

FORTY-NINTH ORDINARY SESSION

In re MEJIA

Judgment No. 521

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO)(World Health Organization) by Mr. Rodolfo Mejía on 22 February 1982 and brought into conformity with the Rules of Court on 2 March, the PAHO's reply of 5 May, the complainant's rejoinder of 9 July and the PAHO's surrejoinder of 18 August 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Regulations 4.2, 4.3 and 4.4, PAHO Staff Rules 920 and 1230.1 and WHO Manual section II.1, Annex A;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. On 30 May 1980 the PAHO issued a notice, No. 80/63, inviting applications for a grade P.2 post, No. 2052, for a finance officer in the Budget and Finance Department of the Pan American Sanitary Bureau, the secretariat of the PAHO. The minimum qualifications included "Graduation from a four-year college or university with a major in Accounting or Business Administration. A recognized certification in accounting as a Certified Public Accountant or a Chartered Accountant." The complainant applied for the post. A citizen of Guatemala, he joined the Bureau in his own country in 1959, has held grade G.8 at headquarters in Washington since 1976 and holds a post as accounting technician II in the accounts section. On 18 November 1980 the Office of Personnel told him that he had not been chosen. The successful candidate was Ms. Mora Reynoso, a G.6 clerk under temporary contract, who has a degree in accountancy from the University of Guadalajara, in Mexico. On 16 January 1981 the complainant appealed to the Board of Inquiry and Appeal against the decision not to appoint him. In its report of 30 September the Board recommended rejecting the appeal, and the Director informed the complainant of his acceptance of the recommendation in a letter of 24 November 1981, which is the decision impugned.

B. The complainant has three main pleas. (1) The decision not to appoint him to the post is another sign of the disfavour he incurred with the PAHO in 1975-76, when, along with others, he protested against conditions in the unit of the Department to which he belonged. His appraisal reports are excellent, he actually performed the duties of post 2052 from April 1974 to May 1975, and for years was second in command in the unit. Yet his career has been blocked on account of personal prejudice against him within the meaning of Staff Rule 1230.1.3. (2) Regulation 4.4 ("... vacancies shall be filled by promotion of persons already in the service of the [Bureau] in preference to persons from outside") implies that officials with a long record of service should be preferred to recent recruits: career opportunities should reward satisfactory performance and loyalty. Yet here the PAHO preferred a temporary employee holding a lower grade. The educational qualifications for the post were added to suit someone chosen in advance. (3) Manual section II.1, Annex A, requires a university degree for posts at grades P.1 to P.3. This discriminates against serving staff and especially - in breach of Regulation 4.3 - against women, who make up four-fifths of the General Service category. The provision is also invalid because the staff representatives were not consulted before it was adopted: Rule 920 requires such consultation on any proposal to change the Regulations or Rules, which should include Manual sections, since they may be used, as they were in this instance, to curtail or deny rights embodied in the Rules. The complainant seeks reclassification of his post to P.2, financial compensation retroactive to the date at which he would have been appointed to post 2052 had he been selected, such other relief as the Tribunal thinks fit, and costs.

C. In its reply the PAHO invites the Tribunal to consider the complaint together with those of Mr. Carbo and Mrs. Gluecksmann, which are also before the Tribunal, because the rights of one exclude the rights of the others. The PAHO denies breach of Regulation 4.4: Ms. Mora Reynoso was not a person "from outside" since she held a temporary contract, and the complainant can scarcely be claiming priority for permanent over other staff. Besides,

Regulation 4.2 states that the paramount consideration in appointing staff shall be "the necessity of securing the highest standards of efficiency, competence and integrity". For reasons which the PAHO explains, a university degree was required for the post, and the complainant does not have one. The successful candidate is well qualified for the post. There is no merit in the allegations, based on Manual section II.1, Annex A, of discrimination against serving staff, especially women, since the person appointed was a member of the staff and a woman. There was no flaw in the Selection Committee procedure. The claims for relief are in any case unfounded. The complainant has suffered no wrong since he was not qualified for the post anyway, and his claim to reclassification is irreceivable since for that there is a special procedure which he has not followed.

D. The complainant argues in his rejoinder that it would be contrary to due process and the Tribunal's practice to join his own complaint with those of Mr. Carbo and Mrs. Gluecksmann. What each of them contends is that the selection procedure was unfair and in breach of the rules, and the remedies each is claiming are not mutually incompatible. The PAHO gave Ms. Mora Reynoso a temporary contract so as to make her an "insider" and get round Regulation 4.4. "Efficiency" and "competence" do not depend on holding a degree, and there must be some connection between the educational requirements and the duties of post 2052. The failure of an official of proven fitness like the complainant to obtain the post reflects personal prejudice against him. Charges of discrimination against women are not rebutted by pointing out that one woman was successful. The claims are valid, the remedy sought being, not appointment to post 2052, but compensation for the wrongful selection procedure.

E. The PAHO observes in its surrejoinder that it is inviting the Tribunal, not to join the three complaints, but merely to consider them together, since they are similar and the relief sought in one may exclude that sought in the others. The determination of the educational requirements for a post is a matter of administrative discretion and was in this instance correct. Regulation 4.4 does not, as the complainant suggests, prescribe promotion by seniority. Ms. Mora Reynoso is far better qualified for post 2052 than the complainant and there was no abuse of discretion in appointing her. He has not suffered the violation of any right, and his claims are, in the PAHO's view, devoid of merit.

CONSIDERATIONS:

The complainant has been in the service of the Organization for 22 years and has always received excellent appraisal reports. Like Mr. Carbo (Judgment No. 519) and Mrs. Gluecksmann (Judgment No. 520) he was a candidate for the vacancy in post 2052 and like them he was unsuccessful because of his lack of a university degree. Had it not been for this lack, he would have had a strong claim to be considered, since he had for five years been second in command of the unit to which the post belonged and during an earlier vacancy he had for over a year been in charge of the unit. The headquarters Board of Inquiry and Appeal expressed the opinion that "the educational requirements of post 2052 were excessive for a P.2 post, tending to restrict PAHO staff career opportunities". However this may be, the point can be brought within the competence of the Tribunal only if there is an allegation, which in this case there is not, that the imposition of minimum qualifications is a breach of some regulation or rule or of some term of the complainant's contract of employment. For these reasons, which are also those given in Judgment No. 519, the complaint fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

André Grisel

Devlin

H. Gros Espiell

