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ADMINISTRATIVE TRIBUNAL

Judgement No. 809

Case No. 928: WALTER

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Samar Sen, Vice-President, presiding;  
Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas, at the request of Geneviève A. Walter, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 November 1994, 28 February, 31 July and 31 December 1995, 31 May and 31 August 1996, the time-limit for the filing of an application with the Tribunal;

Whereas, on 21 June 1996, the Applicant filed an application containing pleas which requested the Tribunal, inter alia, to find:

"11. ...

(a) That the Applicant performed functions at the P.3 level and was denied appropriate remuneration.

and to order:

(b) Retroactive promotion or the appropriate compensation for such promotion from 1988 to the date of her retirement."

Whereas the Respondent filed his answer on 6 November 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 27 May 1963, as a Conference Typist, Department of Conference Services, on a three month, fixed-term appointment, at the G-2, step V level. She served on a series of fixed-term contracts until 27 November 1963, when she received a probationary appointment. She was promoted to the G-3 level, with effect from 1 January 1964. On 1 May 1965, she was granted a permanent appointment.

After a short separation from service, the Applicant was recruited by UNITAR on 1 November 1968, as a Clerk-Stenographer, at the G-3 level. On 1 April 1971, she was promoted to the G-4 level, as a Secretary. On 1 April 1975, she was promoted to the G-5 level, as an Administrative Assistant. The Applicant was temporarily assigned to the Office of Personnel Services (OPS), with effect from 1 February 1984, as an Administrative Assistant. With effect from 8 April 1985, she was reassigned to the Office of the Coordinator for the Advancement of Women in the UN Secretariat. On 18 July 1988, the Applicant was reassigned as an Associate Administrative Officer to the Office of the Chief, Mail, Archives and Records Service (MARS), Office of General Services (OGS). On 1 December 1988, as a result of Judgement No. 390, Walter (1987), the Applicant was promoted from the G-5 to the P-2 level, with effect from 1 December 1982.

On 23 May 1989, the Chief, MARS/OGS, submitted the Applicant's job description to the Executive Officer, Department of Administration and Management (DAM), for transmission to the Compensation and Classification Service (CCS) for classification.

In February 1990, MARS was incorporated into the Building Management Services (BMS) and the Applicant was asked to undertake, in addition to her duties as Administrative Officer of BMS, "the special project of developing and organizing a consolidation

programme for personnel and budget to enhance the operational efficiency of the BMS."

On 25 February 1991, the Chief, BMS, resubmitted to the Executive Officer, DAM, the Applicant's revised job description for classification, indicating the new functions and responsibilities that had been added. CCS recommended to maintain the classification of the post at the P-2 level. The recommendation was approved by the Assistant Secretary-General, OPS, on 1 May 1991. The Applicant was so informed on 28 May 1991. The Applicant did not appeal this decision to the Classification Appeals Review Committee (CARC).

On 1 August 1991, the Applicant wrote to the Acting Under-Secretary-General for Administration and Management, requesting a re-examination of her case "with a view to finding a fair and equitable solution". The Applicant's request was examined by the Department but the Chief, BMS, confirmed on 7 October 1991, that the Applicant's job description accurately reflected her current duties and responsibilities.

On 9 January 1992, the Applicant wrote to the Assistant Secretary-General for Human Resources Management (OHRM), requesting him to intercede on her behalf and promote her to the P-3 level. In a reply, dated 31 January 1992, the Director of Staff Administration and Training Division, OHRM, informed the Applicant that CCS had re-reviewed the classification of her post to verify whether the factors of the classification standard had been properly applied to the functions of the post. CCS had determined that the functions of the post had been correctly classified at the P-2 level.

On 12 June 1992, the Chief of BMS recommended the Applicant for a "Personal Grade Promotion" to the P-3 level.

On 17 November 1992, the Applicant lodged a complaint with the Panel on Discrimination and Other Grievances (the Discrimination Panel). She requested an investigation of DAM for failure to implement her promotion to the P-3 level.

In January 1993, the Applicant was offered a temporary assignment in the Commercial, Purchase and Transportation Service, which was scheduled to begin on 1 February 1993. The Applicant declined to accept this assignment, indicating her intention to remain in her position in BMS.

In February 1993, the Coordinator of the Discrimination Panel advised the Applicant that since there was no report in her case, the Discrimination Panel did not have a recommendation to make to the Secretary-General.

On 15 March 1993, the Applicant wrote to the Director of Personnel, OHRM, requesting an immediate promotion to the P-3 level, retroactive to 1 July 1988, the date from which the Applicant - in her view - had been performing the functions and responsibilities of Administrative Officer in OGS at the P-3 level. The Applicant stated that failure to take the requested decision would constitute "a negative decision" that she would appeal.

In a reply dated 8 April 1993, the Director of Personnel, OHRM, advised the Applicant that no new decision could be taken at this juncture.

On 15 June 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 29 March 1994. Its findings and recommendations, read, in part, as follows:

"20. ... The only aspect of 'personal promotion' it deemed relevant in the context of this case was the fact that the Head of her office had formally requested the Department of Administration and Management to assist in getting such a promotion for the Appellant. Whether or not she knew or thought she knew from other sources that such promotions existed, is not pertinent. She had a legitimate expectation, in light of the above-mentioned request by her superior, that she might be the beneficiary of such a promotion. If it did not exist or was illegal, she should not have been given the impression that she might receive one. The Panel also noted that the memorandum of the Chief of the Buildings Management Service contained several other inaccuracies. Not only did he recommend the Appellant for a 'personal grade promotion' which is not to be found in the Staff Rules, he also proposed

the promotion as a 'reward for her long, devoted and efficient service', which is not considered to be a ground for promotion under the rules. By this memo, her superior gave her a legitimate expectation of a promotion.

21. It is for this reason that the JAB finds that Appellant has not been treated in accordance with the rules which entitle her to receive accurate information about her promotion possibilities and career prospects.

22. Her subsequent refusal to accept an offer to move to another section of OGS where there were promotion possibilities, may well have been influenced by her persisting belief in the personal promotion possibility to which she apparently continued to cling.

23. The Panel noted that the Appellant limited her appeal to challenging 'the Administration's deliberate failure to take an administrative decision to grant her a personal grade promotion to [the] P-3 level as recommended over a year ago by the Chief of BMS'. The Panel therefore did not deal with any of the other matters raised incidentally by either the Appellant or the Respondent, such as the initial classification of her post or the findings by the 'Panel on Discrimination and Other Grievances'.

24. However, the Panel wishes to record that it could find no evidence of discrimination or of prejudicial or retaliatory actions by the Respondent, as alleged by the Appellant.

25. On the other hand, the Panel expressed its surprise that in all the long years of Appellant's service which, throughout, had been recognized as exemplary, the Administration at no time had found a possibility to accord her a promotion in accordance with the applicable rules.

26. The Joint Appeals Board found, for the reasons stated in paragraphs 20 and 21 above, that the Appellant had been misinformed by her superior about the possibilities for promotion and had thereby been misled as to the best course of action which she might have followed to secure being considered for promotion. For the reason the Joint Appeals Board unanimously recommends that Appellant be granted compensation in the amount of one year's difference between the P-2 and the P-3 level." (Emphasis in original).

On 23 May 1994, the Under-Secretary-General for

Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

"... The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's finding that there was no evidence of discrimination or of prejudicial or retaliatory actions by the Organization in your case. In the spirit of the Board's concern over your expectations for promotion, the Secretary-General has decided to accept the Board's unanimous recommendation that you be granted compensation in the amount of one year's difference between the P-2 and the P-3 levels. Accordingly the Secretary-General has decided to pay you compensation in the amount of \$2,605.00.

..."

On 21 June 1996, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant was denied due process by the Respondent's failure to promote her to the P-3 level either by classifying her post at that level or by granting her a personal promotion.
2. The Applicant has been performing P-3 level functions from 1988 and should therefore be promoted retroactively.

Whereas the Respondent's principal contentions are:

1. The Applicant's challenge to the classification of her post is time-barred. The Applicant should have appealed the classification of her post to CARC.
2. The Applicant does not have a right to a "personal" promotion.
3. The Applicant has been adequately compensated.
4. There was no discrimination or prejudice against the Applicant.

The Tribunal, having deliberated from 1 to 25 July 1997, now pronounces the following judgement:

I. The Applicant appeals a decision of the Secretary-General dated 23 May 1994, accepting the recommendation of the Joint Appeals Board (JAB) to pay her \$2,605.00 in compensation and rejecting her request for a promotion to the P-3 level. The Applicant contends that she had performed functions at the P-3 level since 1988 and was denied appropriate remuneration. On this basis, she claims retroactive promotion or appropriate compensation for such promotion from 1988 to the date of her retirement. The Applicant also claims that the delay in the classification of her post and the failure of the Administration to grant her a personal promotion was arbitrary and based on inequitable treatment on the basis of gender.

II. The Respondent contends that since the Applicant did not appeal the classification decision of her post before the Classification Appeals and Review Committee, her challenge to the classification of the post is not receivable.

The Tribunal does not agree with this contention, since it finds that incorrect information given to the Applicant by her supervisor, which greatly influenced the Applicant's actions, was sufficient to constitute "exceptional circumstances", thereby justifying the Tribunal's hearing of the case.

III. With respect to the delay in the classification of the Applicant's post, the Tribunal notes that there were organizational changes which resulted in the Mail, Archives and Records Service being incorporated into Building Management Services. Subsequently, the Applicant's job description was redrafted to reflect the changes in her duties resulting from the reorganization.

IV. The Tribunal has reviewed the evidence before it and is

unable to find any material errors or significant flaws in the classification process. The burden of proof is on the Applicant to bring evidence of prejudice before the Tribunal (Cf. Judgements No. 594, del Rosario-Santos (1993), No. 639, Leung-Ki (1994) and No. 657, Araim (1994)). The Tribunal finds that the Applicant has failed to discharge this burden. In this respect, the Tribunal agrees with the JAB, which found "no evidence of discrimination of prejudicial or retaliatory actions by the Respondent".

V. The Applicant contends that, as an alternative to her post being classified at the P-3 level, she should have been granted a personal promotion. The promotion policy of the Organization at the time was that in order for a staff member to be promoted, there had to be a vacancy or an expected vacancy in a position at a higher level than that encumbered by the staff member (See ST/SGB/267 of 15 November 1993 and ST/AI/413 of 25 March 1996). Vacancies are announced by the circulation of vacancy notices, and staff members who wish to apply for the advertised post must submit an application, which is subsequently reviewed by the appropriate promotion bodies. The Tribunal agrees with the Respondent that in the absence of a vacancy, a staff member cannot be promoted, regardless of his or her qualifications, favourable performance evaluation reports or seniority. The concept of "personal promotion" has not been incorporated in the Staff Regulations and Staff Rules.

VI. Notwithstanding the above, the Tribunal agrees with the JAB's findings that the Applicant had been misinformed by her supervisor regarding the possibilities for her promotion and had been misled as to the best course of action to take in order to be considered for promotion.

VII. For the foregoing reasons, the Tribunal decides that the



JAB's recommendation, namely that the Applicant be "granted compensation in the amount of one year's difference between the P-2

and P-3 [salary] level[s]", was properly implemented by the Secretary-General in his decision of 23 May 1994.

VIII. In view of the foregoing, the Tribunal rejects the application in its entirety.

(Signatures)

Samar SEN  
Vice-President, presiding

Mayer GABAY  
Member

Deborah Taylor ASHFORD  
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN  
Executive Secretary