

EIGHTY-THIRD SESSION

In re van der Peet (No. 21)

Judgment 1622

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-first complaint filed by Mr. Hendricus van der Peet against the European Patent Organisation (EPO) on 2 September 1996, the EPO's reply of 27 November 1996, the complainant's rejoinder of 20 February 1997 and the Organisation's surrejoinder of 11 April 1977;

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

Having examined the written submissions and decided not to allow the complainant's application for the hearing of witnesses;

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

A. The complainant, a Dutchman, is on the staff of the EPO's secretariat, the European Patent Office, in Munich. Facts relevant to this case appear under A in Judgments 1391 and 1439 on his eighteenth and nineteenth complaints.

In a letter of 27 February 1995 the Director of Personnel Administration told him that he was promoted to grade A4 as from 1 July 1993. By a letter of 1 March 1995 he asked the Director to give effect to his promotion "in keeping with the actual standards applied to such promotions" or else treat his letter as an internal appeal. By a letter of 26 April the Director of Staff Policy told him that the President of the Office had put the matter to the Internal Appeals Committee. In a report dated 17 April 1996 the Committee recommended rejection. By a letter of 5 June 1996 the Director of Staff Policy told him that the President had decided to endorse the recommendation. That is the decision under challenge.

B. The complainant submits that he met the required conditions well before his promotion took effect. He alleges breach of the EPO's practice governing promotion, failure to take account of the facts, and flaws in the proceedings before the Appeals Committee.

He is seeking promotion from either 1 January 1991 or 1 July 1991 or, subsidiarily, from either 1 January 1992 or 1 July 1992. He claims 4,000 German marks in costs.

C. The Organisation replies that the complaint is time-barred: not until August 1993 did he first challenge the denial of promotion. He had ample opportunity before that to ask why his name was not on the list of officials who did get promotion in 1991 and 1992. In subsidiary argument on the merits the EPO contends that it gave effect to his promotion at the proper date. It describes the complaint as an "affront" to its dignity and an abuse of process.

D. In his rejoinder the complainant seeks to counter the EPO's pleas on receivability and the merits.

E. In its surrejoinder the EPO observes that the rejoinder contains no new pleas to make it change its position.

CONSIDERATIONS

1. The complainant joined the staff of the European Patent Organisation in 1980 as a patent examiner. This complaint, his twenty-first, is a sequel to his eighteenth and nineteenth. Judgments 1391 and 1439 set out the main facts.

2. On 9 March 1992 the EPO imposed on the complainant a disciplinary measure that consisted in reducing his seniority by twelve months. That decision was set aside by Judgment 1391, allowing his eighteenth complaint.

3. While those proceedings were pending the complainant found that his name was not on the list of promotions of staff from A3 to A4 that the Office had published on 11 August 1993. By a letter dated 19 August 1993 he asked the President of the Office to say why, and the answer was that the reason was the disciplinary measure. After exhausting his internal remedies he filed his nineteenth complaint on 11 August 1994 seeking promotion to grade A4 as from "the date on which the Promotion Board recommended such promotion". Judgment 1391 was delivered on 1 February 1995, and by a letter dated 27 February the EPO promoted the complainant to A4 as from 1 July 1993.
4. The complainant put a further claim to the EPO at once, on 1 March 1995, that his promotion should be backdated to 1 January or 1 July 1991 or, failing that, to 1 January or 1 July 1992. It is the rejection of the claim that prompts this complaint.
5. On 6 July 1995 the Tribunal delivered Judgment 1439 on his nineteenth complaint. It noted that, although he had not specified the date recommended by the Promotion Board for his promotion, what he had asked for in his letter of 19 August 1993 was promotion to A4 in 1993. It concluded that he had received full satisfaction if the date of promotion recommended by the Promotion Board was 1 July 1993 or later and that any claim to backdating as from any earlier date must await the outcome of his internal appeal pursuant to his claim of 1 March 1995.
6. In its report of 17 April 1996 on that appeal the Appeals Committee confirmed that the date that the 1993 Promotion Board had recommended was 1 July 1993. The complainant does not dispute that, and in accordance with Judgment 1439 his claim to promotion in 1993 has been satisfied in full.
7. As for his claim to the backdating of his promotion to 1991 or 1992, it is not in dispute that his promotion to A4 depended on whether his performance had been "outstanding", "very good" or "good": the higher the rating, the lower the minimum age and the less the "reckonable experience" required to qualify for promotion. In his claim of 1 March 1995 he said that the practice was to grant promotion to A4 on the strength of 17 years' reckonable experience -- the EPO says 15 to 18 years -- and "very good" ratings for four years; and that by 1 July 1991 he had the 17 years' reckonable experience -- the EPO says he had only 16 -- and had had "very good" ratings for two-and-a-half years, a point the EPO admits.
8. Although the complainant may have otherwise qualified, even as late as 1 July 1992 he had not yet had four "very good" ratings and he therefore failed to qualify for promotion in terms of the prevailing practice.
9. He has cited an instance of promotion of a staff member in 1992 whom the Promotion Board had not recommended and who had had "very good" ratings for less than two-and-a-half years. He contends that that was in keeping with the criteria for promotion in 1992 and that he had satisfied those criteria even in 1991. The Tribunal ruled on the matter in Judgment 1600 (*in re* Blimetsrieder and others); it held that the decision to promote the other staff member he mentions had been contrary to the established procedure for promotion and had resulted in the denial of equal treatment. The reason why it did not quash that promotion was that the complainants had not so asked.
10. As the complaint fails on the merits, it is unnecessary to consider its receivability.
11. In his submissions the complainant has made personal allegations against two senior officers of the EPO which have not the slightest relevance to the vindication of his rights or to the present litigation. He has thereby misused the rights and privileges he enjoys in proceedings before the Tribunal.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Mark Fernando, Judge, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

William Douglas
Mark Fernando
Julio Barberis
A.B. Gardner

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