

The Administrative Tribunal,

Considering the second complaint filed by Mr P.-S. B. against the Food and Agriculture Organization of the United Nations (FAO) on 6 February 2004, the FAO's reply of 14 May, the complainant's rejoinder of 24 June, and the Organization's surrejoinder of 27 September 2004;

Considering Articles II, paragraph 5, and VII 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 Canadian national born in 1945, is a former official of the World Food Programme (WFP), an autonomous joint subsidiary programme of the United Nations and the FAO. He separated from service, by way of a mutual agreement, on 31 July 2003. At the material time he held a post in the field, at grade P-4.

During a visit to WFP headquarters in Rome on 22 April 2002 the complainant discovered three documents in his personal file. Considering these documents as "proof" that WFP management had a "persistent negative attitude and unfair consideration" towards him, he submitted an appeal to the Executive Director of the Programme on 20 June 2002, alleging that there had been a "collusion" to deprive him of career advancement and to exclude him from assignments in Asia. As a "fair measure of redress" he asked the WFP to consider giving him a retroactive promotion to grade P-5, with apologies. The Executive Director replied on 28 October that there is no right to promotion, only a right to be considered for promotion and that there were no legal grounds to justify a retroactive promotion in his favour. He added that there was no evidence of any collusion against the complainant: his non-promotion was based on his uneven performance combined with a couple of disciplinary measures taken against him – namely a written reprimand and a written censure – one of which he unsuccessfully appealed.

On 1 December 2002 the complainant appealed against the Executive Director's decision to the Appeals Committee of the FAO. He said that his appeal was based on abuse of power, denial of career progress and due process over a period of 15 years. In its report dated 29 July 2003 the Committee recommended by a majority that the appeal be rejected as time-barred and unfounded. Two members considered the appeal admissible, but unfounded. The Director-General rejected the appeal in a letter dated 4 November 2003. That is the impugned decision.

B. The complainant submits that the discovery of the three documents in his personal file was "the necessary trigger" which gave concrete support to his beliefs that he had been discriminated against, causing his lack of career progress and choice of postings, since 1987. Therefore, he argues, his appeal should have been considered receivable. He points out that two members of the Committee considered that his appeal had been filed within the prescribed time limits.

He contends that senior staff members of the WFP abused their power, depriving him of career advancement, progress and promotion and he explains in detail how the documents in question affected his career development and denied him due process. The complainant states that the Appeals Committee was critical of the manner in which WFP management had treated him. According to him it was his "whistle-blowing" activities against senior WFP officials which were resented by the officials concerned and in some cases he was retaliated against, and therefore his career prospects were damaged. He alleges that WFP management has failed to observe its own policy on harassment. Despite the fact that several recommendations concerning his promotion were made between 1989 and 1996, he remained at grade P-4 for his entire career with the WFP.

He asks the Tribunal to grant him financial compensation equivalent to 12 months' salary and allowances for the loss of opportunity and lack of career development, plus six months' salary and allowances in moral damages. He also requests a letter of apology and costs.

C. In its reply the FAO objects to the receivability of the complaint, because the complainant has not challenged

a final administrative decision. There is no identifiable and dated administrative decision against which a grievance could be filed. Any decision concerning his career taken by the WFP during his employment would have been subject to appeal, but he did not appeal any such decisions within the time limits.

It submits that the complainant has presented a “plethora of accusations” against the Programme, without presenting any plausible legal argument or factual evidence in support of his claims. The FAO rejects the complainant’s underlying assumption that a right to promotion exists. It is the complainant himself who has hindered his career progression by refusing to participate in the Management and Appraisal of Performance (MAP) process, a mechanism put in place to guide the process of promotions. He was also subject to a written reprimand in October 1999 and to a written censure in November 2001. In any event, the link between the documents he found in his personal file and his non-promotion is too attenuated to have caused him any injury. It adds that the alleged damages are also remote: there is no direct connection between any wrongful act and an alleged injury.

The Organization invokes the Tribunal’s case law on the subject of promotions. Decisions concerning promotions are discretionary and there is no right to promotion, even with a good performance record and satisfactory appraisals. The complainant’s supervisors, however, judged his performance not suitable for promotion purposes.

D. In his rejoinder the complainant explains that he did not file appeals against earlier administrative decisions because he kept his faith in the integrity of the WFP management; but he has a cause of action and his complaint is receivable. He should not be blamed for not filing formal complaints against unfair decisions; the blame should be placed on the Programme for not respecting fairness or the elementary principles of justice.

He contests that his performance was “uneven” and he has never received an “unsatisfactory” rating during his employment. The defendant has referred to the lack of factual evidence in support of his claims; however, it could have easily verified his statements and the facts, but it did not. The complainant argues that, while there exists no automatic right to promotion, a discretionary decision is still subject to respect for legality, fair process, and all other rights granted under the statutory provisions. He had boycotted the MAP process because he became convinced of the futility of the exercise.

He notes that the reply does not address his comment that the WFP did not abide by their obligation to enforce their policy on harassment.

E. In its surrejoinder the Organization presses its pleas on receivability. On the merits, it points out that the complainant presents no new documentation in support of his claims and he has failed to demonstrate any direct connection between the documents found in his personal file and any alleged injury. The Programme rejects the complainant’s position and asserts that his analysis of the situation is without merit and his conclusions erroneous.

CONSIDERATIONS

1. In the course of a visit to WFP’s headquarters on 22 April 2002, the complainant found three documents in his personal file which, he alleges, showed unfairness, lack of due process and honest consideration on the part of the WFP on matters regarding his promotion and transfer. He also alleges that there had been a collusion to deprive him of career advancement and to exclude him from assignments in Asia, which amounted to nothing less than professional harassment, all of which according to him explained why he could not make any progress in terms of career promotion or to obtain any preferences on transfer.

2. On 20 June 2002 the complainant submitted an appeal to the Executive Director of the Programme detailing his allegations as mentioned above and asking the WFP to consider giving him a retroactive promotion to grade P-5, with apologies.

3. On 28 October the Executive Director replied negatively on the grounds that the complainant had no right to promotion but only a right to be considered for promotion.

4. On 1 December 2002 the complainant submitted an appeal to the Appeals Committee of the FAO, alleging abuse of power, denial of career progress and due process over a period of 15 years. This time, he asked, as moral damages, compensation of one month of salary per year for 15 years for a total of 15 months, as well as a letter of apology.

5. On 31 July 2003 the complainant's appointment was terminated by mutual agreement.
6. In its report to the Director-General of 29 July 2003, the Appeals Committee recommended that the appeal be rejected as time-barred and unfounded, there not being sufficient evidence to substantiate the complainant's accusations.
7. The Director-General, in his reply of 4 November 2003, accepted the recommendation of the Committee to reject the appeal as not receivable and unfounded.
8. Having received the Director-General's decision on 13 November 2003, the complainant filed this second complaint with the Tribunal on 6 February 2004 wherein he asked that the Programme grant him a financial compensation equivalent to 12 months' salary and allowances to compensate for the loss of opportunity forced upon him by the discrimination and lack of career development, plus six months' salary and allowances as moral damages, reimbursement of legal expenses, and a letter of apology.
9. The complainant was subject to disciplinary measures, one of which he unsuccessfully appealed; the other he has not appealed and the applicable time limit has passed, as argued by the Organization.
10. Over the years, the complainant had sent letters to different officials of the Programme expressing various grievances, all of which were answered by management after proper review, confirming that there was no merit in his repeated allegations; these answers were not contested by the complainant before the Tribunal.

Concerning his request for retroactive promotion, the Tribunal considers that the Executive Director was justified in answering that the complainant has no right to promotion. Therefore, his claim for damages cannot be entertained either.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 November 2004, Mr Michel Gentot, President of the Tribunal, Mrs Florida Ruth P. Romero, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Michel Gentot

Florida Ruth P. Romero

Agustín Gordillo

Catherine Comtet