

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

FIFTY-THIRD ORDINARY SESSION

In re THADANI

Judgment No. 623

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Rupchand Thadani on 12 August 1983, the FAO's reply of 24 October, the complainant's rejoinder of 20 December 1983 and the FAO's surrejoinder of 26 January 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Rules 302.907 and 303.136 and Manual provisions 331.361 and 363;

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. The complainant is an Indian citizen and was born in 1921. He joined the FAO on 1 January 1980 as an administrative assistant at grade G.6 in the Office of the FAO Representative in New Delhi. His one-year appointment was extended. In August 1981 he was promoted to grade G.7. His appointment expired on 31 December 1981. On 16 December he appealed to the Director-General against the non-renewal of his contract. By a letter of 19 January 1982 the Administration in Rome informed him that the FAO had to give his post to someone with a continuing appointment and much greater seniority. He appealed on 8 February to the Appeals Committee. On 19 October 1982 the Committee recommended dismissing his appeal. The Director-General's decision to dismiss it, which he now impugns, was conveyed to him in a letter of 26 May 1983 from the Deputy Director-General.

B. The complainant points out that before joining the FAO he held the "coveted post" of Permanent Undersecretary in the Indian civil service and he surrendered it only on the strength of an oral but categorical commitment, binding on the FAO, from Mr. Alwan, the FAO Representative in India, that he would be kept on until the age of superannuation, i.e. until 31 December 1983. In August 1981 the FAO was trying to place two redundant project staff members, but Mr. Alwan wrote on 18 August to headquarters to say that neither of them should be put on the complainant's post and that in the FAO's interests he should be kept on. But Mr. Alwan left, and his assistant, Mr. Henle, took over. In the complainant's view Mr. Henle was prejudiced against him for having, in two letters to the Director-General, accused him of various malpractices. On 29 September Mr. Henle proposed replacing him with one of the redundant officials, and Mr. Alwan's successor as FAO Representative agreed out of ignorance of the circumstances. Separate seniority lists are kept for office staff and project staff and there are no grounds for replacing the former with the latter. Besides he held a higher grade than the official who replaced him. That Mr. Alwan intended to keep him on is clear: he was promoted to G.7 on 1 August 1981 and he held an FAO identity card valid until 1 June 1982. He was told of the Appeals Committee's hearings only one day in advance and had no chance to appoint anyone to represent him in Rome. Oral proceedings -- which the Committee wrongfully refused -- are needed to establish Mr. Alwan's oral promise. He seeks payment of his remuneration from 1 January 1982 to 31 December 1983, a sum of 25,000 United States dollars for mental anguish, a further \$25,000 for damage caused to his law practice by his working for the FAO for two years, damages for humiliation and any other relief the Tribunal sees fit to grant him.

C. The FAO replies that the complainant's appointment came to an end under Staff Rule 302.907: "A fixed-term appointment shall expire automatically and without prior notice on the expiration date..." The FAO estimates his income in the Indian civil service and surmises he needed no inducement to join its staff. He produces no evidence of Mr. Alwan's alleged promise; only the Personnel Division may make such a promise, and there is nothing to suggest it in the "terms of employment" he signed on 17 March 1980. He had no legitimate expectancy of renewal. The issue of the identity card, valid only until mid-1982, could not lead him to expect renewal until the end of 1983. The official who replaced him had been employed in an FAO office in New Delhi before being assigned to a project. There was no G.6 vacancy for him, and the complainant's G.7 post was the only suitable one. The non-

renewal was due to the FAO's obligation to place the holder of a continuing appointment. The reasons were objective and the charges against Mr. Henle are groundless. There was no flaw in the appeal proceedings: he had ample opportunity to state his case.

