

## **EIGHTY-SIXTH SESSION**

### ***In re Mesfin***

#### **Judgment 1808**

The Administrative Tribunal,

Considering the complaint filed by Mr. Gabre-Michael Mesfin against the International Labour Organization (ILO) on 19 January 1998 and corrected on 20 February, the ILO's reply of 9 April, the complainant's rejoinder of 12 May and the Organization's surrejoinder of 30 July 1998;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant is Ethiopian and was born in 1941. The ILO recruited him on 1 January 1974 at grade P.3. On 1 December 1983 it promoted him to P.4 and put him in charge of coordinating the work in Africa of its Labour Law and Labour Relations Branch (LEG/REL). He did so until the beginning of 1992, when it made him responsible for coordinating all the technical cooperation programmes and activities of the Branch.

According to circular 253, series 6, of 1983 an official or the responsible chief may apply for review of the grading of a post on the grounds that the duties and responsibilities are materially different from those outlined in the job description. In a minute of 6 December 1993 to the Personnel Department the chief of LEG/REL accordingly asked for the reclassification of the complainant's post on the grounds, among others, that the post of technical cooperation coordinator in that Branch had "always been at the P.5 level". On 7 December the complainant and his chief signed a "position description questionnaire" outlining what they saw as a substantial increase in the duties of his post. The questionnaire went to the Personnel Department.

In a minute of 3 May 1995 to the complainant the Department confirmed the grading of his post at P.4. On 18 May he lodged an appeal with the Professional Grading Appeals Committee.

On 19 July the secretary of the Committee sent him a report by the ILO's classifiers, who work out the number of points each post warrants. Their report said the complainant's post had been properly graded P.4 because on the strength of the answers to the questionnaire it had obtained a total of only 1,835 points, whereas the range warranting the grant of P.5 was from 2,040 to 2,479. The classifiers explained that apart from the coordination of technical cooperation all the duties of the post were similar to those that had been graded P.4 in 1983.

On 25 October the complainant put to the Committee his written comments on the classifiers' report. He saw as mistakes of fact the failure to recognise that his post had always been held by a P.5 official and that he was now responsible for other regions as well as Africa.

The Personnel Department informed him, however, in a minute of 29 August 1996 that the grading was confirmed at P.4.

On 3 December he put a "complaint" to the Director-General under Article 13.2 of the Staff Regulations. He cited several mistakes made by the Committee, one being that it had given too few points to some of the wanted qualifications. He objected to the Personnel Department's refusing to let him know the Committee's reasoning.

In a letter of 16 April 1997 the Director of the Personnel Department told him that the Director-General had decided to let him know the grounds on which the Committee had reached its conclusion. On 1 August the chief of Personnel Administration forwarded to him a statement dated 28 July by the chairman of the Appeals Committee that, though the Committee had agreed to raise the number of points allocated to his post the total was still not

enough to warrant upgrading to P.5.

In a minute of 10 September to the chief of Personnel Administration the complainant raised further objections.

In a letter dated 22 October 1997 the Director of the Personnel Department answered on the Director-General's behalf the "complaint" of 3 December 1996. She revealed that the revised total number of points had come to 2,027. She said that though the posts of other officials were graded P.5 they were carrying out greater responsibilities; and that the final decision was to confirm the grading at P.4. That is the decision he is impugning.

B. The complainant contends that the grading of his post was based on incomplete information. The Professional Grading Appeals Committee failed to take account of his additional duties and gave his post too few points. Had the post got the right number of points it would have qualified for P.5. The report on his performance from 1 October 1991 to 30 September 1993 was not made out until 26 June 1995; so the Committee did not have a full record of the facts.

The complainant asks the Tribunal to quash the Director-General's decision, order thorough review of the grading procedure and re-examine the grading of his post on the strength of all the material facts. He seeks damages for material and moral injury and costs.

C. In its reply the ILO contends that the complaint is devoid of merit. The Director-General's decision rested on the conclusion that the procedural rules on grading had been duly applied. The Appeals Committee's report shows no flaws. The complainant's additional responsibilities were taken into account, but they were not managerial: he was merely helping the chief of the Branch.

Since the grading of a post depends on the duties it carries the quality of performance is irrelevant. So the complainant's performance report was not relevant to the review of the grading of his post.

D. In his rejoinder the complainant presses his pleas. He pleads that the Appeals Committee wilfully refused to take account of his performance report because it reflected what he was actually doing and warranted the upgrading of his post.

To qualify for P.5 a post need not carry responsibility for management: other officials in the Branch are at that grade even though they have no managerial duties.

E. In its surrejoinder the Organization presses its pleas.

## CONSIDERATIONS

1. The complainant joined the staff of the ILO in 1974 at grade P.3. He spent four years in Africa - at Addis Ababa and Dar-es-Salaam - and then went back to headquarters, where he worked in the Labour Law and Labour Relations Branch (LEG/REL). At the date of filing his complaint he held grade P.4.

2. Until 1992 he was in charge of coordinating the technical cooperation programmes and activities of the Branch in Africa. He has since coordinated all such programmes and activities of the Branch throughout the world. In his submission that meant a big increase in his duties and called for "a broad understanding of the labour law, labour management relations and wage policy issues" and for a "high level of judgement".

3. He applied in October 1993 in accordance with circular 253, series 6, of 1983 for the upgrading of his post to P.5. But the upshot was that the Director of the Personnel Department rejected his claim in a letter of 22 October 1997, the decision he is now impugning.

4. He contends that his post qualified for grade P.5 on the grounds that his duties have grown and that all earlier holders of the post of coordinator had that grade. He asks the Tribunal to:

"a) ... quash the decision of the Director-General regarding the reclassification of the post as the conclusions of the PGAC [Professional Grading Appeals Committee] have been drawn from incomplete and erroneous facts and serious procedural flaws;

b) Examine the mistakes of facts and procedures which have been committed in the process of evaluation and in

the process of appeal to PGAC;

c) Assert that these mistakes have led to mistaken conclusions;

d) Accordingly provide a ruling for the review of the whole procedure taking account of the rights to retroactivity to the benefits of subsequent decisions;

e) Provide the necessary compensation for moral damages that have been inflicted on account of the biased approach of the administration and;

f) Provide compensation for the appropriate financial damages and costs in consideration of the revenue lost, if the reclassification procedures had been carried out properly and in a timely manner particularly having regard to the effects it could have on pension allocations."

5. As was said in Judgment 1067 (*in re Glenn*) under 2 -

"The grading of a post depends on evaluation of the work done and the degree of responsibility it involves. The evaluation must be done by those who by training and experience are able to apply the relevant technical criteria and the Tribunal will interfere with a decision based thereon only where the organisation is shown to have applied wrong principles or drawn illogical conclusions."

6. The complainant accuses the ILO of overlooking a material fact in that it failed to bear in mind his worldwide responsibility for coordination. But the plea fails; on the evidence he has himself adduced it is plain that the grading officers did take account of that issue.

7. He contends that the evidence was incomplete in that neither grading officers nor Committee had the latest report on his performance. That plea too must fail. Grading turns on the duties of the post, not on the quality of performance. Nor do the Master Standard for Classification of Professional Posts and the standards and procedures of the Professional Grading Appeals Committee lay any duty on the ILO to make available an official's performance reports for the purpose of a grading exercise.

8. The complainant pleads a mistake of fact in the grading officers' view that the duties of the post were merely administrative and financial. The plea cannot succeed. Comparison between the grading officers' report and the post description filled up by the complainant himself and by his supervisor reveals in the report no fatal omission of fact or factual error.

9. The complainant objects to the number of points given to elements of his post under the various headings of the questionnaire. The overlooking of "important elements" has, he says, caused him injury. But the mistakes and omissions he is relying on are those objected to in the grading officers' report, and the Tribunal has ruled above on that issue. In the reckoning of points for each element there is no flaw that warrants quashing the impugned decision.

10. Lastly, he says that he got only sketchy information on the reasons for the Committee's findings. The evidence he offers shows that on 19 July 1995 he received the grading officers' report, which gave a grading and their reasons for it. He disagreed and appealed to the Committee. In letters of 16 April and 22 October 1997 the Organization gave him the Committee's reasoning. The Tribunal is satisfied that he did get the information he wanted. His disagreement with the reasoning does not mean that the Organization failed in its duty to let him have that information.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 18 November 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

*(Signed)*

Michel Gentot

Julio Barberis

Seydou Ba

A.B. Gardner

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