

THIRTY-NINTH ORDINARY SESSION

Registry's translation, the French text alone being authoritative.

***In re* RAJAN**

Judgment No. 321

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Educational, Scientific and Cultural Organization (UNESCO) by Mr. Sundara Rajan on 3 August 1976, UNESCO's reply of 24 September, the complainant's rejoinder of 29 November and UNESCO's surrejoinder of 22 December 1976;

Considering Article II, paragraph 5, of the Statute of the Tribunal and UNESCO Staff Rules 104.6 and 111.1;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant joined the staff of UNESCO on 7 June 1963 on a fixed-term two-year appointment at grade P.4. He had his appointment extended to 6 June 1967 and then to 6 June 1968. On 1 February 1965 he was promoted to grade P.5 and on 1 February 1966 to grade D.1. On 20 April 1968 he was transferred from Thailand to Lagos as chief of mission. In his new posting he had his appointment again extended in turn to 7 June 1968, 30 April 1970, 30 April 1972, 31 October 1972, 31 December 1972, 31 March 1973 and 31 December 1973. The post of chief of mission in Lagos was abolished and on 1 January 1974 the complainant was transferred to headquarters in Paris and given grade P.5. His new appointment at headquarters was extended to 28 February, 31 March, 30 April, 31 May, 30 June, 31 July,

15 September, 31 October and 30 November 1974, then to 31 January and 15 March 1975, and finally to 15 April 1975, when he left UNESCO.

B. The complainant appealed to the UNESCO Appeals Board in May 1975 against the decision not to renew his appointment after twelve years' service. UNESCO argued that his appeal was irreceivable because the procedure laid down in the Appeals Board's statutes had not been observed. Finding his appeal receivable, however, on 7 April 1976 the Board recommended offering him a new appointment of at least two years' duration and of a kind appropriate to his qualifications and abilities or, alternatively, paying him a lump-sum indemnity equivalent to the salary he would have earned had he continued in the service of

UNESCO for eight-and-a-half months from 15 April 1975. By letter of 13 May 1976 the Director-General told the complainant that he disagreed with the Appeals Board's views on the receivability and merits of the appeal and therefore did not endorse its recommendations. That decision is impugned in a complaint which bears no date but was sent to the Registry by the complainant's counsel with a covering letter dated 3 August 1976.

C. The complainant contends that the decision he impugns was mistaken in that it overlooked essential facts and was based on errors of fact; that UNESCO "broke its undertakings to keep him on the staff"; that the arguments it uses to justify the decision not to renew his appointment are mistaken and unfounded, particularly its contention that no post was available; and that "the very short extensions of appointment which he received in the last four years caused him serious prejudice".

D. In his claims for relief the complainant asks the Tribunal to quash the Director-General's decision of 13 May 1976; to order that he be reinstated in the staff of UNESCO and given a fixed-term appointment of at least two years; failing that, to award him compensation not less than the equivalent of two years' salary, or \$51,408, and to award him damages equivalent to three years' salary for the prejudice he has suffered and 15,000 French francs as costs.

E. UNESCO argued before the Appeals Board and still maintains that the complainant's internal appeal was irreceivable because the procedure was not respected. In its view "the first question for the Tribunal to consider is

whether the Appeals Board was right to treat the complainant's appeal as receivable". In so far as the complainant is seeking a decision on the receivability of his internal appeal his complaint is receivable. In so far as he is seeking a decision on the merits, however, i.e. on the correctness of the administrative decision in his case, his complaint is irreceivable. UNESCO believes that "any other view would merely foster abuses detrimental both to sound administration and to the proper exercise of judicial authority".

F. In case its arguments as to receivability should be rejected, UNESCO points out as to the merits that a fixed-term appointment of the kind held by the complainant is defined in Staff Rule 104.6 as "an appointment for a continuous period of not less than one year, ending on a date specified in the Letter of Appointment". The rule further states: "A fixed-term appointment may, at the discretion of the Director-General, be extended, or converted to an indeterminate appointment; it shall not, however, carry any expectation of, nor imply any right to, such extension or conversion and shall, unless extended or converted, expire according to its terms, without notice or indemnity". The complainant is mistaken in alleging that an undertaking was given to keep him on the staff: he was told time and again that it was uncertain whether he could be kept on. UNESCO did its utmost to find him a suitable post and gave careful and objective thought to his applications.

G. The Organization asks the Tribunal to find the complaint receivable in so far as it relates to the receivability of the internal appeal and irreceivable as to the remainder and to find the internal appeal improper by reason of the procedure followed and hence irreceivable; or, should the complaint be found receivable, to dismiss it as ill-founded in its entirety.

CONSIDERATIONS:

There being no need to consider the receivability of the complaint:

The Director of Personnel by a letter of 11 August 1971 and the Director-General by a letter of 22 September 1971 gave the complainant, a fixed-term official, explicit and formal confirmation of the expiry of his appointment on 30 April 1972.

After notifying the termination of the appointment those letters stated that the Director-General was trying and would continue to try to find the complainant another suitable post. As worded, however, they merely expressed the wish of the competent authority to keep the complainant on the staff and made no firm promise which might be deemed to carry legal force by, for example, amounting to a promise of an appointment. In the ensuing exchange of letters the Director-General time and again told the complainant that his appointment, which had been extended in turn to 15 April 1975, would not be renewed and that the Director-General's continuing attempts to find him another appointment had proved of no avail.

The very fact that the Director-General gave him several short extensions of appointment shows that the Organization did indeed try to keep him on the staff by granting him an appointment of longer duration. Although he applied unsuccessfully for many vacancies, it was for the Director-General alone, since he is responsible for the efficient running of the Organization, to decide whether to offer the complainant any of those vacancies. Besides, because of his grade few posts could be offered to him.

It does not appear from the dossier that the grounds for refusing the complainant appointments were extraneous to the Organization's interests.

Nor has he established that the impugned decision is tainted with any of the other flaws which entitle the Tribunal to interfere.

That decision therefore appears lawful and so in taking it the Director-General did not commit any fault which incurs the Organisation's liability.

DECISION:

For the above reasons.

The complaint is dismissed.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 21 November 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet