EIGHTY-THIRD SESSION

***In re* Rota (No. 4)** **Judgment 1652**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mrs. Adriana Rota Furlan against the World Health Organization (WHO) on 5 August 1996 and corrected on 20 August, the WHO's reply of 28 November 1996, the complainant's rejoinder of 4 February 1997 and the Organization's surrejoinder of 8 May 1997;

Considering Articles II, paragraph 5, VII and VIII 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 is employed by the WHO at its Regional Office for the Americas (AMRO) in Washington D.C. Facts relevant

to this case appear under A in Judgment 1599, which dismissed Mrs. Rota's third complaint.

On 4 April 1994 she saw that her name was not on the list of staff who were to get an award for ten years' service at the public ceremony for staff awards scheduled for the next day. She pointed that out to the chief of Personnel in a memorandum he received on the morning of 5 April. He answered the same day that staff whose performance had proved unsatisfactory or who had had a reprimand for misconduct were not ordinarily invited to such a ceremony, but that the Regional Director had agreed to make an exception in her favour; since there had not been time to tell her so before the start of the ceremony she would have the medal sent to her shortly. She got it through the post on 20 April.

On 28 April she lodged an internal appeal against the refusal to recognise her ten years' service. On 18 May 1995 the regional Board of Appeal, in Washington D.C., recommended rejecting her appeal and the Regional Director endorsed the recommendation in a letter he sent to her on 23 June. She appealed against that decision to the headquarters Board of Appeal, in Geneva, on 13 August 1995. On 21 March 1996 that Board too recommended rejecting her appeal but said that the Regional Office should look into the conditions in which she was working and, if need be, improve them. The Director-General endorsed the recommendations in a letter of 8 May 1996 to the complainant. That is the decision she is impugning.

B. The complainant submits that the Organization held her up to public "disgrace" by refusing to invite her to the ceremony. The headquarters Board of Appeal was inconsistent: it failed to impute to the Organization any wilful intent to "disgrace" her, yet held that its practice had not been the same for everyone. The Regional Director meant to invite her, but the Personnel Department disregarded his orders and so demeaned her in the staff's eyes. The chief of Personnel thereby imposed on her, without a hearing, a penalty that the Staff Rules do not provide for.

She seeks public recognition of her years of service; formal assurances from the WHO that she will not be subjected to

maltreatment or punishment without due notice and a hearing; acknowledgement by the Organization that the decisions were in breach of its rules and practice and that she was in a state of disgrace; a promise to end the disgrace; damages; and costs.

C. In its reply the Organization submits that the complaint is irreceivable because what it is challenging is not, as the Staff Rules require, an administrative decision — the Director-General met her wish — but a so-called "state of disgrace". Besides, she shows no cause of action since she did get her medal and congratulations from the Administration on her ten years' service, and an invitation to next year's ceremony.

The complaint is devoid of merit anyway since there was breach neither of the Staff Rules and Regulations nor of the terms of her contract. Her claims to redress are groundless. As precedent makes plain, claims to "recognition" or "assurances" from the Organization fall outside the ambit of Article VIII of the Tribunal's Statute. It therefore asks the Tribunal to dismiss her claims in their entirety and award it token costs for vexatious litigation.

D. In her rejoinder the complainant maintains that her complaint is receivable since what she is impugning is not a "state of disgrace" but the decision not to invite her to the ceremony. The disgrace is one consequence of that decision. After her written reprimand she was transferred and given no work. That was an additional sanction. Citing Judgment 1599, she points out that the written reprimand, which ought to have been the only sanction, said nothing of barring her from the ceremony. Her exclusion was therefore unlawful.

Restating her claims, she asks the Tribunal to set aside the Regional Director's decision of 23 June 1995 and the Director-General's decision of 8 May 1996 and to order the Organization to reinstate her in the post she held before the reprimand, recognise her years of service publicly and give her duties commensurate with her experience and ability and a position not lower than the one she held prior to the reprimand. She seeks moral damages and costs.

E. In its surrejoinder the Organization submits that the complainant has utterly changed her pleas and claims in the light of the Tribunal's dismissal of her third complaint. Quite apart from the Tribunal's ruling in Judgment 1599 that her reassignment was no further penalty, her new pleas and claims are irreceivable because they did not form part of her internal appeals or her original complaint. In comments on her last performance report she expressed "enthusiasm" for her work. She acknowledges that the Regional Director did decide to invite her to the ceremony and later suggested that she attend next year's one. Since her claim to public recognition was thus satisfied, she shows no cause of action.

CONSIDERATIONS

1. Mrs. Rota has been an employee of the World Health Organization at its Regional Office for the Americas since November 1984. She is an office assistant II at grade G.5 and holds a fixed-term appointment, which the Organization recently extended to February 2001.

2. The Tribunal has already delivered judgments on three complaints from Mrs. Rota. Judgment 1599 of 30 January 1997 dismissed her third complaint, in which she challenged the imposition of a written reprimand and her transfer to another unit and another supervisor. In this complaint she cites that judgment several times.

3. She is challenging a decision which the Director-General took on 8 May 1996 on the recommendation of the headquarters Board of Appeal to reject her internal appeal. Since she has failed to supply the text of that appeal there is no telling whether the claims in her internal appeal match those she sets out in the complaint form. Yet firm precedent has it that a complainant may not put to the Tribunal claims other than those he made in his internal appeal.

4. The complainant is claiming:

"(a) Recognition of service in a public forum.

(b) A formal and official certification and assurance from PAHO/WHO that she will not be subject to any adverse treatment or punishment without being provided full notice and hearing rights.

(c) An acknowledgement by [the Organization] of violation of rules and practice in denial of recognition.

(d) Recognition by [the Organization] that Complainant has been under a state of disgrace and an end of that status.

(e) Damages.

(f) Reasonable attorney fees."

Thus her main claims are to public recognition of her services and to acknowledgment of her "disgrace" and the ending of it. Her other claims are to the issuance of further orders to the defendant.

Public recognition of the complainant's services

5. The complainant pleads that the Organization has the obligation of publicly recognising her services, whatever her behaviour may have been. She herself cites no written rule laying down any such obligation and there is no evidence of one in the Staff Regulations or in the Staff Rules or in the contract of service concluded between her and the Organization. But does such an obligation derive from custom? The complainant uses terms like "traditionally" and "customary" to suggest that it does. According to the international case law a custom arises only if there is evidence of repeated acts or of a consistent and unbroken practice that is deemed to be binding: *opinio juris sive necessitatis*. Not only does the complainant fail to prove any such practice but the defendant has shown that staff who have suffered disciplinary action do not always get public recognition of their services: it has produced evidence to show that some staff who had suffered disciplinary action were not granted such recognition. So there is no consistent and unbroken policy in the matter.

6. The conclusion from the foregoing is that there is no written or customary rule requiring the defendant to grant a staff member public recognition of his services, whatever his behaviour may have been. The complainant accuses the Organization of having acted in breach of the rules and practices in force. There being none, the Organization cannot have acted in breach of them.

7. The defendant says that it made an exception in the complainant's favour and invited her to the ceremony on 5 April 1994; but since it was unable to let her have its invitation in time it sent her the medal and a letter of congratulations instead. It invited her to attend a public ceremony in 1995, but she turned down the invitation.

8. The complainant says that she was unable to attend the ceremony of 5 April 1994 because several officials were remiss in passing the invitation on. She says –

> "... the [Regional Director] had a good intention to include her, Personnel did not carry out his order and the consequences were that Complainant was not included in the Public Ceremony."

There is indeed a dispute between the parties over whether the officers complied with instructions to forward the invitation to the complainant. That is a matter at the Organization's discretion and is not subject to judicial review. The Tribunal will not go into matters such as determining whether an official is late for work, or is rude, or is improperly dressed — *de minimis non curat praetor* — even though such behaviour may sometimes cause injury to others. The Tribunal would go into such issues only if the Administration had taken disciplinary action and the internal means of redress had been exhausted.

9. For the reasons set out above and in Judgment 1097 under 6, the conclusion must be that the complainant's claim fails.

The complainant's "disgrace"

10. The complainant says that she is in "disgrace" and wants to see an end to it. No doubt what she means is "disgrace" in a legal sense, though she gives no particulars. In Judgment 1270 (*in re* Errani No. 2) the Tribunal said:

> "The grievances [the complainant] has put to the Tribunal show his utter ignorance of the appeal procedure as set out in the Service Regulations. ... the filing of an appeal presupposes that the Organisation has already taken a decision that adversely affects the staff member or that he has submitted to it a request for a decision he is entitled to under the Regulations."

The present complainant has failed to identify any decision which would have put her in “disgrace”. She believes it began when she was barred from the public ceremony of 5 April 1994. As was said in 7 above, however, she did get a medal in recognition of her services and was invited to attend a public ceremony in 1995, although she turned down the invitation.

11. In her rejoinder she treats the failure to grant her public recognition of her services as a second disciplinary sanction for her misconduct of 9 July 1993, which brought her the written reprimand. She pleads a “principle of law of the civilised nations”. Although she does not use the term, no doubt she means the rule against double jeopardy, a widely acknowledged precept of criminal law.

12. Her plea fails because it misreads the facts. When someone wins a prize in a competition, the others suffer no penalty: they merely fail to get the prize. At the public ceremony of 5 April 1994 some got prizes, while the complainant and others did not. Yet they suffered no disciplinary sanction on that account.

13. There being no need to rule on the defendant’s objections to receivability, nor on its counterclaim, the complainant’s claims fail in their entirety.

DECISION

For the above reasons,
The complaint is 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 10 July 1997.

(Signed)

WILLIAM DOUGLAS MELLA CARROLL JULIO BARBERIS

A.B. GARDNER