

S. P. (No. 2)

v.

WHO

141st Session

Judgment No. 5157

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms J. S. P. against the World Health Organization (WHO) on 14 February 2022 and corrected on 19 March 2022, WHO's reply of 11 July 2022, the complainant's rejoinder of 28 October 2022 and WHO's surrejoinder of 31 January 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges her non-selection to a post.

The complainant joined WHO on 1 April 2008 as Coordinator, Income and Award Management, at grade P-6, under a fixed-term appointment at WHO Headquarters. She was later promoted to the position of Director of the Accounts Unit, at grade D-1. As from 26 October 2018, the complainant served as Acting Comptroller and Director of Finance, a grade D-2 position, due to the resignation of the incumbent and the search for a permanent replacement; she retained some of her previous responsibilities.

Following a structural reorganization on 6 March 2019, the newly appointed Assistant Director-General for Business Operations (ADG/BOS) became the complainant's first-level supervisor.

WHO advertised the Comptroller and Director of Finance position, at grade D-2, from late 2018 to early 2019. The selection panel, chaired by the ADG/BOS who was the hiring manager, reviewed applications and shortlisted nine candidates, including the complainant. She was invited to participate in a written test and to an interview. On 28 May 2020, the selection panel concluded that she was overall "Not suitable", as was the case with all the other candidates. The panel concluded that it had not identified any suitable candidate to recommend, that the search should be expanded, and the position readvertised.

A second round of assessments was organized in which she was rated "Not suitable". The other remaining candidate in the selection process was assessed as "Suitable/Strong", but was ultimately found to be unsuitable. The selection panel's final report was submitted on 7 August 2020.

On 9 September 2020, the complainant was informed that she had not been selected, and on 2 November 2020, she submitted a request for administrative review challenging this decision on the ground that the recruitment process was flawed.

On 2 and 3 November 2020, the ADG/BOS informed the complainant the recruitment process would be cancelled and the position readvertised, and that she would resume her D-1 role. The position was readvertised on 20 November 2020 and the complainant took part in the new selection process and participated in written tests and interviews, but was not selected. This led to her third complaint before the Tribunal.

On 11 January 2021, the complainant received the administrative review decision (dated 8 January), which found no flaws in the selection process or violations of her terms of appointment; she was given a redacted copy of the selection panel's report.

On 11 April 2021, the complainant submitted a statement of appeal to the Global Board of Appeal (GBA). She claimed that the selection process for the Comptroller position was flawed, that the panel failed to consider the complainant's successful service as Acting Comptroller and did not comply with the Harmonized Selection Process guidelines, that the Administration abused its authority by ensuring that the complainant would not be selected to the Comptroller position and that WHO violated its duty of good faith and care. She also sought compensation for lost salary and benefits up to retirement had she been appointed Comptroller, plus 50,000 Swiss francs in moral damages for harm to her health and the Organization's breach of duty of care.

On 11 November 2021, the GBA recommended dismissing the appeal as it found no procedural flaws, bias, or unequal treatment. It concluded that the second round of assessments in the selection process was justified, lawful, and consistent with the Organization's duty of care to uphold high standards of efficiency, competence and integrity. It found no evidence that the second round of assessments was prejudicial to the complainant or that it favoured another candidate unfairly. According to the GBA, the composition and functioning of the selection panel, the approval of the selection report, and the complainant's interview with the Director-General were all conducted appropriately. The GBA held that the complainant's performance record was duly considered, but did not outweigh her performance in the written tests and interviews. It concluded that the lengthy duration of the selection process was justified by objective factors, including the COVID-19 pandemic and restructuring, and did not unfairly impact the complainant. As such, it did not entertain the claims for damages.

On 17 November 2021, the Director-General accepted the recommendation of the GBA and dismissed the appeal without further comment. This is the impugned decision.

The complainant asks the Tribunal to determine that the selection process for the contested position breached the WHO Harmonized Selection Process, involved an abuse of authority and violated her rights, including the duty of care and good faith owed to her. She seeks material damages in an amount equal to the difference between her

current D-1 salary and the total salary, benefits, step increases, pension contributions, entitlements, and other emoluments she would have received as Comptroller and Director of Finance, at grade D-2, until her retirement in December 2028 at the age of 65. Additionally, she requests 50,000 Swiss francs in moral damages for the harm, including to her health, caused by the flawed decision and WHO's failure to uphold its obligations. She also seeks costs in an amount of 15,000 Swiss francs, plus interest at the rate of 5 per cent per annum on all awarded amounts from 9 September 2020 (the date of the non-selection decision) until the full implementation of the remedies, and any other relief the Tribunal deems fair and necessary.

WHO asks the Tribunal to dismiss the complaint in its entirety and to deny each claim for relief, and, in any event, cap legal costs, with payment subject to receipt of invoices, proof of payment, and confirmation that the complainant cannot claim reimbursement from other sources.

CONSIDERATIONS

1. This complaint concerns the non-selection of the complainant for the position of Comptroller and Director of Finance following a competition in which she participated. Shortly after the complainant was informed on 9 September 2020 that she had not been selected for the position, a decision was made that the recruitment would be cancelled and the position readvertised. This occurred on 20 November 2020 and led to a new selection procedure in which the complainant participated. She was unsuccessful and her non-selection is the subject of another complaint (her third) pending before the Tribunal.

It is necessary to deal with one procedural issue at the outset. The complainant seeks the joinder of this complaint with her third complaint. This request is resisted by WHO in its surrejoinder. If an application for joinder is made then, as the Tribunal observed in Judgment 4753, consideration 6:

“The question that arises is whether it is appropriate to join the two complaints. The touchstone for formal joinder has historically been that the complaints involve the same or, more recently, similar questions of fact and law, and it is not sufficient that they stem from the same continuum of events. [...]”

While the factual underpinning of the non-selection matter in the third complaint and the factual underpinning of the second complaint arise from the same continuum of events, the legal issues are not the same. Accordingly, the complaints will not be joined.

2. Notably, regarding the second complaint, WHO argues that the matter is moot having regard to the supersession of the competition challenged in these proceedings by the competition challenged in the third complaint. For reasons which are explained shortly, this is a decisive point of substance.

3. It is desirable to now deal with the question of mootness. The issue of mootness does not concern receivability (see Judgment 2856, consideration 5). A claim is moot when there is no longer a live controversy (see, for example, Judgment 4060, consideration 3). The complainant’s case in this complaint is that the initial selection process, ultimately abandoned, was replete with procedural and other similar flaws vitiating the decision not to select her. However, there can be no live controversy about procedures adopted in the initial selection process because it had no legal effect.

4. The complainant argues that the facts attending the initial selection are relevant to a case of bias she wishes to maintain. There is no reason, in principle, why those facts cannot be raised in her third complaint. She also argues that this complaint raises the question of whether she was entitled to material or moral damages flowing from the non-selection in, as she contends, a flawed selection process. It is true that cases can arise where this residual issue means that the entire matter cannot be said to be moot (see, for example, Judgment 4886, considerations 3 to 6).

5. However, in the present case the asserted material loss is not shown to be causally linked with the alleged flaws in the selection process. At least implicit in her pleas is that she would have been appointed to the position in question but for the flaws in the process. There is absolutely no basis for making this assumption.

6. Insofar as she claims moral damages, she simply asserts in her brief that WHO's unlawful action caused her stress, humiliation, loss of professional standing and mental and physical injury. She relies on a medical certificate for a limited period in January 2022 and which casts no light on any causally connected moral injury. As the Tribunal has repeatedly held, moral damages flow from proof, provided by the complainant, of the moral injury suffered, of the alleged unlawful act, and of the causal link between the unlawful act and the injury (see Judgment 4156, consideration 5, and the case law cited therein). In her rejoinder, she appends and relies on a report of the Advisory Committee on Compensation Claims (ACCC) dated 26 July 2022. In the report the ACCC set out the basis on which the complainant contended how her illness had arisen which included "Drawn-out and delayed recruitment process". However, there is nothing in the report itself, supportive of the conclusion that any illness she may have then suffered was caused by flaws in or delays of the recruitment process for the position of Comptroller and Director of Finance.

7. Her claims for damages are unfounded.

8. In the result the complaint should be dismissed because it is partly moot and additionally, as to her claim for damages, unfounded.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 24 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.