

SEVENTIETH SESSION

In re SHARMA (No. 2)

(Application for review)

Judgment 1057

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review filed by Mr. Hari Chand Sharma on 27 March 1990, the reply of 2 May of the World Health Organization (WHO), the complainant's rejoinder of 31 May and the WHO's surrejoinder of 21 June 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written evidence;

CONSIDERATIONS:

1. In seeking review of Judgment 999 the complainant is contending that in making him an award of 500 United States dollars in damages on account of the breach of due process in the internal appeal proceedings the Tribunal ignored his claim to costs.

2. As is recounted in Judgment 999 under A, a personnel officer informed him on 21 July 1987 that the Director of the WHO's Regional Office for South East Asia (SEARO), in New Delhi, had decided to dismiss him for reasons that he stated. The complainant appealed to the Regional Board of Appeal, which recommended reducing his grade. After the Board had reported the Regional Director wrote to its chairman asking for further inquiry, and at meetings which the complainant did not attend there was discussion of several points of evidence and a witness was further questioned. The upshot was that the Regional Director confirmed the complainant's dismissal. The headquarters Board of Appeal, to which he then appealed, recommended dismissing his appeal. In a letter to him of 5 January 1989 the Director-General confirmed the dismissal and that was the final decision he impugned: in his original complaint to the Tribunal he sought, among other things, the quashing of that decision, his reinstatement and awards of moral damages and costs.

The Tribunal quashed the final decision of 5 January 1989 on the grounds that it had been in breach of due process to hold further discussion of the case in the complainant's absence after the Regional Board had reported. But the Tribunal upheld the earlier decision of 21 July 1987, the actual dismissal. It therefore ruled that the competent authorities must "reconsider the internal appeal in the light of the submissions already made by the WHO and by the complainant and any further submissions the parties may make in adversarial proceedings, no account being taken of the breach of due process". The Tribunal made the award of \$500 in "lump-sum damages".

3. In this application the complainant asks that that amount be increased to \$5,000. He says that Judgment 999 "put the clock back" three years and he will have to suffer two or more years' "agony" before his case is disposed of once and for all. In his submission the Tribunal has failed to rule on his claim to compensation for the enormous costs and effort he put into his two internal appeals and his complaint to the Tribunal.

4. The application fails. The Tribunal took cognizance of all the pleas and claims put forward by the complainant - they are set out in Judgment 999 under B - and gave them due consideration. The amount awarded in Judgment 999 was intended to cover the injury the complainant sustained because of the procedural errors and the costs he had incurred by the date of the judgment.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mohamed Suffian
William Douglas
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.