SEVENTY-FIFTH SESSION

In re BANSAL (No. 4) and HARPALANI (No. 4)

(Application for review)

Judgment 1255

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Prem Kumar Bansal and Mr. Mohan Amulrai Harpalani on 13 October 1992 for review of Judgment 1190, the reply of 27 November 1992 from the World Health Organization (WHO), the complainants' rejoinder of 8 January 1993 and the Organization's surrejoinder of 8 February 1993;

Considering the applications to intervene filed by Mr. Inder Jit Saluja on 8 January 1993 and by Mr. S.R. Kohli on 12 January and the WHO's observations thereon of 8 February 1993;

Considering Articles II, paragraph 5, and VI of the Statute of the Tribunal, Article 17 of the Rules of Court and WHO Manual paragraph II.1.40.1;

Having examined the written evidence;

CONSIDERATIONS:

1. The factual background to this case is set out in Judgment 1190 of 15 July 1992 under A and 1 to 10. In that judgment the Tribunal entertained the challenge made by the present complainants and others to amended salary scales applicable to staff in the General Service category of the WHO's South East Asia Regional Office (SEARO), in New Delhi. Those scales, known as "revision 29, amendment 1", brought in interim adjustments applicable as from 1 April 1988. This is an application for review of Judgment 1190 of 15 July 1992 insofar as it ordered payment to Mr. Bansal and to Mr. Harpalani of "the equivalent of one within-grade salary increment at grade ND.7 for one year as provided for under the scales set out in revision 29, amendment 1" and dismissed their other claims.

2. Judgments are "final and without appeal" according to Article VI of the Statute of the Tribunal and they carry the authority of res judicata. The Tribunal will therefore entertain an application for review only in quite exceptional circumstances. As it has stated many times, and in detail in Judgment 442 (in re de Villegas No. 4), the admissible grounds for review of a judgment are strictly limited: they are failure to take account of some material fact, a mistaken finding of fact that involves no exercise of judgment, omission to rule on a claim and the discovery of some new essential fact which the complainant was unable to rely on in the original proceedings. Moreover, the applicant's plea must be such as to affect the original ruling.

The grounds which are not admissible for an application for review are an alleged mistake of law, misinterpretation of the facts, failure to admit evidence and omission to comment on a plea.

3. The present complainants are alleging that Judgment 1190 shows material error, fails to take into account certain facts and therefore comes to wrong conclusions.

4. Their first plea is about the award of damages equivalent to one within-grade salary increment for one year. In Judgment 1190 the Tribunal held that the WHO had acted in breach of Manual paragraph II.1.40.1 because Mr. Bansal and Mr. Harpalani were being paid less than "someone at a lower grade with less seniority". The Organization had not followed the approach recommended by the Regional Boards of Appeal. As the Tribunal said under 13:

"... the Regional Boards of Appeal recommended reviewing pay by granting an additional step so that the difference in pay for staff junior in grade and service should be the equivalent to at least one yearly within-grade increment. But that solution might have led to other anomalies as unwelcome as the ones which it was the purpose to remove."

The complainants submit, and the Organization denies, that the Regional Boards intended the grant of two steps.

5. Even assuming that the Regional Boards did so intend, that is not a material fact that warrants review of the Tribunal's ruling. If anomalies might result from one step increase they might result from two. In any event the Tribunal's assessment of the Regional Boards' solution and its decision not to grant any actual salary increment are matters of appreciation and therefore not subject to review.

6. The complainants also allege failure to take account of an essential fact concerning an official who got two steps in keeping with a recommendation by the Regional Board of Appeal. But his was a case of promotion, which therefore rested on a different basis in law. The plea fails.

7. The complainants dispute the Tribunal's finding in Judgment 1190 (under 15) that no breach of the methodology which they were relying on had caused them any injury.

The Tribunal held that "the increase in the number of steps in their grade from 15 to 18 did not affect them during the period of application of the scales since they were all at step 9" and that "the differentials between steps in their grade were constant throughout and were not reduced".

It is true that in making those findings the Tribunal understood that the complainants were not affected by an increase in the number of steps from 15 to 18. But they point out that if 15 steps had been maintained in grade 7 each salary increment would have been worth 2,931 Indian rupees, as against a figure of 2,414 rupees if there were 18 steps, and that the consequence is a loss of 517 rupees for each step.

Since Judgment 1190 therefore shows a mistake of fact it is subject to review in that respect and each of the complainants must be awarded damages in the amount of 517 rupees for the loss he incurred in the year in question.

8.The complainants challenge the statement in Judgment 1190 under 15 that:

"... there was no objection anyway to increasing the number of steps as a result of the next comprehensive survey, in 1989."

on the grounds that an objection was in fact raised.

What was meant in 15 was that, although paragraph 62 of the methodology of the International Civil Service Commission provided that the number of steps should normally remain unchanged from one comprehensive survey to another, a change was not precluded at the next one. The complainants have simply misunderstood the import of what the Tribunal said.

9. The complainants seek an additional award of damages for delay by the Regional Boards of Appeal and the headquarters Boards of Appeal in submitting reports. The Tribunal having dismissed the claim in Judgment 1190 in point 4 of its decision, the matter is res judicata.

10. Lastly, the complainants refer to an offer by the Director-General for the purpose of execution of Judgment 1160. The Tribunal refused in Judgment 1190 under 21 to take up the issue on the grounds that it was not material. The offer was made without admission of liability and since the complainants declined it the matter had to be decided on the merits. The Tribunal's comment on the relevance of the offer was a matter of appreciation and is therefore not subject to review.

11. Since the complainants succeed on one point they are entitled to an award of costs.

12. The applications to intervene, which are receivable under Article 17 of the Rules of Court, are allowed: the interveners have the same rights as the complainants themselves insofar as they are in like case in law and in fact.

DECISION:

For the above reasons,

1. The Organization shall pay each of the complainants 517 rupees.

2. The Organization shall pay each of them 100 United States dollars in costs.

3. Their other claims are dismissed.

4. The interveners shall have the same rights as the complainants insofar as they are in like case in law and in fact.

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

Delivered in public in Geneva on 14 July 1993.

(Signed)

José Maria Ruda
William Douglas
Mella Carroll
A.B. Gardner

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