

EIGHTY-FOURTH SESSION

In re Alamgir

Judgment 1724

The Administrative Tribunal,

Considering the complaint filed by Mr. Mohiuddin Alamgir against the International Fund for Agricultural Development (IFAD) on 15 November 1996, IFAD's reply of 20 February 1997, the complainant's rejoinder of 10 April and the Fund's surrejoinder of 26 June 1997;

Considering Articles II, paragraph 5, and VIII of the Statute of the Tribunal;

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. The complainant, a citizen of the United States who was born in 1943, joined the Fund in January 1983 as an economist at grade P.5 in Rome. At the material time he held a permanent appointment at grade D.2 and had just taken charge of the Management Information Systems Division (MM).

On 2 March 1995 he sent the President of the Fund a memorandum about the "strong resistance" he said his division was facing in carrying out a project and about his problems in working with the Vice-President of the Fund and others.

On 6 March the President summoned him and asked him to resign, under threat of dismissal if he refused to do so. Though the complainant allegedly agreed to go, he did not sign the letter of resignation. He took leave on 7 March. On the 8th he reported for work. He fainted in his office early in the afternoon. Later that day two doctors from the Food and Agriculture Organization of the United Nations (FAO) gave him a check-up. So did his own doctor, who prescribed a spell off work and treatment for nervous strain.

Correspondence followed between him and the Fund. Then, on 5 June 1995, the Vice-President sent him another letter of resignation for him to sign and the text of a letter, bearing that date, from the President which he would be sent if he chose not to resign and which gave him notice of termination in the interests of the Fund under Article 3.10.4 of the Personnel Policies Manual. The President's letter gave him three months' notice under Article 3.11.1 of the Manual. It accused him of conduct unseemly in an international civil servant and a Fund director, of lack of proper judgment in dealings with other staff and of insubordination. He refused to resign. By a personnel action form dated 13 July the Director of the Division of Personnel told him that he was dismissed as at 13 September 1995.

By a letter of 22 July he asked the President to review that decision. He observed that there was no evidence to bear out the charges in the letter of 5 June and that he had been denied the safeguards of disciplinary process since the President's main charge was his conduct. In a letter of 21 August the President upheld his decision of 5 June, which he reaffirmed he had taken under Article 3.10.4 in the Fund's interests, not under 3.10.5 for disciplinary reasons. He cited the complainant's memorandum of 2 March 1995 as an illustration of his inability to get on with other staff.

On 14 September the complainant gave notice of appeal to the Joint Appeals Board against the letter of 21 August and on 6 November 1995 he filed a full brief. In its report of 13 September 1996 the Board held that though the dismissal was not arbitrary the Fund ought to have acted under Article 3.9 of the Manual, which was about disciplinary action. So it recommended granting him "additional compensation". By a letter of 24 September 1996, to which was appended the Board's report, the President informed him of the rejection of his appeal. That is the decision he is impugning.

B. The complainant pleads that the President drew plainly wrong conclusions from the evidence. The grounds for the decision of 21 August 1995 were, he says, his conduct, as purportedly illustrated by his memorandum of 2 March 1995. But that memorandum betrayed no spitefulness: all he wanted was the President's help in settling a disagreement. More broadly, his conduct posed no threat to the Fund's interests. When he saw the President on 6 March 1995 he spoke of the undue pressure he and others had for years been working under. Besides, if his conduct had been as the President made out he would never have reached such a senior rank.

The President committed a mistake of law by denying him the safe-guards of due disciplinary process. One canon of administrative law that international tribunals have time and again affirmed is that no-one may be dismissed for misconduct unless there have been disciplinary proceedings. And that holds good even where there is a rule that empowers the executive head to dismiss in the organisation's interests. So the Fund may not rely on Article 3.10.4 of the Manual to shirk the obligation.

The Fund was guilty of an affront to his dignity by informing the Appeals Board of several gratuitous charges against him of sexual harassment. It caused him unnecessary and excessive injury by denying him disciplinary proceedings and by putting evidence to the Board without his knowledge.

He alleges grave material and moral injury.

He seeks the quashing of the decision of 24 September 1996, awards of material and moral damages and costs.

C. The Fund replies that the dismissal, which came just after he sent his memorandum of 2 March 1995, was the upshot of a whole chapter of incidents, which it recounts. For years the treatment he meted out to staff had been "brutally insulting": he had thoroughly upset them and made several so ill that they had begged for transfer. One of them had even resigned. He was insubordinate too. So the conclusions the President drew from the evidence were not wrong.

Article 3.10.4 will cover any sort of dismissal the President sees as being in the Fund's interests, whether the threat to them lies in the official's approach to work or conduct or something else. The complainant has not proved the general rule which he says requires disciplinary proceedings before any decision is taken on the grounds of an official's conduct. In any event it was the interests of the Fund as a "functioning organisation", not his conduct, that prompted the President's decision.

The Fund concedes that the Joint Appeals Board should have sent him copies of the further evidence it filed at the Board's bidding in the internal proceedings. It produces them and invites him to comment. But it submits that its omission is not a fatal flaw as the evidence consists mostly of reports on his performance that he must have known about already.

The Fund denies any affront to his dignity. It did not itself charge him with sexual harassment. There was only one such charge, and it came from a woman who had been one of his colleagues.

D. In his rejoinder the complainant contends that dismissal under 3.10.4 in the Fund's interests is distinct from dismissal under 3.10.5 for disciplinary reasons. Such a distinction was, he says, drawn in Judgment 93 (*in re Saini*). The President is wrong to believe that he is empowered to dismiss someone for misconduct in the Fund's interests. If he were, he would be free to do as he pleased and Article 3.10.5 would be meaningless. To plead the interests of the Fund as a "functioning organisation" is a mere contrivance to bring the impugned decision under 3.10.4. He presses his pleas.

E. In its surrejoinder the Fund argues that Judgment 93 acknowledges an organisation's right to dismiss someone for misconduct when exceptional circumstances so warrant and for the sake of its own interests. In its submission the evidence shows this case to be just such an exceptional one.

CONSIDERATIONS

1. The complainant joined the staff of the Fund on 29 January 1983 as a senior economist at grade P.5. At the material time he was in charge of Management Information Systems and held grade D.2.

- 2. On 2 March 1995 he sent the President of the Fund a memorandum on the development of two projects that accounted for most of the work in that division.**
- 3. On 6 March the President called him in and ordered him to resign under pain of dismissal.**
- 4. In a letter of 5 June the President told him that his conduct was unhelpful to the Fund; he had been offered but had rejected the opportunity of resigning; so the President had decided in the Fund's interests to terminate his appointment under Article 3.10.4 of the Personnel Policies Manual. The grounds for the decision were, the President said, "your failure to conduct yourself in a manner befitting your status as an international civil servant and as a Director in this Organisation, your persistent failure to exercise the good judgment expected of such a person in working with the other employees of this Organisation and your failure whilst carrying out your duties to adhere to instructions".**
- 5. By a letter of 22 July 1995 the complainant appealed to the President, in accordance with Article 4.10.2(a) of the Manual and B.2(a) of the Administrative Instruction, to reverse the decision of 5 June, which he said was unlawful and gravely injurious; he added that he would still consider a settlement.**
- 6. In a letter of 21 August 1995 the President upheld the decision, which he said was in no way arbitrary.**
- 7. The complainant put the matter to the Joint Appeals Board. In its report of 13 September 1996 the Board agreed that the decision was not arbitrary but held that the Fund had not properly followed the procedure for termination in Article 3.9 of the Manual. It recommended granting him "additional compensation ... at par with the separation packages being offered in the [United Nations] System of Organizations including IFAD".**
- 8. On 24 September 1996 the President sent the complainant a copy of the Board's report and gave him final notice of dismissal. That is the decision he is impugning.**
- 9. He seeks the quashing of the decision of 24 September 1996 and consequential relief, including awards of damages in such amounts as the Tribunal sees fit for material injury and for moral injury, in particular the affront to his dignity, the harm to his good name and the unnecessary mistreatment of him. He claims costs. He has four pleas:**
 - (1) The President drew plainly wrong conclusions from the evidence.**
 - (2) He committed a mistake of law by denying the complainant due process.**
 - (3) The Fund was guilty of an affront to his dignity, harmed his good name and caused him unnecessary and excessive injury.**
 - (4) The material and moral injury caused by the impugned decision were grave.**
- 10. The issue that his first two pleas raise is whether, in the absence of disciplinary process, the President was empowered to end his appointment by the decision of 24 September 1996.**
- 11. Article 3.10.4 of the Manual says that a decision to terminate the contract of employment of an official may be taken by the President, "and the President alone", in the interests of the Fund. So it does vest discretion in the President to end an appointment in the Fund's interests without resort to disciplinary process.**
- 12. Yet the Fund is mistaken in supposing that the President has unfettered authority under that provision to cite the Fund's interests as grounds for dismissal. He must set out the facts fully enough to enable the Tribunal to exercise its power of review and to determine objectively whether it is indeed the Fund's interests that are the reason for the dismissal. As was held in Judgments 1234 (*in re* Crockett) under 19 and 1496 (*in re* Güsten) under 9, although an organisation's "own interests are paramount ... it must still, for the sake of proper management and mutual confidence, treat its staff fairly".**
- 13. The Tribunal is satisfied on the evidence that, even though the grounds for dismissal were the complainant's conduct and in the circumstances there might have been a threat to the Fund's interests, it**

was not proper to apply Article 3.10.4 of the Manual.

14. Since the grounds for dismissal were the complainant's conduct, the proper procedure was the disciplinary one prescribed in Article 3.10.5. As was said in Judgment 247 (*in re* Nemeth) under 12, "unsatisfactory conduct ... is naturally a subject for disciplinary action".

15. So, as the Appeals Board held, the President was wrong to terminate the appointment under 3.10.4 without following the disciplinary process provided for in 3.10.5.

16. By denying the complainant the safeguards of due disciplinary process in Article 3.9.2 of the Manual the President committed a mistake of law that was a fatal flaw in his decision of 24 September 1996.

17. Article VIII of the Tribunal's Statute says:

"In cases falling under article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him."

In the circumstances of this case reinstatement would be inadvisable. In the exercise of its authority under Article VIII of the Statute the Tribunal orders instead that the Fund pay the complainant 200,000 United States dollars in damages for the injury sustained under all heads on account of the President's unlawful decision.

18. He is further entitled to costs, and the amount is set at 50,000 French francs.

DECISION

For the above reasons,

1. The Fund shall pay the complainant 200,000 United States dollars in damages for injury under all heads.
2. It shall pay him 50,000 French francs in costs.
3. His other claims are dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot
Jean-François Egli
Seydou Ba

A.B. Gardner