

## SIXTY-THIRD SESSION

### *In re* KHOSLA

#### Judgment 843

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Kewal Khosla against the World Health Organization (WHO) on 12 April 1987, the WHO's reply of 12 June, the complainant's rejoinder of 21 August and the WHO's surrejoinder of 17 September 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 565 and 570;

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

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

A. The complainant, an Indian citizen, joined the WHO's Regional Office for South East Asia in New Delhi in 1965 as a clerk-typist at grade ND.03. He was promoted to ND.04 in 1981. In June 1984 he was made a despatch clerk and in October 1985 was regraded ND.05. In 1984 he was on sick leave for one month; in 1985 for over three. Several times the regional staff physician, Dr. Sobti, rejected the medical certificates he offered.

On 6 December 1985, while on sick leave, he was told he was to be transferred on 1 January 1986, in accordance with Staff Rule 565, to a post as a "machine operator" in the Reproduction Unit. The post was graded ND.02, but he was to keep his own grade, ND.05, "on a personal basis". A personnel action form gave the title of his new post as "messenger". He protested in letters of 10 and 25 December that it was beneath his dignity. On 3 January 1986 a personnel officer wrote explaining that the transfer was due to his "frequent absences from work" and the Administration's difficulty in getting his work done, "which requires a predictable and routine presence". In letters of 7 and 14 January the Director of the Regional Support Programme confirmed the transfer and ordered him to take up duty on 28 January. His doctor advised further sick leave from 25 January but by a letter of 27 January Dr. Sobti again ordered him to come back to work at once. He wrote protesting on 29 January, but the personnel officer repeated the order on 5 February. Dr. Sobti examined him on 6 February and found him fit. On 7 February the personnel officer wrote accusing him of "insubordination" and warning that the Organization would dismiss him unless he gave a proper explanation; in the meantime he was suspended without pay. He answered at length in a letter of 14 February, contending that the transfer was humiliating and unlawful. He filed an internal appeal on 25 February seeking the quashing of his transfer, assignment to an ND.05 post and the award of 20,000 United States dollars in material and moral damages and of \$5,000 in costs. He lodged another appeal on 28 February asking for the withdrawal of the suspension and dismissal, assignment to a suitable post and, again, awards of moral damages and costs. By a letter of 11 March the personnel officer informed him that as from 1 January 1986 his transfer was rescinded and he was assigned to a new post as a clerk at grade ND.05; he was reinstated with full pay as from 7 February.

In its report of 17 April the Regional Board of Appeal held by a majority that the letter of 11 March satisfied the complainant's claims and it recommended no action. The Regional Director having agreed, he appealed on 21 July to the headquarters Board of Appeal in Geneva, seeking \$30,000 in damages and \$7,000 in costs. In its undated report the Board recommended by a majority paying him financial compensation for the "humiliation and anguish suffered as a result of the improper action of the Administration", the amount to be at the Director-General's discretion, and his actual costs. By a letter of 13 February 1987, the decision impugned, the Director-

General informed him that he would be awarded "take-home salary for two months" as compensation for the "inconvenience" and reasonable actual costs.

B. The complainant submits that his transfer to a post three grades lower, besides being in breach of Staff Rule 570, on reduction in grade, and other rules, caused him humiliation, loss of reputation, depression and anguish. The treatment of him was actuated by personal animosity. He suffered far more than inconvenience, and the amount offered him in compensation is too small. He seeks the quashing of the decision of 13 February 1987 and claims

\$30,000 in damages and \$7,000 towards his costs.

C. In its reply the WHO narrates the events leading up to the dispute. It admits that the transfer and suspension were improper and observes that the only issue is the amount of compensation.

There are circumstances that mitigate the injury the complainant suffered and make his claim to exemplary damages unreasonable. His transfer was not sudden: he had been expecting one for some time. To give him less demanding duties was reasonable and the Regional Office's sole fault was not to meet all the substantive and procedural requirements of transfer. No WHO work is humiliating. His charges of animosity are unsupported. The Regional Director went to unusual lengths to place him suitably. He is shortly to retire and will draw a pension. The period of suspension was short, the wrong was not serious, and he has been restored in status and in reputation. The WHO asks the Tribunal to endorse its offer and disallow his claim to costs insofar as it exceeds the reasonable actual costs of his internal appeals, of which he has adduced no evidence, and in any event as it relates to the costs of the complaint. The WHO invites the Tribunal to set the amount of costs incurred up to the date of the impugned decision.

D. The complainant rejoins that the WHO wrongly suggests that somehow he deserved the improper treatment he received. He contends that there are no circumstances to mitigate its fault. He seeks to correct what he sees as errors in its account of the facts and to refute its arguments; he explains how scornful it was of his interests and dignity; and he discusses the Tribunal's case law. He submits that the amount he claims would be fair redress for the wrong he suffered and properly mark its gravity. He presses his claims, including the one to costs: he is, he believes, entitled to his costs in full and is willing to submit accounts if the Tribunal so orders.

E. In its surrejoinder the WHO answers the points of fact and of law raised in the rejoinder and develops its reply. It denies suggesting that the complainant deserved wrongful treatment: what it wants is that its action be seen in context. It observes that he got full satisfaction by reinstatement in a suitable post with no loss of earnings or seniority. According to its case law the Tribunal will not award moral damages in such cases. The alleged humiliation was the less in this case in that the complainant was on sick leave at the time.

