

SEVENTEENTH ORDINARY SESSION

***In re* PASSACANTANDO**

Judgment No. 107

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations drawn up by Mr. Stelio Passacantando on 5 September 1965, the reply of the Organization of 3 December 1965, and the additional documents and explanations furnished by the Organization on 30 March 1967, the production of which had been ordered by the Tribunal;

Considering Article II of the Statute of the Tribunal, Article XXXVI of the General Rules of the Organization, and Articles 301.043 and 301.044 of the Staff Regulations of the Organization;

Having examined the documents in the dossier, after which the oral proceedings and hearing of witnesses requested by complainant, and the hearing of witnesses subsidiarily requested by the Organization, appeared to be without relevance for the settlement of the dispute and were disallowed;

Considering that the material facts of the case are as follows:

A. On 29 January 1962 Mr. Passacantando was appointed by the Food and Agriculture Organization of the United Nations as a draughtsman in Grade G.6-1 in the Visual Media Section for a period of three months. His appointment was extended on a number of occasions, each time for a fixed term.

Following approval by the 12th General Conference of the Organization of the establishment of a G.6 draughtsman's post of indeterminate duration, a competition was held to fill it. Mr. Passacantando was one of the applicants and he was invited to undergo a test in June 1964. At first he refused on the ground that it was not consistent with his professional dignity to submit to a test of his capabilities which were adequately proved by his service with the Organization. Finally, however, he agreed to take the test on 17 July 1964.

None of the applicants having proved suitable for appointment to the vacant post, the Organization made arrangements for a further competition. Out of about 100 candidates ten were convened to take a test on 16 January 1965 Mr. Passacantando was one of the selected applicants and he presented himself on the appointed date

B. On 29 January 1965 complainant was informed by the Chief of the Recruitment Section that he had not been selected for the post and would therefore be separated from the Organization on 28 February 1965.

On 4 February 1965 he appealed against this decision to the Director-General, who confirmed it on 18 February.

On 3 March he submitted an appeal to the Appeals Committee, which on 4 May declared that the appeal did not fall within its competence .

On 9 June he was informed that the Director-General maintained his decision.

C. In the present complaint Mr. Passacantando prays that the Administrative Tribunal will be pleased (1) to quash the Director-General's decision as being in violation of Articles 301.044 and 301.043 of the Staff Regulations; (2) to reinstate him retroactively in the G.6 post of indeterminate duration and to order payment of his arrears of salary from 1 March 1965 up to the date of the Tribunal's accession; (3) to award him U.S. \$10,000 as compensation for moral and professional damages.

The Organization submits that these conclusions be dismissed.

CONSIDERATIONS:

1. Whereas under paragraph 4 of Article XXXVI of the General Rules of the Organization the Director-General acts in his unfettered judgment in appointing, assigning and promoting staff personnel, according to paragraph 2 of the same Article he must nevertheless, insofar as may be feasible, arrange for public announcements of staff vacancies and fill such vacancies in accordance with such competitive methods of selection as he may consider suitable for various types of appointment. Furthermore, Article 301.043 of the Staff Regulations also provides that as far as practicable selection shall be made on a competitive basis. Moreover, Article 301.044 of the Staff Regulations provides that in filling vacancies, without prejudice to the recruitment of fresh talent at all levels, full regard shall be had to the qualifications and experience of persons already in the service of the Organization. From these provisions it follows that in the event of vacancies arising staff members of the Organization have certain rights which it is necessary to specify.

The Organization's obligation to have regard to their qualifications implies, in the first place, that they are entitled to take part in any competitions that may be open to them. If this right is to be effective, it must necessarily include the right to demand that the arrangements for the competition ensure the appointment of the candidate who is really the best qualified. In other words, at every stage of the competition including the arrangements made, the conduct of the tests and the evaluation of their results, every candidate must be treated on an equal footing and with full impartiality.

On the other hand, although the Organization is bound to have full regard to the qualifications and experience of persons already in its service, this does not mean that it must necessarily always appoint them in preference to outside applicants. If this privilege were automatically to be granted to the serving staff, the Organization might be led to take decisions contrary to its own interests, a situation which was certainly not intended by those who drafted the Staff Regulations. The position is that persons already in the service of the Organization have priority only if their qualifications appear to be at least equal to those of other candidates .

