

## EIGHTIETH SESSION

### *In re* MALHOTRA (Ramesh Kumar)

#### Judgment 1471

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Ramesh Kumar Malhotra against the World Health Organization (WHO) on 24 June 1994, the WHO's reply of 14 September 1994, the complainant's rejoinder of 24 February 1995 and the Organization's surrejoinder of 29 May 1995;

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

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, an Indian citizen who was born on 1 November 1935, joined the WHO's staff in December 1967 as a secretary and shorthand typist at grade ND.5 in the Organization's Regional Office for South East Asia (SEARO) in New Delhi. He was later promoted to ND.6 and then to ND.7. He got a within-grade salary increase of one step for meritorious service under Staff Rule 555 in 1975 and another in 1979. The Organization granted him two further steps on completing 20 years' service, in January 1988, and two more, in January 1993, for 25 years' service.

In November 1991 the Administration put up for competition a post, No. 5.0013, for an assistant III at grade ND.8. The complainant was one of eight internal applicants. An ad hoc Selection Committee drew up a short list and submitted it to the Regional Director for final decision. On 25 March 1992 the Administration informed the complainant that he had not been successful.

He appealed against that decision on 22 May 1992. In a report of 1 May 1993 the regional Board of Appeal said that for want of information it had sought from the Administration about the proceedings in the Selection Committee it could make no recommendation on "the competitiveness of candidates". In an undated letter the Regional Director told the complainant he was upholding his earlier decision.

The complainant put his case to the headquarters Board of Appeal on 13 August 1993. In a report dated 15 February 1994 the headquarters Board recommended rejection. By a letter of 24 March 1994 the Director-General endorsed the Board's recommendation. That is the decision under challenge.

B. The complainant submits that the impugned decision shows personal prejudice against him: the reason why the Administration refused to make over documents to the boards of appeal was that it liked another candidate better. The Director-General overlooked such material facts as his own "excellent performance" and seniority. Alleging breach of provisions of the Staff Regulations and Rules on selection and promotion, he pleads procedural flaws and defects in the rating of candidates.

He asks the Tribunal to quash the appointment to post 5.0013, declare him appointed instead and award him 60,000 United States dollars in damages for "grave injury, moral prejudice, mental torture, and loss of reputation". He claims costs.

C. In its reply the WHO denies personal prejudice, neglect of material facts and breach of the rules. In the light of Judgment 1372 on a complaint by Mr. Kashmiri Lal Malhotra it offers to make the Selection Committee's records available to the regional Board of Appeal if the complainant agrees to a resumption of the proceedings before that Board. In any event the Regional Director picked the candidate he found "most suited" for the post.

D. In his rejoinder the complainant observes that the WHO has "admitted" the mistake it made by denying him due process in the internal proceedings. Its offer to send his case back to the regional Board is a "sinister" ploy to gain time. He presses his earlier pleas.

E. In its surrejoinder the WHO says there was nothing sinister about its offer: it just wants to settle the case quickly. It maintains that the appointment was lawful.

#### CONSIDERATIONS:

1. In 1967 the complainant joined the staff of the Organization's Regional Office for South East Asia (SEARO). In 1986 he reached grade ND.7. He was assigned to the Personnel Unit as an assistant. During his career he has been granted two salary increments, each corresponding to one step, for good service. In January 1988 he was awarded a two-step increment on completing 20 years' service and in January 1993 another such increment on completing 25 years. He was to retire in November 1995.

2. In November 1991 the WHO announced a vacant post for an "assistant III", No. 5.0013, and which was graded ND.8. The complainant applied but was declared unsuccessful. On 22 May 1992 he appealed against the decision to the regional Board of Appeal on the grounds of personal prejudice, incomplete consideration of the facts, and failure to comply with the Staff Regulations and Staff Rules and with the terms of his appointment.

3. The regional Board reported on 1 May 1993. It held, among other things, that in the absence of relevant information from the Administration it could make no specific recommendation "regarding the competitiveness of candidates". It suggested that the Regional Director "look into the relevant documentation ... not provided to the Board" before he rejected or allowed the appeal.

4. In a letter to the complainant the Regional Director said that he accepted the Board's conclusion that there was no factual evidence to support the plea of personal prejudice; that "the selection documentation", having "confidential status", could not be made available to the Board; but that, having himself gone through it, he was satisfied that the selection had been correctly made.

5. On 13 August 1993 the complainant lodged an appeal with the headquarters Board of Appeal. In its report dated 15 February 1994 the Board declared that it had found no evidence to support his plea of personal prejudice on the part of his supervisor or others involved in the selection. Having no further information on the process of selection but noting that the Regional Director had himself reviewed the candidates' files and declared the process to be fair, the Board could find no proof of incomplete consideration of the facts. Nor had it found evidence of failure to observe the rules or the terms of the complainant's appointment. It also said it "accepted the Director-General's endorsement of a long-standing WHO policy that the records of the meetings of Selection Committees should not normally be available to the Board".

6. By a letter dated 24 March 1994 the Director-General informed the complainant that he accepted the headquarters Board's recommendation and accordingly rejected his appeal. That is the decision impugned.

7. In the brief filed on 14 September 1994 in reply to the complaint the defendant cites Judgment 1372 (in re Kashmiri Lal Malhotra), which was also about the WHO's rejection of a candidate for a post. The Tribunal held in that judgment that failure to disclose the Selection Committee's records resulted in the frustration of the internal appeal proceedings and denial of due process to the complainant. It accordingly sent the case back to the regional Board of Appeal and ordered the Organization to make the Selection Committee's full records available to that Board. The Organization says in its reply that it wishes to comply in this case with the Tribunal's earlier ruling on the disclosure of the Selection Committee's records.

8. The Organization appends to its reply the text of a letter it had written to the complainant on 2 September 1994 offering to return his case to the regional Board of Appeal. It asked the complainant to withdraw this complaint and said that if he did not it intended to apply to the Tribunal for a stay or adjournment of the proceedings. It confirmed that the full records of the process of selection would be made available to the regional Board and, if need be, to the headquarters Board too. In his rejoinder, however, the complainant says that he does not agree to withdraw his complaint. He says he never saw the letter of 2 September 1994 until he received the text of it with the Organization's reply. In his submission the Organization ignores his "suffering" and has not explained what redress it is offering him.

9. The Tribunal holds that the process of appeal has indeed been set at nought because neither Board of Appeal had at its disposal the information necessary for consideration of the case. The proper procedure is to return the case to the regional Board so that it may resume proceedings with the Selection Committee's full records at its disposal. If

dissatisfied with the outcome, the complainant may make a further appeal to the headquarters Board of Appeal and the Director- General will eventually take a final decision. The decision impugned in this complaint must therefore be quashed.

10. The Organization having committed a breach of due process, the complainant is entitled to damages for the moral injury attributable to such breach and to the delay and inconvenience which he has suffered and will yet suffer before the case is disposed of. The amount is set at 3,000 United States dollars. He is also awarded a sum in costs.

#### DECISION:

For the above reasons,

1. The Director-General's decision of 24 March 1994 is quashed.
2. The case is sent back to the Organization so that the regional Board of Appeal and, if need be, the headquarters Board may take up the complainant's case anew.
3. The Organization shall pay the complainant \$3,000 in damages for moral injury.
4. It shall pay him \$500 in costs.
5. His other claims are dismissed.

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

Delivered in public in Geneva on 1 February 1996.

William Douglas  
Mella Carroll  
Julio Barberis  
A.B. Gardner