

Foreign Service Grievance Board

May 15, 1972

TO: The Secretary of State J ' ~ ^j^-iV-'i C

SUBJECT: Remedial Reconsideration and Order in the Case
of FSO ÖPÖÖÜNSÚ

REF: 3 FAM 667.3

On September 3, 1971, FSO-3 Y&ã{á^\"{Y} àled, a formal grievance with this Board charging that certain efficiency reports prepared on him while he served as Consul General in äääá'\ää in 1964-65 were improperly prepared and falsely prejudicial. YÖã{á^\"{Y} first learned of the existence of the damaging reports on February 28, 1967. The grievant promptly sought to have the reports removed from his file. His efforts were unavailing until, on July 24, 1970, an ad hoc grievance panel found that the äääá'\ää reports were procedurally deficient in a number of respects and recommended that they be removed from the grievant's file. This was done on September 15, 1970.

The ad hoc panel further found that because the erroneously prepared reports had been allowed to remain in his file for five years, Y&ã{á^\"{Y} career had been damaged. To remedy the damage it recommended that the grievant's in-grade be extended for eighteen months.

A second, closely related claim advanced by the grievant herein concerns a 1970 efficiency report, which was placed in his personnel file on the very day (September 15, 1970) that the äääá'\ää reports were removed pursuant to the ad hoc panel's recommendation. The 1970 efficiency report in question (Part II covering the period 9/15/63 - 6/15/70) relates to the grievant's performance in the FSO-2 position he has occupied since his return from äääá'\ää. The 1970 rating officer, who had given the grievant high marks for his performance in the FSO-2 position in Part I of his 1970 report, nevertheless did not recommend him for promotion to the FSO-2 level in Paragraph E of Part II of the report. His stated reason for not doing so was that the position held by Sosserratte was ^{fi}a dead end job.¹ According to the grievant, the latter comment precluded any remaining possibility he may have had of being promoted to FSO-2.

To remedy the injury to him allegedly caused by the foregoing episode, Y&ã{x{á^\\Y has asked, inter alia, that the Board (1) take evidence concerning the substance of the "bad" reports, in order that he may be given an opportunity to show not only that the reports were false but that his performance during the 18 months in question was actually superior; (2) review the procedural defects in the "bad" reports, as found by the ad hoc panel, and review the remedy granted by the panel (removal of the offending reports, plus an 18-month extension in grade); (3) find, on the basis of either (1) or (2) above - or both - that the remedy granted by the ad hoc panel was inadequate, and that the grievant can only be made whole by being promoted; (4) take evidence on the merits of his 1970 rating officer's action in not recommending the grievant for promotion because of the alleged "dead end" character of his job; and (5) find on the basis of (4) plus (1) and/or (2) above that the grievant's chances for promotion have been irreparably damaged and hence recommend that he be promoted.

The Board accepted jurisdiction of Y&ã{x{á^\\CbY case and ordered an investigation of his classification. On the basis of the information developed during that investigation, the Board determined that a hearing of the case would be necessary.

Two pre-hearing conferences were held in an effort to narrow the issues to be presented to the Board. At the first pre-hearing conference counsel for the grievant outlined the "bad" matters in the "bad" reports and the 1970 report on which the grievant intended to present his own evidence; supporting witnesses' testimony. At the same time however, grievant's counsel indicated that he intended to argue that the Department's action in allowing the improper "bad" reports to remain in Y&ã{x{á^\\CbY file for five years and the subsequent 1970 rating officer's characterization of Y&ã{x{á^\\CbY FSO-2 rated job from 1967 to date as a "dead end job" have effectively foreclosed any possibility of his promotion to FEO-2, even should the Board sustain his position on the merits of the disputed reports. More particularly, counsel noted that since Y&ã{x{á^\\Y has now been an FSO-3 for 10 years, - the damage done to him by the disputed reports during the last 7 or 8 years cannot be remedied by providing him with additional time in grade. Such damage, counsel argued, can only be remedied by granting the grievant a promotion.

At the second pre-hearing conference, which was intended to permit agreement between the parties on certain stipulations of fact, it became apparent that no significant areas of agreement could be reached by means of factual stipulations. The parties did agree, however, that the hearing of the grievance would be divided prospectively into two separate phases. Phase one would involve argument only on the grievant's claim for promotion based upon the alleged damage to his career from retention of the disputed reports in his files for so many years. Phase two, which was to be reached only after phase one had been heard and decided by the Board and only if phase one was decided adversely to the grievant, would involve the hearing of evidence and argument concerning the substance of the 1966 reports and of the 1970 report.

On May 1, 1972, the first phase of the hearing was held. The grievant, noting the excellent high quality of his performance prior and subsequent to his assignment to the post as Consul General, argued that the disputed reports which the Department had removed at the recommendation of the ad hoc panel had prevented his being promoted during the five years they remained in his file. The remedies which the ad hoc panel had developed, it was stated, were thus wholly inadequate. Moreover, it was argued, given the promotion system, the removal of the reports created a very obvious and damaging gap in the record, explained only by an allegedly badly phrased memorandum recording their removal. It was further said that this action coupled with a 1970 Development Appraisal report stating that the Class Three Officer, had occupied the position since his return from the post was a "dead end job" had created yet another and still greater impediment to promotion and virtually assured his involuntary separation under the then time-in-grade rules. The grievant argued that given the promotion system, no remedy short of a recommendation for promotion could provide effective relief. On that basis and given his record, he argued that he merited a double promotion, to Class One, as the only means of restoring him to the place he would have occupied were it not for the inclusion of the disputed reports in his file.

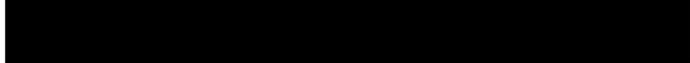
Rejecting the grievant's arguments, the Department's representative argued that the remedy provided him had been adequate. Any additional relief, and in particular any recommendation for promotion, it was held, could only be based on both a comparison of the grievant with the other officers in his class, and a consideration of the substance of the disputed reports.

the substitution for that memorandum of the following statement:

"The performance reports prepared on J5r. Sossaerlatte during the period he served as Consul General in Zagreb were removed in their entirety by the Department in 1970 at the recommendation of an ad hoc grievance panel. The Interim Foreign Service Grievance Board, upon review of the remedy provided [grievant] by that panel has granted him additional relief in the form of a reclassification for promotion to Class Two.

In addition, the Board requests the Director of Personnel to transfer both the memorandum of October 15, 1970, and the redacted re

With respect to [grievant's] request that he be granted reimbursement for his legal costs, the Board has determined that this request should not be granted.



William E. Siskin Chairman,
Foreign Service Grievance Board

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