

The Administrative Tribunal,

Considering the second complaint filed by Ms M. P. V. N.-d.-S. against the International Labour Organization (ILO) on 29 May 2006, the Organization's reply of 28 August, the complainant's rejoinder of 29 November 2006 and the ILO's surrejoinder of 17 January 2007;

Considering Article II, paragraph 1, 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 official of the International Labour Office, the secretariat of the ILO. Facts relevant to this dispute are given in Judgment 2287, delivered on 4 February 2004, concerning her first complaint. It should be recalled that the competition opened in May 2001 to fill the grade P.5 post of senior translator/reviser (Head of Spanish Unit) in the Official Documentation Branch, which had resulted in the appointment of Mr P., was cancelled by the Administration in April 2003, particularly on the grounds that it had not been held with the degree of "transparency and objectivity" which candidates were entitled to expect.

In April 2004 a new competition to fill the above-mentioned post was initiated by the publication of Vacancy Announcement No. 2004/27. The complainant, who had been promoted to grade P.5 on 1 October 2003, submitted her application on 6 May 2004. She was called for a technical evaluation but was subsequently informed by letter of 10 May 2005 that another candidate had been selected for the post. She requested an interview with her responsible chief in order to obtain feedback on the technical evaluation, as provided for in paragraph 13 of Annex I to the Staff Regulations; this interview took place on 24 May. Since the complainant was dissatisfied with the result of the interview, she requested a written response from the responsible chief, in accordance with paragraph 14 of Annex I. By a letter dated 23 June she was informed that, while the Selection Board had acknowledged her solid experience as a translator and reviser, it considered that she did not possess the requisite personnel management skills and had therefore selected a candidate whose overall profile was a better match for the post.

The complainant lodged a grievance with the Joint Advisory Appeals Board on 14 July 2005, contending that the response of 23 June was "unsatisfactory and insufficiently substantiated" and that she had been treated unfairly. She asked the Board to recommend to the Director-General that he send her all the documentation concerning the competition procedure in order that she might ascertain the main reasons for the rejection of her candidature, that he appoint her to a "post at an equivalent grade and with equivalent duties, which was also compatible with her eyesight", and that he grant her compensation for moral injury. In its report of 6 February 2006 the Board recommended that the grievance should be dismissed as unfounded. By a letter of 2 March 2006, which constitutes the impugned decision, the Executive Director of the Management and Administration Sector informed the complainant that the Director-General concurred with the Board's opinion and that her grievance had therefore been dismissed.

B. The complainant maintains that the response of 23 June 2005 was "unsatisfactory and insufficiently substantiated" and that she has been treated unfairly. She claims that in view of the absence of detailed reasons explaining the result of the competition, the terms of Vacancy Announcement No. 2004/27, which stipulated that "[a]pplications for transfer submitted by officials in the same grade will be given prior consideration", have certainly not been observed. Moreover, she deplores the fact that the Joint Advisory Appeals Board agreed to consider the Administration's reply, since it had plainly been submitted out of time.

The complainant requests the quashing of the impugned decision, the disclosure of all documentation concerning the technical evaluation of the competition candidates, and compensation for moral injury.

C. In its reply the ILO states that, owing to “the need to protect interests that are very important for the proper functioning of the Organization” and the position of other officials participating in the selection procedure, access to a competition file can be granted only in exceptional cases. Relying on the Tribunal’s case law, it points out that the Tribunal will not interfere with the comparison of entrants in a competition, and that it will consider whether it is advisable to order the production of evidence only when it appears that the choice of candidate may be tainted with some flaw. In the present case the complainant has not furnished the slightest proof of the existence of any flaw.

The ILO considers that the letter of 23 June 2005 contains “all the relevant information” – in particular the grounds for rejecting the complainant’s candidature – and displays no personal prejudice. The Organization adds that, according to the case law, when an organisation informs internal candidates that they have been unsuccessful, it must take care not to harm their prospects.

As for the preferential criterion whereby prior consideration should be given to applications for transfer submitted by officials in the same grade, the Organization emphasises that, as far as the Tribunal is concerned, a criterion of that nature must be taken into account when it is necessary to choose between candidates who are equal in all other respects. This was not so in the instant case since, unlike the successful candidate, Mr G.-M., the complainant did not possess the requisite personnel management skills.

In the opinion of the Organization, the Administration’s late submission of its reply to the Joint Advisory Appeals Board is certainly regrettable, but has caused no injury to the complainant.

At the Tribunal’s request the Organization forwarded a copy of the complaint to Mr G.-M., who indicated by an e-mail of 23 August 2006, which the ILO has appended to its reply, that he had no comment to make about the case.

D. In her rejoinder the complainant contends that some aspects of the procedure have been neglected. For example, she denounces the fact that the guidelines for a “rigorous technical assessment of candidates”, mentioned in Article 5.1 of the Collective Agreement on a Procedure for Recruitment and Selection of 6 October 2000, have not been published. She argues that the Agreement should not have been implemented in the absence of such guidelines and this is the reason why she has a “strong suspicion” that her right to have her application examined in good faith has been violated. She adds that she has a “deep respect for the human and professional qualities” of Mr G.-M. and that at no time has she wished to call his appointment into question.

The complainant provides further details of her claims, indicating that she now seeks 10,000 Swiss francs in compensation for moral injury and 2,000 francs in costs.

E. In its surrejoinder the Organization notes that the complainant does not challenge the appointment of Mr G.-M., but emphasises that such a statement contradicts the arguments on which she relies. It points out that the plea regarding the implementation of the Collective Agreement is not only irreceivable but also irrelevant.

CONSIDERATIONS

1. The complainant, a former ILO official who was assigned to the Spanish translation unit of the Official Documentation Branch, had applied for the post of Head of that unit in a competition opened in May 2001 and had challenged before the Tribunal the decision to appoint another official to the post. As the Administration cancelled the competition and the contested appointment in April 2003, the Tribunal redressed the situation thus created by awarding the complainant 5,000 Swiss francs in compensation for the moral injury she had suffered (see Judgment 2287, delivered on 4 February 2004).

2. In April 2004 a new competition was opened to fill the post of Head of the Spanish translation unit, which had consequently remained vacant. The complainant again applied for this post on 6 May 2004. On 25 November she was informed that she had been shortlisted and she was invited to an interview for the purposes of technical evaluation, which was held on 30 November 2004, but she was ultimately informed on 10 May 2005 that another candidate had been chosen. On 18 May, referring to Article 13 of Annex I to the Staff Regulations, she requested an explanation and an interview with her responsible chief to discuss the technical evaluation conducted during the selection procedure. This interview took place on 24 May 2005, and on 23 June the Head of the Official Documentation Branch confirmed to her in writing that her professional training and experience met the

requirements of the post and had justified her inclusion on the shortlist, that the Selection Board had taken those factors into account and had noted her thorough knowledge of the Office's work, but that it had concluded that she lacked the requisite personnel management skills and had therefore selected a candidate whose overall profile was more suited to the post.

3. The complainant then filed a grievance with the Joint Advisory Appeals Board against the response of 23 June 2005, which she deemed to be "unsatisfactory and insufficiently substantiated". She asked the Board to recommend to the Director-General that he send her all the documentation concerning the competition procedure in order that she might ascertain the reasons for the rejection of her candidature. Since she was of the opinion that she had been treated unfairly, she claimed compensation for moral injury and asked to be given a "post at an equivalent grade and with equivalent duties, which was also compatible with her eyesight".

4. On 6 February 2006, after having examined the documentation related to the selection procedure *in camera*, the Board found that the response given to the complainant was "sufficiently substantiated and consistent with the technical report" and that the complainant's claims should be dismissed. By a letter of 2 March 2006 the Executive Director of the Management and Administration Sector notified the complainant that the Director-General was in agreement with that recommendation and, at the same time, drew attention to the fact that the Board had noted that the examination *in camera* of the documentation concerning the disputed selection procedure had not revealed any flaw.

5. The complainant asks the Tribunal to quash the decision of 2 March 2006, to require that the documentation concerning the technical evaluation of the competition candidates be forwarded to her and to order the Organization to pay her compensation for moral injury. She does not request that the results of the competition be cancelled and even states in her rejoinder that she has "deep respect for the human and professional qualities of Mr [G.-M.] and at no time wished to call into question the decision regarding his appointment". The dispute is therefore confined to the refusal of her request to be sent the documentation relating to the competition procedure, especially that regarding the technical evaluation of the candidates.

6. The complainant refers to her professional skills and argues that her candidature ought to have received preferential treatment, as provided for in the vacancy announcement, according to which "[a]pplications for transfer submitted by officials in the same grade will be given prior consideration". But these arguments, which are not developed, are of no avail since the complainant has carefully pointed out that she is not requesting the cancellation of the results of the competition.

7. The complainant essentially challenges the validity of the reasons she was given in the letter of 23 June 2005, to wit that her personnel management skills were deemed insufficient, and it is on this account that she contends that disclosure of the documentation she requests is necessary. However, the Tribunal has consistently held that it will not interfere with the comparison of the respective merits of the candidates in a competition unless it appears possible that it is tainted with serious flaws, and it is only then that it will order the production and, perhaps, the disclosure of the evidence on which the Administration's decision was based (see for example Judgment 2163, under 13). In the instant case, the complainant's submissions contain nothing to suggest that disclosure of the file examined *in camera* by the Joint Advisory Appeals Board would bring to light any flaw. The assessment of her personnel management skills obviously falls outside the scope of the Tribunal's power of review given that there are no grounds for doubting the impartiality of the persons who conducted the evaluation. The letter of 23 June 2005 notifying the complainant of the Selection Board's conclusions was admittedly laconic, but it clearly set out the reasons justifying the decision to reject her candidature.

8. The complainant takes the Organization to task for not complying with the stipulations of the Collective Agreement on a Procedure for Recruitment and Selection of 6 October 2000 when conducting the technical evaluation of the candidates in the competition. However, the Tribunal can only dismiss this plea, without there being any need to examine its receivability; even though the guidelines mentioned in the said Agreement have not been adopted, their absence could not prevent the Administration from carrying out the objective technical evaluations incumbent upon the authority responsible for selecting candidates in a competition.

9. The complainant's claims must therefore be rejected. The fact that the Human Resources Development Department did not meet the deadlines laid down in the relevant provisions of the Staff Regulations when submitting its reply to the Joint Advisory Appeals Board has no bearing on the lawfulness of the proceedings and did not imply that the Board necessarily had to disregard the reply.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 April 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