

SEVENTY-FOURTH SESSION

In re MANAKTALA (No. 2)

(Application for execution)

Judgment 1219

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 1133 filed by Mr. Kishore Chand Manaktala on 12 May 1992 and corrected on 1 June, the reply of 20 July from the World Health Organization (WHO), the complainant's rejoinder of 26 August and the WHO's surrejoinder of 30 September 1992;

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

Having examined the written submissions;

CONSIDERATIONS:

1. By Judgment 1133 of 29 January 1992 the Tribunal quashed the Director-General's decision of 18 September 1990 to uphold the complainant's dismissal on the grounds of attempt to defraud the World Health Organization. It remitted the case so that the Organization might either resume the disciplinary proceedings against the complainant in accordance with due process or pay him financial compensation. It ordered the provisional payment to him of 1,500 United States dollars and awarded him \$200 in costs.

By a letter of 25 February 1992 the Director-General informed the complainant that "it would be inappropriate and inadvisable" to resume the disciplinary proceedings and that he would be adequately compensated by the payment of the equivalent of two years' salary, less the \$1,500 already provisionally awarded by the Tribunal. If he did not accept that amount he might, as the Tribunal itself had ruled in point 2 of its decision in Judgment 1133, file a further complaint.

That is what the complainant has done.

2. He is claiming:

(a) the immediate payment of the total sums of \$1,700 awarded to him in Judgment 1133, plus interest as from 1 March 1992;

(b) the payment of his salary, plus interest, as from the date of his separation, 26 June 1987, up to the normal date of his retirement, in October 1998;

(c) such pension benefits as would have accrued to him by the normal date of his retirement;

(d) damages for loss of reputation and mental injury; and

(e) a further award of costs.

3. According to the Tribunal's ruling in Judgment 1133 it was open to the Organization to resume disciplinary proceedings against the complainant, his purported dismissal being null and void. It chose not to do so and stated that it would pay compensation instead.

In the circumstances the Tribunal will order the Organization to pay the complainant compensation over and above the provisional award of \$1,500, for

(1) the period from 26 June 1987, when the Organization suspended him from duty, to 25 February 1992, when it decided not to resume disciplinary proceedings and to offer him compensation rather than keep him in its employ; and

(2) the period starting on 26 February 1992.

In assessing the amount of damages for the second period - starting on 26 February 1992 - the Tribunal takes into account the complainant's age, which is 54 years, his long service, and the difficulty of finding other appropriate employment. It sets the amount at the equivalent of two years' salary, allowances and other entitlements.

4. The Organization gave instructions on 11 June 1992 for the payment to the complainant of the sums totalling \$1,700 awarded in Judgment 1133, and it concedes that he is entitled to three months' interest on those sums.

The Tribunal sets the rate of interest that is due at 10 per cent a year.

5. The complainant is entitled to a further award of costs.

DECISION:

For the above reasons,

1. The Director-General's decision of 25 February 1992 is quashed insofar as it offers the complainant the equivalent of two years' salary in financial compensation.

2. The Organization shall pay the complainant damages equivalent to the amount of the salary, allowances and other entitlements he would have received in the period from the date of his suspension from duty, 26 June 1987, up to 25 February 1992, the date at which the Director- General chose not to resume the disciplinary proceedings.

3. The Organization shall further pay him damages equivalent to two years' salary, allowances and other entitlements, to be reckoned at the rates that prevailed at 25 February 1992.

4. It shall pay him three months' interest at the rate of 10 per cent a year on the awards of 1,700 United States dollars already made under Judgment 1133.

5. It shall pay him a further amount of \$200 in costs.

6. His other claims are dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner