

EIGHTY-FIRST SESSION

In re MALHOTRA (Kashmiri Lal) No. 4

(Application for execution)

Judgment 1523

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Kashmiri Lal Malhotra on 8 September 1995 for the execution of Judgment 1434, the reply of 19 December 1995 from the World Health Organization (WHO), the complainant's rejoinder of 16 January 1996 and the WHO's surrejoinder of 26 April 1996;

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

Having examined the written evidence;

CONSIDERATIONS:

1. This is an application for execution of Judgment 1434, which the Tribunal delivered on 6 July 1995 and in which it made the following orders:

"1. The Director-General's decision of 28 February 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 appeal anew.

3. The Organization shall make available to the boards of appeal the full records of the selection committee's proceedings for the purpose of appeal.

4. It shall pay the complainant 3,000 United States dollars in moral damages.

5. It shall pay him 200 dollars in costs.

6. His other claims are dismissed."

2. By 8 September 1995, when the complainant filed this application, he had received the amounts awarded under points 4 and 5. The Organization does not, however, dispute that it had not complied with the order in point 2, although on 7 and 29 August the complainant had sent reminders to its Regional Office for South East Asia asking for referral of his case to the regional Board of Appeal.

3. On 12 October 1995 the regional Board informed the complainant that the Regional Office had asked it to reopen his case and that it would do so "soon after all the documentation is received". The same day the secretary of the Board sent a message asking the chairman of the headquarters Board and the Division of Personnel at headquarters to supply copies of the headquarters Board's report, Judgment 1435 and "any other documentation" that the headquarters Board had "used".

4. The Organization explains that any delay in returning the case to the regional Board of Appeal was due solely to doubt as to whether instructions were necessary for that purpose. It is clear that the secretary of the regional Board was unsure who was to send the case back because he addressed his message of 12 October 1995 to both the headquarters Board and the Division of Personnel at headquarters.

5. In Judgment 1435 the Tribunal entertained the complainant's application for execution of a judgment, similar to Judgment 1434, in which it had directed that the case be sent back to the Organization to enable the regional Board and, if need be, the headquarters Board to take up the complainant's appeal anew. Judgment 1435 ruled under 13: "The complainant was justified in applying to the Tribunal after the lapse of two months for execution of the judgment".

6.This case cannot be distinguished. There could be no doubt about who was to return the case: the judgment gave directions to the defendant Organization, which was responsible for execution.

7.The Organization informs the Tribunal in its reply that the case "has already been returned to the regional Board of Appeal". Though the complainant does not contest that, he claims compensation for "moral prejudice and mental torture" attributable to the failure to execute Judgment 1434 promptly. He suggests that the delay in sending his case back was deliberate and calculated to harass him and cause him further "mental torture". There is nothing in the evidence to support that suggestion. Although the Tribunal will make no award of damages for the delay in sending the case back, the complainant is entitled to costs because he had to come to the Tribunal to apply for execution.

DECISION:

For the above reasons,

1.The application is dismissed.

2.The Organization shall pay the complainant 200 United States dollars in costs.

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 11 July 1996.

William Douglas
Mella Carroll
Julio Barberis
A.B. Gardner