

M. (No. 2)

v.

ILO

127th Session

Judgment No. 4105

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms V. E. M. against the International Labour Organization (ILO) on 17 December 2015 and corrected on 25 January 2016, the ILO's reply of 28 April, the complainant's rejoinder of 12 July and the ILO's surrejoinder of 16 September 2016;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to grant her a personal promotion in the context of the 2014 exercise.

The complainant joined the International Training Centre of the ILO in 1977. After several promotions, she reached grade P.4 in September 2003.

The personal promotion scheme, which is set out in Circular No. 85/25 (Rev. 1) (hereinafter "the Circular"), allows personal promotions by one grade to be granted to officials meeting specified merit and long-service criteria. In 2015, applying the accelerated rate of calculation provided for in paragraph 9(b) of the Circular, the complainant had accumulated the 13 years of service in the same grade that were

required in order to be considered for a personal promotion in the 2014 personal promotion exercise. On 22 May 2015 she was thus invited by the Human Resources Services (HRS) to complete the “Statement of experience and qualifications” form. She submitted the form on 29 May 2015. The complainant’s application for a personal promotion was considered under Article 7.11(b) of the Staff Regulations of the International Training Centre, which relevantly provides that officials in the Professional category below the grade of P.5 shall be eligible for promotion if their conduct has been fully satisfactory and their performance of duties has been consistently superior to that normally associated with the level of responsibilities of their job, and they have served, or are deemed to have served, at least 13 years in their present grade. In its report dated 2 July 2015, the Sub-Committee on Human Resources Issues of the Joint Negotiating Committee (hereinafter “the Sub-Committee”) found that the complainant had not regularly performed her duties at a level beyond the normal requirements of the job and that it was therefore unable to recommend her for a personal promotion. On 13 July 2015 HRS informed the complainant that, based on the Sub-Committee’s recommendation, the Director of the Centre had decided not to award her a personal promotion in the 2014 exercise.

On 14 July 2015 the complainant lodged an internal complaint under Article 12.2 of the Staff Regulations, challenging the decision of 13 July on the grounds that it was not based on an objective assessment of her performance. She suspected that the decision had been biased by considerations unrelated to her performance and that it constituted an act of retaliation. She also contended that Article 7.11(c) of the Staff Regulations was applicable to her case. Article 7.11(c) relevantly provides that officials in the Professional category below the grade of P.5 who have served at least 25 years in the Centre, the ILO, the United Nations or another specialized agency with at least 13 years in their present grade are eligible for promotion if their conduct and performance of duties in their present grade have been satisfactory. She requested the Director, *inter alia*, to disclose the report of the Sub-Committee, to grant her a personal promotion to grade P.5 effective from October 2014, to remove the decision of 13 July 2015 from her personal file and to award her material and moral damages.

On 18 September 2015 the complainant was informed that the Director of the Centre had decided to dismiss her internal complaint as devoid of merit. Referring to paragraph 17 of the Circular, the Director found that the internal complaint was receivable only with respect to the matters not related to the assessment of the complainant's merit. She concluded that the complainant's case had been correctly treated under Article 7.11(b) of the Staff Regulations and that the review conducted by the Sub-Committee was at all stages thorough, fair and comprehensive. That is the impugned decision.

The complainant asks the Tribunal to quash the decisions of 13 July 2015 and 18 September 2015 and to order the Director to write a letter of apology for the purpose of redressing her professional reputation. She further asks that the personal promotion to grade P.5 be awarded to her effective from October 2014, and that her salary and pension contributions be adjusted accordingly. The complainant requests that the minutes dated 13 July 2015 and 18 September 2015 be removed from her personal file, and she claims moral and material damages as well as costs.

The ILO asks the Tribunal to dismiss the complaint as devoid of merit and to dismiss the claim for a letter of apology as irreceivable.

CONSIDERATIONS

1. The complainant impugns the Director of the Centre's decision, communicated to her by a minute from the Chief of HRS, dated 18 September 2015. In that decision the Director dismissed the complainant's 14 July 2015 internal complaint against the Director's 13 July 2015 decision not to grant her a personal promotion during the 2014 personal promotion exercise. She was informed that, in accordance with Article 12.2 of the Staff Regulations and paragraph 17 of the Circular, her complaint was irreceivable insofar as it regarded the assessment of her merit. She was also informed that, at the relevant time, she was not eligible for a promotion under Article 7.11(c) of the Staff Regulations, as the accelerated rate of calculation provided for in paragraph 9(b) of the Circular for the calculation of years of service in the same grade

did not apply. The decision concluded inter alia that “[c]oncerning the transparency and the fairness of the process, [the complainant] ha[d] not presented any evidence to support [her] allegation that [the promotion exercise] was tainted with prejudice or bias. The Director was satisfied that the review conducted by the Sub-Committee was at all stages thorough, fair and comprehensive. All the elements were duly considered and, having found no inconsistencies, the Director decided to uphold the recommendation made by the Sub-Committee.” The internal complaint, insofar as it was receivable, was dismissed as devoid of merit.

