

The Administrative Tribunal,

Considering the second complaint filed by Mr V. K. S. against the World Health Organization (WHO) on 1 November 2006, the Organization's reply of 7 February 2007, the complainant's rejoinder of 9 April and WHO's surrejoinder of 10 July 2007;

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 is an Indian national born in 1948. Facts relevant to this case are to be found under A in Judgment 2640, delivered on 11 July 2007, in which the complainant was awarded 5,000 United States dollars in moral damages. Suffice it to recall that, following the complainant's appeal against the decision to appoint another candidate to the post of Administrative Assistant (Head of the Communications and Records Unit) at grade ND.07 in the Organization's Regional Office for South-East Asia (SEARO), the Director-General decided on 5 April 2006 that the selection should be set aside and the selection process resumed by a newly appointed panel. He also decided that the selected candidate, Mr K., who prior to his appointment to the said post held grade ND.06, should be shielded from any injury that could flow from the setting aside of the selection, given that he had accepted reassignment to the post in good faith. Further to that decision, Mr K. was informed by a letter of 4 May 2006 that he was being temporarily reassigned with immediate effect to the post of Administrative Assistant, Administrative Services Unit, and that there would be no change in his grade as a result of that reassignment.

In a letter to the Director-General dated 24 July 2006, the complainant protested against the decision to reassign Mr K. to a post at grade ND.07, arguing that it was contrary to the Director-General's decision of 5 April 2006 that Mr K. should continue to hold that grade; he requested that the Regional Administration be directed to take action accordingly. In his reply on behalf of the Director-General dated 9 August 2006, the Director of Human Resources Management drew attention to the fact that the selection of Mr K. had been set aside and that the selection process had been resumed. As for the Administration's decision concerning the status of Mr K., he emphasised that this was a contractual matter between the Organization and Mr K. That is the impugned decision.

B. The complainant submits that the reassignment of Mr K. to a post at the same grade as the post he occupied prior to the selection being set aside negates the Director-General's decision of 5 April 2006. He contends that the Regional Administration erroneously interpreted that decision as meaning that Mr K. should retain the grade ND.07 after the quashing of his selection to the post of Administrative Assistant (Head of the Communications and Records Unit). Such interpretation, he argues, is unacceptable since it could allow for Mr K.'s renewed reassignment to the same post. In his opinion, the requirement that Mr K. be shielded from injury merely implied that the latter should not lose the enhanced pay and the benefits of the higher pay scale accrued to him during his tenure as Head of the Communications and Records Unit. The complainant rejects the view that Mr K.'s reassignment is a contractual matter between the Organization and the latter and asserts that the continued holding by Mr K. of grade ND.07 has caused him "mental torture". He therefore asks the Tribunal to order the Organization to reassign Mr K. to his former grade of ND.06. He also claims moral damages and legal costs.

C. In its reply the Organization argues that the complaint is irreceivable on two grounds. First, the impugned decision does not affect the complainant's terms of appointment but only those of another staff member. Neither does it amount to non-observance of provisions of the Staff Regulations. On the contrary, by reassigning Mr K. to another ND.07 post, the Organization acted in accordance with its Staff Rules and Staff Regulations. In light of the above and the fact that the complainant has shown neither a cause of action nor injury caused by the impugned decision, the Tribunal is not competent to hear the complaint according to Article II, paragraph 5, of its Statute. Second, the impugned decision is not a final decision within the meaning of Article VII of the Statute of the Tribunal given that the complainant has not exhausted all internal means of redress. Although the complainant appears to argue that the present complaint concerns the interpretation of the Director-General's decision of 5 April

2006, which he challenged in his first complaint before the Tribunal, it in fact concerns a separate and distinct issue, namely the Organization's decision to reassign Mr K. to another ND.07 post, in respect of which the complainant has not exhausted the internal means of redress.

On the merits WHO holds the view that Mr K.'s reassignment to another post at grade ND.07 was in conformity with the Tribunal's case law according to which, in the event that a selection is set aside, the selected candidate must be shielded from any injury that may result from the quashing of an appointment accepted in good faith. Furthermore, any decision to reassign Mr K. to a post at the lower grade ND.06 would amount to a demotion in violation of Staff Rule 570, which provides that a reduction in grade may result from a staff member's own request, from unsatisfactory performance or misconduct, or as an alternative to termination. Mr K. had applied for the post of Head of the Communications and Records Unit at grade ND.07 in good faith and his performance during the period of two years that he served in that post was satisfactory. The Organization submits that the manner in which it chose to shield Mr K., namely by reassigning him to a post at grade ND.07, was appropriate in the circumstances and lay within its discretionary authority.

D. In his rejoinder the complainant asserts that the complaint is receivable. He argues that the impugned decision is a continuation of the internal appeal proceedings which resulted in the Director-General's decision of 5 April 2006. To initiate internal proceedings for the sole purpose of obtaining implementation of that decision would, in his view, amount to an abuse of the appeal process.

The complainant also draws attention to the fact that his terms of employment require fairness and equality of treatment on the part of the Organization. He contends that Mr K.'s promotion to grade ND.07 was unfair, since it was not granted following a competitive selection, and that it adversely affected his own prospects of promotion. He dismisses WHO's reliance on Staff Rule 570, arguing that it is irrelevant to the case at hand and that it legitimises a promotion achieved through unfair means.

E. In its surrejoinder WHO maintains its objection to receivability. It argues that the complainant is introducing a new plea concerning the promotion of Mr K. to grade ND.07, which he has not challenged by way of internal appeal. It rejects the contention that Mr K.'s promotion adversely affected the complainant's prospects of professional advancement as unsubstantiated and untenable.

CONSIDERATIONS

1. The complainant successfully challenged the appointment of Mr K. to the post of Administrative Assistant (Head of the Communications and Records Unit) at grade ND.07. Prior to his appointment to this post, Mr K. held a post at grade ND.06.
2. In addition to deciding that the selection should be set aside and that the selection process should be resumed by a newly appointed panel, the WHO Director-General decided that the selected candidate should be shielded from any injury resulting from that decision, given that he had accepted the new position in good faith. To that end, Mr K. was reassigned to another post at grade ND.07.
3. The complainant protested against that reassignment on the grounds that it represented a misinterpretation of the Director-General's decision. In his response on behalf of the Director-General the Director of Human Resources Management stated that the Administration's decision regarding Mr K.'s status was a contractual matter between the Organization and Mr K. That is the decision the complainant challenges before the Tribunal claiming that he has not obtained satisfaction in his plea against the selection of Mr K. As a result, he suffered moral injury.
4. The Tribunal accepts the Organization's argument that the complaint is irreceivable. Pursuant to Article II, paragraph 5, of the Tribunal's Statute, the Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations.
5. The decision to reassign Mr K. to another post at grade ND.07 did not in any way affect the terms and conditions of the complainant's employment nor did it involve a breach of the Staff Regulations. Furthermore, it did not adversely affect the complainant's rights or interests nor did it cause him any injury.

Consequently, the complaint is irreceivable and must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 2 November 2007, Mr Seydou Ba, Vice-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 6 February 2008.

Seydou Ba

Agustín Gordillo

Dolores M. Hansen

Catherine Comtet