

B.
v.
OPCW

139th Session

Judgment No. 4918

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. B. against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 15 April 2021, the OPCW's reply of 13 October 2021, the complainant's rejoinder of 23 December 2021 and the OPCW's surrejoinder of 4 February 2022;

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 his non-appointment to a P-4 position.

The complainant joined the OPCW in 2014. At the material time, he was working as Inspector (Analytical Chemist), at grade P-3, in the Inspectorate Division. On 23 May 2018, a vacancy notice for various P-4 Inspector positions in the Inspectorate Division was advertised (E-INS/I/F0466/P-4/28/05-18). The complainant submitted his application and took a written test. He was later invited for an interview along with 16 other candidates. As a result of the recruitment process, ten candidates were recommended for six vacant P-4 Inspector positions. The Selection Panel decided not to recommend the complainant due to a "lack of leadership" skills.

On 22 October 2018, the complainant was notified that his application for E-INS/I/F0466/P-4/28/05-18 had not been successful.

On 30 November 2018, the complainant submitted a request for review of the 22 October 2018 decision, pursuant to Staff Regulation 11.1 and Interim Staff Rule 11.2.02 of the OPCW Staff Regulations and Interim Staff Rules. In his request for review, the complainant pointed out that former inspectors had been rehired as part of the selection process for E-INS/I/F0466/P-4/28/05-18, which he considered contravened paragraph 2 of the Conference of the States Parties (CSP) decision on Rehired Inspectors (C-22/DEC.14), on the basis that they were external candidates while he was a qualified internal candidate. The complainant concluded his request for review stating the following: “Noticing that a recent promotion round of inspectors to P4 grade (Vacancy Notice: I-INS/I/F0489/P-4/69/10-18) has been published almost two weeks after the conclusion of the previous recruitment process, which reveals the availability of vacant positions at P4 level [...] I would like to kindly request [...] to reconsider my application for the previous recruitment and to join the already rehired candidates and to be designated as an inspector at grade P4.” He also requested to be provided with a copy of “[his] selection report”.

On 18 December 2018, the Director-General rejected the complainant’s request for review. The Director-General found that the recruitment process for E-INS/I/F0466/P-4/28/05-18 had been conducted in line with the applicable rules, that as part of the recruitment process the complainant had been given “a full and transparent opportunity to compete” and that he had been provided with detailed feedback about his application and performance during an in-person meeting with the Chairman of the Selection Panel and the Human Resources Branch (HRB). Regarding the complainant’s argument involving an alleged violation of C-22/DEC.14, the Director-General stated the following: “The outcome of the competitive recruitment process revealed that [the complainant] and other internal candidates were not suitable for the position and thus were not available for the purposes of paragraph 2 of C-22/DEC.14; the Director-General was thus at liberty to consider rehiring external applicants as inspectors.”

On 13 February 2019, the complainant sent a letter to the Director-General, entitled “Re: P4 promotion”. In his letter, the complainant made references to “the decision not to promote [him] to the P4 position” and his request for review of such decision. He indicated that “[i]t ha[d] recently come to [his] attention that at the beginning of February 2019, a colleague, Mr [G.] who was in the same promotion competition [for E-INS/I/F0466/P-4/28/05-18] and who was also unsuccessful on that occasion, ha[d] now been appointed to a P4 position”. The complainant continued as follows: “it is not clear to me whether or not I was considered for this promotion and why I was not ultimately selected. [...] In light of this, I respectfully request an administrative decision on whether or not the organisation will be promoting me to a P4 position.” The complainant further requested that “the merit list and selection report in relation to the selection process which resulted in Mr [G.]’s recent promotion” be disclosed to him.

By letter dated 25 February 2019, the Head, HRB, responded to the complainant that “the Director-General ha[d] already carefully considered this matter and rendered on 18 December 2018 his decision on [the complainant’s] request for review”.

On 18 March 2019, the complainant filed a second request for review, directed against the 25 February 2019 letter, in which he asked to be promoted to a P-4 position with retroactive effect from 1 February 2019 and reiterated his demand to be provided with “a copy of the merit list and selection report in relation to the selection process that resulted in Mr [G.]’s February 2019 promotion”.

By email of 28 March, the Head, HRB, responded to the complainant that “the letter of 25 February did not constitute a final administrative decision” and “[t]he only final administration decision that [the complainant] could have challenged was the final administrative decision of the Director-General dated 18 December 2018”. The Head, HRB, further noted in his email that “[p]ursuant to Interim Staff Rule 11.2.02 (a) (i), [the complainant] had one month within which to appeal that decision” and “[b]ecause [the complainant had] not done so, [he] ha[d] forfeited [his] right to pursue this matter any further”.

On 10 April 2019, the complainant filed an appeal before the Appeals Council, challenging the 28 March 2019 communication from the Head, HRB. As part of the internal appeal procedure, the OPCW provided the complainant with a copy of the selection panel report assessing his performance.

On 16 December 2020, the Appeals Council submitted its report to the Director-General, in which it recommended to reject the complainant's appeal as irreceivable because the matter raised had already been decided by the Director-General in his 18 December 2018 decision and that the complainant did not file an appeal against such decision.

By letter dated 18 January 2021, the Director-General informed the complainant that he had decided to dismiss his appeal as irreceivable. That is the impugned decision.

The complainant asks the Tribunal to order his promotion to a P-4 position, with retroactive effect from February 2019 or, alternatively, to pay him the difference between a P-3 and P-4 salary from that date, with interest. He further requests the Tribunal to order the disclosure of "the information related to the promotion exercise which resulted in Mr [G.]'s promotion in February 2019". Finally, the complainant claims material and moral damages in the amount of two years' salary at his P-3 grade.

The OPCW asks the Tribunal to dismiss the complaint in its entirety and submits that the complaint is irreceivable.

CONSIDERATIONS

1. The complainant impugns the 18 January 2021 decision made by the Director-General of the OPCW, who accepted the Appeals Council's recommendation to dismiss the complainant's appeal as irreceivable.

2. The OPCW argues that the complaint is entirely irreceivable. First, the OPCW contends that there was only one recruitment process relevant to the complaint, namely the 2018 P-4 Inspector Recruitment

Exercise, during which Mr G. was a recommended candidate, allowing his subsequent appointment to a P-4 Inspector position without a new competitive recruitment process, in accordance with paragraph 47 of the Administrative Directive on Recruitment and Selection Procedures (AD/PER/29/Rev.4), and that such appointment was therefore not the result of a separate promotion exercise. Second, the OPCW argues that the complainant's 18 March 2019 request for review was not a valid request for review since there was no new administrative decision to review. The communications from the Head, Human Resources Branch (HRB) on 25 February and 28 March 2019 were merely confirmatory of the Director-General's 18 December 2018 decision. Third, the OPCW submits that the complainant's appeal of 10 April 2019 was time-barred, as it was not submitted within one month after the receipt of the 18 December 2018 decision.

3. In his request for review filed on 30 November 2018, the complainant contested the result of the recruitment process for the P-4 Inspector position (Vacancy Notice: E-INS/I/F0466/P-4/28/05-18) and requested "to reconsider [his] application [...] and to be designated as an inspector at grade P4". The Director-General, in his response dated 18 December 2018, rejected the complainant's request for review on the ground that the consideration of the complainant's application was made in line with the applicable rules and was not prejudged. Rule 11.2.02(a)(i) of the OPCW Staff Regulations and Interim Staff Rules states that "[i]f the Director-General replies to the staff member's letter, the staff member may appeal against the answer within one month of the receipt of such reply". The complainant did not appeal the Director-General's decision of 18 December 2018.

4. In his subsequent letter of 13 February 2019, the complainant submitted a request for "an administrative decision" to the Director-General, requesting to be promoted to a P-4 position. Referring to Mr G.'s appointment to a P-4 Inspector's position, he also asked for documents related to Mr G.'s appointment, namely the "merit list and selection report". The Head, HRB, on behalf of the Director-General, replied to the complainant by letter dated 25 February 2019, informing

him that the matter had already been considered by the Director-General who rendered a decision on 18 December 2018 rejecting the complainant's request for review of 30 November 2018 directed against the recruitment result. The complainant then filed a second request for review on 18 March 2019, directed against the 25 February 2019 letter, in which he again requested to be promoted to a P-4 Inspector post with effect from 1 February 2019 and to be furnished with the documents relating to Mr G.'s appointment. The Head, HRB, later responded to the complainant on 28 March 2019 that "the letter dated 25 February 2019 was sent to [the complainant] out of professional courtesy" and did not constitute "a final administrative decision". On 10 April 2019, the complainant filed an appeal against the 28 March 2019 communication.

5. The complainant has failed to demonstrate that there was a "new" administrative decision to challenge beyond the Director-General's decision of 18 December 2018. A decision made in different terms, but with the same meaning and purport as a previous one, does not constitute a new decision giving rise to new time limits (see Judgment 586), nor does a reply to requests for reconsideration made after a final decision has been taken (see, for example, Judgments 3735, consideration 4, 2011, consideration 18, and 1528).

6. The Tribunal notes that, although the complainant submits in his complaint brief that his request for review dated 18 March 2019 concerned "a decision not to appoint [him] in the 2018 promotion", the claim presented in such request for review was identical to the claim made in his first request for review submitted on 30 November 2018, namely to be appointed to a P-4 Inspector position. It is apparent that both communications from the OPCW dated 25 February and 28 March 2019 were merely confirmatory of the 18 December 2018 decision. The Tribunal finds that they did not constitute a new decision on the matter and, therefore, did not trigger a new time limit (see, for example, Judgment 4116, consideration 4).

7. Article VII, paragraph 1, of the Tribunal's Statute requires that "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations". As the complainant did not file an appeal against the 18 December 2018 decision pursuant to Rule 11.2.02(a)(i) of the OPCW Staff Regulations and Interim Staff Rules, it follows that his complaint is irreceivable.

8. In the foregoing premises, the complaint is dismissed as irreceivable. It therefore follows that it is unnecessary to address the complainant's request for disclosure of documents.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER