



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1250

Case No. 1342

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Dayendra Sena Wijewardane; Mr. Goh Joon Seng;

Whereas at the request of a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 31 March 2003 and periodically thereafter until 29 February 2004;

Whereas, on 23 February 2004, the Applicant filed an Application requesting the Tribunal, *inter alia*:

“7. ...

...

(c) *to decide* to hold oral proceedings ...;

8. On the merits ...

...

(b) *to rescind* the decision of the Secretary-General maintaining the classification of the Applicant's post at the G-5 level;

(c) *to order* that the Applicant's post be re-submitted for classification to the Professional category ... and that the Applicant be considered for promotion to the Professional category with retroactive effect from 1 January 1986 ...

- (d) *to order in the alternative* that the Applicant be compensated in an amount equivalent to the difference between his existing salary and entitlements and those at the appropriate step of the Professional level, including applicable pension coverage, retroactive to 1 January 1986, through the date of his retirement;
- (e) *to award* the Applicant appropriate and adequate compensation to be determined by the Tribunal for the actual, consequential and moral damages ... for the denial of due process, for the harm to his career and for the delays in handling his case from June 1989 to December 2001;
- (f) *to fix* ... the amount of compensation to be paid in lieu of specific performance at three years' net base pay in view of the special circumstances of the case;
- (g) *to award* the Applicant on behalf of the United Nations Staff Union costs in the sum of \$10,000.00 for legal fees and expenses in bringing this application."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 June 2004 and periodically thereafter until 19 November;

Whereas the Respondent filed his Answer on 19 November 2004;

Whereas the Applicant filed Written Observations on 25 April 2005;

Whereas, on 3 June 2005, the Respondent submitted comments on the Written Observations and, on 20 June, the Applicant commented thereon;

Whereas, on 15 July 2005, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined the Organization as a Clerk at the G-2 level in the Documents Reference and Collections Section, Library, Department of Conference Services, on a three-month fixed-term appointment, on 7 April 1969. Effective 1 April 1971, he was granted a permanent appointment. The Applicant was promoted several times and his functional title was changed to Library Assistant.

On 9 December 1985, as part of a General Service classification exercise, the post encumbered by the Applicant since 1981 was classified at the G-5 level, with effect from 1 January 1985. The classification of the post was based on job description No. 3349, which was prepared in June 1983. According to the Applicant, it was only in 1987 that he was informed of this classification decision.

In 1987, a working group (the Mango Group) was established to examine perceived inconsistencies in the job classification exercise. According to the Applicant, in keeping with procedures, he requested the Chief, Users' Service, Dag Hammarskjöld Library (DHL), to bring the inconsistency in his case to the attention of his Department for review by the Mango Group.

On 8 May 1998, the Head Librarian, DHL, confirmed that the functions described in job description No. 3349 were performed by DHL staff at the P-2/P-4 level.

In January 1989, when the results of the Mango Group findings were being implemented throughout DHL, the Applicant learned, through his Executive Office, that his Department had never presented his case to the Mango Group. On 21 June, the Applicant wrote to the Director, DHL, stating his concerns regarding the classification of his post and the violations of his due process rights. The Applicant also provided the Director, DHL, with a detailed account of his case.

On 29 June 1989, the Applicant requested the Assistant Secretary-General, Office of Human Resources Management (OHRM), to arrange for a review of the classification of his post. On 15 August, his request was rejected, since the deadline for submission of an appeal against the initial classification had passed. On 6 December, the Applicant again wrote to the Assistant Secretary-General, OHRM, requesting that he "rectify, with magnanimity the deliberate denial of due process and gross procedural irregularities in the initial classification of [his] post at the GS-5 level, and to reclassify [his] post from the General Service Category to the Professional Category". On 25 March 1992, the Applicant again wrote to the Assistant Secretary-General, OHRM, referring to his earlier correspondence and stating that despite the fact that more than two years had elapsed, he had not yet received any reply. The Applicant further requested that the matter be investigated. On 12 October, the Department of Management requested that, due to the "obviously exceptional nature of this case", the Applicant's job description be reviewed by the Compensation and Classification Service (CCS). In its response of 22 January 1993, CCS advised it was not in a position to endorse the request.

On 14 August 1998, the Applicant wrote to the Under-Secretary-General for Management requesting "appropriate compensation for [his] professional services rendered to the Organization since 1981, and compensation for the denial of justice

since 1989". On 21 September, OHRM reiterated that the request for review of the initial job classification was time-barred.

On 25 February 1999, the Head Librarian, DHL, expressed the view that a review of the initial classification of this job description should be undertaken.

On 31 December 2001, OHRM submitted the Applicant's case, "on an exceptional basis," to the New York General Service Classification and Review Committee (NYGSCARC). On 15 March 2002, the Applicant submitted his comments to the NYGSCARC. In its report of 18 October, the NYGSCARC concluded that "the preponderance of functions contained in the subject job description were General Service in nature and appropriately classified" and recommended that "the subject post remain classified in the General Service category". That same day, the Applicant was informed that the Assistant Secretary-General, OHRM, had accepted this recommendation of the NYGSCARC.

16 December 2002, the Applicant requested the Department of Public Information (DPI) to "undertake a study of DHL job description No. 3349".

On 19 December 2002, the Head Librarian, DHL, advised DPI that the report of the NYGSCARC contained "a number of errors and misunderstanding that could have been avoided had the Committee called witnesses to clarify points in the job description".

On 20 December, the Applicant was informed that DPI did not have authority to conduct the classification study requested by him.

On 19 March 2003, the President of the United Nations Staff Union wrote to OHRM expressing her concern over the constitution and composition of the NYGSCARC and noting the conflict of interest present as the Secretary of the NYGSCARC was also the classification officer in the Applicant's case. She proposed that the Applicant's case "be reviewed by the Committee on Classification Appeals". On 28 April, OHRM agreed to recommend that the case be "remanded to the Committee for further consideration". On 30 June, the President of the Staff Union rejected OHRM's offer, stating that it did not address the Applicant's concerns, particularly regarding the presence of the current Secretary of the Committee.

On 23 February 2004, the Applicant filed the above-referenced Application with the Tribunal.

On 7 October 2004, OHRM wrote to the Applicant, proposing that his case be remanded to the New York General Service Classification Appeals Committee

(NYGSCAC) and specifying the terms under which the review would take place. On 19 October the Applicant rejected this proposal.

Whereas the Applicant's principal contentions are:

1. The Applicant has been denied due process and in so doing has also been denied proper professional recognition, compensation and career opportunities.
2. The NYGSCARC was improperly constituted, its proceedings violated the requirements of the Staff Regulations and Rules and pertinent Administrative Instructions and it erred in matters of law and of fact.
3. There is an obvious conflict of interest in an official providing advice in reviewing his own decision.
4. The formal submission to the NYGSCARC omitted the relevant job definitions that were in effect at the time the classification decision was taken.
5. There were undue delays in handling the Applicant's case.

Whereas the Respondent's principal contentions are:

1. The Respondent offered to remand the Applicant's case to the NYGSCAC in a manner that would address all of the Applicant's concerns.
2. The Respondent's discretionary decision in respect of the classification of the Applicant's post was properly taken and the Applicant was accorded due process.

The Tribunal, having deliberated from 27 June to 22 July 2005, now pronounces the following Judgement:

I. The Applicant joined the Organization in 1969. In April 1971, he was granted a permanent appointment and, as of 1 April 1976 to the present, the Applicant has been serving in DHL.

On 9 December 1985, as part of a General Service classification exercise, the post encumbered by the Applicant since 1981 was classified at the G-5 level under the title of Library Assistant, with effect from 1 January 1985. The classification of the post was based on job description No. 3349, which was prepared in June 1983. According to the Applicant, he was only informed of this classification decision in 1987.

In 1987, the Mango Group was established to examine perceived inconsistencies in the job classification exercise, including in DHL. According to the Applicant, he requested that his case be included in the Mango Group review. However, in January 1989, he learned that his Department never presented his case to the Mango Group.

On 29 June 1989, the Applicant requested the Assistant Secretary-General, OHRM, to arrange for a review of the classification of his post. On 15 August, his request was rejected, since the deadline for submission of an appeal had passed. In December 1989, the Applicant wrote again, requesting reclassification of his post. The Applicant repeated his request in March 1992, stating that despite the fact that more than two years had elapsed he had not yet received any reply, and requesting that the matter be investigated. A subsequent request to review the Applicant's job description to the Compensation and Classification Service was denied. A similar request to the Under-Secretary-General for Management was determined to be time-barred.

Following further exchange of correspondence on the matter, on 31 December 2001, the Applicant's case was submitted, on an exceptional basis, to the NYGSCARC for review. In its report of 18 October the NYGSCARC concluded that the preponderance of functions contained in the Applicant's job description were General Service in nature and appropriately classified. That same day, the Applicant was informed that the Assistant Secretary-General, OHRM, had accepted the recommendation of the NYGSCARC.

On 7 October 2004, OHRM wrote to the Applicant offering him a final opportunity for a full and fair review of his case, which the Applicant turned down on 19 October.

II. The central issue in the case is whether the Applicant was denied due process in the classification of his post. The Tribunal recognizes that classification is a matter within the discretionary power of the Secretary-General. As long as he exercises that power reasonably with due process, the Tribunal cannot and will not substitute its own judgement for that of the Secretary-General. In the instant case, the Secretary-General's decision was based on the recommendation of the NYGSCARC, which recommendation was made after due consideration of the Applicant's case.

III. The Tribunal notes that the composition of the NYGSCARC complied with the pertinent regulation being section 6.11 of administrative instruction ST/AI/1989/9 entitled "System for the classification of posts", of 6 October 1998. At the same time, it notes the Applicant's objection to the presence of the Secretary of the Committee. The Applicant alleged that the presence of the Secretary of the Committee created a conflict of interest because he was "largely responsible for preparing the Administration's submission to the Classification Appeals Committee and in defending the decision that the post remain[ed classified at] G-5". Whilst a constitution of a Board in those circumstances might well have given rise to a perception of conflict of interest which might attract compensation, the Tribunal considers that it would be inappropriate to award compensation in this case because the Applicant was offered a rehearing of his case before a panel of a different composition, an offer which he declined. Subject to what is stated below in paragraph V, the Tribunal must reject this claim, as the Applicant has not presented any evidence that the Secretary of the Committee acted improperly or that he negatively influenced the decision of the NYGSCARC. In this regard, it recalls its Judgement 1118, *Khuzam* (2003), where it held that "where the Applicant alleges prejudice or discrimination, the burden of proof in such matters rests upon the Applicant" (see also Judgements No. 312, *Roberts* (1983), and, No. 428, *Kumar* (1988).) In the instant case, the Applicant merely raises speculation as to whether discrimination or prejudice entered into the NYGSCARC's decision not to classify his post at a higher level, but he provides no factual basis for such assertions. The Applicant has failed to discharge his burden of proof with respect to his claim.

IV. The Tribunal also examined the Applicant's claim that the NYGSCARC did not hear a number of important witnesses. According to the Tribunal, if the evidence of these witnesses was essential, the Applicant should have insisted that they be called by the NYGSCARC, however, he only requested the presence of his Personnel Officer to monitor the impartiality of the process. So, this claim must also fail.

V. Finally, the Tribunal is of the view that if the evidence of those witnesses was indeed essential, the Applicant should not have declined the Respondent's offer of 7 October 2004 proposing that his case be remanded to the NYGSCAC and specifying the terms under which the review would take place. In particular, the offer included a

proposal that “the Committee would hear witnesses with knowledge of library functions in the United Nations on the subject of the appeal. You would identify such witnesses in advance of the appeal being considered by the Committee”. In the opinion of the Tribunal, that Committee would have addressed the procedural irregularities of which the Applicant now complains. In any event, the Tribunal is satisfied that such irregularities do not point to a violation of the Applicant’s rights.

VI. Accordingly, the Application is rejected in its entirety.

(Signatures)

Kevin Haugh
Vice-President, presiding

Dayendra Sena Wijewardane
Member

Goh Joon Seng
Member

Geneva, 22 July 2005

Maritza Struyvenberg
Executive Secretary