

FORTY-EIGHTH ORDINARY SESSION

In re GHAFAR (No. 3)

THE ADMINISTRATIVE TRIBUNAL,

Judgment No. 482

Considering the complaint filed against the World Health Organization (WHO) by Mr. Abdul Ghaffar on 5 August 1981, the WHO's reply of 30 October and corrigendum of 17 December, the complainant's rejoinder of 19 November and the WHO's surrejoinder of 17 December 1981;

Considering Article II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and WHO Staff Rules 1230.1 and 1240.2;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. As is related in paragraph A of Judgment No. 320, the complainant formerly served on the staff of the World Health Organization as an administrative assistant. In execution of Judgment No. 320 the Director-General informed him by a letter of 23 January 1978 that his appointment was extended from 12 June 1976 to the date of his reinstatement and offered him the post of administrative assistant in Lahore at grade KC.06. He was paid full salary and allowances from 12 June 1976 to 16 July 1977 and a salary supplement from 17 July 1977, when he joined the staff of the United Nations Development Programme (UNDP) in Kuwait. The post in Lahore was moved to Islamabad and, in a letter of 2 June 1978 from the Director-General, was again offered to the complainant, who had not responded to the original offer. He did not accept the new offer nor give any definite answer to a further letter from the Organization of 27 October 1978 nor to telexes of 11 October and 11 December 1978 and 4 January 1979. His appointment was terminated on 31 January 1979. On 16 May 1981 he wrote to the Director-General alleging that the WHO had failed to offer him a suitable post and claiming damages under several heads. By a letter of 2 June the Chief of Personnel replied, on behalf of the Director-General, that any obligation arising under Judgment No. 320 had been discharged by 31 January 1979 in view of his continued "refusal to leave [his] UNDP employment and reassume WHO employment". This letter is the decision impugned.

B. The complainant contends that the only post offered by the WHO was unacceptable because it entailed severe financial loss and a setback to his career. The WHO has therefore failed to give proper effect to the Tribunal's decision in Judgment No. 320. He asks the Tribunal to order the WHO to pay him compensation for loss of reputation and career prospects; for the loss of two years' schooling by each of two of his children and of one year by a third; and for the physical and mental sufferings of his whole family. He also claims the cost of medical treatment for his daughter and incidental expenses.

C. In its reply the WHO points out that the "decision" which the complainant purports to be challenging is no more than the reply to his letter of 16 May 1981 seeking compensation for alleged wrongs. According to WHO Staff Rule 1230.1 "a staff member may appeal against any administrative action or decision affecting his appointment status". The complainant had no status at all on 2 June 1981 because his links with the Organization had been severed on 31 January 1979. Moreover, damages are claimed for events in 1974 and 1975, and his claim is therefore time-barred and in any case unacceptable in law since the Tribunal gave its decision in 1977. Besides, even if his allegations disclosed a cause of action, which they do not, the complaint is irreceivable because he has failed to exhaust the internal means of redress, as required by WHO Staff Rule 1240.2 and Article VII, paragraph 1, of the Statute of the Tribunal.

D. In his rejoinder the complainant seeks to bear out his assertions of victimisation by the WHO. As to receivability, he contends that this complaint is but the continuation of the first and was necessary because the WHO had failed to give effect to the Tribunal's order of reinstatement.

E. In its surrejoinder the WHO observes that the rejoinder raises no new issues of fact or of law. It repeats the

arguments in its reply, adding that to admit the complaint would be contrary to the principle *res judicata*, and again invites the Tribunal to dismiss the complaint either as disclosing no reasonable cause of action or as irreceivable.

CONSIDERATIONS:

1. The facts relating to the complainant's employment as an administrative assistant by the Organization are set out in Judgment No. 320. By a decision of the Director-General of 3 June 1976 his appointment was terminated. The Tribunal by the said judgment given on 21 November 1977 quashed this decision and ordered the reinstatement of the complainant with compensation which has been paid. The complainant was at that time, and apparently still is, in the employment of the UNDP. By letter of 2 June 1978 the Organization offered him the post of administrative assistant at Islamabad. By letters and/or telexes dated 16 and 27 October 1978, 11 December 1978 and 4 January 1979 the Organization enquired whether or not the complainant accepted this assignment; receiving no specific answer the Director-General on 31 January 1979 terminated the complainant's appointment.

2. On 16 May 1981 the complainant addressed a note to the Director-General alleging that the Organization had failed to comply with Judgment No. 320 and demanding compensation; he alleged that the post offered to him on 2 June 1978 was unsuitable. By letter of 2 June 1981 the Director-General rejected this demand; this rejection is the decision impugned.

3. Staff Rule 1230.1 permits a staff member to appeal to an internal board of appeal against any administrative decision affecting his appointment status; the complainant has not so appealed. Article VII of the Tribunal's Statute provides that a complaint shall not be receivable unless the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations. Since the complainant has failed to exhaust such means, the complaint is irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 June 1982.

André Grisel

J. Ducoux

Devlin

A.B. Gardner