

TWENTY-NINTH ORDINARY SESSION

In re CHAWLA

Judgment No. 195

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Atam Parkash Chawla on 27 April 1971, the Organisation's reply of 29 July 1971, the complainant's rejoinder of 22 September 1971 and the Organisation's surrejoinder of 3 November 1971;

Considering also the replies supplied respectively by WHO on 23 August 1972 and by the complainant on 17 July 1972 to written questions put to the parties by order of the Tribunal on 16 May 1972, and the observations of WHO dated 21 September 1972 and of the complainant dated 11 October 1972 on the replies of the other party;

Considering Article II, paragraph 5, of the Statute of the Administrative Tribunal and WHO Staff Rules 420, 460.2, 650 .1 and 940;

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:

On 25 February 1960 Mr. Chawla joined the WHO Regional Office for South-East Asia on secondment from the Indian civil service and was appointed as laboratory assistant to a malaria eradication project in Nepal. Having had his contract of appointment renewed, and having been promoted to grade P.1 in 1962, he resigned from the Indian civil service in 1964. In 1965 he was transferred to Kunduz in Afghanistan, where he was assigned to a regional malaria eradication project. His appointment was extended for several further periods and his performance reports were always satisfactory.

B. On 22 November 1968 the complainant was informed that his appointment would not be extended after 28 February 1969. This decision, for which no reasons were given, was based on the comments of the Senior Malariologist of the Regional Office, Dr. Kellett, who had stated on 19 November 1968 on the administrative form relating to the possible extension of the complainant's contract that he was not "up to the required standard of a WHO technical officer at P.1 grade nor [did] he appear to have made much effort in the training of national staff in Kunduz". He accordingly recommended termination of the complainant's appointment. It appears from inquiries made by the Tribunal that the Senior Malariologist had not himself followed the complainant's work, but had based his appraisal on unfavourable comments made to him orally at New Delhi, without the complainant's knowledge. The complainant appealed to the Regional Board of Inquiry and Appeal, which in its report of 25 March 1969 held that he had been the subject of prejudice, at least on administrative grounds, and that proper account had not been taken of certain facts in taking the decision. It therefore recommended the Regional Director to extend the complainant's appointment from 1 March 1969; to make every effort to find him another post; to consider his candidature for a P.2 post in his field together with other candidates; if no post could be found for him or if he were not promoted to the vacant P.2 post in Kunduz, to retrain him; and to delete the comment made by the Senior Malariologist of the Regional Office in the appraisal report. This comment, dated 21 February 1969, was as follows: "Mr. Chawla's own written evidence shows very bad relationships between himself and his WHO colleagues. Serious enough to merit the termination of his contract." The written evidence referred to appeared in the memorandum submitted by the complainant to the Board of Inquiry and Appeal and transmitted by the administration to the Senior Malariologist for comment. The Board had taken the view that the sharpness of tone was due to the legitimate emotional stress under which the memorandum was written. The Regional Director accepted the Board's recommendations and informed Mr. Chawla on 8 May 1969 that he was extending his contract for one year from 1 March 1969. On the same day the Government of Afghanistan was informed that Mr. Chawla would shortly resume work.

C. On 1 June 1969 Dr. Qadeer, President of the Malaria Institute of Afghanistan, officially informed the Regional Office that the Afghan authorities did not desire the complainant's return. The complainant alleges that this decision was occasioned by a visit paid to the Afghan authorities in May by the Senior Malariologist, who, however, in a

statement of 11 July 1972 communicated by the WHO to the Tribunal, asserted that his discussions with the Afghan authorities had dealt with quite a different matter. On 17 June 1969 the WHO Representative in Afghanistan was asked by the Regional Director (New Delhi) to consult the Minister of Public Health of Afghanistan and the person who had sent the communication of 1 June. These consultations did not take place, but, on 13 September 1969, as a result of an interview between the Deputy Minister of Public Health and Dr. Taba, Director of the Regional Office for the Eastern Mediterranean, the WHO Representative sent a cable to the Regional Office at New Delhi in the following terms: "Government disagrees. Taba informed and will endeavour filling post." In the meantime, on 10 June 1969, the Regional Director had suggested that the complainant should take special leave without pay for a year. After discussions held on 19 June between the complainant and the Regional Director and the Chief of Personnel of the Regional Office, the Organization decided to grant him special leave on half pay under Staff Rule 650.1, and this decision was notified to the complainant on 10 July 1969. At the same time the Regional Office again asked the other Regional Offices to try to find Mr. Chawla another post. All of them had replied earlier saying that they could not meet that request, except for the Regional Office for the Western Pacific, which did have a post free, but one to which the complainant had not been appointed because of the opposition of Dr. Kellett. All the Regional Offices again sent negative replies, except the Regional Office for Africa, which said that it had a post for a laboratory technician. Headquarters consulted its specialist in virology and the official responsible for staff training, who advised that Mr. Chawla would need three or four years' retraining and that he was too old to undergo such training. These attempts to reassign the complainant having failed, he was informed on 14 November 1969 that his appointment would terminate on 30 November 1969.

D. On 1 October 1969 all project staff in Afghanistan had been transferred from the Regional Office for South-East Asia to the Regional Office for the Eastern Mediterranean. Mr. Chawla accordingly lodged an appeal with the Board of Inquiry and Appeal of the latter office on 3 March 1970. The Board having held on 21 July 1970 that his appeal was time barred, he appealed to the headquarters Board of Inquiry and Appeal, which proceeded to hear his complaint on the substance after confirmation by the Director-General that he would not raise the objection of irreceivability. The Board recommended that the Regional Director's decision of 8 May 1969 should be honoured in full, that Mr. Chawla's contract of appointment should therefore be regarded as having terminated on 28 February 1970 and that he should be paid all his entitlements so as to adjust what he had received during the period in question to what he would have received had his appointment been renewed for one year. The Director-General informed the complainant on 25 February 1971 that he accepted these recommendations in full settlement of his claims.

E. The complainant accordingly prays the Tribunal to:

- "1. quash the decision of 14 November 1969 to terminate my appointment, which was not cancelled by the decision of 25 February 1971;
2. order payment of arrears of salary and allowances up to date of reinstatement;
3. order assignment to a suitable post without loss of career prospects or financial benefits;
4. order payment of US\$20,000 for moral damages for the harassment to which I have been subjected for no fault of mine, and the distress caused by the arbitrary, abrupt and unjust way in which I have been treated;
5. failing reinstatement, the award of an indemnity of US\$104,256 in addition to the indemnities received on termination ... ;
6. order reimbursement of costs."

In support of his claims the complainant argues that he served the WHO faithfully for nine years; the decision to terminate his appointment was unlawful since it was based on prejudice which the Regional Board of Inquiry and Appeal and the Director of the Regional Office for South-East Asia formally acknowledged; that the Senior Malariologist tried to thwart his reassignment to Afghanistan and to the Regional Office for the Western Pacific; that the Organization made little attempt to find him a post elsewhere; that it did not properly explore the possibilities of retraining provided for in Staff Rules 420 and 460.2 since the decision not to retrain him during a period of three or four years was taken in disregard of the fact that he had sufficient qualifications in the technical field in question, as was proved by his possession of a degree; that, although he was assured that he was on the waiting list, it was found impossible since 1969 in a huge organisation like the WHO to provide him with a suitable

post; that he gave up his career and pension rights in the Indian civil service because he was almost assured that his appointment would be renewed indefinitely; and that it is now difficult for him to find a new job because of the special nature of his technical field.

F. In reply the Organization states that the decision of 25 February 1971 superseded all earlier decisions and is therefore the only decision that can be impugned before the Tribunal. It alleges that under Staff Rule 940 fixed-term appointments terminate automatically on the date of expiry and that since the Afghan Government's opposition was the reason for the termination of the complainant's appointment the only point at issue was whether the Organization had done its utmost to reassign him. The Headquarters Board of Inquiry and Appeal acknowledged that the Organization made reasonable efforts to find him another post. The decision not to retrain him was taken after close and detailed examination of his personal file. It was thirty years since the complainant had obtained his degree and subsequent progress in the technical field in question has been so considerable that he would have had to receive retraining for a period of three or four years.

G. In his rejoinder the complainant points out that the whole case arose out of the opposition of the Senior Malariologist, who, although he had never personally supervised the complainant's work, had reported unfavourably on it without submitting his report to the complainant for comment. He points out that the Senior Malariologist's prejudice was proved by the Regional Board of Inquiry and Appeal and acknowledged by the Regional Director. The Director-General's decision of 25 February 1971 is not satisfactory, since he is claiming reinstatement and the right to continue his career, which was interrupted, through no fault of his own, by the malicious interference of a supervisor. In view of the increase in the salaries of United Nations officials he demands a larger sum in compensation, amounting to US\$119,155, under the fifth heading of his claim. He maintains that the headquarters Board of Inquiry and Appeal contested the Director-General's right to decide independently not to renew his appointment. Finally, he maintains that he was entitled to expect renewal of his appointment because of his length of service, his resignation from the Indian civil service and Staff Rule 460.2 which entitled him to expect that he would be retained in his post once it had been reclassified at grade P.2, and because the Regional Board of Inquiry and Appeal had recommended keeping him in the service of the WHO. The letter of 14 November 1969 also stated that he would be granted leave with half pay "pending reassignment". The complainant maintains that the attempts to reassign him were not sincere and that several WHO officials opposed specific offers of other posts.

H. In its surrejoinder the Organization does not contest the existence of original prejudice but maintains that account was taken of it when Mr. Chawla's appointment was extended by one year to 28 February 1970. It points out that it did not raise the objection of irreceivability before the headquarters Board of Inquiry and Appeal although it was entitled to do so. It repeats that there can be no expectation of renewal of fixed-term contracts, and lastly, asserts that every effort was made to find the complainant a new post. The Organization accordingly maintains its plea that the complaint be dismissed.

CONSIDERATIONS:

1. The reason given by the Organization for not renewing the complainant's contract is that the Government of Afghanistan expressed the wish that the Organization could arrange that the complainant should not return to Afghanistan; and that thereafter it was not possible to find for him any other assignment. The circumstances in which the Government expressed this wish are so unusual as to make it necessary for the Tribunal to examine them.
2. The previous contract under which the complainant had been employed expired on 28 February 1969 and the Regional Director decided not to renew it. The complainant then left Afghanistan where he had been working for nearly four years. The reason for the Regional Director's decision was the adverse report by Dr. Kellett in which the complainant was represented as being not up to the required standard. On 8 May 1969 the Regional Director reversed his decision, renewed the complainant's contract until 28 February 1970 and informed the Government of Afghanistan that arrangements had been made for the complainant to resume his duties there. In reversing his decision the Regional Director acted on the advice of the Regional Board of Appeal; the Board found that there had been "administrative prejudice ... possibly based on personal prejudice" against the complainant. Having examined the dossier, the Tribunal is satisfied that this finding is correct and that Dr. Kellett was strongly and quite unjustifiably prejudiced against the complainant.
3. When on 1 June 1969 Dr. Qadeer, the President of the Malaria Institute of Afghanistan, expressed his wish that it

should be arranged for the complainant not to return to Afghanistan, he said that he considered that the complainant was below the standards required. It is to be noted that

(a) the conclusion that the complainant was below the standards required is the same as that contained in the adverse report by Dr. Kellett;

(b) that in neither report were any particulars given;

(c) that the conclusion runs contrary to all previous reports about the complainant's work;

(d) that the Government had not at any time previously during the four years of the complainant's service in Afghanistan expressed any dissatisfaction with his work; and

(e) that the letter of 1 June 1969 was the expression of a wish and not a formal, positive and final request.

The Tribunal considers that the Organization was in these circumstances under a duty to the complainant to ensure that all relevant matters were brought to the attention of the Government of Afghanistan. The Regional Director recognised this duty and instructed the WHO Representative in Afghanistan to discuss the matter with Dr. Qadeer as well as with the Minister of Health.

4. The WHO Representative did not discuss the matter either with Dr. Qadeer or with the Minister of Health. Dr. Taba, Regional Director for the Eastern Mediterranean, saw the Deputy Minister of Public Health and the only report of the conversation that is in evidence is "Government disagrees", whatever that may mean. On this evidence the Tribunal cannot conclude that the Organization satisfactorily discharged its duty as aforesaid.

5. Since the Organization has been unable to find another appointment for the complainant the Tribunal will not order that his contract be renewed but will order that instead he be paid an indemnity. The indemnity must be such as to compensate him for both moral and material damage. The moral damage consists of the injury done to his reputation and which flows from the unjustifiable prejudice of Dr. Kellett. In assessing the material damage it is relevant to consider that by 28 February 1970 the complainant was 50 years of age, had completed ten years of satisfactory service with the Organization and was receiving a salary with allowances of about US\$9,400 per annum; that after four and a half years in such service on deputation from the Government of India, he had given up a permanent and pensionable government post in order to continue in the service of the Organization; and that in February 1969, before the Regional Board of Appeal had reported, the possibility of a P.3 post for him in the Western Pacific region had been destroyed by the adverse opinion of Dr. Kellett. The Tribunal fixes the indemnity to cover both moral and material damage at US\$20,000.

DECISION:

For the above reasons,

The decision of the Director-General dated 25 February 1971 is quashed and it is ordered that the Organization pay to the complainant,

1. in accordance with the recommendation of the headquarters Board of Appeal on 8 February 1971, any arrears of emoluments due under the contract which expired on 28 February 1970; and

2. twenty thousand United States dollars (US\$20,000).

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., 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 13 November 1972.

M. Letourneur
André Grisel
Devlin

