

## SEVENTY-FOURTH SESSION

### *In re* KOUTA-LOPATEY (No. 2)

#### Judgment 1206

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Anani Enyonam Kouta-Lopatey against the World Health Organization (WHO), received by the Registry of the Tribunal on 26 August 1991 and corrected on 22 November 1991, and the WHO's reply of 20 March 1992;

Considering Articles II, paragraphs 5, 6 and 7, and VII, paragraphs 1 and 2, of the Statute of the Tribunal and Articles 23 and 48 of the Regulations of the United Nations Joint Staff Pension Fund;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. As is stated in Judgment 1205, also delivered this day, under A, the complainant, a Togolese who was born in 1919, served the WHO as a shorthand typist from 1 December 1965 to 31 December 1979 in the office of the Organization's representative for Dahomey and Togo. From 1 December 1965 to 30 June 1970 he held a contract that precluded membership of the United Nations Joint Staff Pension Fund. From 1 July 1970 onwards he held an appointment that entitled him to join the Fund. When he joined, the Regional Office for Africa in Brazzaville sent him a form for naming beneficiaries and instructions on how to validate prior service in accordance with Article 23 of the Fund's Regulations, which reads:

"(a) A participant may elect, within one year of the commencement of his participation, to validate prior service during which he was not eligible under these Regulations for participation, provided that (i) participation succeeded the ending of such service within two years, (ii) the service was the most recent prior to his participation and had not been interrupted by a break of more than one year, (iii) participation had not, during such service, been expressly excluded by the terms of his appointment, and (iv) the totality of the period open to validation is elected.

(b) ...

(c) Validation shall be subject to receipt by the Fund of contributions in accordance with article 25(c)."

The complainant signed the form on 31 July 1970 but did not "elect ... to validate prior service" under Article 23.

As is said in Judgment 1205 under A, he chose to continue participating in the staff health insurance scheme after retirement in 1979. In April 1990 he received the usual yearly demand for payment of his premiums to the scheme. Noticing a big increase in the amount, he sent a memorandum to the Regional Office on 14 May 1990 asking for an explanation. He sent a copy of the memorandum to an insurance officer at WHO headquarters in Geneva. The officer sent him a letter on 1 June 1990 explaining how the amount had been worked out and observing that the period of his actual service had been 9 years and 6 months. That is the letter he is challenging in this complaint.

B. The complainant objects that his pension has been drastically and unfairly cut because only 9 years and 6 months' service have been taken into account in reckoning it instead of the 14 years and 1 month he actually spent in the Organization's employ. Though he did fail to take up the offer of validation of prior service, that was because he knew nothing of administrative practice in regard to pensions and was overwhelmed with work at the time. He supposed that his contributory service must have begun at the date when he joined the Organization. The Administration did not give him proper information: it should have alerted him to his entitlement and sent him a validation form along with the one for naming beneficiaries. It was negligent.

He asks the Tribunal to restore his entitlements by ordering validation of his prior 4 years and 7 months' service.

C. The Organization replies that what is at issue is the application of Article 23 of the Fund's Regulations. So the Tribunal is not competent: under Article 48 of those Regulations the competent body is the United Nations

Administrative Tribunal.

The complaint is also irreceivable. The insurance officer's letter of 1 June 1990 just explained how health insurance contributions had been worked out for 1990 and it was not a final decision within the meaning of Article VII of the Tribunal's Statute. Nor was a letter of 5 March 1991 from the secretary of the WHO Staff Pension Committee about the complainant's contributory service. The complainant has neither used any of the internal means of redress provided for in the WHO Staff Regulations nor met the deadline for filing a complaint with the Tribunal.

On the merits the Organization observes that the complainant's period of service was calculated in accordance with the rules and by the same procedure that applied to all staff. He was told that he might validate prior service and every year he was sent a statement from the Pension Fund showing the date of his entry as 1 July 1970. He paid no contributions before that date.

#### CONSIDERATIONS:

1. The complainant, who joined the WHO in 1965, held as from 1 July 1970 a contract providing for membership of the United Nations Joint Staff Pension Fund. Validation of prior service is allowed under Article 23 of the Fund's Regulations but the complainant failed to exercise the option. He retired in 1979. On retirement he opted to continue membership of the Organization's staff health insurance scheme.
2. The demand he received in April 1990 for payment of his yearly premiums to the scheme showed a substantial increase and when he asked for an explanation an insurance officer at headquarters replied, by a letter of 1 June 1990, explaining the calculation of the amount and referring him to a staff circular of 11 April 1990 about a revision of the regulations on health insurance that had been announced on 16 January 1990. The revision included a change in the method of reckoning which entailed basing premiums on thirty years' notional pensionable service. The letter observed that until then the complainant's premiums had been reckoned on the basis of only 9 years and 6 months' pensionable service.
3. In this complaint the complainant objects to the period of service taken into account for the reckoning of his pension entitlements: he maintains that the period should be the full 14 years and 1 month during which he worked for the Organization.
4. The Organization challenges the Tribunal's competence to rule on the complainant's claim to validation of the period of service during which he was not a member of the Fund. In its submission any issue concerning the application of the Fund's Regulations must form the subject of (1) a claim to the secretary of the Staff Pension Committee, then (2) an appeal to the Standing Committee of the Fund and lastly (3) an appeal to the United Nations Administrative Tribunal, which alone is competent in the matter under Article 48 of the Regulations.

The complainant has entered no rejoinder to the Organization's reply.

5. The Tribunal is not competent to make any ruling on the application of the Fund's Regulations and therefore declines to entertain the complaint.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner

