



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1099

Case No. 1194: THOMAS

Against: The Secretary-General of the
United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Ms. Marsha Echols; Ms. Brigitte Stern;

Whereas, on 31 May 2001, Joëlle THOMAS, a staff member of the United Nations, filed an application the pleas of which read as follows:

“II. PLEAS

I request rescission of the 5 February 2001 decision (...) by the General Service Classification Appeals and Review Committee not to reclassify the post on the date requested by the Applicant, that is, 24 June 1998 (...)

I request that ... the reclassification of my post become effective as of 24 June 1998 (...) the date of my reclassification request, which was submitted with a new job description in accordance with the instructions ...

That this reclassification as of 24 June 1998 have as of that date full effect with regard to my salary and entitlements.”

Whereas, at request of the Respondent, the President of the Tribunal extended until 31 October 2001, and then on two subsequent occasions until 31 March 2002, the time limit for the filing of his answer;

Whereas the Respondent filed his answer on 8 February 2002;

Whereas the Applicant filed written observations on 12 March 2002;

Whereas the facts in the case are as follows:

At the time when the events occurred, the Applicant was employed as a secretary in the Translation and Editorial Service (hereinafter called the Service, the Section or TES), United Nations Office at Vienna (UNOV).

On 14 March 1997 the Human Resources Management Section informed the Applicant and the other members of the Translation Service of their official titles and grade levels. The Applicant's post had been declassified from the G-5 to the G-4 level. On 4 July 1997, the Applicant, together with other UNOV staff members, sent the Human Resources Management Section in memorandum in which they expressed their disagreement with the announced reclassification and requested that "on-the-spot post evaluations be carried out with a view to re-evaluating the duties and responsibilities of the post of section secretary". In its reply of 25 July 1997, the Human Resources Management Section informed the Applicant that there had been no change in the duties of the TES secretaries since the previous evaluation, that no further evaluations were necessary and that it could not accede to her request.

On 24 June 1998 the Applicant and other secretaries in the Translation Section sent a memorandum to the Chief of Section, attaching the job description of the section secretaries in accordance with circular UN/INF.240/Rev.1 of 6 June 1995, concerning the classification of General Service posts at UNOV, which was in force at that time.

On 22 December 1998 the Chief of Section informed the Applicant and the other staff members that he intended to undertake a further examination of their duties in January 1999, taking into account in particular the new factors in the working environment of the section secretaries.

On 27 January 2000 it was decided that a general job description would be prepared on the basis of a matrix of factors and duties relating to a specific job.

On 28 January 2000 the Human Resources Management Section sent the Translation and Editorial Service the aforementioned generic job descriptions and requested it to prepare a basic data matrix. On 9 February the French Translation Section sent that matrix to the Human Resources Management Section. On 18 April the Chief of Section, in his capacity as requesting staff member, signed the form requesting a classification of General Service posts and on 20 April, the Chief of Section signed the job description form.

On 30 May 2000 the Human Resources Management Section informed the Applicant that her post had been classified at the G-5 level. On 6 June the Applicant requested the Human Resources Management Section that the decision to reclassify her post become effective as of the date on which she had occupied it, that is, in August 1996. On 20 June the Human Resources Management Service informed the Applicant that the date on which the reclassification become effective had been determined in accordance with administrative instruction ST/AI/1998/9 of 6 October 1998 (System for the classification of posts), and that consequently, that date had been fixed without regard to the length of service and/or entitlements of the person occupying the post.

On 18 July 2000 the Applicant requested the Secretary-General that the reclassification become effective as of 24 June 1998, the date of her reclassification request. On 31 August the Human Resources Management Section informed the Applicant that her request would be transmitted to the General Service Classification Appeals and Review Committee in Vienna. On 16 January 2001 that Committee submitted its report, in which it stated that the post reclassification procedure had been followed and recommended that 1 May 2000 should be the date on which the Applicant's promotion become effective. On 5 March 2001 the Applicant was informed that the Director-General of UNOV had decided to maintain the original decision.

On 31 May 2001, the Applicant filed an application with the United Nations Administrative Tribunal.

Whereas the Applicant's principal contention is:

The decision of the Secretary-General not to reclassify her post at the G-5 level with retroactive effect to 24 June 1998 violated her rights.

Whereas the Respondent's principal contentions are:

1. The decision to classify the Applicant's post at the G-5 level as of 1 May 2000 was a legitimate exercise of administrative authority which respected the applicable rules, and the Applicant's rights have not been violated.

2. The Respondent observes that the memorandum of 24 June 1998 did not meet the criteria set forth in circular UN/INF.240/Rev.1 of 6 June 1995 and that consequently, the Human Resources Management Service did not receive a

classification request fulfilling the conditions laid down in administrative instruction ST/AI/1998/9 until 18 April 2000.

The Tribunal, having deliberated from 5 to 25 November 2002, now pronounces the following judgement:

I. The Applicant does not deny that when the contested decision was taken her grade level was G-4/XII. She also states that she was occupying a G-5 post, that is, one of the posts of Translation Sections secretary, "which had been G-5 posts since their establishment", according to the Applicant. This is the post which according to the Applicant was declassified to G-4 on 14 March 1997. She says she had occupied that post since August 1996, when she took up her duties as secretary of the French Section. The Applicant considers that "(c) this change seems all the more unjustified in that, in the Translation and Editorial Service, those secretaries were the only ones to be declassified, at the very time when their duties were increasing following the introduction of the new computerized system ...".

II. On 4 July 1997 the Applicant together with the five other secretaries concerned, contested that classification and requested that her post be reclassified. All these internal procedures were carried out with the other secretaries of the Translation Service. On 24 June 1998, the Applicant sent a memorandum to the Chief of the Translation and Editorial Service to which was attached the job description of the section secretaries. Then, on December 1998, the Applicant submitted her case to the Panel on Discrimination and Other Grievances. As a result of that move, the Chief of the Translation Section, on 22 December 1998, informed the Applicant and the other secretaries concerned that he was going to review the classification in the following terms:

"As I informed you in a meeting some time ago, I intend to undertake a new review of your duties, taking into account in particular the new factors in the working environment of the section secretaries. This review will be carried out in January 1999, but its success and the following reclassification will depend on your personal contribution. I would like you to prepare yourselves well in advance by defining your duties and responsibilities in a succinct and convincing manner."

III. The Chief of Service thus indicated that the review would be completed quite soon. That was not what happened. In February 1999 a new job description was prepared by an independent expert. The Applicant requested information about the progress of the reclassification on several occasions, by letters dated 16 April 1999,

27 May 1999, 7 July 1999 and 26 November 1999. The case does not seem to have been pursued by the Panel on Discrimination and Other Grievances, to which it had been submitted in December 1998, since an agreement concerning rapid reclassification had been reached with the Administration in September 1999. In its 1999 report (ST/IC/1999/79, para. 45), the Panel on Discrimination and Other Grievances seems to believe that the problem was on the point of being resolved: “the Panel trusts that the problem will be resolved without further intervention”. However, it was not until 2000, following a lengthy procedure, that the Applicant’s post was reclassified to G-5, its original level, specifically as of 1 May 2000. The Applicant was subsequently promoted to the G-5 level as of 1 June 2000.

IV. The Applicant submitted an appeal contesting the decision to give effect to her promotion only as of 1 June 2000 to the General Service Classification Appeals and Review Committee of the United Nations Office for Drug Control and Crime Prevention of UNOV, which rejected her appeal at a meeting on 16 January 2000, its report having been notified to the Applicant by a letter of 5 February 2001. It is the Administration’s decision to accept the refusal to change the date on which her reclassification became effective, as contained in the Appeals Committee’s report, that the Applicant is contesting before the Tribunal.

V. The Applicant affirms that her post had been declassified from G-5 to G-4 without any valid reason. On 24 June 1998, at the same time as the six other secretaries affected by that measure, the Applicant requested that the post be reclassified to its former level. The Administration did not even discuss the declassification problem, which was explicitly ignored in its memorandum, and treated the case as a problem relating to the original classification.

VI. It is true that the Tribunal confirms the statement made in its Judgement No. 541, *Ibarria* (1991), based on Judgement No. 396, *Waldegrave* (1987), to the effect that it cannot substitute its judgement for that of the Secretary-General in job classification matters. The Tribunal must simply consider whether there was a material error in procedure or substance, or some other significant flaw in the decision complained of (see *Ibarria, ibid.*).

VII. The Tribunal considers, however, that this case involves, not the classification of a post, but a problem relating to the date to be taken into consideration with regard to the reclassification of a post subsequent to a declassification appeal.

VIII. In support of the argument that declassification actually occurred, the Tribunal notes the terms used in the letter of 30 May 2000 from the representatives of the Human Resources Management Service informing the Applicant that “your post has been **reclassified** to the G-5 level” (emphasis added). Even more significant is the fact that several notes in the file record discussions between the Chief of the Translation Service and the Coordinator of the Panel on Discrimination and Other Grievances concerning the “**declassification** from G-5 to G-4 of secretarial personnel in the Translation Service” (emphasis added). These internal notes indicate that the Chief of Service considered that the declassification was unjustified, as did the Panel on Discrimination and Other Grievances. Thus, the Coordinator of the Panel stated in a note of 7 January 1999:

“I indicated, on behalf of the Panel, that the **declassification** did not seem to be justified, since the duties of a section secretary are quite complicated and have not diminished in recent years but have, on the contrary, increased. [The Chief of Service] supported and approved this view.” (emphasis added).

These notes date from the period January 1999-January 2000, and nobody ever treated the case as anything other than a declassification problem.

IX. The Tribunal also notes that in the Applicant’s performance evaluation report for the period April 1996-March 1997 the first reporting officer wrote the following:

“[The Applicant] is responsible for ensuring the smooth functioning of the Section, which she does with great energy and intelligence. She is fully familiar with all aspects of its work and has become an indispensable assistant to the officer in charge of the Section. In that connection, it is very regrettable that such a key post should have been **declassified to the G-4 level**” (emphasis added).

The same comments appear in the performance evaluation report for the period April 1997-March 1998, which states: “one can only reiterate that this post should be reclassified to the G-5 level. **The declassification to the G-4 level is unjustified**, given the responsibilities of the post” (emphasis added).

X. Moreover, the Respondent himself, while not explicitly discussing the declassification as such, seems to admit implicitly, inadvertently as it were, that that is indeed the point at issue. In his explanatory statement he indicates, with regard to the memorandum of 24 June 1998, which he regards as an informal document, that “this memorandum did not constitute an official **reclassification** request” (emphasis added).

XI. The Tribunal concludes from the foregoing that the central problem in this case concerns the reclassification of a declassified post. The Tribunal considers that the problem involves a contested declassification and not the original classification. Once the situation is defined in this way, a second question arises, namely the consequences of that definition. More precisely, the situation is as follows: a G-5 post was declassified to the G-4 level, then, following a complex appeals procedure pursued by the occupants of the declassified posts and handled with scant diligence, to say the least, by the Administration, was reclassified at its original G-5 level. The question therefore is to determine when the reclassification should become effective.

XII. The Applicant originally requested the Administration to reclassify the post as of August 1996, since she had occupied it since that date and her duties had not changed. The Tribunal notes that her Chief of Service made a similar request on 3 May 2000 in an internal memorandum addressed to the Human Resources Management Section, which stated:

“Observations of the requesting staff member:

assignment of [the Applicant] to the above-mentioned post in accordance with circular ST/AI/1999/8, the staff member having performed the duties of JDVG0866 since 16/8/1996”.

The Applicant subsequently requested that the post be classified as of 24 June 1998, the date on which she submitted the reclassification request.

XIII. The Administration, for its part, by a letter of 20 June 2000, informed the Applicant that the reclassification date did not depend on the length of service of the occupant or on the quality of her work, but was determined according to the procedures laid down in administrative instruction SG/AI/1998/9 (System for the declassification of posts) which it considered relevant:

“4.1 Classification decisions shall become effective as of the first of the month following receipt of a classification request fulfilling the conditions of section 2.2 above ...”.

The Tribunal notes that the Administration originally interpreted this text so as to make the reclassification become effective on 1 June 2000. That date was, however, corrected by the General Service Classification Appeals and Review Committee, which considered that the date should be 1 May 2000.

XIV. The Tribunal considers that neither of the dates proposed respectively by the Applicant and the Respondent should be selected. The answer to the question concerning the date on which the reclassification of the post should take effect can be found in administrative instruction ST/AI/1998/9 (System for the classification of posts), which indicates clearly and without the slightest ambiguity what happens in the case of a declassification appeal:

“6.15 In those cases where the appeal is successful, the effective date of implementation of the post classification shall be, subject to the availability of a post, the same effective date as that of the original decision, as defined in section 4.1. above.”

The date of the original decision, which was finally reversed after strenuous efforts on the part of the Applicant and what appears to be a lack of diligence, or even obstructionism, on the part of the Administration, was 14 March 1997, and the Tribunal therefore considers that the reclassification should take effect on that date.

XV. At this stage the Tribunal wishes to comment on the Respondent's approach to this case. In her observations, the Applicant says that she is “very surprised, but also disappointed, not to say shocked, by the interpretation of my appeal by the Respondent”. The Tribunal shares this indignation. The Respondent not only invoked rules which were inapplicable to the situation, but also interpreted those rules in a very formalistic way.

XVI. In other words, the Administration, in its explanatory statement, pretended to consider that the case involved a new classification and sought to apply to the Applicant's request the procedures to be followed in the case of classification. In fact, the Administration invokes a number of paragraphs of circular UN/INF/240/Rev.1, with which the Applicant had allegedly failed to comply, that being the reason why her post classification could not become effective until 1 May 2000. The circular states that requests for classification or reclassification of a post may be submitted in the following cases:

- (a) When a new post is established;
- (b) When a post becomes vacant;
- (c) When substantial changes are made in the duties and responsibilities of a post;

(d) When an administrative unit has been reorganized in such a way as to affect substantially the duties and responsibilities of the post concerned.

XVII. There is nothing to indicate, and the Administration does not contend, that one of these hypotheses applies in the present case. The Tribunal therefore considers that the Administration invoked inapplicable rules in order to refuse to reclassify the Applicant's post retroactively. The Tribunal considers that the foregoing paragraphs are not applicable in the present case.

XVIII. Moreover, the Administration also sought to apply to the Applicant a formalistic approach which it failed to apply to itself. Even if, for the sake of argument, it were to be assumed that the rules invoked by the Respondent and accepted as applicable by the General Service Classification Appeals and Review Committee were applicable, the Tribunal considers that the Administration interpreted those rules in too formalistic a manner. The Tribunal considers that the Administration demonstrated bad faith by taking an extremely formalistic approach, while failing to respect the formalities which if considered essential for the validity of its acts. Thus, the Tribunal, having carefully considered all the documents in the file, found that the new classification of 14 March 1997 did not bear the signatures of the occupants of the posts and their supervisors, which were nevertheless required. It is important that the Tribunal remind the Administration that it should not deny rights to staff members by invoking rules which it does not respect itself.

XVIX. If it is acknowledged that the post should never have been declassified, or at least that it should be regarded as having been reclassified in the light of the rules on declassification appeals, what are the consequences for the Applicant? In other words, since the post should be considered as being reclassified on 14 March 1997, what is the effect on the Applicant's grade level?

XX. The Applicant requests that her promotion become effective on 24 June 1998, the date on which she requested that her post be reclassified. The Administration informed her that the date of her promotion depended, not on the reclassification date, but solely on the rules set forth in administrative instruction ST/AI/1999/8. (Placement and promotion system), which states clearly: "When the selection also entails promotion to a higher level, the earliest date on which such promotion may become effective shall be the first day of the month following the decision, subject to the availability of the post and the assumption of the higher-level functions." The Administration applied this rule when it fixed 1 June 2000 as the date on which the

promotion became effective, one month after the post reclassification became effective.

XXI. According to the applicable rules, a staff member having a certain grade level, but occupying a higher-grade post, is not automatically entitled to promotion. According to the relevant administrative instruction:

“4.2 The classification of a post shall not negatively affect the existing contractual status, salary, or other entitlement of the staff member encumbering the post.

4.3 Staff members whose posts are classified at a level above their current personal grade level in the same category may be **considered for promotion** in accordance with established procedures, including issuance of a vacancy announcement, where applicable” (emphasis added).

XXII. The Applicant was thus undeniably deprived of her right to be considered for promotion during the period 14 March 1997-1 May 2000. The right to be considered for promotion seems particularly “substantial” in this case.

XXIII. The Tribunal considers that the Applicant stood a good chance of being promoted quickly once the post was properly classified. First, the facts in the case show that promotion followed immediately upon the reclassification of the post, pursuant to the applicable rules. Second, the Applicant had already been at the G-5 level from August 1992 to October 1993, when she resigned. When she was re-recruited in another post in November 1993, she accepted a G-4 level. She could hope for promotion, especially since she received very good reports and since, as indicated in paragraph 9 above, her performance evaluation report stated that her post should be reclassified because of the quality of her work. The Tribunal therefore concludes that she stood a particularly good chance of being promoted.

XXIV. In the light of the foregoing, the Tribunal considers that if the Applicant had the right to be considered for promotion from the beginning of her contract, under which she was given a G-4 grade level in a G-5 post, that right was reinforced at the time when her post should have been reclassified, that is, as of 14 March 1997.

XXV. For the foregoing reasons, the Tribunal:

1. Decides that pursuant to the applicable rules, the post reclassification become effective on 14 March 1997.

2. Considers, therefore, that the Applicant was deprived of her right to be considered for promotion during the period 14 March 1997-1 May 2000;

3. Considers that it would be a just decision if the Administration were to make her promotion retroactive from 1 May 2000 to 24 June 1998, the date on which the Applicant requested that her post be reclassified, with all consequent effects with regard to her salary and entitlements.

4. Rejects all other pleas.

(Signatures)

Mayer GABAY
President

Marsha ECHOLS
Member

Brigitte STERN
Member

New York, 25 November 2002

Maritza STRUYVENBERG
Executive Secretary
