



Administrative Tribunal

Distr.
LIMITED

T/DEC/680

9 November 1994

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 680

Case No. 734: GULATI

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin
Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 24 December 1992, Rajender Kumar Gulati, a staff member of the
United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application that
did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, at the request of the Applicant, the President of the Tribunal, with the
consent of the Respondent, extended to 31 May 1993 the deadline for the filing of an
application to the Tribunal;

Whereas, on 12 May 1993, the Applicant, after making the necessary corrections,
again filed an application, the pleas of which read, in part, as follows:

"PLEAS

- (a) In arriving at the decision to appoint (...), the Representative, India Country Office, did not give due weightage to the selection process.
- (b) The compulsion stated by the Representative ... to accommodate the 'selected candidate' against the recommended candidate by the Appointment and Placement Committee (APC) far exceeded the policy requirement governed by UNICEF Headquarters administrative instruction No. CF/AI/1986-10 dated 26 November 1986 (...).

- (c) The process of natural justice was denied to the Appellant by bringing in irrelevant factors in the final decision to appoint ...
- (d) The Appellant's legitimate right to lawfully compete with other candidates for career progression was denied.

..."

Whereas the Respondent filed his answer on 24 January 1994;

Whereas the Applicant filed written observations on 1 July 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF in New Delhi, India, on 29 December 1980 as Clerk/Typist, at the G-3 level, in the Personnel Services Section under a fixed-term appointment. Following a series of short-term appointments, he received a fixed-term appointment as Clerk/Typist on 1 June 1983. On 1 December 1983, the Applicant received a fixed-term appointment to a post of Personnel Assistant and on 1 June 1984, he was promoted to the G-4 level. On 1 December 1985, the Applicant received a permanent appointment. On 1 January 1987, he was promoted to the G-5 level and on 1 January 1990, he was promoted to the G-6 level. He is now serving in the Emergency Office for the former Yugoslavia, Zagreb, at the L-1 level.

On 10 April 1991, the UNICEF Representative sent to all staff members of the India Country Office a letter to which were attached guidelines announcing the implementation of a new staffing structure for 1992-1993 and the Placement Exercise scheduled to take place in the Office as a result. In line with these guidelines, all new, vacant and upgraded posts were to be advertised and staff members whose posts had been abolished were to be given priority in placement.

On 28 June 1991, during this placement process, a vacancy was announced for a G-7 post of Senior Personnel Assistant. Forty-four candidates, including the Applicant, applied

for the post. On 19 July 1991, the Selection Advisory Panel (SAP) reviewed the applications and unanimously recommended four candidates, in order of preference, with the Applicant as the number one preference. The Appointment and Placement Committee (APC) "reviewed and endorsed the recommendation of the Selection Advisory Panel that [the Applicant] be appointed to this post". The UNICEF Representative reviewed the SAP and APC recommendations and decided to appoint a candidate other than the Applicant who was the number four preference on the SAP list. The Representative noted that this candidate was already at the level of the post and that her own post had been abolished.

On 2 August 1991, the Applicant wrote to the UNICEF Representative protesting his non-selection for the post and requesting her to review this decision or to appoint him to any other core G-7 post. He had meetings with the Representative on 2 August, 19 September and 30 October 1991. On 8 November 1991, the Applicant submitted a request for administrative review to the Executive Director at UNICEF headquarters in New York, requesting him, inter alia:

"- To intervene and instruct the ICO [India Country Office] Management to appoint him against the post of Senior Personnel Assistant since HE IS THE ONLY CANDIDATE RECOMMENDED BY THE APPOINTMENT AND PLACEMENT COMMITTEE."

On 21 January 1992, the Deputy Executive Director (Operations), UNICEF, replied to the Applicant. Her reply read, in part, as follows:

"In the Representative's deliberations on this case, she reviewed fully both the SAP and the APC recommendations. She also personally reviewed the files of all other short-listed candidates.

It should also be noted that the India Country Office was in the midst of a major reorganization and staff placement exercise. Consequently, all decisions by the Representative on appointments needed to be taken against that background. Therefore, the Representative's decision factored in the following:

1. During the 1992-1993 biennium budget, a number of posts in the India Country Office were abolished and many core posts were converted to project

posts.

2. The selected candidate was a permanent staff member occupying a core post which was abolished as of 31 December 1991. She was among the candidates short-listed by SAP for appointment to the post in question. She was already at the G-7 level, the same level of the Senior Personnel Assistant post.
3. In accordance with the provisions [of administrative instruction] AI/1986-10 of 26 November 1986, the Organization was committed to make every reasonable effort to place core staff whose posts [had] been abolished into other suitable available posts.
4. In the India Country Office, staff holding core posts and whose posts were abolished, were, as a matter of priority, and on the basis of their qualifications, to be placed in other suitable core posts available at the same level. This also ensured that the number of core post holders would not exceed the total number of core posts available in the budget.

Based on the above, the Representative decided that, on balance, the interests of the Organization would be best served by the appointment of the selected candidate. Based on the facts of this case, we consider that the Representative's decision was a proper exercise of her authority.

The Organization does recognize and appreciate your contribution to UNICEF. While we understand your disappointment with the decision to select another candidate for the post of Senior Personnel Assistant, we maintain that it was taken properly and in accordance with the established guidelines of our appointment and placement review system."

On 28 February 1992, the Applicant addressed a formal appeal to the Joint Appeals Board (JAB), which unanimously adopted its report on 25 September 1992. The JAB's considerations, finding and recommendations read, in part, as follows:

"Considerations

...

23. After carefully examining the records that the Panel had before it, the Panel did not find any wrongdoing by the Administration or any impropriety in the decision not to select the Appellant to the post in question. The Panel however, felt that the

Appellant was put into an unfortunate position as a result of the APC recommendation. In all likelihood he would have been selected for the post in question, but for the unforeseen development of another staff member having to be given priority as a result of the abolition of her post.

Finding and recommendations

24. The Panel found that the decision not to select the Appellant to the post in question did not violate his rights, including his right to due process.

25. However, the Panel recommends that as the decision taken by the Representative put the Appellant into an unfortunate position, his candidature should be given priority for any vacancy at the G-7 level in his field of competence that might arise in UNICEF. The Panel makes no other recommendation in favour of the appeal."

On 29 October 1992, the Director of Personnel transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has examined your case in the light of the Board's report. He concurs with the Board's finding that the decision not to select you to the post in question did not violate your rights, including your right to due process. He has decided, however, in view of your 'very good performance', that you be given full consideration for future vacant G-7 posts in the India Country Office in your field of competence for which you are found to be qualified."

On 12 May 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The APC unanimously recommended the Applicant as the only candidate suitable for appointment to the post in question.

2. The absolute guarantee given to staff members whose posts had been abolished that they would be "accommodated" disregards the selection criteria contained in UNICEF headquarters administrative instruction No. 352 and is contrary to the procedures

and provisions contained in UNICEF headquarters administrative instruction No. CF/AI/1986-10.

3. Many other core G-7 posts were vacant and could have been filled by the candidate selected for the post in question without denying the Applicant his legitimate opportunity for promotion.

Whereas the Respondent's principal contentions are:

1. The selection of staff is within the discretionary power of the Secretary-General. Staff have the right to due consideration for promotion, which consideration was accorded to the Applicant.

2. The decision not to select the Applicant was not tainted by prejudice or discrimination or motivated by extraneous factors.

The Tribunal, having deliberated from 17 October to 9 November 1994, now pronounces the following judgement:

I. The Applicant began working at UNICEF/New Delhi on 29 December 1980 as Clerk/Typist at the G-3 level. He was then promoted to the G-4 level, as Personnel Assistant. On 6 December 1985, he received a permanent appointment. From then on, he was promoted successively to the G-5 level in 1987 and to the G-6 level, on 1 January 1990.

On 10 April 1991, on the occasion of a general reorganization of the UNICEF India Country Office, all staff members were invited to submit their candidatures. A vacancy was announced for a G-7 post of Senior Personnel Assistant and 44 candidates, including the Applicant, applied for it.

On 19 July 1991, the Selection Advisory Panel (SAP) reviewed the applications and unanimously recommended four candidates, in order of preference, with the Applicant as the number one preference. The Appointment and Placement Committee reviewed and endorsed the recommendation of SAP that the Applicant should be appointed to this post.

However, the UNICEF Representative for India decided to appoint to the post a candidate who was the number four preference, in view of the fact that this candidate was already at the G-7 level and that her post had been abolished.

The Applicant appealed to Headquarters against this decision by the India Country Office Representative, but without success. The reply was made to him that the contested decision had been taken in accordance with the relevant administrative instructions. The Joint Appeals Board (JAB) had recommended that the Secretary-General should maintain this decision. Nevertheless, the Board had recommended that the Applicant's candidature should be given priority for any vacancy at the G-7 level in his field of competence.

II. The Applicant requests the Tribunal to rescind this decision. He contends that the decision to select another candidate merely because her post had been abolished does not constitute one of the selection criteria specified in the relevant administrative instructions. In addition, he seeks retroactive promotion to the G-7 level, but with no financial implications.

III. The Respondent answers that the Secretary-General has discretionary power to select candidates for a given post and that staff members merely have the right to have their candidatures considered in accordance with the statutory provisions. The Respondent adds that the decision not to select the Applicant is not tainted by factors extraneous to the interests of the Organization.

IV. As to the Applicant's request to the Tribunal, inviting it to verify that there were also other posts available at the G-7 level, the Tribunal considers that the information at its disposal is sufficient to enable it to pronounce judgement in the case under consideration.

V. As to the merits, the Tribunal shares the view of the JAB, and reaffirms its previously stated position that the Administration has discretionary power in respect of the selection of candidates. In this matter staff members merely have a right to impartial consideration of

their candidatures (cf. Judgements No. 312, Roberts (1983); No. 362, Williamson (1986); No. 586, Atefat (1992) and No. 630, Megzari (1993)). The Administration's decision could be contested only if the Applicant could establish that the Administration had been influenced in its decision by extraneous factors, such as prejudice, discrimination or an improper motive. The Tribunal notes that the Applicant has not claimed that this was the case.

VI. The Tribunal notes further that the selected candidate was already at the G-7 level and that her post had been abolished. In accordance with the provisions of UNICEF headquarters administrative instruction CF/AI/1986-10 of 26 November 1986, which were applicable to the reorganization of the UNICEF India Country Office in 1991, priority is to be given to candidates whose posts have been abolished. The candidate whose post had been abolished was therefore rightly selected in accordance with staff rule 109.1 (a) (i).

The Tribunal thus concludes that the Administration has, in this instance, correctly applied the aforesaid guidelines. In the light of the foregoing, the application is without merit and should be rejected.

VII. However, in view of the fact that the Applicant was at the head of the list and that his promotion to the G-7 level was delayed, the Tribunal, endorsing the recommendation of the JAB, requests the UNICEF Administration to give priority to the Applicant's candidature for any vacancy at the G-7 level in his field of competence.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

New York, 9 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary