

## EIGHTY-SECOND SESSION

### *In re Chandrasekharan*

#### Judgment 1569

The Administrative Tribunal,

Considering the complaint filed by Mr. Cherukat Chandrasekharan against the Food and Agriculture Organization of the United Nations (FAO) on 3 October 1995, the FAO's reply of 17 January 1996, the complainant's rejoinder of 28 February and the Organization's surrejoinder of 14 June 1996;

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 born in 1933, joined the staff of the FAO in 1975 under a fixed-term appointment at grade P.4. He got a continuing appointment in 1977. In 1980 the FAO promoted him to P.5 as a senior officer for the planning of forestry. In October 1988, when he was at step 9 in grade P.5, it assigned him to a project in Indonesia at step 6 of grade D.1 and guaranteed his eventual return to headquarters in Rome at grade P.5. In November 1991 it transferred him to Bangladesh at step 8 of D.1, still with the right to return to Rome at P.5.

On 1 January 1993 he went back to headquarters. Manual paragraph 311.447 says that, when someone reverts to his old grade "after a fixed-term assignment at a higher grade", his step is to be established as if his "entire service had been at the grade ... held prior to" that assignment. The complainant was put on step 11 of grade P.5. Taking the view that he should have been put at a higher step of P.5 that would have given him a level of pay just above what he had been getting at D.1, he appealed to the

Director-General on 11 August 1994. The Assistant Director-General in charge of the Administration and Finance Department having rejected his appeal on the Director-General's behalf on 12 September, he went to the Appeals Committee on 5 October 1994.

In a report dated 2 June 1995 the Committee recommended rejection. The Director-General endorsed that recommendation in a letter of 15 September 1995, which is the decision he impugns.

B. The complainant submits that the step he got on returning to headquarters was too low. Instead of applying Manual paragraph 311.447, which is about transfer, the FAO should have applied Manual paragraphs 311.331 and 311.332, which govern change to a lower grade following a change in assignment.

He also alleges breach of equal treatment on the grounds that another official in like case got a higher step on return to headquarters than he did.

He wants the Tribunal to have his within-grade step at 1 January 1993 set in keeping with Manual paragraphs 311.331 and 311.332 and his terminal emoluments and pension benefits reckoned accordingly. He claims 100,000 United States dollars in moral damages and an "appropriate" amount in costs.

C. In its reply the FAO contends that the complaint is devoid of merit. When a staff member returns to headquarters after a fixed-term assignment in the field with "guaranteed" return rights the material rule is Manual paragraph 311.447. The rules that the complainant is relying on apply to "normal transfers or clearly specified situations" other than those of an official asserting a right to return.

In answer to the complainant's charge of discrimination the FAO explains that the official he mentions was not in the same position in fact and in law: he came back to headquarters on a new P.5 post for which he had won a competition while serving at D.1. Whereas that official was transferred to the new post at a lower grade the complainant had a right to return to the Forestry Department only at the grade he had held before going to the field.

D. In his rejoinder the complainant enlarges on his pleas and comments on the FAO's reply. In his submission the Organization fails to address the issues objectively and is vengeful.

E. In its surrejoinder the FAO restates its case and disputes several points in the rejoinder. It argues that, having accepted the benefits under Manual paragraphs 311.442 and 311.447, the complainant is estopped from claiming the benefit that another provision afforded and that was "marginally" greater.

## CONSIDERATIONS

1. The complainant joined the FAO in 1975. Just before his assignment to Indonesia as from 1 October 1988 he held a grade P.5 post of senior officer in the Forestry Department. On taking up duty in Indonesia he was promoted to grade D.1, but only for the duration of his assignment there. In November 1991 he was transferred under a fixed-term assignment to Bangladesh, again at D.1. He returned to duty at head-quarters as from 1 January 1993 on the P.5 post of chief of the Non-wood Products and Energy Branch in the Forest Products Division of the Department.

2. The issue in this case is whether on his return to headquarters the complainant's pay should have been determined in accordance with Manual paragraphs 311.331 and 311.332 or 311.447.

3. The complainant contends that his relegation from D.1 to P.5 resulted from the change in assignment and that he was therefore entitled under Manual paragraphs 311.331 and 311.332 to the top step in grade P.5.

Those paragraphs read:

".331 Upon change to a lower grade level for reasons indicated in para. 311.31(i) through (iv) the calculation of the step in the new grade is based upon the salary scale operative on the effective date of the change to the lower grade level. ...

".332 Where, on change to a lower grade under para. 311.331, the salary currently received by the staff member is above the amount of the top step of the grade to which he/she is being moved, his/her salary is set at the maximum of the new grade unless an exception is made by the Director-General."

4. Arrangements for the transfer of staff from headquarters to field or from field to headquarters are set out in Manual section 311.44. Paragraphs 441 to 443 of that section read:

".441 A staff member with a continuing appointment who is transferred to a post of limited duration retains his/her continuing appointment status.

".442 Before effecting the transfer of a staff member with a continuing appointment to a post of a limited duration the releasing Department commits itself to place the staff member upon return in a similar post at the same grade level. ...

".443 When the assignment of a staff member transferred under the conditions specified in paragraph 311.441 comes to an end the staff member is reassigned as specified under Manual para. 311.442. ..."

And paragraph 447 reads:

"When, after a fixed-term assignment at a higher grade, a staff member reverts to the grade he/she had held in his/her previous post, his/her step in grade and date of eligibility for within-grade step increase are established as if his/her entire service had been at the grade he/she had held prior to the fixed-term assignment."

5. In a memorandum dated 8 July 1988 and headed "Return Rights" the Assistant Director-General in charge of the Department said to the complainant:

"... the Forestry Department will take the responsibility for placing you at your present grade, P-5, on an available post in Headquarters, should you elect to return to Headquarters upon completion of your assignment in Indonesia."

He got a similar undertaking in a memorandum dated 31 October 1991 as to his later assignment to Bangladesh.

6. From the foregoing it is clear that it was the provisions of section 311.44 that applied to the complainant's case and that paragraph 447 was therefore the material rule. So the Organization acted correctly in applying 447 to determine his step in grade and the date of his eligibility for a within-grade step increase.

7. He has a further plea of unequal treatment. He cites the case of a staff member at grade P.4 who was assigned to

a D.1 post in the field and who on return to headquarters was given step 12 in P.5, or one step higher than he.

8. He is mistaken in suggesting that his own situation and that of the other staff member were identical in fact. The other staff member had held grade P.4 but while on assignment to the field applied for and was promoted to a P.5 post. Instead of reverting to P.4 on return to headquarters he was transferred to a new post at P.5. That meant determining his step in his new grade under 331, not 447, which is limited to "return rights". The plea therefore fails.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas  
Michel Gentot  
E. Razafindralambo  
A.B. Gardner