

SEVENTEENTH ORDINARY SESSION

In re KUNDRA

Judgment No. 108

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organisation drawn up by Mr. Ved Prakash Kundra on 2 October 1965, the reply of UNESCO dated 5 November 1965, the complainant's rejoinder dated 28 March 1966, and the further reply of the Organisation dated 28 April 1966;

Considering Article VII of the Statute of the Tribunal and Articles 11.1 and 11.2 of the UNESCO Staff Rules, together with the Statutes of the UNESCO Appeals Board,

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. Complainant entered the service of UNESCO on 1 January 1955 in the South Asia Science Co-operation Office in New Delhi and was given an indeterminate appointment on 30 October 1961. By a cable from the Director of the Bureau of Personnel of UNESCO dated 1 April 1964, transmitted under cover of a letter from the Director of the New Delhi Office on 4 April 1964 and received on the same day, Mr. Kundra was informed that the Director-General had decided to terminate his appointment under Regulation 9.1 of the UNESCO Staff Regulations, which covers termination on account of abolition of posts or reduction of staff, unsatisfactory service and health reasons, the decision to take effect on receipt of the cable and payment to be made in lieu of notice. The cable stated also that a letter would follow, and this letter, dated 10 April 1964 and transmitted under cover of a letter from the Director of the New Delhi Office dated 21 April 1964 and received by Mr. Kundra at an unspecified date, but not later than 25 April 1964, confirmed the terms of the cable of 1 April and, in addition to specifying the amounts payable to the complainant in lieu of notice, as termination indemnity, and on account of accrued annual leave, stated that the decision to terminate complainant's employment had been taken after consultation with the competent advisory body and as a consequence of (unspecified) actions on complainant's part which did not conform to the standards of conduct required of UNESCO staff members and which therefore constituted unsatisfactory service in accordance with Article 9.1 of the UNESCO Staff Regulations.

B. In acknowledging receipt of the cable notifying his termination on 6 April 1964, complainant already informed the Director of the New Delhi Office of his intention of appealing against the decision, and to this end asked to be informed of the reasons for termination of his services and of the procedure for filing appeals. In reply he was informed on 8 April that the first part of his request had been transmitted to Paris, while in response to the second part the full text of Article 11.1 of the Staff Regulations and the relevant provisions of the Statutes of the Appeals Board were communicated to him. Complainant also cabled headquarters directly on 7 April stating his intention of filing an appeal and asking for the reasons for his termination. He repeated this latter request to various UNESCO authorities by communications of 25 April, 17 May, 27 June, 6 September, 20 October and 2 December 1964, and 20 January and 19 March 1965. Insofar as replies were made to these communications they invariably stated, as the Director of Personnel had done on 6 August 1964, that there was nothing to add to the original letter of 10 April 1964.

C. On 19 April 1965 complainant filed an appeal with the UNESCO Appeals Board, which on 30 July 1965 gave its opinion that the appeal was inadmissible because it had been presented outside the prescribed time limit. This opinion was accepted on 3 August 1965 by the Director-General, who notified it on the same day to the complainant, following which Mr. Kundra lodged his appeal with the Tribunal by a complaint dated 2 October 1965.

D. In his final submission to the Tribunal complainant alleges violation of the right to be heard both in respect of the decision to terminate his employment and in respect of the rejection of his internal appeal because of non-observance of the time limit, on the ground that he had not been able to defend himself against charges which had been notified to him neither before nor after his termination, regarded by him as unjustified, and prays for the

quashing of the decision to reject his internal appeal, as well as of the decision to terminate his employment, and for his reinstatement. The Administration submits that, while the complaint is receivable insofar as it concerns rejection of the internal appeal because of non-observance of the time limit, the complaint is nevertheless ill-founded, whereas, insofar as the complaint concerns Mr. Kundra's grievance against his termination, it is not receivable.

CONSIDERATIONS:

1. The first three paragraphs of Article VII of the Statute of the Administrative Tribunal provide as follows:

1. A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.

2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published.

3. Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.

2. Paragraphs 7 and of the Statutes of the UNESCO Appeals Board lay down the following rules for the procedure of the Board:

"7. A staff member who wishes to protest against any administrative decision or disciplinary action shall do so in writing, within 15 working days of the date of notification of such decision or action, through appropriate channels (Director of Department or Chief of Service or Bureau and the Chief of the Bureau of Personnel) to the Director-General who shall give a ruling within 15 working days of the date of protest.

8. If the staff member wishes to appeal against the ruling or if no ruling is made within 15 days of the date of the protest, the staff member may request a hearing by reporting these facts in writing to the Secretary of the Board within an additional period of 15 working days. The staff member shall briefly state the issue, indicating his level, and his Department, Service or Bureau."

3. The decision to terminate Mr. Kundra's appointment was notified to him by cable on 1 April 1964, and confirmed by letter of 10 April 1964. As early as 6 April 1964 Mr. Kundra addressed a letter to the competent authority announcing his intention of appealing against his termination and asking for various particulars. This letter must be regarded as a protest against the administrative decision of the Director-General given on 1 April. Accordingly the Director-General was required by paragraph 7 as set out above to give a ruling within 15 working days of 6 April. The Director-General did not give this ruling and consequently paragraph 8 as set out above came into operation providing that the complainant "may request a hearing by reporting these facts in writing to the Secretary of the Board within an additional period of 15 working days".

4. In the circumstances as set out above, two different contentions may be envisaged:

On the one hand it may be argued that, once complainant did not ask for a hearing within the further time limit provided for under paragraph 8 of the Statutes of the Appeals Board, the appeal which he later instituted before the Board was not receivable, and consequently that insofar as it sought to resist the Director-General's decision to accept the opinion of the Appeals Board recognising that it was irreceivable the complaint is unfounded and must be dismissed.

On the other hand it may be argued that it was not only open to complainant to ask for a hearing in accordance with paragraph 8 of the Statutes of the Appeals Board, but the fact that the Director-General had not given a ruling in accordance with paragraph 7 of these same Statutes could be regarded as failure to take a decision on a claim, thus entitling complainant to have recourse to the Tribunal under Article VII, paragraph 3 of its Statute. If the latter contention be correct, however, complainant would have had to file his complaint with the Administrative Tribunal within the ninety days following the sixty days during which the Director-General had failed to give a ruling on his claim, i.e. on or before 3 September 1964. As complainant did not in fact file the complaint with the Administrative

Tribunal until 2 October 1965 he is obviously time-barred.

It follows that whichever of the two contentions considered above is adopted, the complaint must be dismissed, in the first case as unfounded and in the second as not receivable.

5. Mr. Kundra's contention that he was unable effectively to challenge a decision to terminate him when the reasons for termination had not been conveyed to him is untenable. The failure to give reasons, far from impeding the operation of the appeals machinery, afforded in itself sufficient grounds for challenging the decision.

6. However serious may be Mr. Kundra's allegations concerning violation of the right to be heard, which if held to be well founded would justify quashing the decision to terminate him, these allegations relate in the circumstances of the case to the substance of the dispute and cannot be considered by the Tribunal.

DECISION:

For the above reasons,

The complaint of Mr. Kundra is dismissed.

In witness of this judgement, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

M. Letourneur
André Grisel
Devlin
Jacques Lemoine