

## SEVENTY-NINTH SESSION

### *In re* QURESHI

#### Judgment 1426

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Nazir Qureshi against the Food and Agriculture Organization of the United Nations (FAO) on 14 June 1994 and corrected on 31 August, the FAO's reply of 26 October, the complainant's rejoinder of 23 November and the Organization's surrejoinder of 22 December 1994;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Pakistani citizen who was born in 1944, joined the staff of the FAO at headquarters in Rome in 1978 as a guard at grade G.1. He was promoted to grade G.2 in 1979.

He says that on 9 October 1990, while replacing an attendant in the car park, he had a quarrel with another official whose driving he thought unsafe. The FAO says that the incident took place on 8 October. He suffered injury to two fingers. The FAO maintains that he got treatment for the injury from its medical service, finished his shift and went back to work the following day. The complainant denies having been treated by the medical service.

It is common ground that on 10 October he telephoned the office to say that he was ill; the chief medical officer examined him at home; the diagnosis was cerebral ictus, or a stroke; and he was taken to hospital.

In a letter of 7 September 1991 to the alternate secretary of the Advisory Committee on Compensation Claims he attributed his illness and resulting incapacity for work to the incident in the car park and asked that they be recognised as service-incurred. By a letter of 19 November 1991 the alternate secretary told him that the Administration had rejected his claim in keeping with the medical service's finding that the "minor incident" of 8 October 1990 had not caused his stroke. On 17 December 1991 he sought "reconsideration" of his claim under FAO Manual paragraph 342.7.

The FAO thereupon convened a medical board, which submitted a report dated 13 February 1992.

He was separated from service on 21 April 1992 with a disability pension.

The secretary of the Advisory Committee informed him by a letter of 30 December 1993 that the Director-General had rejected his claim "on medical grounds". The secretary referred him to the material provisions on internal appeals in case he wanted to pursue the matter.

On 19 March 1994 he wrote asking the Director-General to review the decision.

By a letter of 18 May 1994, which he impugns, the Assistant Director-General in charge of Administration and Finance confirmed on the Director-General's behalf the rejection of his claim and explained that he might put his case to the Appeals Committee under Staff Rule 303.131 and Manual section 331.

B. The complainant sets out the events that led to what he describes as a "service-incurred natural accident". He claims an award of 500 million lire in "physical" damages for total incapacity for work.

C. In its reply the FAO gives its own account of the facts. It submits that the complaint is irreceivable because of the complainant's failure to exhaust the available internal means of redress. The decision of 18 May 1994, which he is challenging, refers to the next step in the appeal procedure. Since the decision is not a final one, direct appeal does not lie against it to the Tribunal.

D. In his rejoinder the complainant disputes the FAO's account and alleges that it altered evidence and mounted a "covert and gruesome" plot to "assassinate" him.

E. In its surrejoinder the FAO says it has no comments to add to its earlier submissions.

#### CONSIDERATIONS:

1. The complainant joined the headquarters staff of the FAO in May 1978 as a guard at grade G.1. He suffered a stroke on 10 October 1990. He claimed that his illness and subsequent total incapacity for work be recognised as service-incurred on the ground that his condition had been caused by an altercation he had had with a staff member in the car park of the headquarters building. The Organization rejected his claim in a letter dated 19 November 1991 from the alternate secretary of the Advisory Committee on Compensation Claims, to which his case had been referred. The letter conveyed to him the Committee's conclusion that there was no causal connection between the stroke and the incident in the car park.

2. In a letter of 17 December 1991 to the alternate secretary of the Advisory Committee he asked for reconsideration of his claim to recognition of his condition as service- incurred in accordance with FAO Manual paragraph 342.7. A medical board was convened and submitted a report. The Advisory Committee recommended rejecting his claim on medical grounds and the Director-General endorsed the recommendation. By a letter of 30 December 1993 the secretary of the Advisory Committee informed the complainant that the Committee had reviewed his case; that the Director-General had decided to reject it on medical grounds; and that if he did not agree he should submit an appeal to the Director-General within 90 days in accordance with Manual paragraph 331.3.

3. In the meantime, on the recommendation of the FAO Staff Pension Committee, he was granted a disability pension and he was separated from the Organization for reasons of health on 21 April 1992. He lodged an appeal with the Director-General in a letter of 19 March 1994. By a letter of 18 May 1994 the Assistant Director-General in charge of Administration and Finance rejected his appeal, stating that the rejection constituted a reply by the Director-General under Manual paragraph 331.311 and adding:

"Should you wish to appeal against this decision to the Appeals Committee, you may do so in accordance with the provisions of Staff Rule 303.131 and Manual Section 331 within sixty days from the date of receipt of this letter."

The complainant chose instead to appeal directly to the Tribunal.

4. The Organization contends that the complaint is irreceivable because the complainant did not exhaust the internal means of redress available to him under its regulations and rules.

5. The plea is upheld. Article VII(1) of the Tribunal's Statute provides:

"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".

The complainant failed to go to the FAO Appeals Committee and so to complete the internal appeal process. Since the decision he is challenging is therefore not a final one within the meaning of Article VII(1), his complaint is not receivable and must be dismissed, there being no need to go into the merits.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, 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 6 July 1995.

William Douglas

Mella Carroll  
Mark Fernando  
A.B. Gardner

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