

TWENTY-FOURTH ORDINARY SESSION

***In re* DEVDUTT**

Judgment No. 158

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Devdutt on 8 March 1970 and brought into conformity with the Rules of Court on 21 April 1970, the reply of the Organization dated 31 July 1970, the complainant's rejoinder dated 25 August 1970, and the Organization's surrejoinder dated 8 September 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Rules 910 and 1030 of the WHO Staff Rules;

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. Mr. Devdutt was appointed to the WHO Regional Office for South East Asia in New Delhi on 27 December 1948. In June 1949 his appointment was extended for a further two years and was converted into an indefinite appointment from June 1951. In January 1955 he was transferred to the Reports and Documents Section and he was promoted to Grade ND5 in November 1961. He was granted a two-step within-grade increment after completing twenty years' satisfactory service on 1 January 1969.

B. As from March 1967 Mr. Devdutt became dissatisfied with his conditions of employment because he considered that he had not been promoted to a post for which he had applied and for which he considered himself qualified, and which had been given to a colleague greatly junior to himself, and because he wished to have his own post reclassified in a higher grade. As a result of his dissatisfaction he submitted his resignation in a letter to the Regional Director dated 15 March 1967, in which he stated that "having not been satisfied with the clarification given to me I am left with no other alternative than to resign my post as per rules, i.e. three months' notice and subject to my right to appeal as per relevant staff rule". He added that he wished to record his extreme hesitation and grief at having to part from an Organization with which he had been associated for eighteen years and to which he had given the best part of his youth. His resignation was accepted, but as a result of interviews with his supervisors no action was taken upon it and Mr. Devdutt remained in the service of the Organization.

C. On 20 May 1968 Mr. Devdutt addressed a long memorandum to the Regional Director which he entitled "Aide-mémoire" setting forth his grievances in respect, first, of an application he had made for special leave; secondly, of the reclassification of his post; and thirdly, of his conditions of work and his status in the section in which he was employed. Having received no reply to this document, he again wrote to the Regional Director on 28 October 1968 in the following terms:

"Sir,

Please refer to my letter of 20 May 1968, a subsequent reminder in August 1968 and our short discussion on 27 September 1968.

It is now more than 150 days when I wrote to you and 30 days when I spoke to you for justice in respect of the matter raised in my letter of 20 May 1968. In view of (1) this delay, which is most unusual for an international organization (2) your attitude towards me on 27 September 1968, which, to say the least, was rather unpleasant, I hereby submit this as my appeal under Staff Rule 1030 in respect of the matters raised in my letter of 20 May 1968.

Further, since the decision of the Board of Appeal is likely to take time and considering that my presence during this period will not be in the interest of my duties and that of the Organization, I may therefore be relieved of my services with the Organization.

In other words, this letter may be considered as my appeal to the Board of Appeal as well as my resignation.

Kindly acknowledge receipt of this letter and let me know the procedures for lodging the appeal.

With cordial regards,

Yours faithfully,

(Signed)

Dev Dutt."

The Chief of Personnel replied on 4 November 1968, on behalf of the Regional Director, that Mr. Devdutt's resignation was accepted, and drew his attention to Staff Rule 1030.8 concerning the procedure for the Regional Board of Inquiry and Appeal. The resignation was to take effect from 31 January 1969 in accordance with Staff Rule 910.1.

D. The Regional Board of Inquiry and Appeal reported on 21 March 1969 and found that the appellant's submissions in respect of his special leave, the reclassification of his post and his conditions of work were not receivable because he had not submitted them within the time limit of thirty days laid down by the Staff Rules, and had not tried all the existing administrative channels. In regard to the appellant's request for reinstatement, the Board found that his resignation had not been made conditionally and that as he had at no time requested the Administration to consider the withdrawal of his resignation there were no grounds for recommending his reinstatement. The Board accordingly recommended that the Regional Director take no further action on the matter. However, the case having been referred by the complainant to the headquarters Board of Inquiry and Appeal, the latter reached different conclusions upon it. After considering the substance of Mr. Devdutt's grievances, the Board found that his resignation had been voluntary and that the Administration had not committed any abuse of authority in accepting it. The Board regretted, however, that having regard to the complainant's twenty years of satisfactory service with the Organization and to his integrity, the Administration had not made more energetic attempts to modify the course of events. The Board also found that the complainant's requests for reclassification were not unjustified, since he had considerably increased his academic qualifications over the years by pursuing his studies and acquiring several degrees, and that it was not surprising that he had suffered from a sense of frustration. The Board concluded its report by recommending that the Director-General should make every effort to offer the complainant an opportunity to resume service with the Organization if an adequate post should become available. This report was communicated to Mr. Devdutt on 9 December 1969 by the Director-General, who informed him that he was unable to accept the recommendation of the headquarters Board of Inquiry and Appeal and that he maintained the decision of the Regional Director. The reason given was in the following terms: "In view of your perennial discontent with WHO conditions of service and as there are no prospects of offering you conditions other than those under which you worked previously, I believe that the Board's recommendation would not be in the interests of the Organization and I am unable to accept it".

E. Mr. Devdutt prays that it may please the Tribunal:

- (1) to annul the decision of the Director-General communicated to him on 9 December 1969;
- (2) to endorse the recommendation of the headquarters Board of Inquiry and Appeal;
- (3) to ask WHO to treat the complainant as if he had continued to be employed since 1 February 1969 and consequently to pay him the appropriate arrears of salary and allowances;
- (4) to assess the amount of compensation to be paid to him by the Organization in the event of the Director-General being unable to reinstate him;
- (5) to order the payment of compensation to the complainant on account of his having discharged duties above the level of his post from 1958 to 31 January 1969, and to determine the proper grade for his post.

F. The Organization prays that the complaint should be dismissed in respect of the request for reinstatement and that it should be declared irreceivable in respect of the reclassification of post, since the complainant did not submit an internal appeal on the matter within the prescribed time limit when he was informed at the beginning of 1968 that his request for the reclassification of his post had been considered and had not been approved.

CONSIDERATIONS:

As to the procedure before the Regional Board of Inquiry and Appeal:

1. The headquarters Board of Inquiry and Appeal criticises the Regional Board of Inquiry and Appeal for having failed to give the appellant a list of its members, thereby preventing him from exercising his right to object. Further, while recognising the impartiality of the Chairman of the Regional Board, the headquarters Board deplors the fact that he was an official closely associated with the administration of the Regional Office. It also criticises the fact that, contrary to the usual practice, the report of the Regional Board was signed by the Chairman alone.

It is unnecessary to consider whether these alleged irregularities were such as to invalidate the decision of the Regional Director. They do not affect the validity of the decision impugned which was taken by the Director-General on the completion of a regular form of procedure after exercising powers of investigation as broad as those of the Regional Director on the advice of a body which, like the Regional Board, had a joint composition.

As to the claim concerning resignation:

2. In his letter of 28 October 1968 the complainant, after referring to his previous correspondence and a previous interview, expresses his intention of pursuing the claims he had already made through the appeals procedure. Considering that his continued employment during the appeals procedure, which was likely to take some time, would be in the interest neither of himself nor of the Organization, he asked to be relieved of his services with the Organization, stating that his letter should be regarded both as an appeal and as his resignation.

The Regional Director was fully justified in believing that the complainant genuinely intended to leave his post. As the complainant had already resigned once in 1967 and had changed his mind only after discussions with his chiefs, his letter of 28 October 1968 appeared to be the confirmation of a firm intention.

Furthermore, the complainant's resignation as submitted in the above-mentioned letter was not in any way conditional. Although he complains of having received no reply to his complaints and gives the submission of an appeal as the reason for his resignation, he does not indicate that the cessation of his service is intended to continue only for the duration of the appeals procedure.

In these circumstances, by accepting the complainant's resignation and setting the date of expiry of his appointment at 31 January 1969 in accordance with Staff Rule 910.1 the Regional Director took a decision which was in no way contrary to the applicable rules. It would in fact have been contrary to the rules to regard the complainant's resignation as having been a temporary measure, as claimed by the complainant during the procedure. It follows that the decision by which the Director-General confirmed that of the Regional Director cannot be censured by the Tribunal.

Consequently, as the complainant's appointment was regularly terminated on 31 January 1969 he is not entitled to salary and allowances for any subsequent period. Moreover, as his resignation was validly accepted his claims for reinstatement and for damages in default of reinstatement are equally unfounded.

As to the claim concerning conditions of employment:

3. Although the complainant's services terminated on 31 January 1969 as a result of his resignation, he was still entitled to challenge his grading during an earlier period. His claim is, however, ill-founded.

The Tribunal's power of review in this respect is subject to a two-fold limitation. In the first place, as the complainant's conditions of employment were the subject of a decision made on 28 February 1968 which in default of any appeal became operative, only facts subsequent to that date can be taken into consideration. Secondly, having regard to the Director-General's discretion in such matters, the decision impugned can be quashed only if it is tainted by procedural irregularity or by an error of law, is based on incorrect facts, fails to take essential facts into

account, or if conclusions which are clearly false have been drawn from the documents in the dossier.

The point at issue, therefore, is whether as a result of events between 28 February 1968 and the letter of resignation dated 28 October 1968 the refusal to regrade the complainant should be censured for any reason falling within the competence of the Tribunal. The complainant himself does not claim that during the decisive period the development of his qualifications or the increase in his responsibilities justified any alteration in his status. In other words, the decision impugned is not tainted by any irregularity which the Tribunal is competent to review in respect of the complainant's grading. While it is true that the headquarters Board of Inquiry and Appeal considered that the complainant's merits had perhaps not been properly recognised, there is no reason to suppose that the Board's opinion, which was in any case stated with reservations, was based on facts subsequent to 28 February 1968.

As to the recommendations of the headquarters Board of Inquiry and Appeal:

4. In asking the Tribunal to endorse the recommendations of the headquarters Board of Inquiry and Appeal the complainant has misunderstood the respective roles of these two bodies. The Board of Inquiry and Appeal, as an advisory body, may take into account considerations of expediency, whereas the Tribunal, as a judicial organ, must confine itself to considering whether the decision impugned is in conformity with the applicable rules. From what has been said above it is clear that the Director-General did not infringe any such rule in rejecting the complainant's appeal.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy 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 6 October 1970.

(Signed)

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy