

SEVENTY-SEVENTH SESSION

In re MANAKTALA (No. 3)

(Application for execution)

Judgment 1338

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 1219 filed by Mr. Kishore Chand Manaktala on 11 September 1993, the reply of 1 November 1993 from the World Health Organization (WHO), the complainant's rejoinder of 10 January 1994 and the Organization's surrejoinder of 24 January 1994;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS:

1. The WHO suspended the complainant from duty without pay on 26 June 1987 and dismissed him as from 1 June 1988. After he had made internal appeals the Director-General upheld that dismissal by decision of 18 September 1990. By Judgment 1133 of 29 January 1992 the Tribunal quashed the Director-General's decision and remitted the case so that the WHO might either resume disciplinary proceedings against the complainant in accordance with due process or pay him financial compensation; it also ordered the provisional payment to him of 1,500 United States dollars and awarded him \$200 in costs.

2. By a letter of 25 February 1992 the Director-General informed the complainant that "it would be inappropriate and inadvisable" to resume the disciplinary proceedings and he would be adequately compensated by the payment of the equivalent of two years' salary, less the \$1,500 already provisionally awarded to him in Judgment 1133.

3. The complainant did not accept that amount and, as the Tribunal had expressly permitted him in Judgment 1133 to do, filed a second complaint claiming:

(a) the immediate payment of the total sums of \$1,700 awarded to him in Judgment 1133, plus interest as from 1 March 1992;

(b) the payment of his salary, plus interest, as from the date of his separation, 26 June 1987, up to the normal date of his retirement, in October 1998;

(c) such pension benefits as would have accrued to him by the normal date of his retirement;

(d) damages for loss of reputation and mental injury; and

(e) a further award of costs.

4. By Judgment 1219 of 10 February 1993 the Tribunal quashed the Director-General's decision of 25 February 1992 insofar as it offered the complainant the equivalent of two years' salary in financial compensation. It ordered the WHO to pay him:

(a) damages equivalent to the amount of the salary, allowances and other entitlements he would have received in the period from the date of his suspension from duty, 26 June 1987, up to 25 February 1992, the date at which the Director-General had chosen not to resume the disciplinary proceedings;

(b) further damages equivalent to two years' salary, allowances and other entitlements, to be reckoned at the rates that had prevailed at 25 February 1992;

(c) three months' interest at the rate of 10 per cent a year on the awards of \$1,700 already made; and

(d) \$200 in costs.

5. On 14 May 1993 the WHO paid the complainant 1,041,037 Indian rupees, which included the interest and costs awarded. In working out the figure it had taken account of normal within-grade increments and salary revisions for the period up to 25 February 1992 but not for the period after that date.

6. The complainant did not accept the WHO's interpretation of Judgment 1219. In his view the essence of that judgment was that he must be considered to be in uninterrupted service with full pay until 25 February 1994. He accordingly claimed the following further benefits:

(a) two two-step within-grade increases for meritorious service, one falling due on completion of 25 years' satisfactory service, in August 1988, and the other on completion of 30 years' satisfactory service, in August 1993;

(b) normal within-grade increments for the period from 26 February 1992 to 25 February 1994;

(c) deductions from salary for accident and sickness insurance, which would enable him to make claims for the period after 26 June 1987; and

(d) restoration of participation in the United Nations Joint Staff Pension Fund.

He also claimed interest on account of the delay in payment, which he reckoned at two months and five days from the expiry of thirty days after the date of Judgment 1219.

7. By a letter it sent him on 7 July 1993 the WHO rejected those claims. It said that if the Tribunal had intended to award him all those benefits it would have ordered reinstatement instead of only awarding damages and that for the period after 25 February 1992 the Tribunal had itself limited the amount of damages to the rates of salary, allowances and other entitlements that had prevailed at that date.

8. The complainant is impugning the Organization's decision of 7 July 1993, adding a claim to payment of the value of 210 days' accrued annual leave for the period from 26 June 1987 to 25 February 1994.

9. All but one of his claims fail.

10. Although Judgment 1133 declared his dismissal null and void it did not order reinstatement. Instead it gave the WHO two options. Had the Organization preferred to resume disciplinary proceedings against him it would have had to treat him as remaining in service from 26 June 1987 until the proceedings were over. But it exercised the alternative option of paying him financial compensation: that was in lieu of reinstatement and on the assumption that his separation from service had occurred on 26 June 1987. Accordingly Judgment 1219 did not assess compensation on the basis of any actual or notional reinstatement from 26 June 1987 but simply awarded him damages equivalent to "the amount of the salary, allowances and other entitlements he would have received" in the period from 26 June 1987 to 25 February 1992. Those entitlements were to include payments similar in nature to the salary and allowances directly received by an employee in the usual course of his career, such as periodic salary revisions and normal increments. They were not to include benefits accruing from actual reinstatement, such as participation in the Pension Fund, health insurance coverage, any salary increases dependent upon assessment of the quality of actual service - such as within-grade increments for meritorious service - or non-financial entitlements such as annual leave. Furthermore, in computing the sums the complainant was entitled to for the period after 25 February 1992 the WHO was right to ignore increases of any kind in that period since, as the Organization observes, the Tribunal itself had limited the amount to the rates prevailing at that date.

11. Yet, as Judgment 553 (in re Usakligil No. 2) affirmed, an international organisation which has recognised the Tribunal's jurisdiction is bound, not merely to refrain from acting in disregard of a judgment, but to take whatever action the judgment may require. In line with the ruling in, for example, Judgment 234 (in re Chawla No. 2) an organisation must, where a specific sum has been awarded, pay compensation if it takes more than one month to pay after the judgment was notified, save that if, as in Judgment 1219, the Tribunal does not put a figure on the amount due, the need to work out the figure warrants allowing additional time.

12. In this instance headquarters in Geneva sent a memorandum on 19 March 1993 to New Delhi giving the Regional Director there details of the amount due "for your implementation". Apart from alleging the need for consultations the Organization has offered no explanation for the delay in payment. The Tribunal therefore awards

the complainant payment of interest at the rate of 10 per cent a year for a period of 30 days as fair compensation for that delay. But it will make no award of costs.

DECISION:

For the above reasons,

1. The Organization shall pay the complainant interest on the amount awarded in Judgment 1219, to be reckoned at the rate of 10 per cent a year for a period of thirty days.
2. His other claims are dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner