**G.**

***v.***

**WHO**

**129th Session** **Judgment No. 4238**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. G. against the World Health Organization (WHO) on 9 March 2018 and corrected on 7 April, WHO's reply of 17 July, the complainant's rejoinder of 21 August and WHO's surrejoinder of 9 November 2018;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

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

The complainant challenges the decision not to reclassify his post.

The complainant joined WHO's Regional Office for South-East Asia (SEARO) in 2003. On 30 September 2012 he was transferred to the WHO Country Office for Indonesia, at grade P-4. The post to which he was assigned, which was previously classified at grade P-5, had been reclassified at grade P-4 in August 2012 based on a revised post description.

On 20 March 2014 the WHO's Representative to Indonesia requested the reclassification of the complainant's post at grade P-5. Following a review conducted by the Regional Post Classification Specialist, the complainant was informed on 17 November 2014 that the Regional Administration agreed with the recommendation of the

Regional Reclassification Committee to maintain his post at grade P-4. By email of the same date, the complainant wrote to the Regional Administration requesting guidance on the review process. Having received clarifications, the complainant challenged the reclassification process with the Director of Administration and Finance and the Regional Director on 21 and 28 November 2014.

On 14 January 2015 the Regional Administration informed the complainant that, in accordance with the provisions of WHO eManual III.2.1, a request for review had to be submitted to the Classification Specialist within sixty calendar days after receipt of the classification decision. Given that the complainant was on duty travel followed by leave, it exceptionally agreed that he could submit his request within sixty calendar days from 14 January 2015 and transmitted to him the relevant provisions regarding the procedure to be followed. On 23 January 2015 the complainant's supervisor (WHO's Representative to Indonesia) submitted a revised post description, in accordance with paragraph 160 of eManual III.2.1 for consideration in the context of the request for review.

In an email of 15 February 2015, the Regional Administration expressed its concern regarding the complainant's failure to comply with the established procedure to contest the reclassification decision, despite multiple messages addressed to him concerning the proper procedure. It reiterated that the complainant was entitled to submit a formal request to the Classification Specialist for consideration by the Regional Classification Review Standing Committee, and pointed out that he could not revise the post description submitted on 20 March 2014 while contesting the reclassification decision taken on the basis of that post description.

On 4 March 2015, in view of the complainant's continued assertions that the post description submitted in 2014 did not reflect his actual duties, the Regional Administration agreed on an exceptional basis to review the reclassification request based on paragraph 110 of eManual III.2.1. On 16 October 2015 a classification specialist at WHO headquarters conducted a desk audit of the disputed post, which was countersigned by the complainant, and submitted the completed

Professional Post Classification Report to the Regional Reclassification Committee. By email of 10 May 2016 the complainant was informed that the Regional Director had decided to maintain the complainant's post at grade P-4 in accordance with the Regional Reclassification Committee's recommendation.

In May 2016, following further exchanges between the complainant and the Administration as to the appropriate procedure for contesting such decision, the complainant expressed his intention to go ahead with the process of appealing the decision of 10 May 2016 before the Regional Board of Appeal (RBA). Although the Regional Administration indicated to the complainant that it reserved the right to challenge the receivability of his appeal in the event that he chose not to follow the established procedure, on 30 May 2016 the complainant pursued his appeal before the RBA. By letter of 18 January 2017, in accordance with the RBA's findings, the Regional Director decided to dismiss the complainant's internal appeal as irreceivable on the grounds that he had not availed himself of the administrative procedure for contesting a classification decision.

On 21 March 2017 the complainant appealed that decision to the Global Board of Appeal (GBA). In its report dated 17 October 2017, the GBA found that the complainant had exhausted the existing administrative channels, but recommended that the appeal be dismissed as it found no evidence that the contested decision was tainted by bias, discrimination or personal prejudice, or that there was a mistake of fact or law. By a letter of 11 December 2017, which is the impugned decision, the Director-General decided to endorse the GBA's recommendation and to dismiss the complainant's internal appeal.

The complainant asks the Tribunal to set aside the impugned decision as well as the decision of 18 January 2017 dismissing his internal appeal before the RBA. He asks the Tribunal to order that his post be reclassified at grade P-5 and that he be appointed to the upgraded post retroactively from October 2012. The complainant seeks compensation for the wrongful reclassification exercise which, according to him, resulted in mental injury, systematic harassment and delayed career growth. He seeks further compensation for unfair treatment and

prejudice on the part of the Regional Personnel Officer and claims costs as well as any other relief as may be considered just and fair.

WHO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal means of redress. It otherwise asks the Tribunal to dismiss the complaint as devoid of merit.

## CONSIDERATIONS

1. The complainant impugns the decision, dated 11 December 2017, by which he was informed that the Director-General had accepted the recommendation of the GBA to dismiss his internal appeal. That appeal was made against the decision of 18 January 2017 by the Regional Director, SEARO, to maintain the complainant's post as Technical Officer, Planning, WHO Country Office for Indonesia, at the P-4 grade. The GBA had concluded that the original decision to maintain the position at that grade was taken in accordance with WHO's Staff Regulations and Staff Rules and that it had found no evidence that the decision was tainted by bias, discrimination or personal prejudice or by mistake of fact or law.

The complainant seeks an order to set aside the impugned decision and the original decision of 18 January 2017.

He also asks the Tribunal to order that the position be reclassified to the P-5 level and that he be appointed to the upgraded post retroactively from October 2012. This request is rejected as the Tribunal cannot order the Organization to reclassify the complainant's post. This is a discretionary decision to be made by the Organization (see Judgment 4102, consideration 7).

The complainant also seeks compensation on various grounds, and costs.

2. WHO raises receivability as a threshold issue on basically the same grounds that it proffered before the RBA and the GBA. WHO submits that the complaint is irreceivable, pursuant to Article VII, paragraph 1, of the Tribunal's Statute. This, it argues, is because the complainant failed to exhaust the internal means of redress that were

available to him when he proceeded directly to appeal the decision to maintain his post at the P-4 level to the RBA when the Regional Administration had already explained to him that he was required to request a review of the classification decision, through his supervisor, providing reasons for the request. WHO states that had he done so, the Classification Specialist would have prepared the background materials and convened the Regional Classification Review Standing Committee in accordance with paragraph 160 of eManual III.2.1 and Annex 2.B in eManual III.20.

3. It is noteworthy that the GBA recalled that the complainant's supervisor (WHO's Representative to Indonesia) did in fact submit a request for the review of the subject decision on 23 January 2015; that the latter withdrew the request on 3 February 2015 as it included a new post description and that a request for review did not require a new post description. The GBA also noted that the complainant had continued to express his desire for the review, stating his reasons in his email of 25 February 2015 to the SEARO Director of Administration and Finance. The GBA therefore found that the requirements for seeking the review were met as the complainant had addressed a request for review through his first-level supervisor providing reasons for that request. Moreover, the GBA further found that while a revised post description was not required for a review, it was understood that the complainant wanted the reclassification decision reviewed; that it was not clear whether the request was for the review of the 2014 classification exercise or a new request based on a revised post description; and that although the request was withdrawn, the reclassification of the post was in fact reviewed as the SEARO Director of Administration and Finance agreed that there would have been a fresh review on an exceptional basis. The GBA concluded that the 2015 review led to the 2016 reclassification exercise, as well as the RBA's recommendations and the Regional Director's decision and the appeal to it; that while the procedure required the complainant to submit the request for review to a Regional Classification Review Standing Committee, that Committee had not been established when he contested the 2016 reclassification decision. The GBA correctly concluded that he had exhausted the administrative

procedure then available to him when he lodged the appeal. The complaint is therefore receivable in the Tribunal.

4. The complainant challenges the impugned decision on three main grounds. In his third ground, the complainant alleges that the irregularities which he identifies were based on malice, discrimination and unequal treatment against him, nepotism, unfair treatment, retaliation and harassment. He also alleges that the Administration's actions in the matter "have prejudiced and unfairly treated [him] and delayed and damaged his [career] growth". The complainant further alleges that the GBA is biased and supports the Administration; committed perjury and fraud by supporting the Administration's "malicious act" in conducting a reclassification review on the wrong post description and in failing to find that the Administration's actions were tainted by nepotism, discrimination, unfairness and prejudice against him, thereby increasing the retaliation and harassment against him. These allegations are unfounded.

5. The Tribunal's case law states that allegations of discrimination and unequal treatment can lead to redress on condition that they are based on precise and proven facts which establish that discrimination has occurred in the subject case (see Judgment 4067, consideration 10). It further states that an allegation of harassment must be borne out by specific facts, the burden of proof being on the person who pleads it (see, for example, Judgment 4034, consideration 16). The Tribunal also stated, in Judgment 3748, consideration 6, for example, that the complainant must establish that an action or conduct complained of was retaliatory, although it can be accepted that evidence of personal prejudice is often concealed and such prejudice can be inferred from surrounding circumstances. Moreover, the case law states that fraud depends on an intention to obtain financial advantage by deception (see Judgment 3402, consideration 9).The complainant provides no evidence to support the subject allegations or from which any of them may be proved on inference drawn from the surrounding circumstances of the case. As to his allegation of unequal treatment, for example, he provides no evidence to substantiate his plea that in the conduct of the

reclassification exercise he was treated unequally to any other staff member who was in the same situation in fact and in law (see, for example, Judgment 4000, consideration 6).

6. In the first ground the complainant contends that the impugned decision's confirmation of the decision to maintain his post at the P-4 level was wrong in that it failed to conclude that the decision violated standard procedure. In the second ground the complainant challenges the GBA's process on the basis that it disregarded facts; failed to consider the excessive delay in processing his two reclassification requests; failed to consider his academic background, experience and positive appraisal reports; failed to find that he was deprived of the opportunity to resolve the matter through the mediation mechanism and that the GBA "covered up" the Administration's irregularities that he had raised.

7. The applicable regulatory provisions with regard to the complainant's first and second grounds will be referred to as necessary in this judgment. It suffices at this juncture to recall the basic guiding principles from the case law. The following was stated in Judgment 4000, considerations 7, 8 and 9:

> "7. In Judgment 3589, in which the reclassification of a post was also challenged, the Tribunal stated the following, in consideration 4:
>
> > 'It is well established that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts (see, for example, Judgments 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8). The grading of posts is a matter within the discretion of the executive head of the organisation (or the person acting on her or his behalf) (see, for example, Judgment 3082, consideration 20).'

> 8. As to the main factors that are to be taken into account in a reclassification process, the Tribunal has relevantly stated as follows, in Judgment 3764, consideration 6:
>
> > ‘It is for the competent body and, ultimately, the Director-General to determine each staff member’s grade. Several criteria are used in this exercise. Thus, when a staff member’s duties attach to various grades, only the main ones are taken into account. Moreover, the classification body does not rely solely on the text of the Staff Regulations and Staff Rules and the job description but also considers the abilities and degree of responsibility required by each. In all cases grading a post requires detailed knowledge of the conditions in which the incumbent works.’
>
> 9. The classification of a post involves an evaluation of the nature and extent of the duties and responsibilities of the post based upon the job description. It is not concerned with the merits of the performance of the incumbent (see, for example, Judgment 591, under 2).
>
> [...]”

8. The statement in consideration 9 of Judgment 4000 bears out the provision contained in Staff Rule 220 that all posts shall be classified in categories and level according to standards promulgated by the Director-General and related to the nature of the duties and the level of responsibilities required. This is repeated in a manner in paragraph 20 of eManual III.2.1. While repeating this, paragraph 30 further states that the grading does not depend on the qualifications, job performance, seniority or other characteristics of the incumbent. Paragraph 30 also states that a change in the grade of a position should result only when a significant and sustained change in the level of its duties and responsibilities have occurred. Paragraph 40 states that positions are classified by applying the relevant position classification standards as approved and amended from time to time by the Director-General on the basis of the decisions of the International Civil Service Commission (ICSC).

9. In the second ground, the complainant contends that the internal appeal process is tainted with flaws. He submits that the GBA disregarded the facts in various instances. He insists that the GBA wrongly considered that the post at the P-5 level required a PhD while it requires only an advanced university degree. The Tribunal observes that

the GBA relevantly noted that the Classification Specialist's report of 28 August 2014 had stated that prior to its reclassification in August 2012, the P-5 health policy advisor's post included duties, responsibilities and educational requirements that were different from those of the P-4 post to which the complainant was transferred in 2012. The GBA then stated that it found no apparent or compelling reasons why the complainant's position should be graded at the P-5 level. It further stated that the documents revealed that the position was downgraded in 2012 on the basis that the senior advisory function pertaining to public health was removed from the post description and the required qualification changed from a doctoral degree in health administration/system analysis, medicine or public health science to a university degree in medicine, public health and social science. The GBA further noted that the post description for the complainant's position was reviewed by three different classifiers, in August 2012 and in the 2014 and 2016 reclassification exercises, and that all classifiers as well as the Classification Committees arrived at the same conclusion that it should remain at the P-4 level. The Tribunal considers that as the focus of the reclassification was the complainant's subsisting P-4 post, nothing relevantly turned on the GBA's statement that the prior post required a doctoral degree that would affect the finding that his position should be maintained at the P-4 level. The reclassification exercises were concerned with determining whether his position should have been reclassified to the P-5 level on the basis of the duties and responsibilities that attached to that post. The plea therefore fails.

10. The complainant further contends that the GBA failed to consider the excessive delay in processing both reclassification requests (over 8 months for the first reclassification exercise and over 15 months for the second) just for him "to hear a pre-intended negative outcome". The complainant raised what he refers to as the "Torturous Delays in Processing of Reclassification of [his] Position" in his appeal to the GBA dated 21 March 2017. The GBA did not address the issue of delay. In all of the circumstances, particularly given the two reclassification exercises, the delay was neither unreasonable nor excessive. The plea therefore fails.

11. The complainant's pleas that the GBA failed to consider his academic background, experience and positive appraisal reports and that SEARO intentionally provided wrong information regarding his scope of experience also fail. This is because these are irrelevant considerations for the purpose of the reclassification exercise in light of Staff Rule 220 and paragraphs 20 and 30 of eManual III.2.1.

12. The complainant contends that he was deprived of the opportunity to resolve the matter through the established mediation mechanism pursuant to eManual III.12.2 and that this forced him to bring the case to the internal appeal process and the Tribunal with the attendant emotional and financial costs. According to this provision, a staff member may use informal channels to resolve a work-related concern, including a final administrative decision, which she or he considers to be in non-observance of the terms of appointment. It further states that mediation is an informal, voluntary process aimed at resolving such concerns. In the process, a mediator facilitates communication between the parties with a view to assist them to find a mutually agreeable resolution of the concern. As a voluntary process, mediation can only take place with the consent of all of the parties involved.

13. The evidence shows that the complainant drew the Ombudsman's attention to the communication of 10 May 2016 which informed him that the Regional Director had decided to maintain his post at the P-4 level in accordance with the Regional Reclassification Committee's recommendation and the Classification Specialist's findings. The complainant alleges that the Ombudsman, on behalf of the Administration, tried to "suppress" the matter. However the fact that nothing came out of his approach to the Ombudsman is not a ground for vitiating the decision to maintain his post at the P-4 level. The plea therefore fails.

14. The complainant contends that the GBA "covered up" irregularities on the part of the Administration that he had raised and did not give him an oral hearing that would have permitted him to explain them. He states that he would have provided supporting

arguments to confirm that he had been forced to witness many questionable actions by the Administration. The GBA had found that an oral hearing was unnecessary by reference to its Rule 530 which permitted it to consider oral hearings if it determined that the parties were likely to add substantially to the material before it and that such evidence could only have been obtained orally. The GBA stated that it was satisfied that the matter could have been "fairly and appropriately determined by reference to the written material filed by the parties". The complainant's plea fails as the Tribunal finds no basis that would vitiate the GBA's rejection of his request. Moreover, the evidence which the complainant wished to adduce was irrelevant to the case.

15. The complainant contends that the GBA ignored his reservation concerning one of its members whom he suggested may have had a conflict of interest. According to the Tribunal's case law, it is a general rule of law that a person called upon to take a decision affecting the rights or duties of other persons subject to her or his jurisdiction must withdraw in cases in which her or his impartiality may be open to question on reasonable grounds (see Judgment 3958, consideration 11).

The complainant had raised the matter with the Chairperson of the GBA by email dated 26 July 2016 stating that he once had to deal with an administrative issue with one of the members of the GBA. He however stated that the matter was "trivial, closed instantly", but there may be some repercussions from the incident. He concluded by stating that he would have appreciated it if there was an option to have an alternative member. In reply, the Chairperson stated that given that the matter was slight/trivial, was closed instantly and a one-time occurrence, it was not reasonably perceived to affect the independence or objectivity of the panel member. She therefore decided, correctly in the Tribunal's view, that under GBA Rule 510, there was no need to replace that member. The plea fails.

16. In his first ground, the complainant submits that the impugned decision should be set aside because it violated standard procedures. He argues, in the first place, that WHO did not honour its promise to conduct a fresh review on a new post description when it exceptionally

granted him the review after he had contested the 2014 reclassification exercise. He insists that the 2015 desk audit review by the classification specialist was conducted on the post description of 20 March 2014 and that it was the same one that was used in the 2014 reclassification exercise when it should have been conducted on the post description of 23 January 2015. The plea is unfounded. In the first place, as WHO points out, the desk audit itself was to determine and clarify the functions of the post which were to be considered in the reclassification exercise. Additionally, it is evident from the desk audit report of 11 November 2015 that the reclassification exercise was conducted on the basis of the amended post description submitted on 23 January 2015. The November 2015 report noted that in the amended post description the overall purpose of the post remained unchanged but that "the duties and their focus had been partially amended" and that although the amended version had not yet been approved the complainant had been exercising the responsibilities of the post, functionally and officially. The analysis continued on the amended post description.

17. In the second place, the complainant contends, without referencing any authority, that the Administration committed a serious breach of confidentiality and non-compliance with WHO standard procedures by holding secret discussions with unknown/undisclosed officials in WHO's Country Office for Indonesia concerning the functions of the post, without his consent. He insists that it was within the sole authority of the Reclassification Committee to obtain additional comments from other officials. He refers to the contents of an email of 18 November 2014 from the Manager of the Human Resources Management (HRM) Unit in reply to inquiries which the complainant had made to her concerning the reclassification exercise and which he had copied to other persons. In the relevant aspect of the reply, HRM had informed the complainant that the Unit had conducted the review of the current and proposed post description and discussed the functions with the Country Office so that there was no need for further clarification and the Unit and the Reclassification Committee had all of the information which he (the complainant) and the WHO's Representative had submitted on the review. It is apparent that HRM's reference was

to an internal administrative consultative process, which, as WHO points out, was between the Regional Administration and the Country Office to clarify issues relevant to the reclassification review exercise. The plea is unfounded as the complainant's arguments disclose no basis that the process was irregular.

18. In the foregoing premises, the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 30 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