2. In the 13 July 2015 decision, challenged in the complainant’s internal complaint of 14 July 2015, the Director endorsed the recommendation of the Sub-Committee. She stated that “[o]n the basis of the documentation reviewed in accordance with paragraph 10 of the Circular [...], the Sub-Committee concluded that under the assessment of merit, the minimum standard required was not met over the period under consideration. The Sub-Committee found that the assessment of merit provided by [the complainant’s] responsible chief and a review of [the complainant’s] personal file did not clearly demonstrate that [she] had regularly performed at a level beyond the normal requirements of the job.” The complainant was also informed by that decision, that her case would be “re-examined in 2016 in light of [her] eligibility for a personal promotion in accordance with the provisions of Art[icle] 7.11 c) ii) of the Staff Regulations as [she would] have reached 13 full years in the same grade and 25 years of service”.

3. In challenging the decision not to grant her a personal promotion during the 2014 personal promotion exercise in accordance with Article 7.11, the complainant relies on the following grounds: (a) the complainant’s performance was consistently above average, as documented in her performance appraisals and by the “Statement of experience and qualifications”, and as proven by the fact that she managed a second team, worked nine to twelve hours a day, was proficient in four languages, and accepted numerous additional functions, including substituting for her responsible chief; (b) the Sub-Committee should have sought clarification from her before issuing a negative recommendation;

(c) the assessments of the quality and quantity of her work by her responsible chief were positive; (d) the assessment of her personal attributes (“her behaviour has sometimes been divisive and unduly aggressive”) was inaccurate as it referred to her activities within the Staff Union instead of referring to her work, and the criticism that she was less flexible with regard to accepting suggestions for new methods of work, did not reflect the reality of facts; (e) the Sub-Committee’s recommendation was tainted by bias against her; (f) the decisions not to promote her were not fully motivated; (g) the Centre should have used the accelerated rate of calculation provided for in paragraph 9(b) of the Circular (“the last six years of service before the mandatory age of separation specified in the Staff Regulations (Article 13.3) count at one-and-a-half times the normal rate of accumulation”) to promote her in 2014 in accordance with Article 7.11(c), as the accelerated rate of calculation should also be applied under this provision.

4. Article 7.11 of the Staff Regulations provides as follows:

“Promotion linked to Official’s Record of Service

- (a) Officials in the Professional category below the grade of P.5 and officials in the General Service category who have not reached the top grade of their category shall, once only in the course of their entire service with the Centre, be eligible for promotion in accordance with either paragraph (b) or paragraph (c) of this article.
- (b) Subject to the criteria, procedures and numerical limits determined by the Director after consulting the Staff Relations Committee, officials referred to in paragraph (a) shall be promoted to the next higher grade of their category if:
 - (i) their conduct has been fully satisfactory and their performance of duties has been consistently superior to that normally associated with the level of responsibilities of their job, and
 - (ii) they have served or are deemed, in accordance with the criteria established, to have served at least 13 years in their present grade.
- (c) Officials referred to in paragraph (a) shall be promoted to the next higher grade of their category if:
 - (i) their conduct and their performance of duties in their present grade have been satisfactory, and

- (ii) they have served at least 25 years in the Centre, the ILO, the United Nations or another specialized agency with at least 13 years in their present grade.”

5. Paragraphs 7(a), 9(b), 10, 11, 14 and 17 of the Circular provide as follows:

“Personal promotions

7. The primary objective of the personal promotion scheme is to offer the possibility of promotion to long-serving officials whose contribution to the Centre goes beyond the normal requirements of the position they occupy, as evidenced by their performance over the years, but who have not been able to achieve career advancement through other procedures, i.e. regrading of the position or appointment to another position following competition. The following provisions apply:

- (a) Officials who meet a specified long-service requirement will be considered for a personal promotion on the basis of merit.
- (b) [...]”

“Years of service requirements

9. In order to be eligible for consideration for a personal promotion the requirement of 13 years of service in the same grade must be met by the official. The method of calculating years of service in the same grade is as follows:

- (a) [...]
- (b) the last six years of service before the mandatory age of separation specified in the Staff Regulations ([Article 13.3](#)) count at one-and-a-half times the normal rate of accumulation in the same way as extra credits are given for years of service spent on transfer or secondment in the field;

[...]”

“Assessment of merit

10. The Staff Relations Committee will base its recommendations on:

- (a) an assessment of merit provided by the official’s responsible chief;
- (b) a statement of experience, qualifications and other relevant information provided by the official; and
- (c) a review of the official’s personal file.

11. A positive recommendation by the Staff Relations Committee will require a clear demonstration that the official has regularly performed at a level beyond the normal requirements of the job. Account will be taken of three main criteria: quality of work, quantity of work and personal attributes

applied to the job. Special factors to be considered in making assessments against each of the criteria are illustrated on the appropriate forms to be completed by the responsible chief and the official. The importance of the factors may differ from one job to the next depending on their relevance to good performance. As a minimum, however, either the quality or quantity of work must be assessed to be above normal. In addition, the Staff Relations Committee cannot recommend a personal promotion if there is a negative assessment (i.e. below normal requirements) with respect to any of the three main criteria, provided that this negative assessment is not manifestly in contradiction to the performance appraisals of the official. Significant efforts made by the official towards career development will be viewed positively.”

“Procedure for the award of personal promotions

[...]

14. The Staff Relations Committee will review the statements. It will in the first instance determine consistency between the statements and the official’s personal file. In the event of inconsistency, it may seek clarification, in writing or in a personal interview, from or with the official and/or the responsible chief. The Committee will then submit a recommendation to the Director as to whether a personal promotion shall be awarded.

[...]

17. In the event of a negative decision of the Director, the responsible chief or the official may ask the Director to review his decision on the ground that the statement of reasons given to the official contains an important error of a factual nature. The Director may refer this request to the Staff Relations Committee for advice. The provisions of Chapter 12 of the Staff Regulations may be invoked only with respect to questions which do not relate to the assessment of the official’s merit for a personal promotion.”

6. The plea regarding the application to Article 7.11(c) of the accelerated rate of calculation provided for in paragraph 9(b) of the Circular is unfounded. Article 7.11 provides for eligibility for promotion in two instances: the first, Article 7.11(b), regards promotions for exceptionally meritorious officials who have regularly performed at a level beyond the requirements of the job, whilst the second, Article 7.11(c), regards promotions for satisfactory service based on duration of service. The wording of Article 7.11(b)(ii) (“they have served or are deemed, in accordance with the criteria established, to have served at least 13 years in their present grade” (emphasis added)) allows for the accelerated rate of calculation provided for in paragraph 9(b) of the Circular. The wording of Article 7.11(c) does not contain the same expression.

This difference evidences that the years of service referred to in that provision refer only to full years of service. The Circular outlines, in paragraph 5, the objective and scope of the personal promotion scheme as permitting, “where possible: (a) outside recruitment at a grade below that of the position when the requirements are not fully met by the candidate selected; [and] (b) personal promotions by one grade to officials meeting specified merit and long-service criteria.” The two possibilities are described, with the criteria for personal promotions being detailed (in relevant part), in paragraphs 7(a), 9(b), 10, 11, 14 and 17 (as quoted above). Specifically, it is noted that the personal promotion covered by the Circular is merit-based. If the accelerated rate of calculation were also to be applied to a personal promotion based on length of service, it would render the accelerated, merit-based promotion purposeless. The complainant joined the International Training Centre of the ILO in 1977 and started working at grade P.4 in September 2003. She would have reached 13 full years of service in the same grade in 2016. Therefore, in 2014, she could not have been assessed under Article 7.11(c) of the Staff Regulations. She was in fact promoted in 2016 pursuant to Article 7.11(c).

7. In the present case, the Director’s decision endorsing the Sub-Committee’s unanimous recommendation, which confirmed that the complainant had not “regularly performed at a level beyond the normal requirements of the job”, is not vitiated. Specifically, no wrong conclusion was drawn from the facts. There is no proof of inconsistency between the assessment of merit by the complainant’s responsible chief and the assessments made in her performance appraisal reports for the relevant period, and the Sub-Committee’s evaluation of the wording used in that assessment of merit regarding the quality and quantity of work (“mostly”, “usually”, “at times”, etc.) is consistent with the finding that the complainant did not regularly perform above the required level for the exceptional promotion. It is clear that the complainant’s performance appraisals were positive proof that she worked satisfactorily in her post, but the provisions of Article 7.11(b) require a clear demonstration of continuous exceptional performance, not just occasional exceptional performance. Moreover, the responsible chief’s commented that the

personal attributes applied to the job, demonstrated by the complainant, could be considered below the normal requirements. The complainant's objection, that that assessment was inaccurate as it referred to her Staff Union activity, is unproven.

8. The complainant contests the fact that the Sub-Committee did not seek clarification, prior to rendering its negative recommendation, in accordance with paragraph 14 of the Circular. The Tribunal notes that no such clarification was required and that, furthermore, there were no inconsistencies to be clarified. Therefore, the Sub-Committee properly exercised its procedural discretion. The complainant's allegation that the Sub-Committee's recommendation was tainted with bias against her, is unfounded. She mainly relies on the fact that the two Staff Union representatives (Ms C. and Mr B.) received an email from another staff member which contained insulting and sexist comments regarding the complainant and did not (to the complainant's knowledge) reply or actively defend her. This is not enough to prove bias against the complainant. Her claim that she was punished for her criticism of the Organization is unfounded as that punishment was rescinded and there is no proof that the denial of the merit-based promotion was a hidden sanction.

9. Lastly, the plea that the Director's decisions were not fully motivated, is unfounded. Both the 13 July 2015 and 18 September 2015 decisions included the reasons on which they were based.

10. In light of the above considerations, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 24 October 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