#### CONSIDERATIONS:

1. The main issue in this case is the quantum of compensation to be awarded to the complainant, whom the WHO admits it treated wrongfully.

In the internal appeal the complainant lodged with the Regional Board of Appeal on 25 February 1986 he claimed compensation amounting to 20,000 United States dollars on the grounds of that wrongful treatment. In his appeal to the headquarters Board of Appeal he increased his claim to \$30,000.

The Regional Board held that since he had been reinstated he should get no award; the headquarters Board held that he should be compensated but left the amount to the Director-General's discretion.

On 13 February 1987 the Director-General took the decision, now impugned, to grant him two months' take-home salary for the "inconvenience" he had suffered.

2. In Judgment 447 (in re Quinones) the Tribunal ruled that where an impugned decision was not unlawful compensation was due only in exceptional circumstances, viz. where the wrong was especially grave. But where the decision was unlawful, the wrong need not be especially grave for an award of compensation for moral prejudice: it was enough for the Tribunal to find a serious wrong.

In this case the impugned decision was tainted by error and the latter condition is fulfilled. Indeed the Director-General must have thought so himself; otherwise he would not have offered any compensation at all.

3. At the material time the complainant was 57 years old. He had served the Organization for 20 years. His record was good apart from frequent absences on sick leave during the last few years. The grade he had been appointed to on taking up duty as a clerk-typist in 1965 had been ND.03 and over the years he had been promoted until, in October 1985, he was put on a post, graded ND.05, for a despatch clerk. On 6 December 1985 he was told he was to be transferred on 1 January 1986 to the post of "machine operator" at grade ND.02, i.e. three grades lower, though he was to keep his own grade, ND.05, "on a personal basis". He protested in letters of 10 and 25 December

1985 that it was beneath his dignity. On 10 January 1986 the title of his new post was given as "messenger".

The Director of the Regional Support Programme confirmed the transfer in letters of 7 and 14 January 1986 and ordered him to take up duty on 28 January. His doctor advised further sick leave from 25 January but by a letter of 27 January the regional staff physician, Dr. Sobti, again ordered him back to work at once.

He wrote protesting on 29 January, but the personnel officer repeated the order on 5 February. Dr. Sobti examined him on 6 February and found him fit.

On 7 February the personnel officer wrote accusing him of insubordination and warning that the Organization would dismiss him unless he gave a proper explanation; in the meantime he was suspended without pay. He answered at length on 14 February, contending that the transfer was humiliating and unlawful.

On 25 February he filed his internal appeal with the Regional Board asking for the quashing of his transfer, assignment to an ND.05 post and material and moral damages. Three days later he filed another internal appeal, again asking for damages.

By a letter of 11 March the personnel officer informed him that as from 1 January 1986 his transfer was rescinded and he was assigned to a new post as a clerk at grade ND.05; he was reinstated with full pay from 7 February, the date on which he had been suspended.

The amount of moral damages

4. The complainant has suffered no financial loss and has been fully restored in status. What he is saying is that his transfer to a post three grades lower, in breach of the Staff Rules, caused him humiliation, loss of reputation, depression and anguish, that he suffered far more than inconvenience, and that the amount of compensation offered is too small.

5. The headquarters Board of Appeal held that the Organization had acted improperly, as indeed it had acknowledged by reversing its own decisions, thereby partly redressing the injury. However, the reversal had come three months after and the Board felt that the complainant was likely to have suffered humiliation and anguish in the meantime. While acknowledging the difficulty of assessing compensation, it was of the view that the sum claimed - \$30,000 - was inordinately high but that a lesser sum should be paid, of which it left the amount to the Director-General's discretion. As earlier stated, the Director-General awarded him two months' take-home salary as compensation for the "inconvenience" experienced.

6. The Organization advances several pleas, summed up in C above, in mitigation of damages. It points out, in particular, that the complainant had been absent on sick leave in 1981 for 18 days; in 1982 for 30; in 1983 for 41; in 1984 for 36; in 1985 for 105; and in 1986 until 1 August for 16 1/2 days. Such frequent absences were, it observes, disruptive of office work. The decision to reassign him was not taken suddenly. He has been fully restored to his old position and has suffered no financial loss. He is to retire on a pension on 30 June 1988 at the age of 60.

7. The Tribunal holds that an award of \$30,000 would be too much but that the sum of two months' take-home salary is too little.

Taking into account all the circumstances, the Tribunal awards the complainant the equivalent of six months' take-home salary by way of moral damages.

Costs

8. As regards his claim to \$7,000 in costs, the Director-

General, on the recommendation of the headquarters Board of Appeal, agreed to pay him any reasonable costs which he had actually incurred over his appeal.

The Organization should pay him the costs of his appeal, including any he has incurred since reinstatement. The Tribunal sets the amount *ex aequo et bono* at \$1,250.

DECISION:

For the above reasons,

The Tribunal orders the Organization to increase the amount of damages to be paid to the complainant to the equivalent of six months' take-home salary and to pay him \$1,250 in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 10 December 1987.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
William Douglas  
A.B. Gardner