

TWENTY-FOURTH ORDINARY SESSION

***In re* RAJ KUMAR**

Judgment No. 162

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Raj Kumar on 19 June 1970, the Organization's reply of 31 July 1970, the complainant's rejoinder of 30 August 1970 and the Organization's further reply of 14 September 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 330.7, 510.6, 520, 530, 540.1, 670.6 and 975;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. Towards the end of 1968 the Indian Government informed the Director of the WHO Regional Office for South East Asia in New Delhi that several members of the office staff were conducting illicit traffic in foreign currencies through the Organization's diplomatic pouch. Under Article 27, paragraph 4, of the Vienna Convention on Diplomatic Relations, the specialised agencies of the United Nations may use codes and despatch correspondence in sealed bags which are vested with the same immunities and privileges as diplomatic bags, provided they contain only diplomatic documents or articles intended for official use. On 11 December 1968, at about 3 p.m., in the presence of his assistants for administrative and financial questions, the Regional Director had the office pouch opened just before its despatch to the WHO Office in Kabul (Afghanistan) and found it to contain US\$18,000 in traveller's cheques, ordinary cheques and foreign currencies. He ordered an immediate investigation and on the next day, 12 December 1968, two high-ranking officials of the Regional Office left for Kabul to pursue inquiries. The resulting findings led to the implication of six members of the WHO staff - three in New Delhi and three in Kabul.

B. Mr. Raj Kumar, one of the three Kabul officials involved, was originally appointed to the WHO in November 1958 as a secretary/stenographer and had his contract renewed several times, and in 1967 for five years. In June 1968 he was assigned to the office of the WHO representative in Kabul. On 4 November 1968 he returned to New Delhi for two months' home leave. At 10 a.m. on 16 December two officials of the Regional Office came to look for him at his home and, though told that he was ill - as was later confirmed by medical certificate - took him with them to the Regional Office. According to the complainant, he was there detained in an office until 5.30 p.m. without food or freedom of communication. He was then questioned by the acting chief of Administration and Finance in the presence of two other officials of his department. After the questioning he wrote and signed a statement denying any connection with smuggling of currency between New Delhi and Kabul. He was invited to return to the Regional Office at 10.50 a.m. the next day. On his return he was again detained, and at 4.45 p.m. the interrogation was resumed in the presence of the same persons as before and of the Chief of Personnel. The complainant claims that he at first refused to sign a typed two-page document drafted by the investigating officials and containing an alleged confession of guilt, but eventually consented after suffering a collapse and being heavily plied with alcohol. According to the complainant, against his will the chief interrogator then destroyed the denial of guilt he had made on 16 December; the officials maintain that he consented. He alleges that the officials then drove him to a bus stop and pushed him out of the motor car, while insulting him and the host country. A witness later corroborated this before the WHO Regional Board of Inquiry and Appeal, although the officials themselves categorically deny it. The complainant alleges that on the same day he sent the Regional Director a written protest withdrawing his confession and repeated it on 24 December 1968 in a further letter to the Regional Director. The officials intercepted and destroyed these two communications, he maintains. On 18 December he was suspended by virtue of WHO Staff Rule 530 and dismissed for serious misconduct. He did not receive a copy of his confession until 29 January 1969. He alleges that he then discovered that, although he had signed both pages of the statement, the first had been replaced by a new, unsigned text. On the same day he protested by telegram to the Regional

Director and by a letter dated 3 February 1969 asked for a copy of the original text of the first page. He received no reply.

C. Along with some of the other officials involved, Mr. Raj Kumar appealed against this decision to the Regional Board of Inquiry and Appeal in New Delhi. The Board heard witnesses and examined several pieces of evidence, including some confidential documents withheld from the complainant. In a detailed report to the Regional Director it recommended the dismissal of Mr. Raj Kumar's appeal. It rejected his charges of coercion. All the witnesses heard, whose integrity is beyond question, testified that the complainant had freely consented to leave his home with the officials and had been well treated while awaiting questioning; the chief questioner had even offered him a meal at his own expense, though the complainant had declined it. According to the evidence given by the officials before the Board, the complainant had immediately stated on 17 December that upon reflection he had decided to confess to having taken part for some time in currency dealings, though he had given up doing so long before they had been discovered. He had typed out the text of his own confession in consultation with the officials and had consented to the destruction of his statement of the day before. He had signed only the second page. He had been served coffee and not alcohol. The Board also held that the threat of criminal prosecution made during the questioning could not be regarded as intimidation. The Board rejected in particular the contention that the first page of the confession had been replaced. All the witnesses denied that he had signed both pages and confirmed that the other officials involved had signed only the second page of their confessions. The complainant would, moreover, have been most unlikely to insist on signing both pages, if, as he maintains, he had signed an already drafted confession under duress. The Board also dismissed as fabricated the allegations concerning the incident at the bus stop. The witness called by the complainant testified that the incident had occurred at 5.30 p.m. on 17 December and specified the make and colour of the motor car. All the other witnesses stated that the only car to answer his description belonged to the acting chief of Administration and Finance. Yet the Board found that the chief had spent the afternoon at the office and had not left until 7 p.m. Other proofs and the evidence given by the officials themselves also suggested that the incident was a pure fabrication. On 30 June 1969 the Regional Director accepted the Regional Board's recommendation and confirmed the decision to dismiss the complainant. The headquarters Board of Inquiry and Appeal, to which the complainant then appealed, unanimously recommended the Director-General to confirm the Regional Director's decision, but suggested that for humanitarian reasons account should be taken of the consequences of the complainant's dismissal for his family. On 6 January 1970 the Director-General informed Mr. Raj Kumar that he accepted the recommendation of the headquarters Board of Inquiry and Appeal and that account had been taken of its suggestion in that the complainant's pension rights had been computed as if his employment had been terminated for reasons other than serious misconduct.

D. Mr. Raj Kumar is appealing to the Tribunal against the decision of 6 January 1970. He observes that according to his supposed confession he took part in currency dealings in collusion with Mr. Bhandari and a colleague in Kabul. The latter, though called before the Regional Board of Inquiry and Appeal, failed to appear and therefore did not corroborate the charges. As for Mr. Bhandari, he wrote to the Board denying any part in the affair. The incriminatory statement allegedly made by his colleague in Kabul to the investigators was never communicated to him in writing and, if it existed, was inspired by resentment at his having replaced that colleague in the Kabul office. He by no means agreed to the destruction of his statement of 16 December 1968. In failing to forward his protests to the Regional Director the investigators acted as judge in their own cause. The memorandum on the interviews held on 16 and 17 December 1968, submitted by the officials to the Board, bears the signature also of the Chief of Personnel, who was absent on 16 December. The Indian authorities, who carried out their own investigation, fully exonerated the complainant. Finally, the Regional Board of Inquiry and Appeal failed to decide many important questions of fact and law drawn to its attention by the complainant.

The complainant submits the following claims:

1. The Administration was prejudiced against him. It violated the Staff Rules and kept him in illegal confinement (an offence punishable under section 340 of the Indian Penal Code). One page of his confession was replaced. His statement of 16 December was destroyed. He was publicly insulted. He was not informed of the charges against him nor given a copy of the investigators' report, nor of his own written statement, nor even of the full text of the report of the Regional Board of Inquiry and Appeal. The heads of department suppressed his written complaints to the Director-General. He was taken from home though on leave and ill with over-work. Finally, the Regional Director merely backed up his subordinates without exercising his own judgment concerning the truth of the matter.

2. The Staff Rules were violated and irregularities committed. Under Staff Rule 530 there must be a strong presumption of guilt before an official can be suspended. No such presumption existed in the present instance.

Staff Rule 540.1 was infringed in that the charges were not notified in writing to the complainant and he was given no opportunity to reply to them in writing within eight days. The Organization cannot maintain that his confession made that formality unnecessary since it is a forgery. The Organization pleads urgency. In fact there was none, and instead of resorting to underhand police tactics the Organization should have observed the Staff Rules and given him an opportunity to reply in writing within eight days. Nor can the Administration plead that it was unable to put the charges in writing before the investigations were completed. The allegedly delicate state of relations with the host country is of no concern whatever to the complainant. The Organization also failed to respect the detailed provisions of the WHO Manual (Part II, section 9) which prescribe in detail the procedure to be followed when a notification is made under Staff Rule 540.1. The procedure was not observed in the present instance.

3. Lack of evidence. The document which supports the whole case was fabricated. The complainant signed it under duress and the first page was replaced with a forgery. There is no other evidence to support the charges.

4. The written confession does not withstand critical scrutiny. Had it been authentic, the complainant would naturally have been given a copy immediately after signing it. It is couched in an un-Indian style and shows a clarity of expression unlikely in someone in his position.

5. Account was not taken of essential facts. The Board disregarded the fact that the investigating officers intercepted the complainant's written protests. No cogent evidence was found in the diplomatic pouch. The Regional Director's good faith was compromised. His subordinates did not inform him that they had forged the confession and violated the Staff Rules and that the official who had incriminated the complainant felt animosity towards him. The telegram in which the complainant drew attention to the replacement of one of the pages received no answer. The details given in the confession relate to a period some eighteen months earlier which the complainant could hardly be expected to remember. Finally, the last paragraph of the confession is curiously similar to the last paragraph of Mr. Bhandari's statement.

6. Destruction of evidence. The chief investigating officer acknowledged before the Board that he had destroyed the complainant's first statement. Even if he had the latter's consent, which he did not, he nevertheless acted unlawfully.

7. The impugned decision is irregular in form. In particular, the impugned decision gives no details of the charges against the complainant, although details were necessary to enable him to decide whether to appeal. The Regional Director did not carry the investigations any further and based his decision, not on the relevant Staff Rules, but on views expressed by the acting chief of Administration and Finance.

The complainant accordingly requests the quashing of the decision to dismiss him, his reinstatement in the Regional Office and the payment of 500,000 Indian rupees as damages.

E. In its memoranda the Organization replies that the currency smuggling through the WHO pouch constituted an extremely grave infringement of its rules and placed it in a situation which at best could be described as delicate in its relations with two member States. It therefore had to act promptly and severely. It was naturally unable to communicate to the complainant certain confidential documents concerning its relations with those member States and in particular the sections of the Regional Board's report referring to those relations. A scrupulous check carried out by the Board established that the complainant had suffered no coercion and had made his confession voluntarily. Being disciplinary and administrative the proceedings initiated by the Regional Director did not fall within the scope of Indian legislation. The Organization was in no way bound to observe Indian rules of criminal procedure and in particular to draw up a list of charges. The behaviour of the investigating officers in no way infringed the Staff Rules or the principles of natural justice. In particular the Organization was not required to notify the complainant in writing of the charges against him in accordance with Staff Rule 540.1, since he had himself confessed to his serious misconduct. The Organization therefore prays that the complainant's claims be dismissed.

CONSIDERATIONS:

As to the charges against the complainant:

1. The Organization's decision to dismiss the complainant was based on the statements signed by him on 17 December 1968 in which he admitted having taken part in the traffic in foreign currency through the diplomatic

pouch. The complainant denies the validity of this document and accuses the officials who interrogated him of having forced him by improper treatment to confess to misconduct which he had not committed. However, the Tribunal finds that the complainant's statement must be held to be true in spite of his denials for the following reasons.

That statement contains detailed particulars of the persons implicated in the traffic in foreign currency, the payments they received and the precautions they took to conceal their illicit operations. These particulars are clearly too detailed to have been invented by third parties not implicated in the acts with which the complainant is charged; moreover, they are corroborated by similar statements made by five other persons charged, two of whom have not retracted their confessions. Finally, the complainant's statement is all the more convincing in that it was signed in the presence of several officials; and it is immaterial that one of them attended only part of the questioning. In these circumstances the complainant must be regarded as bound by his signature to the document concerned even if he did not himself draft it

It is true that the complainant claims to have yielded to the threats of the officials interrogating him after a prolonged period of confinement during which he was allegedly deprived of food. These allegations, however, are not only entirely unproven, but are highly improbable. The treatment alleged by the complainant was in any case not of such a kind as to force him to confess to imaginary acts of misconduct. The complainant himself claims that on 16 December he proclaimed his innocence in a document which was destroyed without his consent, and that on 17 December, after signing his statement of that date, he complained to the Director-General about the behaviour of the investigating officers and retracted his confession. It is highly probable that if he had been deprived of his freedom of expression he would not have contradicted himself twice within so short a space of time. The indisposition which the complainant claims to have suffered in the course of an incident which he has not established as having occurred, even if he had been so indisposed, cannot be regarded as a point in his favour, since it might equally well be explained by his fear of the measures which the Organization would be obliged to take

There is no evidence to indicate that the officials by whom the complainant alleges he was victimised acted in a spirit of animosity or in order to protect their own interests. On the contrary, the fact that the investigation was carried out by several officials excludes any suspicion of bias.

Lastly, even if the complainant's allegation that the first page of his statement of 17 December was torn out and replaced were true, his responsibility would not thereby be diminished, since it is simply proved by the second page of the same document

As to the decision to suspend the complainant:

2. Under Staff Rule 530, the suspension of a staff member is subject to three conditions. The person concerned must be charged with serious misconduct; there must be prima facie evidence that the charge is well founded; and the staff member's continuance in office pending the result of an investigation must be presumed to be prejudicial to the service. In the case at issue these three conditions were fulfilled and the Regional Director was therefore entitled to suspend the complainant and to withhold payment of his salary for the duration of his suspension. The charge that he had engaged in traffic in foreign currency for reward constitutes serious misconduct, since any act by which an official takes advantage of his official status for personal profit falls within the definition contained in Staff Rule 510.6. Secondly, the confession signed by the complainant affords evidence of the charges against him; and thirdly, the misconduct of which the complainant was accused was such as to deprive him of the confidence of his chiefs, so that his continuance in office was liable to be prejudicial to the Organization.

Under Staff Rule 530, the suspended official forfeits his right to the salary withheld if the charge against him is proved. It follows that as the charges against the complainant have been admitted there is no reason to order payment of the salary withheld from him.

As to the decision to dismiss the complainant:

3. Staff Rule 520, second paragraph, provides that an official may be summarily dismissed for serious misconduct. It is clear from the considerations set forth above that this provision was correctly applied in the present case. As for the procedural irregularities alleged by the complainant and the other accused persons, they are non-existent or at least do not affect the validity of the decision impugned.

The officials responsible for investigating the charges against the complainant were undeniably competent to do so. The investigation carried out by them aimed at identifying the persons responsible for breaking the rules of the Organization and was necessarily followed by the sanctions provided for in those rules. The investigation was therefore necessarily entrusted to the agents of the Organization itself rather than to the authorities of the State in which the complainant was employed. The rules of the Organization itself alone were applicable, and not any national legislation.

The accused persons claim further that Staff Rule 540.1 was not observed. The rule in question provides that a staff member may not be dismissed for serious misconduct before being formally notified in writing of the charges made against him and given an opportunity to reply to those charges within eight days, a reduction in this time limit being allowed only in urgent cases. The procedure laid down for the purpose of enabling an official to defend himself against the charges against him is inapplicable once the person concerned has admitted those charges. The safeguard provided by Staff Rule 540.1 has become pointless in the present case, since the complainant had admitted his misconduct in statements which the Tribunal has found to be true.

There is no foundation for the complaint by the accused persons that they were unable to consult certain documents, and in particular the correspondence between the Organization and the Indian authorities. To dismiss this argument it suffices to observe that the right of a party is confined to consulting the documents on which the decision is based, and in the case at issue the decision made by the Regional Director and subsequently confirmed by the Director-General is fully justified on the basis of the statements signed by the interested parties, the contents of which were thus known to them. The headquarters Board of Inquiry and Appeal expressly confirmed this. It is therefore unnecessary to consider whether the Organization was entitled to regard as confidential the documents which it withheld from the accused persons. For the same reasons, it is immaterial that the complainant received only an extract of the report of the Regional Board of Inquiry and Appeal.

Lastly, it is unnecessary to consider whether the complainant underwent the medical examination provided for by Staff Rule 330.7, since this formality is merely a consequence of dismissal and not a condition of its validity. In any event the provisions concerning sickness leave were no impediment to dismissal, since Staff Rule 670.6 provides that the right to sickness leave expires on the expiry of the contract.

In conclusion, as the decision to terminate his appointment was not in violation of the applicable provisions, the complainant can claim neither reinstatement nor compensation. The complaint is therefore unfounded in its entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 October 1970.

(Signed)

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy