NINETY-NINTH SESSION

Judgment No. 2463

The Administrative Tribunal,

Considering the 69 complaints filed against the World Health Organization (WHO) on 26 February 2004 (and corrected on 25 March) by:

Mr S.K.A.

Mr S.A.

Mr P.A.

Mr K.K.B. (No. 2)

Mr S.K.B.

Mr V.B. (No. 2)

Mr R.C.B.

Mr K.B.

Mr S.L.B. (No. 2)

Mr G.C.B. (No. 2)

Mr B.

Mr B.R.

Mr P.C.

Mr C.L. (No. 2)

Mr C.G.

Mr D.C. (No. 2)

Mr K.D.

Mr P.C.D.

Mr R.K.D.

Mrs M.S.D'S.

Mr R.E.

Mr S.N.G. (No. 2)

Mr A.G.

Mr S.K.G. (No. 2)

Mr S.R.G. (No. 11)

Mrs P.H.

Mr J.K.D. (No. 2)

Mr R.J.

Mr A.T.J.

Mr H.J.

Mr B.K. (No. 2)

Mr P.K.

Mrs N.K.

Mr K.L.

Mr R.K.

Mrs B.L.

Mr G.M.

Mr S.P.M.

Mrs V.R.M.

Mr N.M.

Mr K.S.K.N.

Mr G.P.S.P.

Mr D.S.P. (No. 2)

Mr P.K. (No. 2)

Mr V.S.R.D.

Mr R.R.

Mr R.D.

Mrs N.R.

Mr A.R.

Mr A.R.

Mr S.R.

Mr B.P.S.

Mrs M.S.

Mr D.S.

Mr V.K.S. (No. 2)

Mr M.S.

Mr S.L.

Mr A.K.S. (No. 2)

Mr B.M.S.

Mr H.C.S. (No. 6)

Mr N.L.S.

Mr S.S.

Mr A.S.

Ms S.S. (No. 2)

Mr T.R.S.

Mr P.S.T. (No. 2)

Mr V.K.

Mr C.K.V.

Mr S.P.Y.

Considering the WHO's single reply of 30 June 2004, the complainants' rejoinder of 21 July and the Organization's surrejoinder of 21 October 2004;

Considering the applications to intervene filed by Mr B.S.B. on 16 May 2004 and Mr J.R.D. on 13 September, and the WHO's observations thereon of 30 June and 12 October 2004 respectively;

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

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

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

A. By a memorandum of 4 October 1995 the Organization's Regional Office for South-East Asia (SEARO) informed General
Service staff in New Delhi that a salary increase of 18.4 per cent for the period 1 November 1993 to 30 June 1994, resulting from a mini salary-survey initiated in August 1994 and completed in March 1995, would be paid in the form of a non-pensionable one-time lump-sum bonus equivalent to 147.2 per cent of a month's salary as at 1 November 1993; the payment of the lump sum was reflected in pay slips of October 1995.

Eighty-eight staff members, including certain of the complainants in the present case, appealed against that decision to the Regional Board of Appeal (RBA) within the applicable time limit. Twenty-nine appellants, including several of the present complainants, pursued the matter before the Headquarters Board of Appeal (HBA). One staff member only – Mr K.C.R. – who had meanwhile retired, pursued the matter before the Tribunal, contending that he had lost out in pension benefits. The Tribunal ruled on his case in Judgment 2030, delivered on 31 January 2001. It set aside the impugned decision and ordered the Organization to pay the complainant compensation for loss of pension benefits resulting from his receiving a lump sum rather than an increase in salary.

The complainants in the present case joined SEARO on various dates between 1963 and 1997. Some have now retired. All either held or hold General Service category posts. On 24 September 2001, after learning of the Tribunal's ruling in Judgment 2030, 71 staff members, including the complainants, wrote a joint letter to the Regional Director, asking that action be taken to rework the salary scales with effect from 1 November 1993. The Regional Director, in a reply of 11 February 2002, gave reasons why he considered that the matter at issue in Judgment 2030 could not be revisited. On 27 March 2002 the complainants notified their intention to appeal against that decision to the Regional Board of Appeal. In its report of 13 January 2003 the RBA found in their favour. The Regional Director did not concur with the Board's findings and dismissed their appeal. His decision was notified to the complainants in letters of 30 April 2003. They appealed to the Headquarters Board of Appeal on 3 June. In its report of

20 October 2003 the HBA recommended dismissing the appeal on the grounds that the decisions handed down in Judgment 2030 were applicable only to the parties concerned, and the Tribunal did not order that the salary scales be reworked. By letters dated 29 December 2003 the Director-General accepted the Board's recommendations and dismissed their appeal. That is the impugned decision.

B. The complainants argue that their complaints are receivable. They base their view on the case law, according to which a staff member may ask the Administration to review a decision where some "new and unforeseeable fact of decisive importance has occurred since the decision was taken". The Tribunal's ruling in Judgment 2030 was a "fact of decisive importance", as it became clear from that judgment that it was "not permissible" for the Organization to pay a lump-sum non-pensionable amount instead of effecting a revision of the salary scales as a result of the mini-survey. It thus gave the complainants a right to ask the Organization to review its decision of 4 October 1995. They made their request on 24 September 2001 and the Regional Director's letter of 11 February 2002 set a new time limit for appeal.

Their plea is that since it was not permissible for the Organization to pay a lump-sum non-pensionable amount in lieu of a revision of the salary scale, the Organization should rework the salary scales from 1 November 1993 to avoid the complainants suffering cumulative loss in their remuneration or pension benefits. To do otherwise would perpetuate the illegality and would amount to infringement of their terms and conditions of appointment.

The complainants seek the quashing of the Director-General's decision of 29 December 2003. They ask that the Organization be directed to rework the salary scale from 1 November 1993 in accordance with the result of the mini-survey, thus allowing a "knock-on effect in the subsequent salary survey result[s] to date". They each seek payment of the arrears of salary and allowances that may be due; an award of 4,000 United States dollars in respect of material and moral injury; and 1,000 dollars in costs.

C. In its reply the Organization objects to the receivability of the complaints. It holds the opinion that both the present complaints and the internal appeals filed by the complainants in 2002 were filed out of time. It is the decision of 4 October 1995 to implement the results of the mini-survey by way of a lump sum that is effectively at issue. Although at the time some of the complainants filed appeals against that decision with the Regional Board of Appeal and then the Headquarters Board of Appeal, none proceeded with an appeal to the Tribunal, and the decision of 4 October 1995 is no longer open to challenge. It disagrees with the complainants' view that the letter of 11 February 2002 set off new time limits for appeal. That letter was no more than a reply to a request for reconsideration of a decision which was no longer open to challenge. The Organization also rebuts the complainants' argument that Judgment 2030 created a new situation. It perceives that argument to be a ploy to circumvent rules on time limits for appeals.

The WHO also argues that the complainants have no standing to claim the benefit of Judgment 2030 as they were neither parties nor interveners in the case ruled on by the Tribunal in that judgment. They cannot remedy their previous inaction by an after-the-fact request to benefit from that judgment.

On the merits, the WHO maintains that the complainants' claim that they have suffered or will suffer loss of pension benefits as a result of the 4 October 1995 decision is devoid of merit. It explains that benefit upon retirement is calculated on the basis of years of contributory service and final average remuneration (FAR). Given their retirement dates, their final average remuneration will not need
to take into account the period that was covered by the lump-sum payment. Their request that the salary scales be reworked is founded on the presumption that they suffered a loss of salary, but their presumption is unsupported. In

any event, the results of the mini-survey were overtaken by the results of the comprehensive salary survey which took place in 1995. The results of the comprehensive survey were reflected in the revision of the salary scale referred to as Revision 37, which was implemented retroactively from 1 July 1994. Moreover, the Tribunal did not order the Organization to rework the salary scales.

The WHO holds the view that the complainants are not only asking to benefit from Judgment 2030 but are asking the Tribunal to make an order that goes beyond the remedy ordered in that judgment. It considers that the complainants have not suffered any material or moral injury, and that their claim in that regard is unsubstantiated. Furthermore, it indicates that some of the complainants entered the service of SEARO after the period of 1 November 1993 to 1 July 1994, which is at issue in these complaints.

D. In their rejoinder the complainants submit that they are legally entitled to the relief they are claiming. They concede that five complainants joined SEARO after the period at issue above, but add that the others had an acquired right to the revision of the salary scales as a result of the mini-survey.

They argue that their cause of action is the decision contained in the Regional Director's letter of 11 February 2002. They hold to their view that they stand to lose in terms of both monthly salary during service and pension benefit upon retirement.

E. In its surrejoinder the Organization maintains its view that the complaints are irreceivable.

CONSIDERATIONS

1. Some time in March and April 1995, a comprehensive salary survey was carried out by the WHO resulting in an announcement on 15 May 1995 of a new salary scale effective 1 July 1994 (Revision 37). Simultaneously, in March 1995, a mini-survey initiated in SEARO in August 1994, was completed, the results of which were sent to WHO headquarters along with the recommendations of the Local Salary Survey Committee (LSSC) to revise the salary scale with effect from 1 November 1993 and from 1 May 1994.

2. Since the new salary scale (Revision 37) had been promulgated before the results of the mini-survey were reviewed, it was decided to implement the results of the mini-survey in the form of a non-pensionable lump-sum payment equal to 147.2 per cent of one month's salary as at 1 November 1993. This was equal to a salary increase of 18.4 per cent per month from 1 November 1993 to 30 June 1994, after which Revision 37 became effective. This decision was announced to General Service staff in New Delhi on 4 October 1995.

3. Initially, 88 staff members appealed against that decision to the Regional Board of Appeal, but only 29 subsequently filed an appeal with the Headquarters Board of Appeal. The HBA found that the Administration had not acted in violation of the relevant rules in "implementing a benefit other than that which the LSSC had recommended". It considered, however, that only two staff members, Mr K.C.R. and Mr R.P., had suffered any real loss in their pension rights. It recommended that they should be compensated based on the life expectancy table used by the United Nations Joint Staff Pension Fund for calculation purposes.

4. The Director-General's final decision was notified to the staff members who had appealed, by letter of 27 September 1999. The Director-General considered that no compensation was due to them since the Administration had not violated either the provisions of the Manual of the United Nations' Consultative Committee on Administrative Questions (CCAQ) or the methodology on local salary surveys when it implemented a salary increase in the form of a "non-pensionable one-time lump-sum bonus". She dismissed their appeals.

5. Subsequent to that decision, only Mr K.C.R. filed a complaint with the Tribunal. In Judgment 2030, delivered on 31 January 2001, the Tribunal quashed the Director-General's decision and ordered the WHO to pay compensation to the complainant for loss of pension benefits resulting from the payment of a lump sum rather than an increase in salary, which affected his pensionable remuneration. Moreover, the Tribunal declared that the payment of a lump sum, not being equivalent to the approval of a salary scale as required under the CCAQ Manual, was not permissible.

6. On 24 September 2001, upon learning of the decision of the Tribunal in that case, 71 SEARO staff members, including the present complainants, who had not been parties or interveners in the case that led to Judgment 2030, wrote to the Regional Director at SEARO requesting that action be taken "to re-work [their] salary

scales effective 1 November 1993 as a result of the sanctioned [increase] consequent to the mini survey". They contended that the ruling in Judgment 2030 was "definitely a new and unforeseeable fact of decisive importance that [had] occurred since the decision of 4 October 1995 was taken".

7. In his reply of 11 February 2002, the Regional Director stated: first, that in Judgment 2030 the Tribunal did not impose upon the Organization an obligation to rework the salary scales effective 1 November 1993; secondly, that the Organization was under no legal obligation to pay compensation to those who were neither complainants nor interveners in the case that led to that judgment; and lastly, that the decision to implement the results of the mini-survey by way of a non-pensionable lump-sum payment dated back to 4 October 1995; therefore, any appeal that might now be filed on the issue would be outside the time limits for appeal prescribed by the Staff Rules.

8. Numerous staff members, including the present complainants, appealed to the RBA against the 11 February 2002 decision of the Regional Director. In its report the RBA concluded that "the recommendations of the [Tribunal in Judgment 2030] should be applied to all employees on the payrolls of the organization as of the day of payment of lump-sum amount".

9. On 30 April 2003 the Regional Director, however, opined that the appeal filed on 27 March 2002, was not receivable, having been filed outside the time limits set by the Staff Rules. Also he did not agree that Judgment 2030 should be applied to all employees of the Organization who were on the payroll on the day the lump sum was paid, regardless of whether they had filed an appeal or have since retired, on the ground that judgments affect only the parties to the dispute. Furthermore, he disagreed with the Board's view that the lump-sum payment should be replaced by salary increases on the basis of Judgment 2030 since the Tribunal did not order that the salary scales be reworked. Hence he dismissed the appeal.

10. A certain number of staff appealed to the Headquarters Board of Appeal against the Regional Director's decision. In its report of 20 October 2003 the HBA recommended that the appeal be dismissed. It found that the Tribunal's judgments affect only those who are parties to them, unless the Tribunal itself states otherwise. Judgment 2030 concerned only redress for Mr K.C.R., the complainant therein, who alone had filed a complaint with the Tribunal. None of the present complainants submitted a complaint on their own or asked to intervene in that case, although they could have done so.

11. By a letter of 29 December 2003, the Director-General affirmed the HBA's recommendation and dismissed the appeal. This is the decision that the complainants now impugn. They ask that the decision be set aside and that the Organization be ordered to rework
the salary scale applicable to them, in accordance with the result of the mini-survey which thereafter would have a knock-on effect on the subsequent salary survey results to date and thus save them from a cumulative loss in remuneration, their pension contribution or the amount of future pension benefit. They additionally ask for arrears of pay and allowances that may become due as well as costs.

12. Without having to deal at length with the issue of receivability raised by the Organization, the Tribunal finds that many of the complainants filed an internal appeal with the HBA against the 4 October 1995 decision to implement the mini-survey by way of a lump-sum payment. However, even though they received the Director-General's decision of 27 September 1999 to dismiss their appeal and not to award them compensation for loss of pension benefits as recommended by the HBA, they decided against acting further on the matter. Certainly, they did not file a complaint with the Tribunal within the time limit prescribed by its Statute as Mr K.C.R. did. Nor did they intervene in the latter's case. The passage of time has obviously worked against them and the Organization's decision can no longer be questioned.

13. In no way may Judgment 2030 be viewed as a "new and unforeseeable fact of decisive importance" that has arisen since the Director-General's decision of 27 September 1999, which would justify the complainants' request for a review of the matter on the ground that it has set off a new time limit for appeal. Time limits are an objective matter of fact which should be respected; otherwise, there could be no certainty in legal relations between the parties. Moreover, not being parties nor interveners in the case that resulted in Judgment 2030, the complainants had no legal standing to claim the benefit of said judgment. Precedent has it that the judgments of the Tribunal operate only *in personam* and not *in rem*. Therefore, these take effect only as between the parties involved even when the judgments are couched in general terms. (See Judgment 2220, under 5.) Moreover, "[s]ound judicial policy requires that the Tribunal encourage parties to settle their disputes after as well as before judgment. That cannot happen if persons, like the complainant, who did not participate in a case, even though he

might have done so, can interfere after the fact and prevent such settlement."

14. In their rejoinder the complainants argue that the cause of action leading to the present complaint arose on 11 February 2002 when the Regional Director turned down the request for review filed by the 71 staff members. Again, in their rejoinder, the complainants aver that they are not seeking to benefit from the Tribunal's ruling in Judgment 2030, but are only contesting the decision of 11 February 2002. In effect, they invoke a distinction without a difference, for this decision precisely rejected the application of Judgment 2030 to their case.

15. For the foregoing reasons, the complaints must be dismissed.

16. Similarly, because the applications to intervene and the relief claimed therein are based on the same facts and law as the present complaints, those applications must also be dismissed.

DECISION

For the above reasons,

The complaints and the applications to intervene are dismissed.

In witness of this judgment, adopted on 6 May 2005, Mr Michel Gentot, President of the Tribunal, Mrs Flerida Ruth P. Romero, Judge, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

Flerida Ruth P. Romero

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 14 July 2005.