

TWENTY-SIXTH ORDINARY SESSION

In re GOYAL (2)

Award of Compensation

Judgment No. 176

THE ADMINISTRATIVE TRIBUNAL,

Considering the memorandum dated 16 March 1970 in which Mr. Prahlad Saran Goyal, failing agreement between the parties, requests the Tribunal to determine the compensation to be paid to him by the United Nations Educational, Scientific and Cultural Organization (UNESCO) by virtue of Judgment No. 136 of the Tribunal, the Organisation's reply of 12 June 1970, the complainant's rejoinder of 30 August 1970, the Organisation's surrejoinder of 10 December 1970 and the complainant's communication of 9 February 1971;

Considering Article VIII of the Statute of the Tribunal;

Considering Judgment No. 136 handed down by the Tribunal on 3 November 1969;

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. Following Judgment No. 136 of the Tribunal, UNESCO asked Mr. Goyal on 27 November 1969 for full information on the nature and periods of any employment obtained by him since 18 April 1968 and the amounts earned thereby. On 12 December 1969 Mr. Goyal sent the Organisation a statement comparing the earnings from his new job with the British Council in New Delhi until 31 December 1969 (the complainant was born on 1 January 1936) with the earnings (including allowances and pension payments) which he would have received during the same period had he stayed with UNESCO. The difference amounted to US\$74,919 less \$35,115, or \$39,804, to which he added \$8,000 as compensation for his illegal suspension. On 5 February 1970 the Organisation replied that although the complainant's earnings in his new job had amounted to Rs.11,412.41 for the period from 13 May 1968 to 30 November 1969 the Director-General had decided to grant him compensation amounting to Rs.13,355 (twelve months' salary including family allowances), plus compensation for the suspension amounting to Rs.6,677.50 (six months' salary including family allowances). A cheque for \$2,671 (Rs.20,032.50) was enclosed with the letter.

B. Mr. Goyal returned the cheque on 24 February 1970 saying that it was not enough. He contended that the truth of his accusations against a colleague, which had led to his losing his job, had been admitted, that the Organisation therefore had a duty to reinstate him and that, since it was unwilling to do so, it should pay him substantial compensation for the sharp decline in his professional and social status due to the termination of his appointment. He told the Organisation of his intention to ask the Tribunal to determine compensation.

C. In his complaint Mr. Goyal points out that he had left a lucrative post in the Ministry of the Interior of the Indian Government to work for UNESCO but could no longer expect reinstatement in his Ministry job because of his age. He repeats the charges which he had brought against his colleague and which had caused him to lose his job, and stresses that his excellent performance reports had entitled him to expect to stay with UNESCO until retirement. He again maintains that his chief treated him insultingly in suddenly ordering him out of the UNESCO office in New Delhi. He claims that not only are his career prospects seriously diminished (his present job is approximately only half as well paid as his UNESCO job), but he has suffered loss of reputation and severe emotional strain. In accordance with paragraph 4(a) and (b) of Judgment No. 136 he states that:

(a) his remuneration at UNESCO amounted to US\$149 a month net;

(b) as regards the nature and periods of his employment since 18 April 1968, his net monthly income was \$77 from 13 May 1968 to 12 May 1969 and \$80 from 13 May 1969 up to the date of the complaint.

He requests the Tribunal to award total compensation amounting to \$47,804.

D. In its reply the Organisation contends that its offer of Rs.20,032.50 is generous and perfectly fair and takes account of the statutory or decisional rules which govern the matter, the extent of the fault committed by it and the extent of the injury sustained by the complainant. It points out that:

(1) with one exception the Tribunal has never granted compensation exceeding the amount of two years' salary, and that the Statute of the United Nations Administrative Tribunal lays down that, save in exceptional cases, the compensation awarded for any injury sustained may not exceed the equivalent of two years' base salary of the applicant;

(2) compensation is high only for dismissal of established officials with contracts of indeterminate duration, whereas, the present case arose, not out of termination or summary dismissal, but non-renewal of a fixed-term one-year appointment;

(3) the offer of eighteen months' salary as compensation was based

(a) on the assumption that but for the events leading to non-renewal Mr. Goyal's contract would have been renewed for a further year;

(b) on the fact that in re Agarwala (Judgment No. 121) the Tribunal fixed the compensation payable to the complainant at an amount equivalent to eight months' salary "for the distress caused by the abrupt way in which he was treated, tantamount in its form to summary dismissal, and for the injury done to his reputation and to his prospects of obtaining other employment";

(4) the reasons for its decision not to renew the complainant's appointment following Judgment No. 136 were:

(a) that Mr. Goyal had failed in his obligations as an international official and as a former UNESCO official by informing the Indian authorities of his accusations against a member of the staff of the UNESCO office in New Delhi, accusations which had led to court proceedings and even to an intervention in Parliament and which after inquiry had been held to be without foundation;

(b) that he cannot reasonably claim that UNESCO would have employed him until retirement because field offices could be closed down at any time and policy was to limit field office appointments in duration, and because in offering compensation equivalent to eight months' salary the Organisation deducted his income from his new job.

E. In his rejoinder Mr. Goyal contests all the Organisation's arguments. In particular, he maintains that the denunciation to the Indian authorities was made by someone else; he points out that several of his former colleagues in the New Delhi office have been employed there for some twenty years, and contends that he was therefore entitled to expect annual renewal until retirement. The complainant contends that his appointment was about to be converted into a permanent appointment, and asserts his present job is greatly inferior to his UNESCO job. Lastly, he points out the exceedingly abrupt nature of his dismissal; he was ordered off the WHO premises in the middle of taking dictation of a letter.

F. In its surrejoinder the Organisation repeats its request to the Tribunal to find that its offer of 5 February 1970 to Mr. Goyal was equitable.

CONSIDERATIONS:

1. The liability of the Organisation to pay compensation is established by Judgment No. 136 under two heads. The first is compensation to the complainant for the non-renewal of his contract on 30 June 1968; in respect of this the Organisation has offered Rs.13,355 calculated as twelve months' basic salary. The second is compensation for moral damage for illegal suspension from duty, i.e. compensation for the distress caused by the manner of his treatment and for the injury done thereby to his reputation and to his prospects of obtaining other employment. In this respect the Organisation has offered Rs.6,677 calculated as six months' basic salary.

2. In its submission the Organisation has referred to the provision in the Statute of the Administrative Tribunal of the United Nations which lays it down that the compensation which that Tribunal may award shall not normally exceed the equivalent of two years' net base salary of the applicant. The Organisation states that the Administrative

Tribunal of the International Labour Organisation has subject to one exception adhered to the same maximum and contends that the compensation payable to the complainant in this case should be fixed as a proportion of the two years' salary which is the normal maximum. Since the present case is one of non-renewal and not termination the Organisation submits that the total of eighteen months' salary which it has offered is generous.

3. The Tribunal does not agree with this approach. The duty of this Tribunal, as of every other tribunal unless its statute otherwise provides, is to fix as compensation the sum which appears to it to be equitable in all the circumstances. If any limit be imposed upon an equitable amount, it necessarily means that the sum awarded will be less than the complainant deserves. Doubtless, the principle of limitation of liability has been accepted in many systems of law. The basis of it is that in certain spheres of operation it is considered to be in the public interest that a ceiling should be placed on the offender's liability for fault, the injured person being left, if he so desires, to insure himself against any excess. This principle has not, so far as the Tribunal is aware, been generally introduced into the relationship between an employer and his employees. It is far from clear that it governs the relations between the United Nations and its officials, since the Statute of the Administrative Tribunal of the United Nations makes provision for exceptional cases. To the extent to which it does govern such relations, it operates solely by virtue of an express provision in that Statute. Every person, before he becomes an official of the United Nations, in the same way as he can ascertain from the Staff Regulations what will be the conditions of his employment, can ascertain that in the event of its termination his compensation may be limited. A tribunal without a similar provision in its statute is not entitled to impose upon an official what would amount in effect to a condition of his employment to which he has not assented. Nor can the duty of the Tribunal to fix the compensation that is just in all the circumstances of the case, neither more nor less, be discharged simply by adding up so many years or months of the complainant's salary. The rate of salary which he was enjoying is an important factor to be taken into consideration, but it is not the only factor. Another important factor is the extent to which the complainant has, by obtaining other employment or otherwise, been able to diminish his loss.

4. Accordingly, in assessing the amount of compensation for non-renewal, the Tribunal does not for the reasons given above adopt the method of calculation proposed by the Organisation. It accepts as a reasonable basis in this case the method proposed by the complainant, that is the difference, which is about Rs.500 per month, between the salary and benefits he was earning with the Organisation and those which he now enjoys: but it does not accept the complainant's calculation as a whole. As to the earlier period, that is up to 5 February 1970, the date when the Organisation offered the complainant compensation in lieu of reinstatement, there is no difficulty. Rs.500 a month for nineteen months, which is the length of the period in question, amounts to Rs.9,500. Allowance must be made on the one side for the fact that the complainant received approximately Rs.900 in actual earnings from his new employment during the period in which he was still drawing his salary from the Organisation; and on the other side for the fact that he lost something in fringe benefits such as medical attention. The Tribunal considers that the loss on balance should be put at Rs.9,000. Since the Organisation decided not to reinstate the complainant he must be given some additional sum as compensation. But the complainant's calculation errs, first, in presupposing an indefinite liability and, secondly, in making no allowance for the fact that compensation for non-renewal is very different from compensation for wrongful termination. In all the circumstances of this case the Tribunal considers that Rs.6,000, which is approximately equivalent to a year's difference between the salary he would have got from the Organisation and his actual earnings, would be appropriate. Accordingly the total amount of compensation under this head is fixed at Rs.15,000.

5. As to compensation for illegal suspension from duty, the Tribunal has considered the further evidence adduced about the circumstances of the suspension, but has not found it to be of much assistance. The essence of the moral damage claimed lies in the fact of the abrupt and summary suspension which is not denied. It would not be right to relate the assessment under this head exclusively to the basic salary. Distress and moral prejudice may be as great to a man on a small salary as to a man on a large one. But the rate of salary affords a guideline and the six months' salary offered by the Organisation under this head is in the opinion of the Tribunal approximately correct. The Tribunal fixes the compensation under this head at Rs.7,000.

DECISION:

For the above reasons,

1. The Organisation shall pay the complainant the sum of Rs.22,000.
2. The Director-General's decision of 5 February 1970 is amended to that extent.

3. The remainder of the complainant's claims is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., 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 3 May 1971.

M Letourneur
André Grisel
Devlin

Bernard Spy