

EIGHTY-SEVENTH SESSION

In re Munshi

Judgment 1859

The Administrative Tribunal,

Considering the complaint filed by Mr Mohomed Nazir Munshi against the World Health Organization (WHO) on 22 June 1998 and corrected on 12 October 1998, the WHO's reply of 18 January 1999, the complainant's rejoinder of 11 February and the Organization's surrejoinder of 3 March 1999;

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, who is a national of Malawi and was born in 1946, joined the staff of the WHO in 1990 as a technical officer at grade P.3. He was assigned to a project post in Lesotho in the framework of the Global Programme on Aids (GPA). His contract, of an initial duration of two years, was renewed for two further years and then for fifteen months. In August 1995, the Administration informed him, as well as other staff members, that the funding for his post would expire on 31 December 1995 and that his appointment would end on the same date.

In a letter dated 14 December 1995, an Assistant Director-General informed the president of the Staff Committee that staff members of the GPA who challenged the termination or non-renewal of their appointments could appeal directly to the Tribunal or apply to intervene in complaints already filed. He also undertook that the rulings of the Tribunal in respect of one staff member would apply to other staff members in the same situation in fact and in law.

On 10 July 1997, the Tribunal delivered Judgments 1624 to 1631 (*in re* Clements, Gray, Lewis, Ratcliffe, Sato, Schopper, Stoneburner and Wabitsch) in which it upheld the claims of former staff members of the GPA and ordered the Organization to apply the reduction-in-force procedure to them.

In a letter dated 20 October 1997, the Director of the Division of Personnel informed the complainant that, if he considered that he was in the same situation as those staff members, he could make a written claim to obtain the remedy contained in these judgments. The complainant filed his claim on 21 November 1997. In a letter of 19 January 1998, the Director of Personnel replied that Judgments 1624 to 1631 were not applicable to him as he was not in the same factual and legal situation as the complainants in those cases, since the post he occupied was a field project post and, as such, of limited duration. In a letter dated 19 March, the complainant requested the Director to reconsider his decision to exclude him from the reduction-in-force procedure. By a letter of 6 April 1998, the Director confirmed the decision of 19 January 1998. The complainant challenges this confirmation.

On 28 January 1999, the Tribunal delivered Judgments 1792 (*in re* Najjar and Voetsch) and 1793 (*in re* Aye Han and Renas) dismissing the applications made by other former staff members of the GPA who claimed the redress granted in Judgments 1624 to 1631.

B. The complainant challenges his exclusion from the reduction-in-force procedure on the grounds that he was assigned to a project. He contends that, after five years of service, his post should have been classified as indefinite. He emphasises that the Organization made no attempt to reinstate him.

The complainant asks the Tribunal to grant him the benefit of a reduction-in-force procedure and/or to order his reinstatement. He also asks for damages for the "trauma" experienced by himself and his family, as well as 5,000 United States dollars to reimburse the medical costs incurred as a result of his son's illness.

C. In its reply, the Organization notes that it was the letter of 14 December 1995 which entitled the complainant to

file a complaint, and not the letter of 20 October 1997, which only referred to the former letter. However, it does not contest the receivability of the complaint.

According to the Organization, the only issue to be addressed is whether it was correct in concluding that the commitment made in the letter of 14 December 1995 did not apply to the complainant. In other words, the examination of the complaint should be limited to determining whether or not the complainant was in the same legal and factual situation as the staff members of the GPA whose claims were upheld by the Tribunal. While the latter occupied permanent posts at headquarters, governed by the WHO Manual section III.3, the complainant was assigned to a project post, which is a category of posts that Manual paragraph II.9.260.3 classifies as being of limited duration. The fact that he worked for the WHO for five years does not mean that his post was an indefinite one.

It states that it "made all possible efforts" to reassign or reinstate the complainant.

D. In his rejoinder, the complainant refutes the Organization's explanations. He contends that he was a fully fledged member of the staff engaged in Geneva and observes that his contract did not specify that it was tied to the duration of the project.

He adds that, if the letter of 14 December 1995 had been sent to him, he could have filed the claim that it recommended.

E. In its surrejoinder, the Organization contends that in Judgments 1792 and 1793 the Tribunal confirmed that project posts were of limited duration.

CONSIDERATIONS

1. The complainant seeks the quashing of a decision of 6 April 1998, by which the Director of the Division of Personnel of the WHO confirmed the decision in his letter of 19 January 1998 to reject the request that he should benefit from the Tribunal's judgments of 10 July 1997, which allowed the claims of several officials of the Organization who had been assigned to the Global Programme on Aids (GPA) and whose appointments had ended on 31 December 1995. As recalled in Judgment 1793 (*in re* Aye Han and Renas), the Organization informed all former GPA staff members in a letter of 20 October 1997 that, if they considered that they were in the same situation as a complainant whose claim had been allowed by the Tribunal, they remained free "to make a written claim" to the Director of the Division of Personnel "stating the full particulars of [their] claim, including its factual basis, and the remedy requested".

2. The complainant was assigned to the GPA as a technical officer at grade P.3 on a project post in Lesotho with the number 3.3727 4. Appointed on 1 October 1990 for two years, his contract was renewed twice, the last time until 31 December 1995. In August 1995, he was informed that the funding for his post would expire on 31 December 1995; as a consequence, his contract was not renewed beyond that date. When he became aware of the above judgments of 10 July 1997 and the Organization's letter of 20 October 1997, he sent a letter by facsimile on 21 November to the Director of Personnel stating that he was in the same situation as the officials for whom the cancellation of their posts had been judged unlawful and requesting reinstatement. This claim was rejected by the letter of 19 January 1998, which was confirmed by the impugned decision.

3. The written submissions show that the post occupied by the complainant was created in the framework of a project in Lesotho with the reference GPA/Lesotho/210, and then 200. It is not contested that the functions undertaken by the complainant in the context of the project were not renewed beyond 31 December 1995. As in Judgments 1792 (*in re* Najjar and Voetsch) and 1793, the Tribunal finds that the complainant was recruited on a post under a country project which is not governed by the same rules as those applying to posts created at headquarters and that the duration of the post was linked to the activities of the above project. The situation of the complainant was therefore different to that of WHO staff members recruited by headquarters, who were entitled to benefit from the so-called reduction-in-force procedure.

4. To avoid this conclusion, the complainant contends that his contract did not specify that it was tied to the duration of the project, that he was not informed of his rights in due time, that the Organization did not act in his regard with the sincerity and fairness that it should have shown him and that the Tribunal should consider his claim equitably. But, on the one hand, he admits having received the letter of 20 October 1997 from the Director of

Personnel informing staff members of the Organization of the possibility which was made available to them, despite the expiry of the time limits, to benefit from the Tribunal's case law if they were in the same situation as those whose claims had been allowed. On the other hand, there is no reason to question the action taken by the Organization in his regard. The Tribunal can only conclude that his situation in law and in fact is different from that of the GPA staff members whose claims it allowed in its judgments of 10 July 1997. The complainant cannot therefore claim reinstatement or the benefit of the reduction-in-force procedure.

His claims for the decision to be set aside must therefore be dismissed, as are those for damages and the reimbursement of the medical costs incurred by the illness of his son.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 May 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

(Signed)

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet