

The Administrative Tribunal,

Considering the complaint filed by Mr V. K. S. against the World Health Organization (WHO) on 8 June 2006, the Organization's reply of 11 September 2006, the complainant's rejoinder of 3 January 2007 and the WHO's surrejoinder of 13 March 2007;

Considering Article II, paragraph 5, 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, an Indian national born in 1948, joined the Organization's Regional Office for South-East Asia (SEARO) on 12 July 1979 as a Clerk-Typist in the Typing Pool and Reproduction Unit, at grade ND.03. In July 1985 he was reassigned to the Communications and Records Unit as Clerk II and promoted to grade ND.04. As a result of post reclassification in June 1995, he was promoted to grade ND.05.

In April 2003 the complainant submitted an application for the post of Administrative Assistant (Head of the Communications and Records Unit), at grade ND.07. He took a written test in March 2004 and was called for an interview in April of the same year. On 29 July 2004 he was informed that he had not been selected for the post. He appealed this decision to the Regional Board of Appeal on 5 August 2004, pleading bias on the part of the chairperson of the selection panel, non-consideration of essential facts and failure to observe the provisions of the Staff Rules and Staff Regulations or the terms of his contract. In its report of 13 April 2005, the Regional Board held that the complainant had not substantiated his case so as to invalidate the selection or to be entitled to compensation and legal costs, and recommended that the appeal be dismissed. By a decision of 9 May 2005 the Regional Director endorsed the Board's recommendation.

On 22 June 2005 the complainant appealed the Regional Director's decision to the Headquarters Board of Appeal. In its report of 31 January 2006 the latter found that, while there was insufficient evidence to support the allegation of "personal prejudice", by excluding the complainant from the shortlist on the basis of his grade, the panel had breached the Guidelines for the recruitment and selection of General Service staff in SEARO and the Staff Regulations contained therein. Thus the Headquarters Board recommended that the selection be set aside and that a new panel be established to re-examine all the evidence according to the procedures in force at the time of the challenged selection. In addition, it recommended the award of legal costs and 15,000 United States dollars for moral injury. By a decision of 5 April 2006 the Director-General endorsed the Board's recommendations concerning the selection process and the reimbursement of legal costs but found no basis for awarding 15,000 dollars in compensation for moral injury. That is the impugned decision.

B. The complainant submits that, in view of the moral and material injury he suffered due to the Administration's acts and omissions, the Director-General's decision not to award him moral damages is not justified. He puts forward three pleas. Firstly, he claims that the selection process was flawed because the panel's chairperson was biased. He contends that, in the absence of consensus among panel members as to which candidate was the most suitable, she used her position to induce the panel to recommend for the final selection only the candidates who held one grade below that of the vacant post, all of whom were officials in her unit, thus eliminating those, including himself, who held two grades below. In this regard, he asserts that the panel's composition gave the chairperson "50 per cent voting rights" since she had been able to nominate one of the three other panel members.

Secondly, he contends that the Administration failed to consider essential facts. It did not take into consideration that, unlike the selected candidate, the complainant satisfied the essential vacancy notice requirement of supervisory experience, since he had *de facto* assumed the duties and responsibilities of Head of the Communications and Records Unit since June 2000, when the post became vacant. The Administration also

overlooked the fact that his aggregate score was higher than that of the selected candidate.

Thirdly, he argues that the selection Guidelines, the Staff Rules and Staff Regulations and the conditions of his contract were not observed. He submits that the elimination from the selection process of all candidates holding grade ND.05, including himself, constituted an *ultra vires* decision, given that grade was not among the selection criteria listed in the applicable Guidelines and Regulations.

The complainant asserts that the Administration's illegal acts have caused him "grievous injury and undue suffering", and that he felt "cheated" and "unjustly deprived of his due selection" for the advertised post. Additionally, he alleges that he was "traumatized" by the procedural delays. For these reasons, the complainant asks the Tribunal to order the Organization to award him 15,000 dollars in compensation for moral and material injury and an additional amount for legal costs.

C. In its reply the Organization submits that the complainant obtained satisfaction in respect of his original appeal by the Director-General's decision to set aside the contested selection and to order a new selection process. It reiterates the conclusions of the Headquarters Board of Appeal and the Regional Board of Appeal that there was not sufficient evidence to support his allegation of bias and argues that, contrary to his contention, the complainant was not assigned as acting Head of the Communications and Records Unit when the post became vacant. In this respect, it points to a memorandum dated 24 May 2000 in which the Administration indicated that the responsibilities pertaining to the post in question should be distributed and it contends that, during the time that the said post was vacant, other staff members were either reassigned to it or specifically hired to carry out the duties of the post.

According to the Organization, the complainant's assessment that he was the best candidate for the post is subjective and speculative. It recalls that a new panel was constituted to resume the selection by re-examining all evidence, and emphasises that upon completion of its evaluation, which was undertaken in full compliance with the applicable rules and procedures, the new panel unanimously recommended a different candidate. This, the Organization argues, constitutes evidence that the complainant was not selected in the first selection exercise simply because he was not the best candidate for the vacant post. In effect, the procedural flaws of the first selection did not have a bearing on the evaluation of the complainant's candidature.

The Organization submits that the complainant provides no legal grounds to support the allegation that he suffered moral or material injury and therefore asks the Tribunal to dismiss the complaint in its entirety. In any event, it considers the amount claimed in compensation excessive.

D. In his rejoinder the complainant presses his pleas. He argues that, while accepting the conclusions of the Headquarters Board of Appeal, the Director-General denied him the recommended compensation without explaining the reasons for his decision. He further argues that the fact that the selection process was invalidated gave him only partial satisfaction; he has still not received any compensation for the moral and material injury he sustained. He rejects the Organization's argument concerning his non-selection in the renewed selection exercise as irrelevant to the subject of the present complaint, adding that he has also challenged the second selection process on the grounds that the selected candidate lacked the required experience. He asserts that "agonizing delays" in the selection process and the subsequent proceedings of the Regional Board of Appeal aggravated the injury he suffered by obstructing his career advancement.

E. In its surrejoinder the Organization points out that, following the Director-General's decision, the Organization paid the complainant 2,000 dollars in legal costs. It emphasises that the Director-General endorsed the recommendations of the Headquarters Board of Appeal only insofar as they concerned the selection process. He did not endorse the Board's recommendation concerning the award of compensation as he considered the claim to be unfounded. In that regard, the Organization draws attention to the fact that recommendations of the Headquarters Board of Appeal are not binding on the Director-General. In addition, it points out that other candidates were also affected by the flawed selection process. As was the case with these candidates, the complainant was free to participate in the new selection process. In its view, the complainant failed to show that he has actually suffered injury and to establish a causal link between the unlawful act and the injury suffered.

## CONSIDERATIONS

1. The complainant successfully challenged a selection process in which he was an unsuccessful candidate. As the Headquarters Board of Appeal observed, the Guidelines governing selection procedures and the relevant Staff Regulations were breached and the selection process itself was flawed. In particular, the Board remarked on the arbitrary nature of the process and the absence of any justification concerning the merits of the candidates. In addition to the setting aside of the selection decision and the establishment of a new selection panel with specific instructions, the Board recommended that “in view of the undue suffering sustained” by the complainant, he should be awarded 15,000 United States dollars for moral injury and an additional amount for legal costs.

2. The Director-General accepted, by his decision of 5 April 2006, all the recommendations with the exception of the award of damages, stating that there was “no basis for awarding” the complainant moral damages in the circumstances of the case.

3. The complainant maintains that, in addition to experiencing “grievous injury and undue suffering”, he was traumatised by procedural delays and inaction on the part of the Administration.

4. Having regard to the illegal and arbitrary nature of the selection process, to the fact that the duty to provide staff members with an internal means of redress without inordinate delay was not observed, and to the absence of reasons on the part of the Director-General for rejecting the recommendation for the award of moral damages, the Tribunal concludes that an award of moral damages in the amount of 5,000 dollars is equitable in the circumstances of the present case. The complainant is also entitled to his costs of the proceedings before the Tribunal which are set at 2,000 dollars.

## DECISION

For the above reasons,

1. The WHO shall pay the complainant 5,000 United States dollars in moral damages.
2. It shall also pay him 2,000 dollars in costs.

In witness of this judgment, adopted on 9 May 2007, Mr Michel Gentot, President of the Tribunal, Mr Agustín Gordillo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Agustín Gordillo

Dolores M. Hansen

Catherine Comtet