

FIFTY-SEVENTH ORDINARY SESSION

In re GEORGE

Judgment No. 685

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Joseph George on 9 December 1984, corrected on 11 March 1985 and supplemented on 16 March, the WHO's reply of 15 May, the complainant's rejoinder of 6 June and the WHO's surrejoinder of 11 July 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, WHO Staff Rules 510.1, 565.2, 570 and 1230 and WHO Manual provision II.5.450;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, a citizen of India born in 1924, joined the South East Asia Regional Office (SEARO) of the WHO in New Delhi in 1963. He worked in the Regional Director's own office and was in the General Service category of staff. His work was highly thought of. By 1975 he held a grade P.2 post as an administrative officer and in 1979 obtained personal promotion to P.4. Early in 1981 the Regional Director retired and was replaced by Dr. Koko, a senior Burmese official with whom the complainant had, as the previous Director's assistant, come into contact. By a decision of 9 March 1981 Dr. Koko assigned the complainant, as from 1 March, to the office of the WHO Programme Co-ordinator and Representative in Katmandu, where he kept the title of administrative officer, a P.2 post, and his personal grade, P.4. But he was dissatisfied with his new job and on 20 November 1982 wrote to the Regional Director seeking "rehabilitation". In March 1983 he wrote again alleging a conspiracy to force him into a more lowly job, protesting against his downgrading, "humiliation" and "harassment", and claiming damages for loss of reputation and injury to his own health and that of his wife. On 28 March he appealed to the Regional Board of Appeal under Staff Rule 1230. In its report of 31 May 1983 the Regional Board recommended rejecting his appeal as irreceivable: he had not challenged the decision of 9 March 1981 in time. The Regional Director having endorsed that recommendation, he appealed to the headquarters Board of Appeal on 4 July 1983. There was delay because papers went astray. In its report of 29 March 1984 the headquarters Board held that the appeal must fail because the appeal to the Regional Board had been time-barred. By a letter of 19 June 1984 which was not delivered and a copy of which did not reach the complainant until 10 September, the Director-General informed him that his appeal was rejected. That is the final decision he impugns.

B. The complainant submits that Dr. Koko bears him a grudge for imagined slights in the days before he became Regional Director, for the complainant's closeness to the previous Director, and for his Indian nationality. That is why Dr. Koko packed him off to Nepal. His ouster from New Delhi was humiliating. Two senior officials of SEARO threatened him with Manual provision II.5.450 ("Refusal to accept a reassignment can be grounds for terminating the appointment") but assured him he would soon be brought back. His position in Nepal was demeaning. His post was graded only P.2 and had usually been held by clerical staff. A request had been made to abolish it. The work was routine. The injury to his dignity and reputation was continuous. From November 1982 he wrote often to the Regional Director asking to be relieved. Dr. Koko showed "personal prejudice", within the meaning of WHO Staff Rule 1230.1.1, against himself and in favour of the official who supplanted him in New Delhi. There was breach of Rules 510.1 (an assignment must take account of the "staff member's particular abilities and interests") and 570, which allows reduction in grade only on conditions which were not fulfilled in this case. The WHO could easily have found him a suitable post. His career ended, in August 1984, in disgrace. He alleges many flaws in the Board proceedings and denial of due process of law. He seeks moral damages and costs.

C. The WHO replies that the complaint is irreceivable because the complainant failed to exhaust the internal means of redress correctly, his appeal to the Regional Board being time-barred. The decision he originally challenged, and indeed the only challengeable one, was his transfer to Nepal. It was notified to him in March 1981, and under Rule 1230.8.3 he should have appealed within 60 days; he did not appeal until March 1983. He cannot surmount that obstacle by challenging the refusal to remedy the continuing consequences of his transfer to Nepal or to move him

elsewhere. Such an expedient would do away with the time bar. In any event he did not lodge internal appeals against those alleged "decisions".

The WHO seeks to rebut the charges of denial of due process and submits that there were no procedural flaws.

It advances subsidiary pleas on the merits. It denies personal prejudice and humiliation. The complainant had a successful and honourable career and his transfer to Nepal in no way reflected adversely on his performance. His work there was useful and appreciated.

D. In his rejoinder the complainant submits that the treatment of him after transfer afforded a continuing cause of action. The consequences of his transfer became apparent and grew worse with time, and the plea of the time bar is therefore unsound. The denial of his legitimate request for reassignment also constituted a cause of action. In any case as early as 1981 he started seeking a transfer or reclassification of his post, though he got no response; so it is unfair to accuse him of waiting too long before appealing. It is also mistaken to say his internal appeals did not challenge the refusal to relieve him and the refusal to reassign him: that he wished to do so was clear from the start. He cites cases in which the Tribunal upheld a plea of continuing breach of the rules and declared a complaint receivable on that account. He enlarges on his allegations of procedural flaws and further argues the merits.

E. In its surrejoinder the WHO seeks to refute the pleas in the rejoinder. It maintains that neither of the internal appeals could have been construed as seeking redress for specific acts of harassment in Nepal; the alleged humiliation was the consequence of the original transfer, and he failed to challenge the transfer in time. No specific subsequent decision or act which he has alleged and challenged in time forms the subject of the present complaint. Any flaw there may have been in the internal proceedings caused him no prejudice. The WHO submits that the complainant has distorted its reply, the force of which it finds nothing in the rejoinder to weaken.

CONSIDERATIONS:

Receivability of the complaint

1. Under the provisions of Article VII(1) of the Statute of the Tribunal, a complaint is receivable only if the means of redress available under the Staff Rules have been exhausted. To comply with this requirement the complainant must respect the time limits and procedure prescribed for the internal appeal.

2. The complainant joined the South East Asia Regional Office of the WHO in 1963 as a secretarial assistant. In 1975 he was promoted to the Professional category and in 1981 he held the post of administrative officer, with a personal grade of P.4. Following the appointment of a new Regional Director he was reassigned to a post in the Office of the WHO Programme Co-ordinator and Representative in Nepal with effect from 1 March 1981.

3. On 1 March 1983 the complainant wrote to the Regional Director, stating inter alia:

«My protests against my reassignment to a lower grade (P4 to P2) and to a less responsible position in the WPCR's Office in Nepal in breach of Staff Regulations, Staff Rules and WHO Manual, have so far only evoked from you and your staff evasive replies. It is now, however, clear from the letter from DSP that I cannot expect a fair deal from the Regional Office. In the circumstances, I beg of you to let me know categorically whether you are willing to

(1) Undo the injustice done to me at the fag end of my career by reassigning me to my former post or an equivalent position to vindicate my honour.

(2) In the meanwhile, permit me to work with self respect in the WPCR's Office, and stop harassment and pin pricks from the Regional Office.

(3) Pay damages for the irreparable loss of reputation suffered by me on account of my posting to a lower grade in a less responsible position.

(4) Pay compensation for the deterioration in health suffered by me resulting from working in an uncongenial atmosphere and the consequent stress syndrome developed by my wife.

If your response is negative, having exhausted all avenues to redress my grievances in terms of Staff Rule SR

1230.8.1, I would be left with no alternative but to regrettably initiate appeal procedures to redress my grievances..."

The Regional Director on 23 March 1983 merely acknowledged the receipt of the letter.

4. On 28 March 1983 the complainant lodged his appeal to the Regional Board of Appeal against "the decision of the Regional Director to reassign the appellant to a lower grade and less responsible post with effect from 1 March 1981 and the consequent discourtesy and humiliation to which the appellant has been subjected to since then by the Regional Director and his Representative in Nepal".

5. Staff Rule 565.2 provides:

"A staff member may be reassigned whenever it is in the interest of the Organization to do so. A staff member may at any time request consideration for a reassignment in his own interest."

6. It is to be noted that the complainant's letter of 1 March 1983 does not put in issue any refusal on the part of the WHO to grant a request for reassignment in terms of the second sentence of Rule 565. 2. The complainant speaks about the surreptitious introduction of "a new element to make it appear as if my request was for a routine reassignment to the Regional Office" which, according to the complainant, confirmed his suspicion that he had been made the victim of "a well planned conspiracy" to force him to accept a lower grade post.

7. On behalf of the complainant it is contended that he "argued at length the illegality and impropriety of the transfer action to Nepal precisely to put into context the claim that the Administration had failed to safeguard complainant's rights thereafter and was therefore in continuing breach of same". But it is clear from the complainant's letter of 1 March 1983 and his appeal to the Regional Board of Appeal that his protest was directed to his reassignment with effect from 1 March 1981 to a lower grade and to a less responsible position in Nepal and not to any failure on the part of the WHO to safeguard his rights thereafter. His demand that his honour be vindicated by transfer to his former post or an equivalent position and his claims to damages for loss of reputation and for compensation for the deterioration of his own and his wife's health are directly linked with his having been reassigned to Nepal in the first place.

8. From the foregoing it must be concluded that the impugned decision is that notified to the complainant on 9 March 1981, and for the purposes of Staff Rule 1230.8.2 time must run from that date. The time limits for the internal appeal not having been complied with, the complaint is irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable the Lord Devlin, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

André Grisel

Devlin

William Douglas

A.B. Gardner