

## TWENTY-FOURTH ORDINARY SESSION

### *In re* DHAWAN (No. 1)

#### Judgment No. 163

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Madan Mohan Lal Dhawan on 14 October 1969, the Organization's reply dated 19 December 1969, the complainant's rejoinder dated 13 February 1970 and the surrejoinder of the Organization dated 25 March 1970;

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

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. The complainant was appointed to the staff of the WHO Regional Office for South East Asia in New Delhi on 12 March 1963 as an assistant accountant at grade MD4/1. On 1 August 1966 he was promoted and assigned to a project in Katmandu (Nepal) as a senior administrative assistant on Post No. 5.1119 at grade KA7/1 and his contract was extended for a period of two years. Following a review of the staffing position of the project, on 1 April 1967 the Organization decided to abolish the post of senior administrative assistant held by Mr. Dhawan. By letter of 16 November 1967 the Administration offered, as an alternative to the termination of his contract - there being no other suitable post at that time - to reassign him with effect from 1 January 1968 to a post in the WHO Office in New Delhi as a junior assistant at grade MD4/5, i.e. at the grade, step and salary that he would have had if he had continued to work in New Delhi without being transferred to Katmandu. Mr. Dhawan accepted this offer by letter dated 3 January 1968. In that letter he also requested the Organization to consider his candidature for posts comparable in status with the one held by him in Nepal either in the New Delhi Office or in some other region. In a letter of 12 January 1968 the Administration promised to consider his candidature when suitable vacancies arose in the future. On 1 April 1969, his contract being extended for a further period of two years, he was promoted to accountant at grade MD4/7.

B. At the beginning of 1969 Mr. Dhawan applied for vacant Post No. 5.1135. On learning of the selection on 27 February 1969 of someone else for this post, on 11 March he declared his intention to appeal against that selection to the Regional Board of Inquiry and Appeal. In his appeal dated 24 March 1969, he impugned the decision of the Selection Committee regarding Post No. 5.1135 and condemned the Administration's failure to restore his status and afford him job satisfaction in accordance with the Staff Rules although opportunities had been available for doing so after the abolition of his previous post of senior administrative assistant (Post No. 5.1119). He gave the grounds for his appeal as: "(1) Incomplete consideration of facts. (2) Failure to observe or apply correctly the provisions of the Staff Regulations, Staff Rules and terms of contract. (3) Personal prejudice on the part of a supervisor or other responsible officials. (4) Improper application of the WHO post classification standards." He asked that the decision regarding Post No. 5.1135 should be reviewed in his favour, that he should be given retrospectively a status equivalent to that of the Post No. 5.1119 previously held by him in Nepal, that Post No. 5.1119 should be reclassified at an appropriate professional grade and that he should be paid the resulting difference in salary. He also asked for review of the decisions of the Administration regarding several other posts filled after his return to the New Delhi Office, as well as for certain information and documents.

C. By letter of 1 May 1969 the Secretary to the Regional Board of Inquiry and Appeal informed the complainant that his appeal was irreceivable and the matter should be considered closed. On 27 May 1969 the complainant notified his intention to appeal to the headquarters Board of Inquiry and Appeal, to which, however, the case was not submitted.

D. The complainant's appointment with the WHO was terminated with effect from 10 October 1969 on the grounds of unauthorised absence from work.

E. In his appeal to the Tribunal, the complainant seeks the same reliefs as he sought before the Regional Board as

well as the dismissal of three officers of the WHO Office in New Delhi and the payment of compensation for the injury caused him.

F. The Organization maintains that the complaint is not receivable as the complainant has not exhausted all other means open to him under the Staff Regulations. The complainant should have appealed, not against the decision of the Selection Committee regarding Post No. 5.1135 but against that of the Regional Director appointing someone other than the complainant. As for the remainder of Mr. Dhawan's claims, there is no final decision against which he has appealed. Matters of appointment fall within the discretion of the Director-General and cannot be reviewed by the Tribunal except under certain circumstances not applicable in the present case. The Organization further states that, at the time of abolition of the post held by the complainant in Nepal, it did its best to accommodate him rather than terminate his employment and, having accepted the post, he cannot complain about it two years later.

#### CONSIDERATIONS:

According to Article VII of the Statute of the Tribunal a complaint submitted to the Tribunal shall not be receivable unless a final decision is impugned, the person concerned having exhausted such other means of resisting as are open to him under the applicable Staff Regulations.

The complaint of Mr. Dhawan is not directed against any decision taken by the Director-General of the WHO. In particular, although it states that the complainant is impugning a decision of 11 March 1969, in fact no administrative authority of the WHO took any decision on that date concerning Mr. Dhawan; 11 March is the date on which he appealed to the Regional Board of Inquiry and Appeal. The complaint is therefore irreceivable.

#### DECISION:

For the above reasons,

The complaint submitted by Mr. Dhawan 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.

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