

EIGHTY-SEVENTH SESSION

In re Oberoi (No. 2)

Judgment 1888

The Administrative Tribunal,

Considering the second complaint filed by Mr Krishan Chandra Oberoi against the World Health Organization (WHO) on 24 February 1998, the WHO's reply of 5 June, the complainant's rejoinder of 27 July, and the Organization's surrejoinder of 10 November 1998;

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

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, who is of Indian nationality and was born in 1936, joined the WHO's Regional Office for South-East Asia (SEARO) at New Delhi on 3 September 1962 as a clerk-typist at grade ND.3. He was promoted to ND.4 in 1969, to ND.5 in 1979, and to ND.6 as an assistant in 1983. His post was regraded from ND.7 to ND.8 in 1987. He received three meritorious salary increases under Staff Rule 555.2 on completion of twenty, twenty-five and thirty years of service, and another one under Rule 555.1.

By a letter dated 11 August 1995, the Regional Personnel Officer informed the complainant that he had been selected for the post of special assistant in the Leprosy Unit at grade ND.X. His promotion would take effect from the date of his arrival on the new post. He joined the Unit on 14 August 1995 and retired on 31 July 1996.

By a letter of 24 August 1995, the Personnel Officer informed him that the effective date of reassignment and promotion had been established as 14 August 1995, the date of his arrival on the new post. This was confirmed by a memorandum dated 29 August.

Following the introduction of a new salary scale (Revision 37) announced by SEARO on 2 June 1995 with retroactive effect to 1 July 1994, the complainant had also become eligible for a spouse allowance on 1 January 1995.

On 27 June 1996, the complainant appealed to the regional Board of Appeal challenging the date of his promotion and the effective date of payment of his spouse allowance. He alleged "continued" personal prejudice under Staff Rule 1230.1.1 and failure to observe or apply correctly the Staff Regulations and Rules under Rule 1230.1.3. On 7 January 1997, the majority of the Board found the effective date of promotion to be 14 August 1995. The Board recommended unanimously that the spouse allowance was payable from 1 January 1995. It was unable to find any substantive evidence to prove the complainant's claim of personal prejudice or bias. By a letter of 5 February 1997, the Regional Director dismissed his appeal.

The complainant gave notice on 2 April 1997 of his intention to appeal against this decision to the WHO headquarters Board of Appeal. On 5 November 1997 the Board concluded that both the date of promotion and date of allocation of his spouse allowance were correctly fixed by SEARO in accordance with the Staff Regulations and Rules. The Board also found no substantive evidence of personal prejudice against the complainant. It recommended that the appeal be dismissed. By a letter dated 29 December 1997, the Director-General endorsed the conclusions of the Board and dismissed his appeal. That is the impugned decision.

B. The complainant has three pleas. First, he submits that under Manual paragraph II.5.400 the effective date of promotion is the "first of the month nearest the date on which the promotion is finally approved". This is borne out by Rule 380.3 which says that any increase in salary shall take effect from the first of the month closest to the date it was approved. In his case, the date of promotion should have been 1 August 1995.

Manual paragraph II.5.440 provides that the "effective date for any reassignment is the date of arrival on the new post". But, he says, that is an exception applying only to promotion concurrent with reassignment. In his case there

was no promotion by reassignment as he was promoted through competitive selection.

Further, his promotion was the first in SEARO to take effect from the date of arrival on the post rather than from the first of the month, and the complainant refers to other promotion cases where the incumbents were promoted from the first of the month. The date established for his promotion is one example of a series of actions on the part of the SEARO Personnel Unit to harass him.

Second, the complainant states that following the 37th Revision in the General Service salary scale which came into force retroactively on 1 July 1994, the gross annual occupational earnings of his spouse became less than the limit specified in Rule 310.5.1.2, and as such, he became eligible to draw the spouse allowance. He argues that in the absence of precise instructions under Rule 310.5 regarding changes in dependency status, he should be entitled to spouse allowance as from 1 July 1994. He submits that this is the second example of harassment against him by the Personnel Unit.

Third, he argues that there was personal prejudice against him on the part of SEARO. He states that "the nub" of his complaint is "the moral and material injury done to [him]" by those in the Personnel Unit. He presents several instances when Personnel allegedly "resorted to fraudulent means in killing the prospects of [his] application[s] for professional assignments".

He seeks the quashing of the Director-General's decision of 29 December 1997; promotion to ND.X as from 1 August 1995, and the payment of salary accordingly; entitlement to the spouse allowance as from 1 July 1994, and payment of it "at the admissible rate" up to 31 December 1994; the sum of 100,000 United States dollars for "grave injury, moral prejudice, mental torture, and total loss of reputation"; compensation for the "loss suffered for not bringing his double-meritorious award case to the attention of the Meritorious Increase Committee, despite several reminders" by his Director; and 1,200 dollars in costs.

C. The Organization replies that the complaint is irreceivable on three grounds. First, the complainant failed to dispatch a notice to appeal against SEARO's decision about his promotion date to the regional Board within sixty calendar days of receipt of its notification. He filed it on 3 June 1996, ten months after the final decision was communicated to him on 29 August 1995, and eight months after the personnel action form was issued on 10 October 1995, contrary to Staff Rule 1230.8.3. He was well outside the time limits.

Second, the complainant's claim for the spouse allowance is irreceivable given that all staff were advised on 2 June 1995 of the salary scale change. To be receivable, he should have made his claim by 1 August 1995, that is, within sixty calendar days, whereas he filed his intention to appeal on 3 June 1996. His appeal was time-barred.

Third, his claim for "moral and material injury" due to alleged actions by SEARO is irreceivable for failure to exhaust the internal means of redress, because the complainant's appeal to the regional Board of Appeal was formally withdrawn on 4 September 1995.

The Organization argues that the complainant's promotion was by "reassignment". Thus, the date is governed by Manual paragraphs II.5.400 and 440. Paragraph 440 states, in part, that "the effective date for any reassignment is the date of arrival at the new post or new official station". The complainant assumed the post on 14 August 1995, therefore his effective date of promotion was that same day. He is mistaken in contending that paragraph 440 applies only in exceptional cases. It is also incorrect to argue that he was not "reassigned" since there was a competition.

The Organization explains that the former practice whereby all new promotions took effect on the first of the month and not when the staff member took up the new post "arose from an oversight". That is evidenced by the fact that SEARO's practice was not followed at WHO headquarters or in any other regional office. SEARO changed its practice as from 1 August 1995.

According to Rule 310.5 a staff member in the General Service category is entitled to an allowance for a dependent spouse if his or her "gross occupational earnings ... do not exceed during any calendar year" a limit "equivalent to the gross base salary of the lowest general service category entry level in force on 1 January of the year concerned at the place of work". On 2 June 1995 all General Service staff members were advised that Revision 37, which announced a change of salary scale, would have retroactive effect to 1 July 1994 with respect to the determination of salary. The complainant's claim that Revision 37 has retroactive effect is incorrect with respect to the

determination of the spouse allowance. A staff member's entitlement to spouse allowance was governed by Rules 310.5.1 and 310.5.1.2. Therefore, for the year 1994, Revision 36 which established the limit at 73,330 rupees is applicable in the complainant's case.

Furthermore, Rule 310.5.1.2 applies equally to all General Service staff, including those who joined the Organization after 1 January of a given year. The salary scale in force on 1 January of the year in which an individual joins the Organization is the scale used for determining spouse allowance, even if it is later revised.

Finally, no personal prejudice or bias against the complainant entered into the decisions about the effective date of his promotion, his award of the spouse allowance, his applications for professional advancement, or any other administrative decision affecting him. His allegations are unfounded. D. In his rejoinder, the complainant reiterates his pleas and expands on the alleged "continued prejudicial actions of the Personnel Officer" at SEARO. The Personnel Officer made him the target of many "atrocities", including allegedly informing the United Nations by a fax of 4 May 1993 that his application, in response to a vacancy notice, was part of a batch of "junior and unfit" applicants.

He submits that the matter of the double meritorious increase award remains unconsidered since both the regional Board of Appeal and the headquarters Board of Appeal did not address this point in his previous appeals. He states that the Personnel Unit failed to bring his case to the Meritorious Increase Committee, while other staff cases were brought forward during that same period.

The Organization's argument that its effective date of promotion practice had been an "oversight" does not address the "main issue [of] why the promotions in SEARO had not been concurrent ... with reassignment before, and why the Personnel Officer now, in the case of [the complainant], abruptly wanted it to be concurrent ... with reassignment".

He states that personal prejudice is difficult to establish, but the cumulative effect of these alleged actions is proof of continued personal prejudice on the part of the Personnel Officer. At both levels of appeal the challenged decision focused on the incorrect dates of promotion and eligibility for spouse allowance, which are of lesser importance, and not on the larger issue of prejudice. He asks that his appeal be heard in its entirety.

E. In its surrejoinder, the Organization says that the complainant's many allegations of "continued prejudice" which he presents in his rejoinder, must, according to Rule 1230.1, be submitted against a specific "administrative action or decision affecting his appointment status". If the complainant had objections, he should have challenged these decisions at the given time and under normal appeal procedures.

The fax of 4 May 1993 regarding United Nations peacekeeping vacancies was transmitted along with forty applications, including that of the complainant, and stated that "some of the applicants are working here at junior levels and may not stand fit to your requirements for senior positions" and as such, did not "kill" the prospects of all of the applicants. Further, since the complainant was working as a senior staff member at the time, the comment did not relate to him. This is not evidence of alleged personal prejudice against him.

With respect to the award of a double meritorious increase, the recommendation to grant it was not processed because the Personnel Unit had initiated action to review the post in the Leprosy Unit for which the complainant was selected.

CONSIDERATIONS

1. The complainant contests a decision of the Director-General of the World Health Organization, his employer, endorsing a recommendation of the headquarters Board of Appeal to dismiss an appeal against a decision of the Regional Director of SEARO to accept the recommendation of the regional Board of Appeal that the complainant's initial appeal should be dismissed.

2. In his complaint, the complainant cites and seeks review of two specific administrative decisions relating first to the effective date of his promotion from grade ND.8 to ND.X, and second the effective date upon which he became entitled to receive a spouse allowance. In a third part of the complaint, the complainant alleges that he has suffered moral and material injury as a result of being a victim of prejudice and malfeasance on the part of SEARO and of certain officials at SEARO; he cites a large number of alleged incidents presumably in support of the allegation of prejudice and malfeasance.

3. The Organization pleads that the complaint is irreceivable. With respect to the first of the two specific administrative decisions as identified under 2, this plea is based on the failure of the complainant to file his internal appeal to the regional Board of Appeal within the time limit specified in Staff Rule 1230.8.3, i.e. within sixty calendar days from the time that the relevant administrative decision was notified to him.

4. Both the regional Board and the headquarters Board of Appeal made a specific finding that the appeals were receivable but the Tribunal's case law establishes that notwithstanding such findings it is still open to the Organization to submit the question of the receivability of the internal appeal to the Tribunal. A complainant who has not brought an internal appeal in accordance with the applicable staff rules and within the specified time limit has not fully exhausted his internal means of redress and his complaint is irreceivable within the terms of Article VII of the Tribunal's Statute (see Judgment 575, *in re Schulz*).

5. The complainant was clearly advised of the Administration's position regarding the effective date of his promotion by a memorandum from the Personnel Unit dated 29 August 1995. That memorandum was followed by a personnel action form issued on 10 October 1995 giving effect to the Administration's position. Even if 10 October 1995 were the effective date, the internal appeal would still have been out of time.

6. The complainant attempted to reopen the question by means of memoranda addressed to the Personnel Unit on 2 May and 17 May 1996 but

the Administration made it clear by a response dated 23 May 1996 that it considered that a final decision had already been taken and that the matter was closed.

7. The complainant's appeal to the regional Board of Appeal was brought only in June 1996. Manifestly it was out of time and is irreceivable.

8. The same is true of the second plea regarding the spouse allowance. The complainant was advised on 2 June 1995 of the retroactive increase in salary scale to take effect from 1 July 1994. If that retroactive increase had the result of creating for the complainant an entitlement to a spouse allowance for the year 1994 it was for him to inform the Administration of his wife's earnings during the relevant period and to make a claim for the allowance. For this claim to be receivable he should have filed it within sixty days of the date the new salary scale was notified to him. He filed his appeal in June 1996. It is out of time and irreceivable.

9. With regard to the third part of the complaint the situation is somewhat different although the result is the same.

10. The complainant appears to confuse personal prejudice and malfeasance as a ground upon which an administrative decision may be found to be tainted and therefore subject to be set aside, and such personal prejudice and malfeasance as a cause of action giving rise to a civil claim for damages for moral or material injury.

11. The Tribunal's jurisdiction is limited to the review of administrative decisions taken by international organisations affecting the employment conditions of their employees. Where such decisions are found to be reviewable and where they have caused harm, the Tribunal will exercise its jurisdiction to order reparation thereof. The Tribunal is not, however, a civil court of general jurisdiction in matters of delict and contract. Even where they may be causally related to injury suffered by someone, prejudice and malfeasance do not give rise to a claim for damages before the Tribunal unless they can be related to a specific administrative decision which has become final and against which the complainant has exhausted all available internal remedies.

12. Without exception, the incidents cited by the complainant in the third part of his complaint fall into one of the following categories:

(a) matters in which an internal appeal was launched and withdrawn or otherwise disposed of without any further appeal being taken within the allowable time limits;

(b) matters in which a final administrative decision was taken and no appeal was launched within the time limits allowed;

(c) matters in which there has been no final administrative decision; and

(d) matters invoked by the complainant subsequent to his initial appeal to the regional Board of Appeal and irreceivable as being illegitimate attempts to enlarge the grounds of the complaint.

13. Finally, to the extent that the matters raised in the third part of the complaint may be seen as evidence of personal prejudice admissible for the purposes of impugning the two administrative decisions earlier identified, the claims relating to those decisions are not receivable and such evidence is accordingly irrelevant.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 1999, Miss Mella Carroll, Vice-President of the Tribunal, Mr Mark Fernando, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Mella Carroll
Mark Fernando
James K. Hugessen

Catherine Comtet