

EIGHTY-SIXTH SESSION

In re Aye Han and Renas

Judgment 1793

The Administrative Tribunal,

Considering the complaints filed by Miss Daw Aye Han and Mr. Richard William Renas against the World Health Organization (WHO) on 9 March 1998, the WHO's replies of 9 June, the complainants' rejoinders of 9 July and the Organization's surrejoinders of 8 and 9 October 1998;

Considering the applications to intervene in Miss Aye Han's complaint filed by:

Emmanuel Batururimi

Pierre Charles Leduc

Raúl Boyle

Marthe Mpendubundi

Kouadio Honoré Dibi

Idrissa Sow

Wonderful Baisie Gharthey

Abdoulaye Tounkara

Carol Ann Larivee

Abdullah Ziai

Considering the WHO's observations of 14 September 1998 on the applications;

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

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

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

A. In Judgments 1624 to 1631 of 10 July 1997 the Tribunal allowed complaints from employees of the WHO's Global Programme on Aids (GPA) against decisions to end their appointments on the grounds of the abolition of their posts at 31 December 1995. The Tribunal held that their posts had been of indefinite duration and quashed the impugned decisions because the Organization had failed to carry out the "reduction-in-force" procedure required by Staff Rule 1050.2 and had taken no individual decisions to abolish the posts.

Miss Aye Han is a citizen of Myanmar who was born in 1952. The WHO recruited her in November 1992 as a technical officer at grade P.3. It granted her a two-year fixed-term appointment, which it extended until 31 December 1995. It assigned her to the GPA at Freetown, in Sierra Leone. By a letter of 9 August 1995 a personnel officer of the WHO's Regional Office for Africa told her that her post was to be abolished at 31 December 1995 and her appointment would not be renewed beyond that date. At her request the Organization then put her on leave without pay for six months, until 30 June 1996. When she filed this complaint she was on a short-term appointment in the programme known as UNAIDS jointly sponsored by the United Nations and the WHO.

Mr. Renas, who was born in 1953, is a citizen of the United States. The Organization assigned him in December 1992 under the GPA to Phnom Penh, in Cambodia, as a technical officer at grade P.4. It extended his original two-year appointment to 31 December 1995. By a letter of 25 December 1995 a personnel officer of the Regional Office for the Western Pacific told him that his appointment would not be renewed after 31 December.

By a letter of 20 October 1997 the Director of the Division of Personnel told former GPA employees who had not gone to the Tribunal that if they felt they were in the same position in law and in fact as those who had they might ask to have the Tribunal's rulings applied to them. Mr. Renas did so on 5 November and Miss Aye Han on the 21st. By letters of 19 January 1998 the Director refused their claims on the grounds that they had not been in the same position as those whose complaints the Tribunal had allowed. By a letter of 26 February 1998 he informed their counsel that the Organization gave them leave to challenge the decisions of 19 January 1998 directly before the Tribunal.

B. The complainants cite a letter of 14 December 1995 from the competent Assistant Director-General to the chairman of the headquarters Staff Committee saying that the Tribunal's rulings would hold good for other GPA staff in the same position in law and in fact. They point out that form 172, headed "Notification of decision on position request" and issued by the Budget unit on 3 February 1992, described their posts as "indefinite"; so they were on a par with those who won in Judgments 1624 to 1631.

They ask the Tribunal to order the WHO to apply to them the rulings in those judgments and to award them 2,500 Swiss francs each in costs.

C. The WHO points out in its replies that the Assistant Director-General's letter of 14 December 1995 made it plain that anyone who wanted to put things beyond doubt must file a complaint or an application to intervene with the Tribunal. Although the Organization had good reason to apply the judgments only to complainants and interveners, it consented to letting anyone else in like case in fact and in law benefit too. But the complainants were not in like case: they held posts under field projects, one in Sierra Leone and the other in Cambodia, and the projects ended on 31 December 1995. The rules on creating and abolishing project posts are not the same as for posts at headquarters. And WHO Manual II.9.260.3 is explicit: country project posts are of limited duration.

D. In their rejoinders the complainants submit that the distinction between headquarters and project posts is immaterial because form 172 described theirs as "indefinite". Although they were project posts, they were created at headquarters under the applicable procedure and by a decision of the Director-General recorded in form 172. So the procedure was the same as the one the Organization followed in creating the posts the Tribunal declared indefinite. Rejecting the complainants' claims is discriminatory. They cite the cases of two former GPA employees who, like them, used to be on field project posts and whom the Organization did allow to benefit from the Tribunal's rulings.

E. In its surrejoinders the WHO presses its pleas. It denies discriminating against anyone in dealing with the claims of former GPA employees.

CONSIDERATIONS

1. In judgments of 10 July 1997 the Tribunal ruled on complaints from staff of the WHO who used to work for its Global Programme on AIDS (GPA) and whose appointments it had ended on 31 December 1995. Rejecting the WHO's case, the Tribunal held that their posts were to be treated as indefinite and that, having failed to apply the reduction-in-force procedure required under Staff Rule 1050.2, the Organization had not properly abolished them. The judgments are numbered 1624 to 1631: *in re* Clements, Gray, Lewis, Ratcliffe, Sato, Schopper, Stoneburner and Wabitsch. Other staff had applied to intervene in some of those cases and the Tribunal allowed their applications provided that they were in the same position in law and in fact as the successful complainants.

2. On 20 October 1997 the Director of the Division of Personnel sent the following letter to all former employees of the GPA:

"Before the Tribunal issued these Judgments, the Administration said that rulings made with respect to one staff member would apply to other former GPA staff members with the same claim and fact situation. The Administration repeatedly emphasized, however, that to avoid any dispute concerning whether staff members had the same claim and fact situation, interested staff should intervene in the cases that were already before the

Tribunal, thus allowing the Tribunal to make a definitive ruling on the issue. It was stressed that staff members who chose not to file a complaint with the ILOAT, or who did not intervene in a complaint, would not have the benefit of the Tribunal's clarification and thus risked future uncertainty as to the application of the Judgment.

Keeping this in mind, if you consider that you have the same claim and are in the same fact situation as a complainant, you remain free to make a written claim stating the full particulars of your claim, including its factual basis, and the remedy requested."

3. On getting that letter the complainants and 76 other former GPA staff who had not intervened in complaints wrote to the Director professing to be in the same position as those who had won. The WHO allowed 47 of those cases and rejected the others. In letters of 19 January 1998 the Director turned down the complainants' claims on the grounds that, having been on country project posts which had expired on 31 December 1995, they were not in the same position as those who had been on indefinite ones. That is the decision which, the WHO having waived internal appeals, they are impugning, and there are ten applications to intervene in their complaints.

4. The two complainants are in like case and the Tribunal will join their complaints to form the subject of a single judgment.

5. The case is straightforward enough. The complainants neither lodged complaints of their own against the termination of their appointments and the abolition of their posts nor intervened in earlier complaints; so the Organization might have rejected their claims as time-barred. But out of an understandable sense of fairness it decided otherwise, and the Director of Personnel's letter of 20 October 1997 conferred rights on staff who were in the same position in fact as those whose complaints had succeeded. The only material issue is whether their holding country project posts was a point of difference that warranted denying them the benefit of the Tribunal's ruling.

6. The Tribunal has no doubt about the answer. As it rules in Judgment 1792 (*in re* Najjar and Voetsch), also delivered this day, posts under field projects will as a rule fare as do the projects themselves. If the project is of limited duration, so too will be the post. One complainant had post 3.3847, created for a project (GPA 200) in Sierra Leone, which ended on 31 December 1995. The other held post 8.1933, created for a project (also GPA 200) in Cambodia, which ended at the same date. Neither post was intended to survive the project it came under; so neither may be treated as indefinite.

7. In rebuttal the complainants argue that the WHO created their posts under a procedure using form 172, which described the posts as indefinite, and the Tribunal relied on that form in allowing the earlier cases in Judgments 1624 to 1631.

8. They are misreading the reference to form 172 in those judgments.

9. Miss Aye Han has produced such a form declaring her original post on recruitment to be "indefinite, subject to continued need and availability of funds". But that was post 1.3902, one at headquarters she was put on in February 1992. It was not post 3.3847, the country project post, coming under the Regional Office for Africa, that she was assigned to in November 1994 on a fixed-term appointment for the fourteen months up to 31 December 1995.

10. The case of Mr. Renas is not so clear-cut. He was on post 8.1933 in Cambodia, and the form 172 he produces does say that it was indefinite. Why the WHO used the form at all is hard to see. The Organization shows that it created post 8.1933 in May 1992 as a project post. Yet two months later it issued form 172, which was obviously irrelevant, with the odd annotation "For record purposes only". But whatever mistake it may have made on that score, the post was plainly bound up with the project in Cambodia, which was of limited duration, and could not outlast it.

11. The conclusion is that neither of the complainants was in the same position as staff members recruited on headquarters posts that proved to be of unlimited duration. By refusing to let them have the benefit of the judgments the Organization did not act in breach of the commitments it entered into in its letter of 20 October 1997.

12. Since the complaints fail, so must the applications to intervene.

DECISION

For the above reasons,

The complaints and the applications to intervene are dismissed.

In witness of this judgment, adopted on 18 November 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Julio Barberis

Seydou Ba

A.B. Gardner