

NINETY-NINTH SESSION

Judgment No. 2442

The Administrative Tribunal,

Considering the complaint filed by Mr C.G. against the International Fund for Agricultural Development (IFAD) on 2 February 2004 and corrected on 14 May, the Fund's reply of 1 September, the complainant's rejoinder of 21 October and IFAD's surrejoinder of 1 December 2004;

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, a French national born in 1944, joined IFAD in 1984. At the material time he was working as Assistant Controller at grade P.5. He reached the statutory retirement age in November 2004.

In 1998 the Fund undertook a post classification exercise, as a result of which the complainant's post was confirmed at grade P.5. He disputed this decision in two memorandums, dated 20 August and 14 September 1998, to the Director of the Personnel Division. The latter replied on 17 November 1998 that the Post Classification Recourse Committee had considered his request and that his post classification was maintained at grade P.5. She invited him to contact the Personnel Division for further details.

On 14 September 2001 the complainant sent a memorandum to the President of the Fund asking for a review of his post classification. Having received no reply, he filed an appeal with the Joint Appeals Board on 15 November 2001. In a memorandum of 8 April 2002, copied to all staff, the Presiding Officer of the Board informed the President of the Fund that the Board was "in favour of being relieved from its responsibilities" on the grounds that it was no longer able to operate normally. On 11 April 2002, however, the Administration submitted to the Board a "Motion to Dismiss" the complainant's appeal on the grounds that it had been filed three years after the expiry of the statutory time limit of 60 days. The complainant was not sent a copy of the Motion. On 14 February 2003 the Presiding Officer of the Board informed all staff that the Board was resuming its functions. In its report, which is not dated but which according to the defendant was issued around 11 July 2003, the Joint Appeals Board found the complainant's appeal receivable on the grounds that the delay in lodging the appeal was due to special circumstances. While noting that it was not specifically mandated to advise on the appropriate level of the complainant's post and that none of the current rules had been breached, the Board recommended, *inter alia*, that the complainant be urgently nominated for promotion with retroactive effect and that his post be "reclassified" at the time of the classification exercise due in 2004.

In a memorandum of 7 November 2003 the President of IFAD notified the complainant that he had decided to uphold the classification of his post at grade P.5. He added that the Board should have rejected his appeal as time-barred but that, considering the time and effort it had taken to consider his case, he had "chosen not to reject the report on these grounds". That is the impugned decision.

B. The complainant, who maintains that he ceaselessly called the Administration's attention to the wrong classification of his post from November 1998 onwards, contends that his post remained at grade P.5 as a result of an incorrect evaluation of the work he was doing and of his level of responsibility. In the first place, he considers that there are objective criteria "in favour of the reclassification" of his post to grade D.1. In his view, the description of his duties drawn up on 23 March 1998 does not adequately reflect the importance of his post. In fact, his duties, "which are already important in themselves in terms of the amount of activity and the sums involved, are of crucial importance to IFAD, both within and outside the institution". Moreover, according to that description he had ten persons under his authority, whereas, he points out, his unit comprises between 11 and 13 persons. Secondly, the reclassification of his post has been advocated for years by persons well qualified to judge, namely his supervisor and the former Vice-President of the Fund. Thirdly, he argues that the lawfulness of a post

classification cannot be judged in the light of applicable rules and regulations alone. In his view, the principles of equity and equality must also be taken into consideration. When he compares his post to others within IFAD and to similar posts in other international financial institutions, he concludes that it would have been fair to classify his post at grade D.1.

The complainant asks the Tribunal to set aside the impugned decision with all legal consequences. Noting that he will have reached retirement when the judgment on his case is delivered, he relies on the Tribunal to award him compensation that will restore both his salary and his pension rights. He also claims costs.

C. In its reply IFAD contends that the complainant's post classification in 1998 was conducted in accordance with the applicable internal procedure and the Master Standard for job classification established by the International Civil Service Commission (ICSC). It points out that the complainant himself supplied his post description to the Office of Human Resources around 16 January 1998; that he had an opportunity to make comments to the classifier at the time of the desk-audit; that the initial evaluation was submitted to a second classifier who confirmed the classification at grade P.5; that the complainant was able to challenge the result before the Post Classification Recourse Committee, which submitted the file to a third external classifier, and that the latter also classified the post at grade P.5. The Fund points out that, according to a staffing table which the complainant himself appended to his brief, his unit did in fact comprise ten persons in 1998. The complainant cannot challenge the classification of his post conducted in 1998 on the basis of changes in his duties occurring after that year.

According to the defendant, the Tribunal has recognised in the past that the grading of posts is a technical exercise best done by experts, over which the Tribunal exercises only a limited power of review. It maintains that the complainant has not produced evidence to support the comparison he makes with other posts and adds that equity is not a factor to be taken into consideration.

D. In his rejoinder the complainant notes that the defendant does not object to the receivability of the complaint. He maintains that "an equitable classification of posts should help to ensure equitable treatment for all staff members who are in similar situations". He refers to specific positions and names in support of his comparison. He accuses the last two classifiers of having based their evaluations on the comments made by the first classifier, whereas that classifier had failed to take account of essential facts and his comments contained several errors of fact and were derived from manifestly mistaken conclusions drawn from the file. Noting that his post was not even reclassified after the classification exercise carried out in 2004, the complainant concludes that only bias against him can explain the Administration's persistent refusal since 1998 to reclassify his post.

E. In its surrejoinder IFAD points out that facts subsequent to 1998, particularly the results of the 2004 classification exercise, are "irreceivable" since they cannot have any bearing whatever on the lawfulness of the impugned decision. The defendant reiterates that procedure governing the 1998 post classification was correctly applied in this case. It believes that the complainant's criticism of the classifiers' work is unfounded and that the facts he refers to are not essential and cannot affect the outcome of the 1998 classification decision. Lastly, it contends that the allegation of unfair treatment is "pure speculation" and that the allegations of bias rest on no evidence whatsoever.

CONSIDERATIONS

1. In 1998 IFAD undertook a post classification exercise. The complainant, who had been working since 1987 as Assistant Controller, entertained hopes that his post would be reclassified to grade D.1, but three classifiers in succession confirmed the grade at P.5. In a letter of 17 November 1998, the Director of the Personnel Division informed him that his post classification would be maintained at grade P.5.

2. Although according to the complainant he "ceaselessly" called the Administration's attention to what he considered was a wrong classification, it was only on 14 September 2001 that he wrote to the President of the Fund asking for the classification to be reviewed. Then on 15 November 2001 he filed an appeal with the Joint Appeals Board. In its report issued in July 2003, the Board recommended, inter alia, that the complainant be urgently nominated for promotion with retroactive effect and that his post be reclassified at the time of the classification exercise due in 2004.

3. By a decision of 7 November 2003 the President of the Fund notified the complainant that his post

classification would be maintained at grade P.5. He added that the Joint Appeals Board should not have considered his appeal, which was clearly time-barred, but that he had decided not to reject it as irreceivable and that the complainant's post would be included in the 2004 classification exercise. The complainant filed his complaint with the Tribunal on 2 February 2004.

4. While recalling that the complainant's appeal was filed almost three years after the disputed decision, the Fund does not object to the receivability of the complaint. It merely points out quite rightly that all events occurring after 1998, particularly in the course of the 2004 classification exercise, should not be taken into consideration. The Tribunal will therefore consider the case on its merits, while noting that – contrary to the defendant's assertion – the complainant did not “unlawfully” obtain the confidential opinion of a legal adviser of the Fund, so that there is no reason to “expunge” that item from the file.

5. In contesting the unchanged classification of his post at grade P.5, the complainant, who is not unaware of the case law (see for example Judgments 1647 and 1874) according to which decisions in respect of post classification lie at the chief executive's discretion and are subject only to limited review by the Tribunal, maintains that his work and the level of his responsibilities were incorrectly evaluated by the classifiers and by the Administration. He draws attention to some errors, particularly regarding the number of persons placed under his authority. He asserts that the disputed decision fails to take account of the fact that his post was of crucial importance to the Fund, as was recognised by the former Vice-President in April 2002 and by his supervisor in September 2003, and that “the events which occurred after 1998, culminating in the classification exercise carried out in 2004, lead [him] to conclude that he was exposed to bias from 1998 onwards”. He invokes the principles of equity and equality in his comparison of his post to others within the Fund and in other international financial institutions.

6. As mentioned above, the changes affecting the post after 1998 and whatever opinions have been expressed since then regarding the complainant's responsibilities must in any case be excluded from consideration when judging whether the decision of 17 November 1998 was lawful. There is no evidence in the file to support the conclusion that the managerial and supervisory responsibilities, as assessed by three classifiers according to objective criteria and ICSC standards, were incorrectly evaluated. Nor is there anything to indicate that the complainant, whose personal qualities are not in question, was ever exposed to bias on the part of the Administration or subjected to unfair treatment. The tiny errors noted by the complainant in the work of the first classifier were not significant enough for it to be considered that his final opinion, echoed by the other two classifiers, was tainted with a clear error of judgement. Finally, the principle of equality which must prevail in the international civil service has not been breached.

7. Since none of the complainant's pleas succeeds, the Tribunal must dismiss his complaint.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 April 2005, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

Seydou Ba

Claude Rouiller

