Director-General considered that at the time when the complainant was promoted to the Professional category she had closer ties with Switzerland than with India. The fact that she has acquired overseas citizenship of India is irrelevant in the present case since she obtained that citizenship in November 2006. Nor does this mean that she has regained Indian nationality. The complainant chose to become Swiss and she cannot now argue that she should be considered as an Indian national because she is emotionally and culturally attached to India.

## CONSIDERATIONS

1. The complainant was recruited in February 1988 as a Statistical Assistant in the General Service category and was initially employed under a series of short-term contracts. On 1 October 1988 she obtained a fixed-term contract and on 1 July 1990 she was promoted to the Professional category, but her status as a locally recruited official remained unchanged. However, following a review of the status of some staff members who believed that they should have been recruited internationally, she was informed on 29 July 2005 that she should have been designated as an international recruit when she had been promoted to the Professional category and that the Director-General had therefore decided to change her status. This measure took effect on 1 August 2005.

2. Considering that this change in status entitled her to certain benefits, including home leave and education grants for her children, the complainant asked the Administration to determine her entitlements, but she received a reply dated 2 September 2005 informing her that, since on the date of her appointment to the Professional category she held Swiss nationality which had been acquired by naturalisation in June 1988, her home country was Switzerland. As her home was in Geneva, she did not have a recognised home in a country other than that of her duty station and she was therefore not eligible for the benefits she was claiming.

3. Since the Director-General confirmed this negative reply on 14 October 2005, the complainant lodged an appeal with the Joint Appeals Board. The Board held in its report of 8 March 2006 that the complainant was not entitled to the benefits in question. This conclusion was accepted by the Director-General. The complainant was informed that her appeal had been dismissed by a decision of 20 March 2006, which she is duly challenging before the Tribunal.

4. The complainant concurs with the Organization that only internationally recruited staff members serving in a country other than their home country are entitled to home leave and to an education grant. However, she submits that she is of Indian origin, that she has maintained very close ties with India and that for a long time she held two passports, even after having acquired Swiss nationality. She takes the view that, on the date on which she ought to have been granted the status of an internationally recruited staff member, the provisions of the UN Staff Rules, which applied to ICITO/GATT until 31 December 1998, should have led the Administration to determine which of her two nationalities would be taken into account for the granting of the disputed benefits. At all events, in her opinion, there were compelling reasons to recognise that her home was in India and not in Geneva. She submits that the decision taken shows that there is discrimination among WTO staff members on the basis of nationality, to the detriment of those who have Swiss nationality.

5. The defendant Organization's submissions rest on the application of the rules in force when the complainant was promoted to the Professional category, in other words in 1990, at a time when WTO staff members were subject to the UN Staff Regulations and Staff Rules. In fact, it would appear more logical to apply the provisions in force at the WTO as from 1 January 1999, since the decision of 29 July 2005, by which the

complainant was informed that she should have been designated as an international recruit, took effect on 1 August 2005 and it is therefore on this date that the complainant's possible entitlement to the benefits available to non-local staff members could be determined. But in truth this comment is of little significance because the texts applicable since 1 January 1999 do not differ from those that were in force before then.

6. Both under the UN Staff Rules and the WTO Staff Rules, the Organization recognises only one nationality for each staff member; a staff member's nationality is determined at the time of appointment and a staff member's home is deemed to be in the country of which the staff member is a national, unless there are compelling reasons to make an exception.

7. The complainant relies in particular on UN Staff Rule 104.8(b), which provides that when a staff member has been legally accorded nationality status by more than one State, the Director-General decides which nationality should be chosen in the light of the country with which the staff member is most closely associated. Similarly, WTO Staff Rule 104.6(b) stipulates that "[w]hen a staff member has been legally accorded nationality status by more than one State, the staff member's nationality shall be the nationality of the State with which the staff member is considered to be most closely associated, in the light of the information provided by the staff member". But the complainant's arguments based on these provisions and on the Organization's alleged shortcomings are of no avail, because it is established that she acquired Swiss nationality in June 1988 – in other words before she obtained a fixed-term contract – and that she thereby forfeited her Indian nationality. The fact that some administrative documents erroneously indicated that she had dual nationality does not detract from the validity of this finding. The same applies to the fact that she allegedly retained an Indian passport because she had not returned it to the competent consular authorities, and to the fact that she has been registered as an overseas citizen of India since 2 November 2006.

8. The complainant also relies on UN Staff Rule 105.3(d)(iii), which specifies that in exceptional and compelling circumstances the Director-General may authorise a country other than the country of nationality as the home country of the staff member. But this possibility is subject to certain conditions, in particular that the staff member in question has maintained normal residence in such other country for a prolonged period preceding his or her appointment. The evidence on file shows that this was not so in the instant case, because the complainant had been living in Geneva since 1981 and had previously resided in various foreign countries which had been the duty stations of her father, who was also an international civil servant. Consequently, the complainant could not in any case benefit from the above-mentioned provisions. Similarly, WTO Staff Rule 104.7(a) permits exceptions to the rule that "a staff member's home shall be deemed to be in the country of which the staff member is a national at the time of the appointment" only if there are "compelling reasons" warranting such an exception. Despite the ties the complainant maintains with India, the submissions do not support the view that the Director-General committed an error of fact or of law when, in the exercise of his discretion, he held that there was no compelling reason for making an exception, in the complainant's case, to the application of the rules to which all staff members of the Organization who have Swiss nationality are subject. Moreover, the existence of provisions restricting eligibility for home leave and education grant to internationally recruited staff members whose duty station is not situated in their home country cannot be deemed discriminatory (see Judgment 2638, also delivered this day).

9. Therefore, the Tribunal cannot but observe that, in the absence of a derogation, the Swiss nationality acquired by the complainant in 1988 prevented her from being granted the benefits available to international staff members whose home is not situated in the country of their duty station. The complaint must therefore be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2007, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 July 2007.