

TWENTY-FOURTH ORDINARY SESSION

***In re* SOOD**

Judgment No. 160

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Gian Chand Sood on 8 April 1970, and the Organization's reply of 31 July 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 330.7, 510.6, 520, 530, 540.1, 670.6 and 975;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. Towards the end of 1968 the Indian Government informed the Director of the WHO Regional Office for South East Asia in New Delhi that several members of the office staff were conducting illicit traffic in foreign currencies through the Organization's diplomatic pouch. Under Article 27, paragraph 4, of the Vienna Convention on Diplomatic Relations, the specialised agencies of the United Nations may use codes and despatch correspondence in sealed bags which are vested with the same immunities and privileges as diplomatic bags, provided they contain only diplomatic documents or articles intended for official use. On 11 December 1968, at about 3 p.m., in the presence of his assistants for administrative and financial questions, the Regional Director had the office pouch opened just before its despatch to the WHO Office in Kabul (Afghanistan) and found it to contain US\$18,000 in traveller's cheques, ordinary cheques and foreign currencies. He ordered an immediate investigation and on the next day, 12 December, two high-ranking officials of the Regional Office left for Kabul to pursue inquiries. The resulting findings led to the implication of six members of the WHO staff, three in New Delhi and three in Kabul.

B. Mr. Sood, one of the three New Delhi officials involved, was originally appointed to the WHO in 1952 and at the time was employed as a computer typist in the Statistics Unit of the Regional Office. On the evening of 11 December 1968 the Regional Director sent for him at his home and had him taken to the Office, where he was questioned for several hours by the acting chief of Administration and Finance in the presence of two high-ranking officials of the same department. After this questioning and in the presence of the same officials Mr. Sood wrote out by hand and signed a statement in which he confessed to having sent to a Kabul correspondent, through the WHO pouch, envelopes containing cheques and foreign currency and so addressed as to be easily identified in Kabul. The complainant contends that on the next day he sent the Director-General a protest withdrawing his confession and stating that it had been extracted under duress. The Organization denies the existence of such a protest. On 16 December, following further inquiries in Kabul and further questioning, Mr. Sood signed a second statement elaborating on the confession. On 18 December he was suspended under Staff Rule 530, which reads as follows: "If a charge of serious misconduct is made against a member of the staff, and it is considered that the charge is prima facie well founded and that the staff member's continuance in office pending an investigation of the charge would prejudice the service, the staff member may be suspended from his functions pending investigation ..." On 24 December he was dismissed for serious misconduct in accordance with Staff Rule 510.6.

C. Along with some of the other officials involved, Mr. Sood appealed against this decision to the Regional Board of Inquiry and Appeal in New Delhi. The Board heard witnesses and examined several pieces of evidence, including some confidential documents withheld from the complainant. In a detailed report to the Regional Director it recommended the dismissal of Mr. Sood's appeal. On 30 June 1969 the Regional Director sent the complainant an excerpt from the report and stated that he accepted the Board's recommendation. The headquarters Board of inquiry and Appeal, to which the complainant then appealed, unanimously recommended the Director-General to confirm the Regional Director's decision, but suggested that for humanitarian reasons account should be taken of the consequences of the complainant's dismissal for his family. On 6 January 1970 the Director-General

informed Mr. Sood that he accepted the recommendation of the headquarters Board of Inquiry and Appeal and that account had been taken of its suggestion in that the complainant's pension rights had been computed as if his employment had been terminated for reasons other than serious misconduct.

D. Mr. Sood is appealing to the Tribunal against the decision of 6 January 1970. He dismisses as pure coincidence the fact that envelopes containing currencies bore his initials (G.C.); he would have been foolish to initial the envelopes. Anyone could have used his typewriter to address them. The opening of personal mail in the pouch was quite unauthorised. No inventory of the confiscated items was made, and the whole confiscation took place in the absence of independent witnesses. The procedure prescribed in Staff Rule 540.1, according to which a charge of serious misconduct against an official must be notified to him in writing, was not followed: he received no such notification. He was also denied the opportunity of procuring the services of someone to defend him. He utterly repudiates a confession extracted only under duress and one which no free man in his right mind would ever have agreed to write and sign. He alleges, among other things, that he was coerced with threats of having the confiscated envelopes put in his desk and seized by the Indian authorities. He claims that he never received a copy of the incriminatory statement of the Kabul official, which, besides, conflicts with his own supposed confession in several important respects. Mr. Sethi, the pouch clerk dispatcher in the New Delhi Office, also incriminated him, but the persons to whom Mr. Sethi said the envelopes containing the currency were addressed did not include the addressee of the envelopes which, according to the complainant's confession, he himself had despatched. Mr. Sethi also alleged that the smuggling had gone on for five or six months, whereas the complainant stated that it had begun a year before it had been discovered. The investigations referred to in the letter of 18 December 1968 suspending the complainant never took place and the decision of dismissal made on 24 December was based solely on the events of 11 December. Irregularities were also committed during the investigations and the proceedings before the regional and headquarters boards. The heads of the Regional Office should not have taken it upon themselves to carry out an inquiry; that was the duty of the Indian authorities. The Regional Director gave evidence against the complainant before the Regional Board and then himself decided to adopt its recommendation. Finally, the complainant did not receive copies of certain important documents nor even of the full text of the Regional Board's report. He accordingly requests the quashing of the decision of dismissal and his reinstatement or the payment of a full indemnity. He also asks for the payment of damages amounting to US\$12,000 and costs.

E. In its memoranda the Organization replies that the currency smuggling through the WHO pouch constituted an extremely grave infringement of its rules and placed it in a situation which at best could be described as delicate in its relations with two member States. It therefore had to act promptly and severely. It was naturally unable to communicate to the complainant certain confidential documents concerning its relations with those member States and, in particular, the sections of the Regional Board's report referring to those relations. A scrupulous check carried out by the Board established that the complainant had suffered no coercion and had made his confession voluntarily. Being disciplinary and administrative, the proceedings initiated by the Regional Director did not fall within the scope of Indian legislation. The Organization was in no way bound to observe Indian rules of criminal procedure and in particular to draw up a list of charges. The behaviour of the investigating officers in no way infringed the Staff Rules or the principles of natural justice. In particular the Organization was not required to notify the complainant in writing of the charges against him in accordance with Staff Rule 540.1, since he had himself confessed to his serious misconduct. The Organization therefore prays that the complainant's claims be dismissed.

CONSIDERATIONS:

As to the right to reply:

1. On being informed by letter of 14 May 1970 that the Organization had been requested to reply to the complaint by 30 June, the complainant informed the Registrar of the Tribunal on 25 May that he planned to be away from home from 16 June to the first week of August and therefore did not wish to receive the memorandum replying to his complaint before his return. The Registrar wrote to the complainant on 9 June informing him that he would delay forwarding the memorandum until the date fixed and subsequently despatched it on 7 August by registered mail with acknowledgment of receipt, while at the same time informing the complainant that his rejoinder should be sent within fifteen days of receiving the communication. On 10 September the complainant informed the Registrar that owing to illness he had returned home only two days previously and asked for a copy of the Organization's reply in order to comment on it. On 17 September the Registrar confirmed the communication of 7 August, despatched a further copy of the Organization's reply, and noted that the time limit for the complainant's rejoinder had expired.

When the complainant became aware that his absence would extend beyond the specified date he ought to have so informed the Registrar, or to have taken steps to ensure that the communication containing the memorandum in reply to his complaint was forwarded to him. He does not contend that his state of health was such as to prevent him from taking such steps. Consequently it was his own fault that he did not receive the communication of 7 August and did not reply within the time limit. There is therefore no reason to grant him a further time limit for his reply. Moreover, this could have been done only if it had been requested before the expiry of the original time limit, whereas, in contrast to the Organization which had requested and obtained an extension before the expiry of the time limit for its reply, the complainant's application was tardy. In any case, the dossier already contains several memoranda by the complainant and no further rejoinder is needed to enable the Tribunal to take its decision in full knowledge of the facts.

As to the charges against the complainant:

2. The Organization's decision to dismiss the complainant was based on the statements signed by him on 11 and 16 December 1968 in which he admitted having taken part in the traffic in foreign currency through the diplomatic pouch. The complainant denies the validity of these documents and accuses the officials who interrogated him of having forced him by improper treatment to confess to misconduct which he had not committed. The Tribunal finds that the complainant's statements must be held to be true in spite of his denials, for the following reasons.

These statements contain detailed particulars of the persons implicated in the traffic in foreign currency, the payments they received and the precautions they took to conceal their illicit operations. These particulars are clearly too detailed to have been invented by third parties not implicated in the acts with which the complainant is charged; moreover, they are corroborated by similar statements made by five other persons charged, two of whom have not retracted their confessions. Finally, the complainant's statements are all the more convincing in that they were signed in the presence of several officials.

It is true that the complainant claims to have yielded to the threats of the officials interrogating him after a prolonged period of confinement. These allegations, however, are not only entirely unproven, but are highly improbable. The treatment alleged by the complainant was in any case not of such a kind as to force him to confess to imaginary acts of misconduct. The complainant himself claims that on 12 December 1968, the day after his first statement was made and a few days before the second, he wrote to the Regional Director to complain of the actions of the investigating officials and to retract his confession. If the aforementioned letter was actually sent, it would show that during the period of the investigation the complainant was not deprived of freedom of expression; if, on the other hand, the letter was fictitious, as the Organization claims, the complainant's duplicity is manifest.

There is no evidence to indicate that the officials by whom the complainant alleges he was victimised acted in a spirit of animosity or in order to protect their own interests. On the contrary, the fact that the investigation was carried out by several officials excludes any suspicion of bias.

As to the decision to suspend the complainant:

3. Under Staff Rule 530, the suspension of a staff member is subject to three conditions. The person concerned must be charged with serious misconduct; there must be prima facie evidence that the charge is well founded; and the staff member's continuance in office pending the result of an investigation must be presumed to be prejudicial to the service. In the case at issue these three conditions were fulfilled and the Regional Director was therefore entitled to suspend the complainant and to withhold payment of his salary for the duration of his suspension. The charge that he had engaged in traffic in foreign currency for reward constitutes serious misconduct, since any act by which an official takes advantage of his official status for personal profit falls within the definition contained in Staff Rule 510.6. Secondly, the confession signed by the complainant affords evidence of the charges against him; and thirdly, the misconduct of which the complainant was accused was such as to deprive him of the confidence of his chiefs, so that the continuation of his employment was liable to be prejudicial to the Organization.

Under Staff Rule 530, the suspended official forfeits his right to the salary withheld if the charge against him is proved. It follows that as the complainant's misconduct has been admitted, there is no reason to order the payment of the salary withheld from him.

As to the decision to dismiss the complainant:

4. Staff Rule 520, second paragraph, provides that an official may be summarily dismissed for serious misconduct. It is clear from the considerations set forth above that this provision was correctly applied in the present case. As for the procedural irregularities alleged by the complainant and the other accused persons, they are non-existent or at least do not affect the validity of the decision impugned.

The officials responsible for investigating the charges against the complainant were undeniably competent to do so. The investigation carried out by them aimed at identifying the persons responsible for breaking the rules of the Organization and was necessarily followed by the sanctions provided for in those rules. The investigation was therefore necessarily entrusted to the agents of the Organization itself rather than to the authorities of the State in which the complainant was employed. The rules of the Organization itself alone were applicable, and not any national legislation.

The accused persons claim further that Staff Rule 540.1 was not observed. The rule in question provides that a staff member may not be dismissed for serious misconduct before being formally notified in writing of the charges made against him and given an opportunity to reply to those charges within eight days, a reduction in this time limit being allowed only in urgent cases. The procedure laid down for the purpose of enabling an official to defend himself against the charges against him is inapplicable once the person concerned has admitted those charges. The safeguard provided by Staff Rule 540.1 had become pointless in the present case, since the complainant had admitted his misconduct in statements which the Tribunal has found to be true.

There is no foundation for the complaint by the accused persons that they were unable to consult certain documents, and in particular the correspondence between the Organization and the Indian authorities. To dismiss this argument it suffices to observe that the right of a party is confined to consulting the documents on which the decision is based, and in the case at issue the decision made by the Regional Director and subsequently confirmed by the Director-General is fully justified on the basis of the statements signed by the interested parties, the contents of which were thus known to them. The headquarters Board of Inquiry and Appeal expressly confirmed this. It is therefore unnecessary to consider whether the Organization was entitled to regard as confidential the documents which it withheld from the accused persons. For the same reasons it is immaterial that the complainant received only an extract of the report of the Regional Board of Inquiry and Appeal.

Lastly, it is unnecessary to consider whether the complainant underwent the medical examination provided for by Staff Rule 370.7, since this formality is merely a consequence of dismissal and not a condition of its validity. In any event the provisions concerning sickness leave were no impediment to dismissal, since Staff Rule 670.6 provides that the right to sickness leave expires on the expiry of the contract.

In conclusion, as the decision to terminate his appointment was not in violation of the applicable provisions, the complainant can claim neither reinstatement or compensation. The complaint is therefore unfounded in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr Maxime Letourneur, President, Mr, André Grisel, Vice-President, and Mr A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 October 1970.

(Signed)

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy

