

EIGHTY-EIGHTH SESSION

In re Ochani (No. 5)

Judgment 1941

The Administrative Tribunal,

Considering the fifth complaint filed by Mr Parmanand Sachanand Ochani against the World Health Organization (WHO) on 1 June 1998, the WHO's reply of 8 September, the complainant's rejoinder of 20 November 1998 and the Organization's surrejoinder of 17 February 1999;

Considering Articles II, paragraph 5, and VII 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. Details of events forming the background to this case are to be found in Judgments 1856 and 1857, delivered on 8 July 1999, on the complainant's second and third complaints.

The complainant is a former staff member of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi. His service was terminated on 5 August 1996.

On 3 March 1997 he went to see the staff health insurance assistant at SEARO to settle a pending claim relating to the reimbursement of medical expenses. During the discussion a scuffle broke out between them, a lens from the complainant's glasses was broken and documents from the complainant's file were torn up.

The complainant wrote to the Regional Director on 6 May 1997 claiming awards of compensation for the grievance caused by the incident of 3 March. In the absence of a reply he assumed that his claim had been rejected and on 19 August appealed to the regional Board of Appeal, which in its report of 11 September concluded that the appeal was irreceivable and recommended that it should be dismissed. In a letter of 30 September the Regional Director endorsed that opinion. On 17 November 1997 the complainant went to the headquarters Board of Appeal, which in its report of 27 March 1998 came to the same conclusion and recommended the dismissal of his appeal. By a decision of 4 May 1998, which the complainant impugns, the Director-General endorsed that recommendation.

B. The complainant gives an account of the incident of 3 March 1997. The Regional Personnel Officer intervened in the scuffle and kept him confined in a room for nearly two and a half hours. On being released the complainant reported the matter to the police.

The Regional Director, he submits, dismissed his appeal on the ground that he was no longer a staff member when the incident took place. The Director-General rejected it citing the conclusion of the headquarters Board that his case "did not fall within its mandate as an administrative appeal body" as he "had been dismissed from WHO in August 1996", again meaning he "could not be considered as a former staff member".

The Tribunal's Statute clearly states, in paragraph 6(a) of Article II, that the Tribunal shall be open to an official "even if his employment has ceased". It was the Administration that called him to its premises to receive payments due to him as a former staff member, so it cannot now plead that he is not "a former staff member". The behaviour of the Regional Personnel Officer and the insurance assistant amounted to "criminal misconduct" and was in breach of Staff Rule 110.8. The complainant argues that in keeping with "the principles of natural justice" he should be awarded suitable compensation and damages for material and moral injury.

He seeks awards totalling 7,023,205 United States dollars in compensation for: material injury caused through physical violence; "mental agony ... and loss of social reputation"; illegal confinement; replacement of his spectacles; taxi fare; and legal costs. The sum awarded should include a "personal penalty" imposed on the Regional Personnel Officer and the insurance assistant.

C. In its reply the Organization contends that the complaint is irreceivable as the complainant is not challenging any administrative decision affecting his past appointment status. The terms of Staff Rule 1230.1 do not preclude a former staff member from lodging an appeal, but to be receivable it must relate to his former employment status, and be filed within set time limits. The complainant filed his appeal with the regional Board of Appeal on 19 August 1997 - more than one year after the cessation of his employment and it was therefore time-barred. The headquarters Board rightly concluded that the appeal did not comply with the stipulations of Staff Rule 1230.1, and that his case fell outside its competence as an "administrative body".

Paragraph 6(a) of Article II of the Tribunal's Statute, cited by the complainant, is to be read in conjunction with paragraph 5 which says that the Tribunal is competent to hear complaints alleging non-observance of "terms of appointment" and of "provisions of the Staff Regulations".

On the merits the Organization contests the complainant's version of the incident of 3 March and cites reports written by the officials involved describing what happened. He was not subjected to physical violence and had himself caused the incident.

In view of the frivolous and vexatious nature of the complaint it asks for an award of nominal costs against the complainant.

D. In his rejoinder the complainant pleads that his complaint is receivable. The WHO is answerable for acts of its officials which amount to misconduct linked to the "performance of their assigned duties". The phrase "appointment status" in Staff Rule 1230.8 and "observance in substance and form of the terms of appointment" in the Tribunal's Statute are "wide" enough to include the obligation to treat former staff members with dignity and respect and protect them from arbitrary acts by officials. He has every right to invoke the Staff Rules and seek redress for the indignity inflicted on him.

The reports on the incident produced by the Regional Personnel Officer and the Budget and Finance Officer were dated 4 March 1997, a day after it occurred and were "fabricated as an afterthought".

E. The Organization, in its surrejoinder, presses its objections to receivability. On the merits it submits that the reports produced by the officials involved were truthful accounts of what took place during the incident. Referring to the complainant's claim that a personal penalty should be imposed on the officials involved, it asserts that such a claim is without merit and not one that the Tribunal has competence to rule on.

CONSIDERATIONS

1. The complainant joined the staff of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi in 1988. In December 1995 he submitted a claim under the Staff Health Insurance scheme for the reimbursement of dental treatment for a sum of 2,662 United States dollars and produced two altered receipts as justification. By a letter of 31 July 1996, he was dismissed for misconduct, with effect from 5 August 1996.

2. On 3 March 1997, and therefore well after his dismissal, while the complainant was on the premises of the SEARO, a violent incident occurred between him and a staff member of the Organization, of which each party gives its own version.

The complainant asserts that he went to the SEARO offices at the request of an official responsible for health insurance to settle a claim relating to the reimbursement of medical expenses. As the complainant refused to return a cheque issued in error, the official grappled with him and his glasses were broken. After the incident, the complainant was forced to remain on the Organization's premises for two-and-a-half hours.

The version of the incident given by the defendant is entirely different. It submits that the complainant asked to see his file, snatched it from the hands of the official and then destroyed the two receipts which he

had altered and which were in his file.

3. On 6 May 1997, the complainant claimed compensation from the Regional Director of 7,010,000 dollars and 112,150 rupees in physical and moral damages. Not having received a reply from the Organization, he appealed to the regional Board of Appeal on 19 August 1997. On 11 September 1997, the Board concluded that the appeal was irreceivable. The Regional Director endorsed that opinion in a letter to the complainant dated 30 September.

On 17 November 1997, the complainant appealed to the headquarters Board of Appeal against the Regional Director's decision. The headquarters Board also found that the appeal was irreceivable and its opinion was endorsed by the Director-General on 4 May 1998.

4. Once the internal remedies had been exhausted, the complainant filed his present complainant with the Tribunal on 1 June 1998. His claims are to be found under B above.

5. The Organization asserts that the complaint is irreceivable and does not fall within the competence of the Tribunal.

6. The complainant appealed to the Regional Director on 6 May 1997, while the material facts giving rise to his appeal occurred on 3 March 1997 and his employment with the WHO had ceased on 5 August 1996. He is not now challenging any decision or measure relating to his situation as a former staff member of the Organization and does not put forward any arguments deriving from a breach of his contract or the conditions under which it was decided not to renew it. The Tribunal is not therefore competent, under Article II of its Statute, to hear the complaint.

7. The Tribunal holds that, in the circumstances of the case, there are no grounds for allowing the Organization's counterclaim to an award of costs against the complainant.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The Organization's counterclaim is also dismissed.

In witness of this judgment, adopted on 12 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Julio Barberis, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

Michel Gentot
Julio Barberis
Seydou Ba

Catherine Comtet