

Registry's translation, the French text alone being authoritative.

FORTY-NINTH ORDINARY SESSION

In re PUEL

Judgment No. 526

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Meteorological Organization (WMO) by Miss Renée Puel on 12 October 1981 and brought into conformity with the Rules of Court on 11 December, the WMO's reply of 26 February 1982, the complainant's rejoinder of 30 April and the WMO's farther communication of 26 May 1982;

Considering Article II, paragraph 5, and VIII of the Statute of the Tribunal, Rules 112.1, 131.6, 144.2 of the WMO Staff Regulations and Staff Rules and paragraph 3.430.1 of the Standing Instructions of the WMO;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant was appointed to the WMO in 1966 as a grade G.4 secretary. On 1 February 1969 she was promoted to a grade G.5 post and in October became a secretary in the Scientific and Technical Department. In 1972, 1974 and 1975 she applied unsuccessfully for posts as an administrative assistant, and in 1974 and 1975 her supervisor recommended promoting her to G.6. In July 1976 he became Deputy Director of the Global Environmental Monitoring System and again asked for promotion for the complainant, who continued to work for him. Nothing came of these proposals. In December 1977 she wrote to the Secretary-General again applying, to no avail, for a post as administrative assistant. In March 1978 she was transferred back to the Scientific and Technical Department, now known as MAE, as a principal secretary. In an interview in June 1980 she told the Secretary-General of her dissatisfaction with her duties and grade. On 1 January 1981 MAE and another department were merged to form a new one known as RAP (Research and Application Programmes), to which she accordingly moved. On 3 April she wrote asking the Secretary-General to cancel the assignment to RAP and give her a suitable post. The Secretary-General refused, and she appealed to the Joint Appeals Board on 27 April. In its report of 15 July the Board recommended confirming the assignment and inviting her to apply for any vacant post she thought suitable. By a letter of 17 July 1981, the impugned decision, the Secretary-General informed her that he accepted the Board's recommendations.

B. The complainant maintains that because of lower responsibilities she no longer has job satisfaction. Her reputation in the Organization has suffered from her repeated failure to obtain a post suited to her qualifications and recognising her many years of excellent service. Her duties are typing and photocopying, allow no scope for using her language and other skills, and do not match up to her grade. She has no hope of a regrading. There has been breach of Rule 112.1 ("The Secretary-General shall assign a staff member to any duties, account being taken of his qualifications") and of paragraph 3.430.1 of the Standing Instructions ("Staff members below the grade P.5 should have a progressive career"). For years her advancement has been blocked. There has been inequality of treatment in that less senior and less well-qualified officials have been appointed to posts she has applied for. She invites the Tribunal to quash her assignment to RAP and order her placing in a post suitable to her qualifications and experience and, subsidiarily, award her damages for moral prejudice. She also claims costs.

C. In its reply the WMO observes that the complainant's assignment to RAP is a mere change of form due to the merger of two departments, and it doubts whether under Article II of the Tribunal's Statute she may challenge a policy decision of that kind. She was assigned to her present duties in 1978 and her objections to them are time-barred. Her claim to a suitable post is irreceivable under Article VIII of the Statute since the Tribunal cannot order the WMO to give her any particular post or to create one for her. According to the general principles of law she herself relies on, her complaint is devoid of merit. The principle whereby officials should be given posts suited to their qualifications is subject to the Organization's own requirements. She does not even seek to prove that her duties do not match grade G.5. Even if her former duties were more responsible she continued to hold grade G.5.

For reasons it explains the WMO does not allow temporary promotion. Nor does any official have an absolute right to promotion. Promotion requires the existence of a higher post, and there are only 11 G.6 posts in the whole Organization of the kind the complainant wants. Besides, for six such posts failing vacant between 1975 and 1981 she did not even apply. There have been no breaches of equality. In each of the competitions she entered all candidates had an equal chance of winning: length of service is not a decisive criterion, and she has not shown that the appointment of others harmed the WMO's interests. In any case a challenge to those appointments is time-barred. Rule 144.2(b) reads: "A staff member whose performance has been satisfactory may at any time be considered for reassignment to a post at higher grade"; but to construe this as making promotion a reward for satisfactory service would be to render meaningless Rule 131.6, which prescribes salary increments for such service: it would not be right to leave the Secretary-General to choose between promotion and increment. Lastly, paragraph 3.430.1 of the Standing Instructions cannot create rights not embodied in the Staff Regulations and in any case is irrelevant to the complainant's position.

D. In her rejoinder the complainant presses her claims. In her view there is no time bar since her assignment dates from the creation of RAP, not from 1978. She discusses points of fact she considers to be misrepresented by the WMO. She explains why she did not apply for the six vacancies mentioned by the WMO - some of which she says were intended in advance for other officials - and how her duties do not match her grade. She has applied time and again, to no avail, for suitable vacant posts, and her regrading has been consistently refused. She may have no absolute right to promotion, but it is wrong to keep someone with her record and skills at grade G.5 for 13 years. The inequality of treatment is obvious.

E. In a letter of 26 May 1982 to the Registrar of the Tribunal the WMO stated that in its view there were no new material facts or arguments in the rejoinder. It added, however, that it never holds competitions of which the outcome is predetermined.

CONSIDERATIONS:

The application for oral proceedings

The Tribunal holds that there is no reason to grant the complainant's application for oral proceedings, the evidence in the dossier being sufficient to clarify fully the issues she has raised.

The merits

1. The complainant's principal claim is for the quashing of the Secretary-General's decision of 17 July 1981.

She further invites the Tribunal to order the Secretary-General to place her in a post suited to her qualifications and experience.

2. The Tribunal cannot entertain the latter claim. In cases which come within the scope of Article II of its Statute it may do no more than what is stated in Article VIII: it may order the rescinding of the decision impugned or the performance of the obligation relied upon, provided that where the rescinding or the performance is not possible or advisable it shall award the complainant compensation for the injury caused to him.

Thus the second claim is one which does not fall within the scope of the Tribunal's competence and which it will not consider on the merits.

3. The decision which the complainant seeks to have set aside, and of which the secretary of the Joint Appeals Board informed her on 17 July 1981, is the Secretary-General's acceptance of the Board's report.

As regards the claim which the Tribunal is now considering the Board held that the Secretary-General had not failed to place the complainant in a post corresponding to her qualifications, experience and seniority in appointing her in January 1981 as a principal secretary in a division of the Research and Applications Department, known as RAP.

According to the terms of its Statute the Tribunal is not competent to review the administrative reform whereby, in pursuance of a decision of the Eighth Congress of the World Meteorological Organization, two independent departments were merged into one.

The complainant had worked in one of those departments, the Meteorological Applications and Environment Department (MAE) and was assigned to RAP as a result of its merger with the Research and Development Department (RES). The only question which the Tribunal is competent to consider is whether or not that assignment complied with the rule that the actual duties of a staff member's post should match the grade the post carries.

The Tribunal holds that the complainant's duties match those of a grade G.5 secretarial post. Although her experience and her record of service over the years may have given her a reasonable belief that some of the duties of her post are more important, the content of that post does in fact correspond to G.5, the grade it carries.

The Tribunal accordingly agrees with the view expressed by the Joint Appeals Board in its report of 15 July 1981 that the Secretary-General has not failed to assign the complainant to duties corresponding to her grade G.5.

It appears from the foregoing that there are no grounds for setting aside the impugned decision.

4. The Board recommended that the Secretary-General advise the complainant to consider carefully announcements of vacant posts and apply for them if she had the right qualifications and experience. As the complainant was informed in the letter of 17 July 1981, the Secretary-General endorsed that recommendation. By a letter of 19 August 1981 he reminded her that he had accepted the Board's recommendations and in the second paragraph said: "I advise you to carefully consider vacancy notices issued by WMO and to submit your candidature for such posts where the requirements correspond to your qualifications."

This is a point which the Tribunal feels bound to emphasise. Since her promotion to G.5 in February 1969 the complainant has had no further promotion. The evidence submitted to the Tribunal establishes her competence, efficiency and assiduity. Her performance report for the period from 1 March 1978 to 28 February 1979, although it states that she is "essentially a person who prefers to work alone", cannot, in view of the other observations it contains, be regarded as showing her to be unworthy of the grade she holds - G.5 - or of the grade to which she aspires - G.6.

An official is as a rule entitled to expect promotion by steady career advancement in the international civil service as prescribed in the Staff Regulations and Rules of the organisation. The fulfilment of this reasonable expectation depends not only on the official's seniority, qualifications and skills but also on the organisation's administrative structure and the state of its finances.

Although the Tribunal finds no breach of the Staff Regulations and Rules in this instance, it considers it something of an anomaly that an official of the complainant's qualifications and skills has had no promotion for thirteen years and that her reasonable expectations have not been fulfilled.

The Tribunal concludes that the advice given by the Secretary-General in his letter of 19 August 1981 on the Board's recommendation implies some willingness to advance the complainant's career by giving her promotion corresponding to her seniority, qualifications and experience, provided that this is administratively and financially possible.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., 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.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.