D. In his rejoinder the complainant develops his allegations that Mr. Alwan gave him a promise of extension -- confirmed by the letter of 18 August 1981 to headquarters -- and that his appointment was unlawfully terminated because of malice on the part of Mr. Henle. His former income was greater than his FAO salary, and the additional inducement was the promise, which the FAO is bound to honour. He discusses in detail circumstances which he believes bear out its existence. The reasons given for replacing him are unsound, and the new FAO Representative did not give proper thought to his case. He again alleges that his case was not properly presented to the Appeals Committee. Lastly, the settlement of sums due to him on separation is not to his satisfaction.

E. In its surrejoinder the FAO, answering several points of detail, observes that no expectancy of renewal derived from the mere proposal in Mr. Alwan's letter of 18 August 1981. The non-renewal was a discretionary decision, and the reasons for it were beyond reproach: it had nothing to do with the personal attitude of any senior FAO official in New Delhi. If he is not satisfied with his terminal entitlements he must follow the proper appeals procedure.

CONSIDERATIONS:

Application for oral proceedings

The issues raised by the complainant have been discussed at length in the course of the written proceedings and no purpose would be served by hearing the former FAO representative in India, Mr. Alwan. The written evidence includes several letters by him about the complainant's case which fully explain his position on the matters in dispute. Moreover, since the case is about non-renewal of a fixed-term appointment and there is nothing in the parties' briefs or in the evidence adduced to suggest that oral proceedings would be necessary or even helpful, the Tribunal rejects the application under Article 11(1) of the Rules of Court.

The Appeals Committee proceedings

The complainant has two pleas relating to the Committee proceedings.

The first is that he had no help from a staff member with legal qualifications in presenting his case to the Committee. But the FAO is not to blame for that, and in any event he managed to submit detailed briefs, one on 10 February 1982 with ten appendices and another on 31 March 1982 with four, and to argue his case thoroughly. Staff Rule 303.136 says that a staff member may designate another staff member to present his case or act as his counsel before the Appeals Committee. The FAO cannot therefore be held liable for not appointing a qualified lawyer to advise the complainant, nor was he denied any due procedural safeguards in putting his case to the Committee.

His second plea is that he had no chance to present his case to the Committee in person and at the FAO's expense. FAO Manual provision 331.361 provides that an appellant may appear in person before the Committee, but at his own expense. Under 331.363, however, the Committee may decide that the presence of the appellant is necessary and in that case may ask the Director-General to arrange for the Organization to bear the cost. The Committee did not think the complainant's presence necessary and accordingly did not ask the FAO to bear the cost. The Tribunal holds that the Committee acted correctly and there was no breach of the complainant's rights. All that the right to a hearing requires is that the complainant should be free to put his case, without arbitrary restriction, either in writing or orally.

The merits

The complainant is challenging the decision taken by the Director-General on 26 May 1983 on the Appeals Committee's recommendation to dismiss his internal appeal. His original claim had been made on 16 December 1981 and rejected on 19 January 1982. On 8 February 1982 he submitted his internal appeal challenging non-renewal of his fixed-term appointment, which had expired on 31 December 1981. Staff Rule 302.907 reads: "A fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment. Separation as a result of the expiration of any such appointment shall not be regarded as a termination of appointment within the meaning of the Staff Regulations and Staff Rules."

A contract like the complainant's automatically ends on expiry and the contractual relationship terminates forthwith. Such a contract does not as a rule confer any right to renewal, and renewal is a matter of discretion. Accordingly the decision may be quashed only if it was taken without authority, or was tainted with a formal or procedural defect, or based on a mistake of form or of law, or if some essential fact was not taken into consideration, or if there was abuse of authority, or if some clearly mistaken conclusion was drawn from the evidence.

There is no such defect in this case. On the evidence before it the Tribunal finds that the non-renewal was the normal outcome of the FAO's exercise of its administrative authority as prescribed in the material provisions of the Staff Regulations and Staff Rules.

Nor did any competent official promise the complainant renewal of his contract. The letter which the FAO Representative in India sent to headquarters on 18 August 1981 was not and could not amount to any promise of renewal. It can be treated as no more than acknowledgment of the quality of his performance and an explanation of the reason for his promotion in the circumstances set forth in the letter.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 June 1984.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner