

Registry's translation, the French text alone being authoritative.

FIFTIETH ORDINARY SESSION

In re ALI KHAN (No. 2)

(Preliminary questions)

Judgment No. 557

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Bahauddin Ali Khan on 22 October 1982, the Organisation's reply of 17 December, the complainant's letter of 14 January 1983, and the ILO's observations thereon of 2 February;

Considering Article II, paragraph 1, of the Statute of the Tribunal, Articles 11, paragraph 1, and 19 of the Rules of Court, and Articles 4.12 and 10.3 of the Staff Regulations of the International Labour Office;

Having examined the written evidence and disallowed the complainant's application for oral proceedings on the preliminary questions in this case;

CONSIDERATIONS:

1. The complainant, who was born in 1932, joined the staff of the ILO in 1960 and holds a grade P.4 post as a specialist for the textiles industry in the Manufacturing Industries Branch.

He has filed with the Tribunal a complaint inviting it to order the Organisation: (1) to process his annual appraisal report for 1980-81 in keeping with the relevant rules; (2) to change an entry in the report; (3) to put an end to harassment and discriminatory practices against him; (4) to pay him damages for material and moral injury; and (5) to stop treating him with high-handedness and rancour.

2. In a brief of 14 January 1983 the complainant applies to the President of the Tribunal for a provisional order under Article 19 of the Rules of Court.

That article empowers the President to make such orders only in the interval between sessions. Thus when in session the Tribunal itself will order measures of investigation in accordance with Article 11(1) of its Rules. It is meeting from 15 to 18 March 1983, before the closure of the written proceedings, and will therefore hear the application itself.

3. In his application he is seeking:

(a) the disclosure of a report on the investigations carried out by the Reports Board on the complainant's appraisal report for 1979-80;

(b) the disclosure of all minutes of the Reports Board's discussions on his appraisal reports for 1979-80, 1980-81 and 1981-82;

(c) the disclosure of all confidential minutes exchanged between the units of the Administration;

(d) an end to the harassment which he has suffered since filing his first complaint; and

(e) the disclosure of the appraisals of his colleagues.

The ILO invites the Tribunal to dismiss the application. While willing to submit to the Tribunal the items it regards as confidential, it does not see what purpose they might serve in this case.

4. The Tribunal decides as follows on the various heads of claim.

(a) The ILO states that all the items which come under (a) are appended to its reply. Having no reason to question that, the Tribunal rejects the first claim.

(b) The complainant must be satisfied with the conclusions of the Reports Board as set out under point 18 of the performance appraisal form. He has no right of access to texts produced for or by the Board. Article 10.3 of the Staff Regulations says that "The proceedings of the Board shall be regarded as secret". If that were not so the Board could not act in full independence.

(c) The ILO maintains that there are no secret minutes besides those which have been filed in the dossier. The Tribunal accepts this, and claim (c) therefore fails.

(d) This claim is irreceivable since the complainant is seeking neither a "measure of investigation" within the meaning of Article 11 of the Rules of Court nor a measure "intended to establish the existence of facts" within the meaning of Article 19.

(e) According to Article 4.12 of the Staff Regulations personal files shall be confidential. This provision is in the legitimate interests of staff members and its validity is beyond dispute. The complainant may not obtain the disclosure of the appraisal reports on his colleagues, which form part of their personal files.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 30 March 1983.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner