

## NINETY-NINTH SESSION

**Judgment No. 2465**

The Administrative Tribunal,

Considering the second complaint filed by Mr V.P.R. against the World Health Organization (WHO) on 3 June 2004 and corrected on 15 July, the WHO's reply of 19 October, the complainant's rejoinder of 2 December 2004, and the Organization's surrejoinder of 11 February 2005;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. By a memorandum of 4 October 1995 the Organization's Regional Office for South-East Asia (SEARO) informed General Service staff in New Delhi that a salary increase of 18.4 per cent for the period 1 November 1993 to 30 June 1994, resulting from a mini salary-survey initiated in August 1994 and completed in March 1995, would be paid in the form of a non-pensionable one-time lump-sum bonus equivalent to 147.2 per cent of a month's salary as at 1 November 1993; the payment of the lump sum was reflected in pay slips of October 1995.

Eighty-eight staff members, including the complainant in the present case, filed notices of intention to appeal against that decision with the Regional Board of Appeal (RBA). The complainant did not however lodge a full statement of his case with the RBA and his appeal went no further. A smaller number of appellants pursued the matter before the Headquarters Board of Appeal (HBA).

One staff member only – Mr K.C.R. – who had meanwhile retired, pursued the matter before the Tribunal, contending that he had lost out in pension benefits. The Tribunal ruled on his case in Judgment 2030, delivered on 31 January 2001. It found that the payment of a lump sum in lieu of a revision of the salary scale was not permissible under the relevant regulations governing the implementation of salary survey results. It set aside the impugned decision and ordered the Organization to pay Mr K.C.R. compensation for loss of pension benefits that resulted from his receiving a lump sum rather than an increase in salary.

The complainant in the present case joined SEARO on 10 September 1984 at grade ND.04. He retired with effect from 1 August 1998, at which time he held grade ND.05. After learning of the Tribunal's ruling in Judgment 2030, on 3 October 2001 he wrote to the Regional Director contending that because of receiving a lump-sum payment in 1995 instead of benefiting from a revision of the salary scales, he had lost out in pension benefits. He asked that steps be taken to "properly fix" his pension, or that he be granted compensation – as was done for the complainant in the case ruled on in Judgment 2030.

By a letter of 4 December 2001 the Acting Regional Personnel Officer informed him that the matter was being looked into. According to the Organization, a final response on the complainant's request was sent to him on 11 February 2002. The complainant states that he did not receive that letter. According to him, he sent four letters to SEARO, which the latter claims were not received. Two were purportedly sent to the Acting Regional Personnel Officer in April and May 2002, seeking a final decision in the matter. The other two were purportedly addressed to the Regional Director. In one, dated 17 June, the complainant asked the Regional Director about the status of his request. In the other, dated 5 July 2002, he gave the percentage he had lost out by, and requested compensation for loss of pension benefit. Not having received a reply to his letter of 5 July, the complainant appealed to the Regional Board of Appeal on 19 November 2002.

In its report of 21 May 2003, the Board concluded that in the absence of any evidence that the Organization had received the letter of 5 July 2002, the complainant's appeal should be deemed irreceivable. By a letter of 9 June 2003 the Regional Director rejected his appeal. The complainant appealed to the Headquarters Board of Appeal. In a report of 2 December 2003 the Board recommended dismissing the appeal. It also recommended that the Administration should take steps to provide the complainant with the correct figures concerning the effect of the

lump-sum payment on his pension rights. By a decision of 16 February 2004, which the complainant impugns, the Director-General dismissed the complainant's appeal. In line with the Board's recommendation, the figures used as a basis for the calculation of his pension benefit were provided to the complainant by the Director of Human Resources Services in a letter of 24 June 2004.

B. The complainant contends that his complaint is receivable. He states that he had asked the Administration to compensate him for loss of pensionary benefits in the light of Judgment 2030. The Administration, by implication, refused that request. In his opinion, that refusal triggered the time limit for appeal. After telling him that it was looking into the matter, SEARO failed to respond to the numerous reminders he sent it. Frustrated by the indifference of the Administration, he sent the Regional Director the letter of 5 July 2002, and having received no reply appealed to the Regional Board of Appeal in November 2002. He has produced a Post Office attestation confirming that the said letter was delivered to SEARO on 8 July 2002.

He does not accept arguments put forward by the Administration to the effect that the time limit for appeal was triggered by the decision contained in the memorandum of 4 October 1995. He is challenging the implied rejection of his claims regarding loss of pension benefits. Those claims were made in the light of Judgment 2030 but, he argues, that does not mean that he is asking for the Tribunal's ruling in that judgment to be applied to him. He is simply asking for compensation, as was awarded in Judgment 2030.

On the merits, he submits that if in 1995 the Organization had implemented the results of the mini-survey by revising the salary scale with effect from 1 November 1993 instead of paying staff a non-pensionable lump-sum bonus, he would have received a higher pension benefit upon retirement. He believes that because the Organization chose not to revise the salary scales, there was a negative effect on the calculation of his final average remuneration (FAR) for the 36 months preceding his retirement, which consequently affected his pension. Moreover, the Organization's "illegitimate action" of granting a lump-sum payment instead of effecting a salary scale revision has caused him a recurring loss month after month.

The complainant seeks the quashing of the impugned decision. He also claims compensation for "loss of pensionary benefits" and for "loss of enhanced salary and allowances from 01 November 1993 to 01 June 1998"; interest at 12 per cent on the amount due to him; compensation for moral injury; and costs.

C. In its reply the Organization argues that the internal appeal filed by the complainant on 19 November 2002 was filed outside the prescribed time limits and that therefore his complaint to the Tribunal is irreceivable. Setting aside the issue of whether the complainant received the Regional Director's letter of 11 February 2002 or sent the Organization a letter on 5 July, it argues that it is the decision of 4 October 1995 which is effectively at issue. Given that in 1995/96 the complainant did not pursue his appeal before the Regional Board of Appeal, he failed to pursue the internal means of redress within the statutory time limits, and the decision has ceased to be open to challenge by him. The internal appeal filed with the Regional Board of Appeal on 19 November 2002 was filed out of time, since it was clear that he was in fact contesting the decision of 4 October 1995 with a view to obtaining compensation for action that he considered was "illegal".

The Organization also submits that the complainant has no standing to claim the benefit of Judgment 2030, since he was neither a party nor an intervener in the case ruled on in that judgment. He cannot seek to remedy his earlier inaction by an after-the-fact request for the benefit of the Tribunal's ruling.

On the merits, it contends that the complainant did not suffer any loss in pension benefit as a result of the decision of 4 October 1995, and his claim in this respect is without merit. Any increase in pensionable remuneration resulting from the mini-survey would have ultimately been "overtaken" due to the size of subsequent salary increases at his grade level.

Moreover, his claim with regard to an alleged loss of "enhanced salary and allowances" amounts to a request that the Organization be ordered to rework the salary scales with effect from 1 November 1993. In this regard, the WHO points out that by Judgment 2030 the Tribunal set aside the decision of 4 October 1995 but did not order the Organization to rework the salary scales. The complainant is therefore asking the Tribunal to go beyond the remedy it ordered in that judgment. For this reason, his request is unsustainable, as is his claim for interest. So too, it objects to the complainant's claim for moral damages, partly because he made no such claim in his appeal to the HBA in 2003, and partly because no such remedy was ordered in Judgment 2030.

D. In his rejoinder the complainant presses his pleas. He reiterates that he lost out in pension benefits. He believes that the Organization is ignoring the fact that if a revision of the salary scales had taken place with effect from November 1993, there would have been a “multiplier effect” with subsequent salary increases. For that reason, he does not accept that a revision of the salary scales at that time would have been “overtaken” by future salary increases.

He maintains his claims, arguing that they cannot be denied on the ground that they go beyond the relief awarded by the Tribunal in Judgment 2030, as only the “principle laid down” in that case is applicable to the present case.

E. In its surrejoinder the Organization considers the complainant’s reliance on an alleged “multiplier effect” to be unclear and misplaced. It adds that at the complainant’s grade level, salary scale Revision 37 – which took effect on 1 July 1994 – showed an increase of about 40 per cent over Revision 36, which took effect on 1 January 1993. Thus, hypothetically speaking, if there had been an increase of 18.4 per cent with effect from 1 November 1993, it would have been absorbed by Revision 37, because the salary increase was significantly higher. Pension calculations are based on final average remuneration, and in the complainant’s case that was not affected by payment of the lump sum in 1995.

## CONSIDERATIONS

1. The complainant in this case is also an intervener in a complaint brought by Mr R.P. against the WHO, ruled on by the Tribunal in Judgment 2464, also delivered this day. He contends that he suffered loss of pension benefits owing to the WHO’s decision of 4 October 1995 to implement the result of a mini salary-survey by payment of a lump-sum bonus instead of by a revision of the salary scales. He considers that he should be granted compensation for the loss of such benefits, and for the loss of “enhanced salary and allowances” from 1 November 1993 to 1 June 1998. He also claims interest, an award of moral damages, and costs.

2. This complaint before the Tribunal was filed on 3 June 2004, just three days after the complainant filed his application to intervene in the complaint brought by Mr R.P. against the WHO. The facts of the cases and the relief sought in each complaint are substantially the same. Both the present complainant and Mr R.P. tried to invoke in their favour the Tribunal’s Judgment 2030 without having been either a party or an intervener in the case ruled on in that judgment.

3. The present complainant sought to point out a distinction by asserting that he is requesting compensation for loss of pensionary benefits in the light of the ruling in Judgment 2030 and that he is not saying that the Tribunal’s ruling in that case should be applied to him. This is a distinction without a difference.

4. With the dismissal by the Tribunal of the complaint brought by Mr R.P. against the WHO, this complaint is similarly dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 14 July 2005.