2. In the case at issue complainant does not deny that he was allowed to apply for the vacant post and to present himself on 16 January 1965 for the examination as a result of which the Director-General took the decision impugned. It falls to be considered whether the arrangements for the competition, the conduct of the examination, and the evaluation of its results are open to criticism.

(a) Organisation of the Competition

The Organization did not fail in its duty in making public announcement of the competition in the press, which attracted some hundred applicants; in so doing not only was it acting in accordance with paragraph 2 of Article XXXVI of the General Rules, but it was also increasing its chances of appointing a qualified person, and it cannot be blamed for this. Neither did the Organization prejudice complainant's interests by authorising only some of the applicants to undergo the examination on 16 January 1965; as the complainant was among those selected, it was to his interest that the number of his competitors should be reduced. Similarly, it is of no importance that the tests set on 16 January 1965 differed to some extent from those taken by complainant on 17 July 1964; the Organization was quite right not to repeat the preceding examination exactly so that applicants who had taken the first examination should not be favoured at the expense of those who took the second. It is not necessary to consider whether the organisers of the examination of 16 January 1965 exactly followed the instructions they had communicated to the applicants beforehand; complainant would be entitled to complain that the programme had been changed only if he had prepared himself for the examination in the light of the instructions he had received, and he does not claim to have done this. Finally, contrary to complainant's allegation, the tests set for the candidates did correspond to the duties attaching to the vacant post insofar as they all related to work that a draughtsman may be required to do in the service of an international organisation.

(b) Conduct of Examination

Complainant states that the most important tests had to be carried out by means of an airbrush, that the first such implement allotted to him was defective, and that when an airbrush that functioned was put at his disposal he had no time to make use of it because the time allotted for the examination was coming to an end; and that he was therefore at a disadvantage as compared with the other candidates. This complaint is not valid, however; in fact, those candidates who did not have their own airbrush were allowed to use one of those put at their disposal by the Organisation for an hour and twenty minutes, and the complainant himself states that he received an airbrush in proper working order at 12.50, whereas according to the memorandum submitted to the Appeals Committee the examination did not end until 2 p.m. In these circumstances complainant was in a position to make use of the

airbrush for an hour and ten minutes, or approximately the time provided, and it may be assumed that if he had asked for an extension of ten minutes, which he did not do, his request would have been granted. It follows that, regard being also had to his own attitude, his complaint of being at a disadvantage is unfounded. Moreover, even if complainant had distinguished himself in the airbrush tests it is improbable that he would have been placed first in the competition since his results in the other four tests were definitely less good than those of the successful competitor.

(c) Evaluation of Results

When making their decision the three experts were not aware of the names of the respective candidates, the papers having been placed in plain envelopes marked only with a letter of the alphabet. This ensured the impartiality of the experts. While it is true that complainant's chief, who was allegedly prejudiced against him, was a member of the board of experts, he expressed views which, although independent of those of his colleagues, did not differ from them. Consequently his presence cannot be said to have brought personal influence to bear on the results of the competition nor to have prejudiced complainant's interests. There is no reason to question the impartiality with which the results were evaluated.

3. It follows from what has been said above that complainant is not justified in criticising the conditions under which the competition was held. As he does not deny that his work was inferior to that of the candidate who was appointed, he cannot claim a preferential right as a serving official, since this exists only where qualifications are equal. His submission that the decision impugned should be quashed is therefore ill-founded.

The same applies in respect of his submissions concerning his reinstatement and the payment of arrears of salary. As he was appointed for temporary fixed periods he is not entitled to claim reinstatement in a post of indefinite duration that he has never held. Moreover, he has not put forward any facts justifying extension of his appointment beyond the date at which it was terminated by the Organization. His claims are the less justified inasmuch as the Organization gave him additional appointments to enable him to enter the second competition as a staff member, i.e. with priority rights.

The absence of any violation of the applicable rules involves dismissal of the request for compensation in the last submission.

DECISION:

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine