

NINETY-THIRD SESSION

Judgment No. 2137

The Administrative Tribunal,

Considering the second complaint filed by Mr J. S. N. against the World Health Organization (WHO) on 28 August 2001 and corrected on 11 September, the WHO's reply of 13 December 2001, the complainant's rejoinder of 16 January 2002, and the Organization's surrejoinder of 9 April 2002;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

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

A. The complainant is an Indian citizen and was born on 2 February 1942. He joined the staff of the WHO in July 1974, at grade ND.03, in the Organization's Regional Office for South-East Asia (SEARO) in New Delhi. He worked extensively in the Fellowships Unit. From May 1996 he was employed as an administrative assistant, at grade ND.07, in what became the Social Change and Non-Communicable Diseases Department.

By a vacancy notice of 10 January 2000 SEARO advertised the post of special assistant (post No. 5.1954), at grade ND.X, in the Education and Training Support Unit (formerly the Fellowships Unit). The complainant applied, but was not among the three candidates shortlisted by the Selection Committee. The selection procedure that applied was the one announced to staff in Information Circular IC-98-23 of 14 October 1998, as amended by a memorandum of 21 June 1999. On 16 May 2000 the Regional Personnel Officer informed the complainant that his application had not been successful. The complainant appealed to the Regional Board of Appeal against his non-selection on 8 June. The Board identified various weaknesses in the selection procedures and recommended rectifying them, but it saw no reason to quash the selection that had been made. On 16 November 2000 the Regional Director rejected his appeal.

In January 2001 the complainant appealed to the Headquarters Board of Appeal. It, too, concluded that "the overall selection procedures could be improved" but held that "the imperfections in the process" did not justify overturning the selection of the successful applicant and that there had been no violation of the WHO Staff Rules and Regulations. It recommended rejecting his appeal. The Director-General endorsed the Board's recommendation and so informed the complainant in a letter of 23 July 2001, which is the decision under challenge. The complainant retired with effect from 1 March 2002.

B. The complainant submits that the selection exercise has to be carried out within the parameters of the selection procedure in force, taking into account the requirements stipulated in the vacancy notice. He stresses that, in total, he spent more than twelve years in the Fellowships Unit and had had more experience of working in that Unit than any other candidate and, therefore, best answered the requirements of the job as set out in the vacancy notice. The Selection Committee did not give due weight to the experience he had gained. In not selecting him the Regional Director acted against the best interests of the Organization and did not take account of the requirements of the post. There was clearly prejudice against him or bias in favour of the successful candidate.

In his opinion, there are grounds for reviewing the selection made in that the regional Administration overlooked essential facts and there was breach of form and procedure. He lists numerous examples of what he perceives as flaws in the selection process. For one thing, he contends that there should have been more than three names on the short list. For another, he takes the view that the "interested party" on the Selection Committee should not have taken part in assessing the candidates at the Committee's meeting of 27 April 2000, for that was her last day with the Organization. The meeting was clearly convened in haste, before her successor arrived, to secure the appointment of the candidate favoured by the Administration. He concludes that the procedure was unlawful,

contrived and partial and says that the findings of the Regional Board of Appeal corroborate his opinion that the selection exercise was flawed.

The complainant wants the Tribunal to set aside the impugned decision, quash the selection of the successful candidate and order his own appointment to post No. 5.1954 with effect from 1 May 2000. He seeks damages for moral injury, loss of salary and pension rights; and any other relief the Tribunal may deem "just and fair" as well as costs.

C. In its reply the Organization takes up the matter of the redress sought by the complainant and says that he has no interest in seeking the quashing of the selection in question, for he would reach retirement age in February 2002.

In addressing the complainant's pleas it contends that decisions on appointment are discretionary, and in the case at bar the Organization properly exercised its discretionary authority. Both in deciding not to include him on the short list and in appointing the chosen candidate the Organization fully complied with the applicable rules and procedures.

It gave careful consideration to the complainant's qualifications and experience; but while past performance is a relevant consideration it does not determine selection. The Organization appointed the candidate most suitable for the post, and in so doing it acted in its best interest.

Its choice was also free of prejudice or bias. It notes that the complainant does not corroborate his claim of personal prejudice. All the candidates were assessed by the same criteria. Moreover, irrespective of whether she was to leave the Organization, the "interested party" on the Selection Committee had the authority to evaluate the candidates. Such authority was conferred on her under the selection procedure. The procedure in force does not require that a selection committee has to include more than three names on a short list. Moreover, the Regional Board of Appeal did not recommend quashing the selection; it therefore implicitly acknowledged that the procedure was not flawed. The Headquarters Board of Appeal also concluded that the selection process had been carried out in accordance with the Staff Rules and Regulations.

