

## NINETIETH SESSION

***In re Espinar Sierra***

**Judgment No. 2025**

The Administrative Tribunal,

Considering the complaint filed by Mr Miguel Angel Espinar Sierra against the Food and Agriculture Organization of the United Nations (FAO) on 24 December 1999 and corrected on 17 March 2000, the FAO's reply of 12 June, the complainant's rejoinder of 17 July and the Organization's surrejoinder of 25 September 2000;

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

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

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

A. The complainant, a Spaniard who was born in 1943, was recruited by the FAO in 1979 on an appointment for two years as an expert in bioclimatology at grade P.4 for a project in Algeria. He was thereafter given several short-term contracts and worked on a project in Yemen among others. In October 1983 he was appointed to a grade P.4 post at the Office for Special Relief Operations (OSRO) at the Organization's headquarters in Rome under a contract that was extended several times. He was granted a continuing appointment as from 1 January 1991.

In 1993 the complainant was chosen on a temporary basis for a post as an agricultural economist at grade P.5 for a project in Tanzania. By a memorandum of 15 February 1994 he asked for "return rights" to OSRO at the end of that field assignment, and the FAO agreed. Originally applicable in March 1997, the "return rights" were brought forward to 31 January 1996 because his field project had been shortened. The complainant took up his new duties in Tanzania on 15 March 1994. His transfer involved a promotion to grade P.5 with effect from 1 April 1994. As from 18 January 1996 he was reassigned to FAO headquarters in Regional Service 3 (TCO3) of the Field Operations Division (TCO). On 1 February he was transferred to another post in TCO3. A notification of personnel action dated 7 March informed him that his grade had reverted to P.4 as from 1 February 1996. On 1 September 1996 he was transferred to Regional Service 1 (TCO1).

By a letter of 20 January 1997 the Director of the Personnel Division informed the complainant that restructuring and decentralisation proposals approved by the Director-General in 1994 involved transferring certain posts to the regional and sub-regional offices. The complainant's post had been identified for relocation to the Regional Office for the Near East in Cairo (Egypt). His official transfer was scheduled to take place before 30 June 1997. On 30 January 1997 the complainant filled up a "confirmation of reassignment" in which he stated that he did not speak Arabic, which was one of the languages required at the Regional Office for the Near East. He also pointed out that his youngest son had problems adapting to change and that a transfer would jeopardise his own career development prospects. Moreover, the transfer, if it took place, would be his third assignment in one year. Deeming himself unready for a transfer to Cairo, he therefore asked for a position in the Europe Unit of TCO1. In a letter of 24 February the Director of the Personnel Division confirmed his relocation to Cairo.

By a letter of 24 March 1997 the complainant informed the Director of TCO that he wished to be reinstated in his previous grade, P.5. The Director of TCO replied in a memorandum of 16 April that he would be transferred at his current grade, P.4. By a memorandum of 23 May the complainant appealed to the Director-General against "administrative decisions with a cumulative and humiliating effect", subjecting him to "downgrading, a series of transfers and a forced change of duty station". By a letter of 20 June the Assistant Director-General in charge of Administration and Finance informed him that his appeal was rejected. By a memorandum of 11 July the

complainant went to the Appeals Committee alleging "prolonged administrative harassment". He nonetheless reported for duty in Cairo on 14 July 1997.

In its report of 8 July 1999 the Appeals Committee found the complainant's objection to the transfer to be his only receivable and sound plea. Noting a "language anomaly" in the job description for the post in Cairo, it recommended that the Director-General make a "special effort" to find him "an assignment suited to [his] linguistic and technical abilities" and which, if possible, would help to resolve his family difficulties. It also noted that the Organization's attitude had been "blatantly cavalier". In a letter of 24 September 1999, the impugned decision, the Director-General informed the complainant that he endorsed the Committee's recommendations and that the FAO was prepared to offer him a transfer to headquarters on a P.4 post as operations officer in the Field Operations Division. On 30 September 1999 the complainant wrote to the Director of the Personnel Division confirming his acceptance of the offer.

B. The complainant takes up the part of his appeal which the Organization deemed irreceivable, namely his plea of "prolonged administrative harassment", which consisted of downgrading him and transferring him several times though there was no obvious administrative need to do so. He contends that his appeal was receivable on all counts. The case law holds that an official may allege breach of an acquired right "due to an accretion of final decisions ... each of which, taken singly, would not itself have been deemed unlawful". Furthermore, the Tribunal allows exceptions to time limits where an organisation has misled an official or withheld some document from him in breach of good faith. The FAO hid its real intentions from the complainant and denied him his right to timely appeal. The Tribunal has found complaints to be receivable where the injury arises from the length of time over which the official suffered inconvenience. The complainant alleges in this connection that the FAO failed to cooperate with the Appeals Committee so as to "prolong" his family problems "as much as possible".

He submits that the Organization subjected him to "systematic and continuous harassment" and "discriminatory and humiliating treatment". It took several decisions which were contrary to its own interests as well as affecting him adversely, so it obviously intended to "harm his interests" and cause him unnecessary difficulties in his professional, personal and family life. Moreover, for every decision that affected him adversely the administration took a decision which benefited some other staff member. It was the Organization's indifference to the problems caused by his transfer to Cairo that made him realise that he had fallen foul of "persecution" and abuse of authority by the FAO. He adds that the FAO made "false statements" when it asserted that the post in Cairo required no knowledge of Arabic. And not until May 1997 did it inform him that his post was temporary: it thus hid from him "essential information" about his conditions of employment. Lastly, his downgrading and forced transfer created the presumption that he was being "punished for serious misconduct".

The complainant explains that, on upgrading him to P.5, the FAO failed to inform him that the promotion was temporary. It gave no reasons for his downgrading because, he says, it new full well that it was unlawful.

He alleges that the FAO kept him in a situation of permanent denial of his rights: it put him on an "unwritten black-list" in order to exclude him from the usual career development procedures. He cites several instances of competitions for which he applied but was turned down although he had all the necessary qualifications.

He asks the Tribunal to award him compensation for the "prolonged harassment" to which he was subjected, to quash the unlawful decisions which caused him moral and material injury - particularly the one downgrading him - and to order that his career be reconstituted on the basis of P.5, the level of post he held when he was downgraded, with payment of the corresponding salary including contributions to the United Nations Joint Staff Pension Fund. He also seeks an award of moral damages. He claims compensation equivalent to at least two years' gross remuneration for the deterioration in his family situation and professional reputation and for the decline in the health of his wife, who is having treatment for a depression triggered by the accumulation of events that prompted the complaint. Lastly, he seeks compensation equivalent to at least one year's gross pay for the injury caused by the infringements of the rules and selection procedures.

C. In its reply the FAO submits that the complainant's claim to compensation for harassment is irreceivable because he did not make it in the internal appeal. In subsidiary pleas it observes that the decisions to transfer the complainant were taken owing to requirements of service and in accordance with the rules. His early return from Tanzania had meant putting him on a temporary post at grade P.4 since no other assignment was possible. Another official having been picked for that post in August 1996, it had been necessary to reassign the complainant yet again. As for his transfer to Cairo, it was part of an "in-depth reform" of the Organization and his position had been

considered with the attention it deserved. But in a structural reform involving a great many transfers, as was the case here, an organisation's scope for considering the individual interests of its staff is "limited". That was why the FAO had not regarded the objections raised by the complainant as an obstacle to his transfer. A knowledge of Arabic was not a requirement for the post in question. Besides, during his assignments to Algeria and Yemen, his lack of Arabic did not prevent him from performing his duties.

Likewise, his claim to the quashing of the decision downgrading him is irreceivable because he did not challenge it in an internal appeal. The FAO explains in subsidiary argument that to put the complainant back on a P.4 post was in keeping with the provisions of the Manual and "long-standing" FAO practice. His right of return was granted at the grade he held before his temporary assignment to Tanzania because it was impossible to guarantee him a P.5 post. So he knew full well before leaving for Tanzania that he would return to a P.4 post on completing his assignment in the field.

Lastly, the FAO observes that the case law on the reconstitution of careers is immaterial here. The complainant's transfer to Cairo and any family problems it may have caused do not warrant an award of moral damages. Field assignments are "an essential part of the career and status of any international civil servant" and the FAO has already helped to alleviate the complainant's problems by reassigning him to headquarters.

D. The complainant rejoins that his career has been ruined and that the FAO subjected him to unwarranted "vexatious treatment" in breach of its duty to respect the rights of every staff member at all times, particularly during major reforms. He further alleges that the Organization had no right to oblige him to accept temporary posts on returning from Tanzania, and points out that the latter were classified as grade P.5. He adds that the case law does recognise an official's right to count "experience acquired in the field".

In his submission, whether the duties of the Cairo post required a knowledge of Arabic is immaterial. What matters is that in order to commit an abuse of authority, the FAO submitted the wrong document.

Lastly, the Organization received in September 1997 the medical certificate attesting to his wife's illness but did nothing to alleviate his family problems until December 1999. Furthermore, it ignored the fact that one of his sons had problems in adapting.

E. In its surrejoinder the FAO presses its pleas. The decisions to transfer the complainant were taken because of the requirements of the service and were lawful. They betray no intent to injure the complainant or his family.

## CONSIDERATIONS

1. The FAO recruited the complainant in 1979. After several assignments in the field and at headquarters, including at the Office for Special Relief Operations (OSRO), it gave him a continuing appointment as from 1 January 1991. On 15 March 1994, at which time he held grade P.4, it transferred him on a temporary basis to a post for an agricultural economist at grade P.5 on a project in Tanzania. It had told him beforehand that his right of return to the same unit would be ensured. On returning from Tanzania earlier than expected because the project had been shortened, he was assigned in January 1996 to Regional Service 3 (TCO3), the service responsible for agricultural operations in Latin America and West Africa. From 1 September 1996 he was assigned to Regional Service 1 (TCO1) the service responsible for agricultural operations in Asia and the Pacific, Europe and the Near East. The FAO considered that on returning to headquarters the complainant's grade should be the one he held before his temporary assignment to Tanzania, pursuant to the relevant paragraphs of the FAO Manual, and accordingly told him on 7 March 1996 that he had been put back on grade P.4. In January 1997 it informed him that because of restructuring within the Organization his post had been identified for relocation to the Regional Office for the Near East in Cairo. The complainant objected to the new transfer on the grounds, among others, that he did not speak Arabic and had family difficulties. However, after consulting the competent body the Director of the Personnel Division told the complainant in a letter of 24 February 1997 that although he sympathised with his personal circumstances he would still be transferred to Cairo. The Director of the Field Operations Division (TCO) confirmed on 19 March 1997 that he was to report to the Regional Office in Cairo in June. The complainant told him he wished to return to P.5 - the grade he had held when he was assigned to Tanzania and Yemen - and asked for his support. On 16 April 1997 he was told that he would be transferred to Cairo at his current grade, P.4.

2. The complainant made other attempts to escape transfer and on 23 May 1997 filed an appeal with the Director-General against "administrative decisions with a cumulative and humiliating effect" subjecting him to "a series of transfers and a forced change of duty station". Though he affirmed that he was not against transfer to a regional office as part of the decentralisation exercise and recognised the Director-General's authority "to assign a staff member to any tasks or any posts in the Organization", he sought the quashing of his transfer on the grounds that it was discriminatory, showed formal flaws and came after a series of decisions that had caused him serious moral and professional injury. He also sought reinstatement in grade P.5, which he had lost following the "decision of 7 March 1996 to downgrade him"; and reassignment to a post for which he was fully qualified. Lodged under Staff Rule 303.13, the appeal was rejected on 20 June 1997: the Assistant Director-General in charge of Administration and Finance deemed it out of time insofar as it challenged his transfers in 1996 and the decision to put him on grade P.4 on his return from Tanzania. He added that the latter decision was perfectly lawful, and that the transfer to Cairo breached no rules and was in no way vexatious or discriminatory.

3. The complainant therefore took his case to the Appeals Committee on 11 July 1997. He sought the quashing of the "unlawful" decisions; reinstatement at P.5, the grade he held before the "decision to downgrade him" was taken on 7 March 1996; assignment to a post for which he was qualified; and compensation for the moral injury caused by the decisions he was challenging. He reported for duty in Cairo three days later, on 14 July 1997.

4. After a long enquiry, the Appeals Committee reported on 8 July 1999. It found that an examination of the circumstances of the complainant's downgrading and successive assignments showed no breach of the rules and procedures but indicated rather that the FAO "had dealt with matters in a blatantly cavalier manner". According to the Committee, although the successive decisions on his career did not betray "systematic and continuous harassment" and although his claim to their quashing is irreceivable because it was out of time, the part of his appeal relating to his objections to the transfer to Cairo is both receivable and sound, because the decision to transfer him was based on incomplete or wrong information. It therefore recommended "that a special effort be made, in observance of the rules in force, to find an assignment that meets the linguistic and technical abilities of the complainant and, if possible, helps to resolve his family difficulties".

5. By a letter of 24 September 1999 the Director-General notified the Committee's report to the complainant, indicating that he disagreed with the finding that the decision to transfer him to Cairo was based on incomplete or wrong information, but that a careful examination of the whole matter led him to endorse the Committee's recommendations. He therefore offered him an assignment to headquarters as an operations officer at grade P.4 in the Field Operations Division. The complainant agreed to the new transfer, which met his wishes, though he expressed reservations about the Committee's finding that part of his appeal was irreceivable. On 24 December 1999 he filed this complaint with the Tribunal seeking the quashing of the decision of 24 September 1999 insofar as it does not satisfy his claims. He asks the Tribunal to set aside the unlawful decisions adversely affecting him and particularly the decision to downgrade him to P.4; to order that his career be reconstituted on the basis of grade P.5 and to award him compensation for the injury caused by the harassment to which he was subjected, and for the moral injury on all counts caused by the offending decisions.

6. The Tribunal must first determine which of the complainant's claims are receivable.

7. The Tribunal finds that his claim seeking the quashing of the decision of 7 March 1996 to put him on P.4, which the complainant sees as a downgrading, and the quashing of the decisions to reassign him, taken in 1996, is irreceivable because he failed to appeal within ninety days of the notification of those decisions, as Staff Rule 303.1311 requires.

8. However, his claim to the quashing of the decision to transfer him to Cairo is receivable. So too is his claim to compensation for the injury caused by the harassment he alleges and which is not specifically linked to the unlawfulness of any one of the decisions. His claim to compensation for the harmful effects of his transfer to Cairo is also receivable.

9. In support of his argument that the decision to transfer him to Cairo was unlawful, the complainant relies largely on the Appeals Committee's finding that the FAO paid scant heed to his family circumstances, his personal reservations and his lack of Arabic: although it was not tainted with abuse of authority, according to the Appeals Committee, the offending decision was nonetheless "based on incomplete or wrong information". The evidence shows that, contrary to what some of the information given to the Appeals Committee indicates, the post to which the complainant was assigned did not require any knowledge of Arabic. Furthermore, the complainant fails to

establish any formal flaws, and mainly relies on the fact that the FAO took no account of his observations, which he sees as confirmation of the harassment he alleges. On that score the Organization is right in its assertion that the Director-General acted within his authority to assign staff and broke none of the rules.

10. Yet the FAO itself conceded that, after examining the whole matter carefully, it was bound to accept the Appeals Committee's recommendations; that was why it offered the complainant an assignment to headquarters. It thereby admitted - regardless of the fact, which it denies, that the Director-General's decision was based on incomplete or wrong information - that it had failed to assess the complainant's circumstances with the care required by administrative decisions that affect its staff. That in itself warrants the conclusion that, even though his assignment to Rome met the complainant's wishes in part, it did not fully make up for the injury caused by his transfer to Cairo in the circumstances described above. Consequently, in taking his decision of 24 September 1999 to assign the complainant to Rome, the Director-General was wrong not to award him the compensation he had claimed.

11. The complainant does not specify the nature and extent of the moral injury caused by that transfer, but a fair assessment of the circumstances of the case will be made by granting him compensation in an amount of 4,000 United States dollars.

12. The evidence shows that, in the course of his career, the complainant was unhappy about several decisions on assignments or grades which he did not contest at the time. However, there is no evidence of harassment or systematic wrongdoing on the part of the FAO. The complainant's claims to compensation for the injury he allegedly suffered on this count and to the reconstitution of his career must fail.

13. Since the complaint succeeds in part, the complainant is entitled to an award of 1,500 dollars in costs.

## DECISION

For the above reasons,

1. The Director-General's decision of 24 September 1999 is set aside insofar as it denies the complainant all redress.
2. The FAO shall pay the complainant the sum of 4,000 United States dollars in compensation.
3. It shall pay him 1,500 dollars in costs.
4. His other claims are dismissed.

In witness of this judgment, adopted on 9 November 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

*(Signed)*

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

