

EIGHTY-SEVENTH SESSION

In re Ochani (No. 4)

Judgment 1858

The Administrative Tribunal,

Considering the fourth complaint filed by Mr Parmanand Sachanand Ochani against the World Health Organization (WHO) on 19 May 1998, the WHO's reply of 31 July, the complainant's rejoinder of 12 August and the Organization's surrejoinder of 13 November 1998;

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 background to this case is set out in Judgments 1856 and 1857 also delivered this day on Mr Ochani's second and third complaints.

The complainant was on sick leave from 9 April 1996. The Regional Personnel Officer arranged for a driver to deliver a letter marked "confidential" to the complainant at his home in the early evening. The letter summarised a meeting he had attended with the Personnel Officer on the preceding day. It asked him to provide a written explanation of a discrepancy of 1,800 United States dollars between figures on two receipts that he had submitted in support of a claim dated 29 December 1995 for reimbursement by the Staff Health Insurance scheme of his son's dental treatment in the United States. As instructed in the letter, he signed an enclosed copy to acknowledge receipt and handed it back to the driver.

After his return from sick leave on 27 May 1996 he became aware that the contents of the letter were common knowledge. On 12 June he addressed a letter to the Regional Personnel Officer protesting that the "sanctity of confidentiality" had been lost in the method of delivery of the letter resulting in defamation and he asked for compensation of 500,000 dollars within sixty days.

The Organization did not respond to that demand, but after a lengthy exchange of correspondence with the complainant he was dismissed for misconduct by a letter of 31 July 1996, with effect from 5 August 1996.

He filed an appeal challenging the breach of confidentiality on 30 September with the regional Board of Appeal and subsequently with the headquarters Board of Appeal. In its report of 3 February 1998 that Board recommended rejecting his appeal. The Director-General did so by a letter of 5 March 1998, which the complainant impugns.

B. The complainant contends that it was indiscreet of the Administration to ask him to hand over the signed copy of the confidential letter of 9 April 1996 to the driver who delivered it and who understood English. The driver had been given an "open" letter addressed to the complainant indicating that he should hand the signed copy of the confidential letter back to the driver. There was no justification for sending an "open communication" to his home, at "odd hours" while he was on sick leave. It was a consequence of the Regional Personnel Officer's "personal animosity" towards him.

He gives other instances of "malicious actions" against him: (1) he was physically assaulted in the Personnel Unit on 28 April 1993; (2) surveillance was set up through the colleague who shared his office; (3) he was bypassed for promotion; (4) he suffered harassment while on sick leave in April and May 1996; (5) disciplinary proceedings were initiated against him in the context of the allegedly false health insurance claims; (6) on 3 March 1997, long after his dismissal, he was "subjected to physical violence" on SEARO premises and his glasses were broken. Therefore, to partly offset his losses and "in keeping with the principles of natural justice" he seeks 500,000 dollars for defamation and "mental, material and social injury", and costs of 10,000 dollars.

C. In its reply the Organization denies the contention that the communication of 9 April 1996 was an "open letter": it was marked "confidential" and was delivered to the complainant in a sealed envelope. The complainant could

have returned the signed copy in a sealed envelope too. It submits it cannot be held responsible for his acts of indiscretion and he affords no evidence of any prejudice it caused him.

The complainant's allegation of harassment during his seven-week sick leave is new and unsubstantiated. The Organization took no action to pursue its request for further explanations from him during that time, and extended the deadline for his response.

The nature of the complaint being "frivolous" it asks for nominal costs.

D. In his rejoinder the complainant objects to the Organization's transferring its "fault" to him. It should not be ignored that he was on sick leave on the day the letter was delivered and had no material for sealing letters; besides which the contents of the confidential letter had already been made known to the messenger.

He presses his claim to damages and additionally asks for "any further relief that the Tribunal may deem fit".

E. In its surrejoinder the WHO presses the arguments put forward in its reply. It insists that there was no breach of confidentiality in the way the letter of 9 April 1996 was delivered to the complainant. It produces the duplicate which the complainant signed to acknowledge receipt, and a copy of the sealed envelope it was delivered in. The envelope carried the typed instruction: "Please acknowledge receipt of this memorandum by signing the duplicate copy enclosed". It is thereby clear that the acknowledgement copy also went in the envelope. To preserve its confidentiality he should have returned the letter in a sealed envelope, and he alone is responsible if he did not do so.

CONSIDERATIONS

1. The complainant was employed by the WHO at its Regional Office for South-East Asia (SEARO) in New Delhi as from 1988. He was dismissed because he had failed to furnish a satisfactory explanation for submitting two altered receipts in support of a claim for reimbursement of expenses incurred for dental services provided for his son in the United States.
2. A letter dated 9 April 1996, calling for the complainant's written explanation of the alterations and discrepancies in that claim, was delivered through a staff driver to him at his home because he was on sick leave. In that letter he was requested to acknowledge receipt "by signing the duplicate copy enclosed herewith".
3. The complainant signed the copy and gave it to the driver without enclosing it in a sealed envelope.
4. By letter dated 12 June the complainant claimed that the confidentiality of that letter had been breached, resulting in grave injury to his reputation, because: "a photocopy of the confidential letter, on which [his] signature was obtained in acknowledgement of receipt ... was to be handed over to the English-knowing staff car driver ... which [he] did as per instructions written ... on the covering letter".
5. Having received no reply, the complainant appealed to the regional Board of Appeal on 30 September 1996. There was undue delay by the regional Board in dealing with that appeal, and at the complainant's request the headquarters Board of Appeal decided on 17 June 1997 to allow him to appeal directly to it. The headquarters Board in its report of 3 February 1998, concluded that the delivery procedure was correct and did not constitute a breach of confidentiality: the complainant had been free to return the acknowledgement copy in a confidential manner but he chose not to do so. It recommended dismissal of the appeal. On 5 March 1998 the Director-General accepted that recommendation. The complainant asks the Tribunal to award him damages for defamation in a sum of 500,000 dollars.
6. Even in his complaint to the Tribunal, the complainant did not depart from the position that the acknowledgement copy was enclosed with the letter of 9 April. He added that the Administration had given the driver "an open letter addressed to [him] stating that the signed copy of the confidential letter may be handed over to the driver". However, in his rejoinder he claimed that the WHO flouted the rule of confidentiality "by supplying a copy of a confidential letter to an English-knowing messenger for getting [his] acknowledgement thereon".
7. With its surrejoinder, the WHO produced the covering letter which had been issued to the driver. It merely stated, "Please acknowledge receipt of this memorandum by signing the duplicate copy enclosed".

8. The Tribunal agrees with the headquarters Board of Appeal that any breach of confidentiality and resulting injury to the complainant occurred solely because of his own failure to enclose the acknowledgement copy in a sealed envelope.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 1999, Miss Mella Carroll, Vice-President of the Tribunal, Mr Mark Fernando, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Mella Carroll
Mark Fernando
James K. Hugessen

Catherine Comtet