At the request of the Tribunal, the Organization invited the candidate who was appointed to post No. 5.1954 to comment on the complainant's submissions. It produces those comments with its reply.

D. In his rejoinder the complainant maintains his pleas and presses his claims. He insists that even if he was due to retire he still had the right to question the selection made. Comparing his own experience to that of the successful candidate, he concludes that the latter had had only one year of relevant fellowships experience.

E. In its surrejoinder the Organization does not agree with the way the complainant has calculated experience. Under the rules governing the selection procedure, the experience that is rated for each candidate is that obtained one or two grades below the level of the post. The successful candidate had had close to two years' relevant fellowships experience and the complainant had had four years (not twelve). The selection was carried out objectively and personal prejudice played no part.

It emphasises that it is not questioning the complainant's right to appeal against his non-selection. Rather, it wishes to make the point that he has no interest in seeking the quashing of the selection because he retired with effect from 1 March 2002.

CONSIDERATIONS

1. The complainant, an administrative assistant in the WHO's Regional Office for South-East Asia (SEARO), applied for the post of special assistant (post No. 5.1954) which was advertised through a vacancy notice dated 10 January 2000.

2. The complainant was one of nine in-house applicants interviewed on 7 April 2000. On 27 April a Selection Committee, consisting of a Chairman and those who were on the interview panel, drew up a short list. The complainant's name was not on the list. After deliberation, the Committee recommended the selection of one of the candidates on the list.

3. On 16 May 2000 the Regional Personnel Officer informed the complainant that his application had not been successful. On 8 June the complainant appealed to the Regional Board of Appeal against his non-selection to the post.

In its report of 2 November 2000, while recommending that the selection procedure be reviewed, the Board found that there was no need to quash the selection already made.

4. The Regional Director, by a letter of 16 November 2000, endorsed the Board's recommendation. On 8 January 2001 the complainant appealed against that decision to the Headquarters Board of Appeal. In its report of 22 May the headquarters Board upheld the recommendation of the regional Board; it stressed that in a case like the complainant's, its role was restricted to ensuring that the Organization's rules concerning selections had been correctly implemented. It held that there had been no violation of the Staff Rules and Regulations and that while the overall selection procedures could be improved, the imperfections in the process followed were not such as to justify overturning the selection which had been made.

5. The Director-General wrote to the complainant on 23 July 2001 informing him that she was in agreement with the Board's conclusions and accepted its recommendation that his appeal be dismissed.

6. On 28 August 2001 the complainant filed his complaint with the Tribunal impugning that decision.

7. The complainant was of the opinion that he "best answered the requirements of the job" and alleged that there was either bias in favour of the selected candidate or prejudice against him that resulted in a selection that was unlawful and was against the best interests of the Organization. He cited instances in the selection process of where there had been a "complete violation of all the rules of form and procedure".

8. The complainant asks the Tribunal to:

(a) set aside the decision taken by the Director-General on 23 July 2001;

(b) quash the selection of the successful candidate, and order his own appointment to post No. 5.1954 with effect from 1 May 2000;

(c) award him 100,000 United States dollars in damages for moral injury, loss of salary as a result of non-selection, and loss of pension rights;

(d) award him 3,000 dollars in costs; and

(e) grant any other relief considered "just and fair".

9. The Tribunal has taken note of the detailed reply submitted by the Organization including the comments submitted by the successful candidate, in which he sought to show that the complainant's arguments were flawed because he was relying mainly on his WHO experience, the related factor rating points and on the Regional Board of Appeal's conclusions.

10. The Tribunal, after considering the parties' pleas on the selection procedure, the form and the merits, upholds the decision taken by the Director-General to dismiss the complainant's appeal.

11. In drawing up the short list, the Selection Committee, which was composed mainly of those who had conducted the interviews, applied the same procedure to all the candidates and assessed all of them on the same criteria. The fact that one member of the Selection Committee was to leave the Organization on the day when the Committee met, is irrelevant. The Committee's recommendation was made while that member was still in office.

The plea therefore fails.

12. The complainant has not proved that there was inequality of treatment, personal prejudice against him or bias.

13. In choosing a candidate whom it found to be the most qualified and suitable for the post, the Organization was justified in applying as the paramount consideration, the yardstick laid down in Staff Regulation 4.2, namely, "the necessity of securing the highest standards of efficiency, competence and integrity".

14. According to consistent precedent, promotion is at the discretion of the organisation, which must be free to grant or withhold it in accordance with the objective working requirements. (See, for example, Judgment 1388, under 13.)

15. The Tribunal will not substitute its opinion for that of the Director-General but "will exercise its power with special caution, its function being not to judge the candidates on merit but to allow the selection board and the Director-General full responsibility for their choice" (see Judgment 564, under 3).

It follows that his claims fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet