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

EIGHTY-SIXTH SESSION

In re Mussnig (No.5)

Judgment 1810

The Administrative Tribunal,

Considering the fifth complaint filed by Mrs. Gabriele Mussnig against the World Health Organization (WHO) on 10 October 1997, the WHO's reply of 20 January 1998, the complainant's rejoinder of 3 April and the Organization's surrejoinder of 1 July 1998;

Considering Articles II, paragraph 5, and VII 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's career at the WHO is summed up under A in Judgment 1376 of 13 July 1994 on her first complaint.

On 12 April 1991 the WHO published a notice of vacancy, No. P91/35, for a grade P.4 scientist for its Programme on Substance Abuse (PSA). The complainant applied, but on 27 November 1991 it told her that she had been unsuccessful.

In the rejoinder she filed on 10 November 1993 on her first complaint she sought "production of the evaluation of her qualifications made by Dr. Emblad and Dr. Argandoña in connection with the competition for a P.4 post in the Programme on Substance Abuse". The Tribunal ruled in Judgment 1376 under 21 that since she had succeeded in the main claims of her first complaint it saw "no need to entertain her claim to the production of further evidence".

In a letter of 30 September 1994 she asked the competent Assistant Director-General to let her have the Selection Committee's report on the post of scientist. He answered in a letter of 1 November 1994 that, the Tribunal having declined to order disclosure, the case was "closed with respect to this issue".

In her second complaint, which she filed on 9 September 1996 and which the Tribunal dismissed in Judgment 1731 of 29 January 1998, she again sought disclosure of the Committee's report. Also on 9 September 1996 she made a like claim in an internal appeal to the Board of Appeal against the non-renewal of her appointment, and she pressed it in a letter of 25 November to the Director-General. In a letter of 14 January 1997 the Director of the Division of Personnel rejected it on the grounds of privilege.

By a letter of 18 December 1996 she had given the secretary of the Board notice of appeal against the refusal to produce the records. In a letter of 24 January 1997 the chairman of the Board answered that that appeal was irreceivable because she had already made the claim in the one of 9 September 1996. In a report of 12 March 1997 the Board rejected it as immaterial to her appeal of 9 September 1996. But by a letter of 19 March 1997 the secretary told her that the Board would sit again to hear her appeal of 18 December 1996. In its report of 21 May 1997 it held that that appeal was out of time and that in any event the refusal to disclose the records was not an "administrative action or decision affecting [her] appointment status" within the meaning of Staff Rule 1230.1. It recommended rejecting the appeal, and the Director-General told her in a letter of 7 July 1997 - the impugned decision - that he did so.

B. The complainant submits that her complaint is receivable. The Organization gave no proper answer to her letter of 30 September 1994. Its letter of 1 November 1994 can hardly be treated as a decision on her application for disclosure: the last sentence - "The case is therefore closed with respect to this issue" - was just a "passing" remark. That was why she made the claim again in her internal appeal of 9 September 1996. The final decision to reject it came only in the reply to that appeal. The Organization's dilatoriness had the effect of staying the time

limit, which did not start until 7 July 1997.

On the merits she submits that the only reason for discarding her for the post was a bad appraisal of her written on 17 January 1991 by her supervisor in Angola and put in her personal file. Though eventually done away with, that report came to the notice of senior officers whose backing she needed to win the appointment. She cites a letter of recommendation dated 23 October 1996 from Dr. Argandoña, chief of the Treatment and Care unit of the Programme on Substance Abuse, who had seen her about the job in early June 1991. His letter said that he and the director of the Programme thought her "an extremely valid candidate, with sound academic qualifications, field experience, language qualifications and the general versatility required for filling the specific duties of this professional post", and that she was on the short list.

In her submission the WHO's refusal to disclose the records has prevented her from pleading properly before the Tribunal and brought about a miscarriage of justice.

She asks the Tribunal to order the Organization to let her or it have the selection records, quash the process of selection and award her three years' salary and allowances in damages and 4,000 Swiss francs in costs.

C. The WHO confines its reply to irreceivability. It submits that the complaint is out of time insofar as it is challenging the rejection of the complainant's application for the post of scientist. According to Staff Rule 1280.8.3 she should have appealed against the process of selection within sixty calendar days of getting the letter of 27 November 1991.

Her claim to disclosure of the records is time-barred too. The Assistant Director-General's letter of 1 November 1994 did convey a final and unambiguous decision to reject her application. So her appeal of 18 December 1996 was clearly out of time.

In any event Judgment 1376 dismissed her claim to disclosure of the evaluation by Dr. Emblad and Dr. Argandoña. Insofar as it relates to that issue her complaint is *res judicata*.

Citing Judgment 1513 (*in re* Fauquex), the Organization contends that she may not see the selection records.

The WHO is willing to disclose the records to the Tribunal, though not to the complainant.

D. In her rejoinder the complainant submits that, the appraisal report of 17 January 1991 having been withheld from her for years, she was unable within the prescribed time limit to tell how far it would harm her career. She maintains that the refusal to produce the selection records stayed the time limit. Since the Tribunal has never ruled on the process of selection of the PSA scientist, her complaint is not *res judicata*.

On the merits she challenges the process of selection on the grounds that an external candidate was picked for the post of scientist and is still on it though he was the only applicant not to be interviewed and had lesser university qualifications than her own. Besides, she already knew the WHO.

Discarding her has caused her grievous harm because she has since failed to land a job. The post put up for competition in 1991 is a real one, whereas anything the Organization has since vouchsafed her has proved "futile".

She insists that she wants disclosure to herself, not just to the Tribunal, and is claiming three years' pay at grade P.4.

E. In its surrejoinder the WHO contends that her pleas about the rejection of her application are irrelevant. She offers not a single sound argument in support of her view that the time limit for challenging that decision was stayed.

In subsidiary argument it submits that the process of selection complied with the rules.

CONSIDERATIONS

1. The complainant applied for a P.4 post which the WHO advertised in a notice, No. P91/35, of 12 April 1991. It told her on 27 November 1991 that she had been unsuccessful. Under Staff Rule 1230.8.3 she had sixty days in which to challenge the outcome of the competition. She failed to do so.

2. On 31 May 1993 she filed her first complaint with the Tribunal. In her rejoinder on that complaint she applied for disclosure of the papers relating to the competition. In Judgment 1376 of 13 July 1994 the Tribunal ruled on the complaint but said it need not rule on the application.

3. On 30 September 1994 she again put to the Organization her claim to disclosure. By a letter of 1 November 1994 the Assistant Director-General told her that her case was closed. On 18 December 1996 she put to the Board of Appeal an internal appeal claiming disclosure. The Board was of one mind in recommending that the Director-General reject it as irreceivable, and he told her in a letter of 7 July 1997 that he did so. That is the impugned decision.

4. She is now asking the Tribunal to order disclosure of the papers about selection for the post she applied for. She has subsidiary claims to the quashing of process of selection and to the payment of the equivalent of three years' salary and allowances at grade P.4 in material and moral damages and of 4,000 Swiss francs in costs.

5. The complainant offers no sound explanation of her failure to file an internal appeal within the time limit of sixty days which she had under Rule 1230.8.3 and which began when she got the Assistant Director-General's letter of 1 November 1994. Since she has therefore failed to exhaust the internal means of redress her complaint is irreceivable under Article VII(1) of the Tribunal's Statute.

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. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Julio Barberis

Jean-François Egli

A.B. Gardner

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