



IN THE MATTER OF:

M.M., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Namira Negm, Legal Counsel, African Union Commission

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 21 April 2021, 18 May 2021

JUDGMENT

Procedural and Factual History

1. On 15 August 2019, Applicant, a Senior Internal Auditor within the Office of Internal Audit, filed the instant application contesting Respondent's failure to adjudicate his request to revise his Within-Grade Salary Step under Staff rule 12 retroactive to his appointment as Senior Internal Auditor (P-3) on 27 December 2011.
2. Respondent filed his answer on 10 October 2019, wherein Counsel represented to the Tribunal that Applicant's request for salary revision remained under active consideration by the Appointment, Promotion and Recruitment Board (APROB), an advisory board tasked with all matters relating to recruitment, appointment, promotion, review, appraisal, staff re-employment as well as staff development.¹
3. Following preliminary review of the application in August 2020, the Tribunal issued an order on 21 August 2020, directing Respondent to adjudicate Applicant's request within a period of sixty days.
4. Respondent did not comply with the order. On 23 November 2020, the Tribunal inquired with Counsel for Respondent asking her again to file a status report pertaining to Applicant's request no later than 26 November 2020.
5. On 26 November 2020, in reply to the Tribunal's inquiry, Respondent filed a motion without explaining why the deadline of 26 October 2020 was not met but asking for additional sixty (60) days to permit administrative adjudication of Applicant's request.
6. In view of the excessive delays and Respondent's failure to respect the Tribunal's order, the extension request was refused, and Respondent was debarred from filing any pleadings relating to the subject-matter of the Order issued on 21 August 2020.
7. Applicant joined the Organization in September 2006 as a fixed-term appointee Auditor (P-2). On 19 November 2009, Applicant accepted a fixed-term appointment as a Senior Finance Officer (P-3). He served in this post until September 2011, reaching a salary level of P-3/Step 6.
8. On 27 September 2011, Applicant was offered a regular appointment as a Senior Internal Auditor. He accepted the offer and on entering on duty on 27 December 2011, his salary was set at P-3/Step 1 – five Within-Grade Steps lower than his previous salary level of P-3/Step 6.

¹ Staff rule 27.

9. According to Applicant, in February 2012, he inquired with the Head of Human Resources Management (HRM) about requesting the revision of his salary step under Staff rule 12.3. In his sworn affidavit, he states that he was informed “the provisions of the 2010 [Staff Regulations and Rules (SRR)] with financial implication had not been implemented and rule 12.4 was within this category and therefore [his] application would not be considered.”

10. A memorandum authored by the Deputy Chairperson, issued on 23 February 2016, indicated that the Organization was not implementing some provisions of the SRR at least through the date of memorandum. The memorandum stated:

I wish to reiterate [sic] your attention to the fact that even though the New Staff Rules and Regulations have been approved and adopted by the AU Assembly in 2010, the New Staff Regulations and Rules have not been fully implemented specially those provisions that have financial implications.

11. On 12 May 2016, the Chairperson issued the African Union Administrative Policy on Advancement, Upgrading, Promotion and Mobility (“Policy”), setting forth the details of how Staff rule 12 would be implemented.

12. However, the Policy was not officially distributed to staff members until 5 March 2018, but Applicant states that he first became aware of the Policy at an all-staff meeting on 13 April 2017, during which the Director of AHRM disclosed the details of the Policy to staff members.

13. Soon after, on 24 April 2017, Applicant submitted a request in writing to AHRM asking for his salary to be adjusted in accordance with Staff rule 12.3 and the Policy. In his follow up request of 17 November 2017, he requested that he be allowed to retain the salary level (P-3/Step 6) at the time of his appointment as a Senior Internal Auditor. He wrote:

I had been working for the [AUC] since 27th September 2006 on a short-term contract until being appointed to the regular position of Senior Internal Auditor on 13th September 2011, after undergoing a competitive recruitment process. However, upon being appointed to the regular position, my salary was downgraded from P-3 step 6 to P-3 step 1. This was despite being professionally qualified as a Chartered Management Accountant (CMA) and attaining a Master’s Degree in Business Administration (MBA).

14. Applicant sent additional communication to various officials of the Organization but received no response. His last appeal to the Chairperson was made on 18 June 2019, asking the Chairperson to review his request for salary revision. This application followed on 15 August 2019.

15. Applicant claims that several staff members in similar situation have had their salary levels adjusted, resulting “in the staff members in [his] grade category (P-3) who were appointed from short-term to regular after [him] in becoming more senior to [him] in salary grade step.”

16. In reply, Counsel for Respondent argued that the Policy was not retroactive and further represented to the Tribunal that Applicant’s request “[was pending] before APROB and once [the] request is considered and approved, [his] upgrade will be effective from the date that he submitted the request. The applicant is aware that APROB has a huge workload and that measures have now been put in place for APROB to finalize all pending issues before it.”

17. Applicant countered with evidence that the Policy had been applied retroactively in favor of several staff members. In relation to Respondent’s claimed consideration of the case by APROB, Applicant indicated he was never informed about that process.

18. Applicant asks the Tribunal to order the revision of his salary with effect from the date of his appointment.

19. Upon review of the documentary record, the Tribunal believes the facts and issues have been presented adequately in the pleadings and the Tribunal determines this matter without the need to invite the parties for an oral hearing.

Discussion

Within-Grade Salary Step Revision on Hire

20. Staff rule 12.3 sets forth that new appointees should be placed in the minimum salary step (Step-1) except “where the selection panel recommends that a candidate has the requisite qualifications and relevant experience to warrant [a higher within-grade step].”
21. Staff rule 12.4 sets forth that such “salary adjustment shall be considered by way of re-classification only in exceptional circumstances ... [in accordance with] *the Recruitment, Appointment, Advancement, Upgrading and Promotion Policy...* Such reclassification shall take place within 12 months of appointment.”
22. These rules were promulgated in July 2010 after adoption by the Assembly of the African Union, according to which staff members’ salaries on hire would be revised upwards in appropriate circumstances. Unfortunately, the Policy enabling the application of Staff rule 12 to deserving staff members was not issued until May 2016, and worse, that Policy was not distributed to staff members until 5 March 2018. By delaying the issuance of the enabling Policy, Respondent essentially prevented staff members from exercising the right to seek and benefit from salary revision allowed under the SRR. Given the Organization’s own delays in issuing the Policy, Respondent cannot refuse to consider applications under Staff rule 12 *solely* on the grounds that such request was not made within a year of appointment.

Applicant’s Request for Salary Revision

23. At the outset, the Tribunal finds credible Applicant’s claim, uncontroverted by Respondent, that he verbally inquired in February 2012 and was notified by the Head of HRM that the Organization had not begun implementing Staff rule 12. This response appears to be consistent with a memorandum signed by the Deputy Chairperson on 23 February 2016, which confirmed the Organization’s irregular practice of cherry-picking provisions of the SRR to enforce.²
24. The Tribunal has also considered the fact that Applicant filed his request as soon as he discovered the Organization had issued an administrative policy on Staff rule 12. The Tribunal hence finds that Applicant made a timely request and was entitled to proper consideration of and a timely decision on his request.
25. When the Chairperson appointed Applicant as a Senior Internal Auditor (regular appointment), Applicant was serving in the Organization as a Senior Finance Officer (fixed-term appointment) at the salary level of P-3 Step 6. He submits that on accepting the appointment, his salary should have been re-calculated in accordance with Staff rule 12.3 and 12.4. Applicant contends that Respondent failed to properly consider his request for over four years, while adjusting the salary of other staff members in like circumstances.
26. The Tribunal observes that the Organization’s handling of Applicant’s request was irregular. Independent of the merits of his claim, Applicant has a right to have his request considered and decided by the Organization.³ Additionally, the Tribunal has repeatedly held that the Organization has a duty to deal with its staff “fairly, transparently, and justly,⁴” which was not the case here. Applicant’s written request was made in April 2017, and despite multiple follow-ups, no official responded to him in relation to his request. Even after he had applied to the Tribunal, Respondent did very little to resolve Applicant’s request.
27. The Tribunal also takes note that the Organization favorably adjudicated similar requests from other staff members in like circumstances, a practice antithetical to the principle of equal treatment. Applicant gave examples of several staff members who benefitted from the Policy in 2017 even before the Organization published the Policy to all staff members. These irregularities were not disputed or explained by Counsel for Respondent. The Tribunal therefore concludes that Respondent breached its obligation to act fairly, transparently and justly.
28. The Tribunal would ordinarily remand this matter to Respondent for appropriate re-calculation of Applicant’s salary in accordance with Staff rule 12 and the Policy. However, having observed excessive delays and troubling inconsistencies in the application of the Policy, and in the interest of justice, the Tribunal declines remanding this matter for adjudication by Respondent in the first instance, which may result in additional harm to Applicant in the form of undue delays or other irregularities.

² The Deputy Chairperson’s memorandum appears to the Tribunal to be highly irregular given that the official lacked the authority to suspend any provision of the SRR in the absence of an amendment adopted by the Assembly of the African Union. See Staff rule 81 (amendments); Staff rule 78.4 (hierarchy of Union laws).

³ See e.g., *Kulawet*, 2014-UNAT-428; *Malmstrom et al.*, 2013-UNAT-357.

⁴ *A.L. v. Chairperson*, AUAT/2017/002 p.15; Staff reg. 3.4(b).

29. In his request, Applicant indicated that he had been in the Organization's service prior to his regular appointment for over five (5) years and had achieved a salary level of P-3/Step 6. Given the totality of the circumstances, the Tribunal holds that it would be reasonable to grant Applicant's request to be retroactively allowed to maintain his salary level immediately before his appointment as Senior Internal Auditor. For that reason, the Tribunal would order Respondent to adjust Applicant's salary level to P-3/Step 6 retroactive to 27 December 2011, his entry on duty date as a Senior Internal Auditor.
30. The Tribunal also holds that Applicant was subjected to moral harm due to the excessive delays and inconsistencies in administering the Policy, including the egregious practice of favorably adjudicating similar requests made by some staff members before properly publishing the Policy to all staff members. For these reasons, it would be appropriate to award Applicant moral damages.
31. For the above reasons, the application is GRANTED.

Orders

32. The Tribunal ORDERS as follows:

- a. Respondent must re-calculate Applicant's salary, entitlements and benefits as though he was appointed at P-3/Step 6 retroactive to 27 December 2011;
- b. Applicant is awarded five months' gross salary in moral damages;
- c. Both sums are payable within 30 days from the date of this judgment, failing which a 5% interest shall accrue and escalate to 10% if the sums are not paid in full beyond 60 days after the date of this judgment.
- d. All other prayers are rejected.

Date: 2 June 2021

/signed/

SYLVESTER MAINGA, PRESIDENT
JAMILA B. SEDQI
PAULO D. COMOANE

Secretary: _____

