

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

FORTY-EIGHTH ORDINARY SESSION

In re SIKKA (No. 2)

Judgment No. 489

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Ram Dyal Sikka on 22 May 1981, the WHO's reply of 15 September, the complainant's rejoinder of 19 October and the WHO's surrejoinder of 4 December 1981;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, WHO Staff Rules 230, 380.3.1, 1230.1.3, 1230.1.4, 1230.8.2 and 1240.2 and WHO Manual sections 11.1.40, 11.1.50, 11.5.180 and 11.5.190;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. In 1956 the complainant, who is a citizen of India, joined the staff of the WHO at grade ND.4 in the Regional Office for South East Asia, which is known as SEARO. He was promoted to grade ND.5 in 1962 and to grade ND.6 in 1967. After various reassignments, on 1 February 1978 he was transferred to post 5.0010 in the Fellowship Unit of SEARO and on 1 December 1978 promoted to the grade of that post, ND.7. On 29 November 1979 he applied under WHO Staff Rule 230 for reclassification of his post to grade ND.X on the strength of the duties he had been performing since January 1979 as the result of a redefinition of the post. The Administration informed him on 25 March 1980 that all ND.7 posts in SEARO were under review, and on 19 June that his application was still being considered. On 16 July he applied under Staff Rule 1230.1.4 to the SEARO Board of Appeal. Since the appeal related to "reclassification to the extended general service", which required authorisation by headquarters under WHO Manual section 11.1.50, it was referred to the headquarters Board of Inquiry and Appeal. In its report of 13 February 1981 the Board found the appeal to be irreceivable on the grounds that no decision had yet been taken on the application. It also recommended, however, reminding the Personnel Branch at headquarters of its duty under Staff Rule 1230.8.2(2) to avoid undesirable delay in answering applications. By a letter of 5 March 1981 the Director-General informed the complainant that he accepted the finding of irreceivability, and that is the decision now impugned.

B. The complainant argues that the failure to reply to his application within the time limit of three months set in Staff Rule 1230.8.2 was tantamount to rejection. The Board of Inquiry and Appeal was mistaken in holding his internal appeal irreceivable on the grounds that an appeal under Staff Rule 1230.1.4 must be based on a negative decision: there is nothing in the rule which requires that and besides, the time limit set in Rule 1230.8.2 applies also to appeals under Rule 1230.1.4. As to the merits of his application, the complainant contends that the Administration has failed to determine the appropriate grade for his post. It has in particular failed to respect the criteria set out in the Regional Classification Plan for General Service Staff in the South East Asia Region. According to those criteria his post, the duties of which he describes in detail, should be classified ND.X. Moreover, he has been discriminated against in a manner contrary to Manual sections 11.1.40.1 and 2, which prescribe equal pay for equal work and the same classification for posts of equal difficulty and responsibility. In his claims for relief he asks the Tribunal to declare that the complaint is receivable and that the WHO has failed to observe Staff Rule 1230.1.3, improperly applied the classification standards and been in breach of the principle of equal pay for equal work; to order that his post be regraded ND.X with effect from 29 November 1979; and to award him reasonable costs, compensation and damages.

C. In its reply the WHO states that by a minute of 9 July 1981 the Chief of Personnel at headquarters informed the complainant that his post was reclassified ND.X, and by a minute of 21 July 1981 the Personnel Officer at SEARO

informed him that, "on an entirely exceptional basis and upon the recommendation of the Regional Director", the reclassification and the complainant's consequent promotion to ND.X would take effect from 1 June 1980. He has therefore obtained full satisfaction. In a letter he wrote to SEARO on 20 June 1980 he asked for reclassification by 30 June 1980. He has therefore obtained even more than he asked for then. The WHO explains the reasons for the delay - which it regrets - in deciding on his application. It adds that three other posts of which the incumbents had applied for reclassification from ND.7 to ND.X have been so reclassified, also with effect from 1 June 1980. There has therefore been equality of treatment. The complainant having suffered no prejudice, the WHO invites the Tribunal to dismiss the complaint as unfounded.

D. In his rejoinder, besides taking exception to certain statements of fact in the reply, the complainant denies that he has obtained full satisfaction. He has not been properly compensated for the quite unreasonable delay in reclassifying his post. The long period of waiting - twenty months - caused him mental stress and loss of reputation, which entitle him to damages. He describes again in detail the administrative delays which occurred and contends that he should not be made to suffer on that account since Rule 1230.8.2 entitles him to an answer within three months. The effective date of reclassification should be that from which the redefined duties of his post were performed by him and, as is clear from his performance report for the period from December 1979 to November 1980, that date is 1 January 1979. The date set by the WHO, namely 1 June 1980, is quite arbitrary: under Manual section II.S.190 "the effective date for any reassignment is the date of arrival at the new post". There was also deliberate delay in establishing the description of his post, and for that too he is entitled to compensation. Moreover, there was inequality of treatment since other officials of SEARO in a similar position received prompter and otherwise more favourable treatment. The complainant claims interest at the rate of 16.15 per cent a year on the arrears of pay; 1,500 United States dollars as costs; and damages amounting to 5,000 dollars.

E. In its surrejoinder the WHO contends that in his rejoinder the complainant raises no new relevant questions of fact or of law but merely repeats unfounded allegations. It believes that he has in fact obtained satisfaction. According to Staff Rule 380.3.1 the "date of entitlement to any ... increase [other than a within-grade increase] shall be the first of the month nearest the date of final approval", and according to Manual section 11.5.180, "the effective date of a promotion is the first of the month nearest the date on which the promotion is finally approved ...". The effective date of the complainant's promotion should therefore normally have been 1 July 1981, and only "on an exceptional basis" was it set at 1 June 1980. As for the backdating of the reclassification and promotion to 1 January 1979, this is a new claim and therefore irreceivable under WHO Staff Rule 1240.2 and Article VII(1) of the Statute of the Tribunal. In his internal appeal dated 28 July 1980 the complainant asked for a reclassification of the post and his own promotion with effect from 1 December 1979, and in the claims for relief entered in the complaint form he asks for backdating to 29 November 1979. His allegations of loss of reputation, mental strain and prejudice are unfounded and not supported by a shred of evidence. The WHO therefore again invites the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS:

The complainant submitted to the WHO on 29 November 1979 a request for reclassification of his post to grade ND.X. Under Staff Rule 1230.8.2, such a request shall be "deemed to have been rejected ... if no definitive reply to that request has been made within three months". The first reaction from the WHO was to inform the complainant, in a minute dated 25 March 1980, that "all the ND.7 posts in the Regional Office were under review and that a proposal to establish a new grade ND.8 was under consideration". Then, in a minute dated 19 June 1980, he was told that "the ND.8 grade proposal was no longer being pursued but that his request, together with others, was still under consideration". Under Staff Rule 1230.8.2, however, his request must be deemed to have been rejected three months after 29 November 1979, viz. by 1 March 1980. The complainant did not file his appeal with the SEARO Board of Appeal until 16 July 1980, by which date the time limit set in Staff Rule 1230.8.2 had expired.

The 90-day time limit within which the complainant was required to file his complaint with the Tribunal does not run from the date on which he received the Organization's minute of 25 March 1980, or that of 19 June 1980, since all that those minutes said was that his request was still under review, and they therefore did not constitute final rejection of his claim. An appeal against either of those replies was therefore premature, the WHO not having taken, by 16 July 1980, any final decision expressly rejecting the complainant's request.

The Director-General was therefore correct in deciding on 5 March 1981 - and this is the decision impugned - that the complainant's internal appeal was irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Héctor Gros Espiell, Deputy 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.

(Signed)

André Grisel

Devlin

H. Gros Espiell

A.B. Gardner