

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

## FIFTY-FIRST ORDINARY SESSION

In re ALI KHAN

Judgment No. 564

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Bahauddin Ali Khan on 15 October 1982 and the ILO's reply of 21 December 1982;

Considering Judgment No. 556 and the order made by the President of the Tribunal on 14 April 1983;

Considering the complainant's rejoinder of 9 July 1983 and the ILO's surrejoinder of 30 September 1983;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 4.2, 13.1 and 13.2 and paragraphs 4, 12(d), 14 and 16 of Annex I of the Staff Regulations of the International Labour Office;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant, a citizen of Pakistan who joined the ILO in 1960, was granted a contract without limit of time in 1961 and assigned to the Rural and Indigenous Workers Division. He held grade P.2/P.3, then P.3. Between 1965 and 1974 he applied without success for 14 P.4 posts. On 1 January 1975 he was transferred to a P.3 post in the Industrial Activities Branch. He is an industrial specialist. His post was upgraded and he was promoted to P.4 with effect from 1 January 1975. The Bureau for Labour Problems Analysis needed a senior research official, and a competition (No. V/ANALYSIS/16/81) was announced in June 1981 for a post at grade P.5. There were 43 candidates, including the complainant. Seven applications were eliminated as invalid. A selection board set up under paragraph 16 of Annex I to the Staff Regulations began by eliminating 19 who did not qualify, and it ruled out the complainant for "lack of actual socio-economic research experience". He was told by a minute of 16 March 1982 that he would not get the post. After holding a written test the board made a recommendation, the Director-General approved it, and the result was announced on 6 May. The complainant challenged it and on 7 May asked for "review". On 7 June the Chief of Personnel rejected his objections. In minutes of 11 and 17 June he developed these and asked the ILO to follow the procedure in Article 13.1 of the Staff Regulations. On 25 June the Chief of Personnel had an interview with him and summed it up in a letter to him of 29 June, again rejecting his case. By minutes of 30 June and 2 July he lodged a "complaint" under Article 13.2. The Chief of Personnel rejected it on the Director-General's behalf in a minute of 10 August 1982, the decision now impugned.

B. The complainant observes that he has an excellent academic background and long and varied experience of the ILO. He has written many lengthy and widely-acclaimed reports on the social and labour problems on which the holder of the new post is to do research. The successful candidate is much less experienced and younger and was promoted to P.4 only recently. The ILO committed several irregularities in order to appoint him. He was the only candidate to take the written test and the complainant was told he had lost before the result was made known. He was eliminated out of malice and on mistaken grounds. He has suffered such grossly unfair discrimination time and again since 1965, and it constitutes breach of Article 4.2. There was also breach of paragraphs 4 and 12(d) of Annex I, which require the board to take account of length of service. Real career opportunities in the ILO are reserved to a favoured few. One symptom of this is the dilatory, subjective and unfair methods of performance appraisal, and the complainant alleges grave flaws in the drafting of his own annual reports. He invites the Tribunal to set aside the result of the competition, to order the ILO to stop all discriminatory practices against him forthwith and give him full justice in the matter of career advancement and to award him compensation for material and moral prejudice.

C. The ILO replies that the procedure prescribed in the Staff Regulations was scrupulously complied with. The sole

purpose in letting the complainant and others know in advance that they had been eliminated was to spare them needless uncertainty. Of the three candidates asked to take the written test two dropped out. As to the charges of discrimination, length of service is only one criterion in filling a vacancy: according to paragraph 12(d) of Annex I it counts only after the vetting of candidates, the paramount consideration, as stated in Article 4.2(a), being "the necessity to obtain staff of the highest standards of competence, efficiency and integrity". The only material point is whether the complainant was properly eliminated. The ILO contends that he has no experience of the analytical and critical research work required. In fact his drafts of reports were routine and not always reliable. Academic qualifications are relevant, but not sufficient, and other candidates had better than he. The successful one has an impressive record of social and economic research. The charges of malice are groundless.

D. In accordance with Judgment No. 556 the ILO disclosed to the Tribunal on 31 March 1983 the items and information it had been ordered to produce. The Registrar passed on the information to the complainant. By order of 14 April the President instructed the Registrar to return the items to the ILO on the grounds that some of them merely repeated evidence already in the dossier and the others were irrelevant or immaterial.

E. In his rejoinder the complainant develops the history of the dispute and alleges wilful confusion of the issues by the ILO, malicious harassment and a desire to do him an injustice. At the interview of 25 June 1982 the Chief of Personnel tried to intimidate him. Less senior officials, including Pakistanis, have, quite unfairly, had much more rapid promotion. Material papers have been withheld from him and from the Tribunal, such as a report on the perfunctory inquiry made into his Article 13.2 "complaint". The result of the competition was predetermined, and there were serious flaws in the procedure. For example, all the members of the selection board were from Europe, and so is the winner of the competition; one member was the chief of the Bureau, who should not have been on the board at all. The complainant was eliminated on spurious grounds. He was fully qualified for the post. He develops his allegations of discrimination, contending that his own qualifications and achievements, which he describes at length, were overlooked, and the winner's overrated. The ILO is in breach of its own Discrimination (Employment and Occupation) Convention (No. 111). The whole system of competitions is, to his mind, a stain on the ILO's reputation and he has suffered the injustice of it for years. By United Nations norms his age and seniority entitle him to a higher grade. He presses his claims.

F. The ILO develops its case in its surrejoinder. While the complainant's accusations are in its view gratuitous and sometimes offensive, it recognises the frustrations of the present career system, which gives responsibility and ability priority over age and seniority. The Director-General is having an inquiry carried out to see whether the system can be made more flexible. There are no grounds, however, for blaming the complainant's lack of promotion on the mischievous intentions of others. The procedure for filling the vacancy was the correct one and there were no procedural irregularities. He was eliminated on objective grounds, along with others who were better qualified. The recommendation of the selection board was well-founded: the best man won. The ILO again invites the Tribunal to dismiss the complaint as devoid of merit.

## CONSIDERATIONS:

### Disclosure of evidence

1. In his complaint and in a brief dated 14 October 1982 the complainant applies for provisional orders, including one for disclosure of the reports of selection boards in competitions he has entered since 1964. In Judgment No. 556 the Tribunal dismissed his application in so far as it related to such reports. He repeats it in part in his rejoinder, and the Tribunal again rejects it, for the reasons stated in the previous judgment.

### Receivability

2. The complainant makes the following claims. He asks the Tribunal (a) to declare null and void the result of competition No. V/ANALYSIS/16/81; (b) to order the ILO to stop all discriminatory practices against him and give him full justice in the matter of career advancement; and (c) to award him compensation for material and moral prejudice.

Claims (a) and (c) come within the Tribunal's competence as defined in Article II of its Statute and are therefore receivable.

What claim (b) entails is that the Tribunal order the ILO to perform obligations set out in the Staff Regulations but

stated in such general terms that their performance is unenforceable. The claim is therefore too imprecise to be valid and is irreceivable, and the Tribunal will not consider the pleas in support of it.

#### The Tribunal's power of review

3. The complainant is challenging the decision to endorse the result of a competition held to fill a new post. Such a discretionary decision is subject only to limited review by the Tribunal. It may be quashed only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence.

In this instance the Tribunal will exercise its power with especial caution, its function being not to judge the candidates on merit but to allow the selection board and the Director-General full responsibility for their choice.

#### The merits

4. The English version of the original announcement of the vacancy said that the incumbent would join a team which was to prepare and edit a "Report on World Employment". A revised version in keeping with the French text and the ILO's intention, replaced the words with "World Labour Report". It is obvious that the change had no effect on the competition procedure, and it is not a procedural defect impairing the validity of the impugned decision.

5. The rules on competitions were revised in 1981. The new rules provided for setting up a selection board, and its members were appointed later.

The competition of which the complainant is challenging the outcome opened in June 1981 and it was decided to apply the old rules. His objections to that decision are unsound; there was no error of law and, because of the delay in appointing the members of the selection board, its effect appears to have been to speed up the competition procedure.

6. The board was made up of four staff members from western European countries, including the chief of the bureau in which the vacancy was to be filled.

Its composition was in line with the old rules on open competitions and was therefore correct in this instance since applications were invited and received from outside candidates.

It is debatable whether all members of a board ought to come from the same region, but it was not contrary to the rules in force.

In any event the elimination of all the outside candidates in the course of the selection procedure did not change the competition into an internal one.

7. Of the 43 candidates the board began by eliminating 7 who were not staff members and failed to qualify on grounds of nationality. It then put the 36 remaining candidates into three categories: those who failed to meet one or more of the stated requirements; those who were worth considering further; and those who stood out from the rest.

The complainant was put in the first category on the grounds of his "lack of actual socio-economic research experience". Having been eliminated on such grounds he was so informed several weeks before the impugned decision was taken. The three candidates in the third category were invited to take a written test. Only one actually took it, and it was he who was appointed.

The complainant has two objections to the procedure. The first is that he was eliminated prematurely; the other that having only one candidate take the written test was just a ruse.

The pleas fail. The board's exercise of its discretion was judicious. It was reasonable to sort out the candidates and, so as not to keep them waiting unnecessarily, inform at once those who had been eliminated; and the fact that two of those invited to take the test decided not to do so does not mean that the third was unduly favoured.

8. The complainant believes that the elimination for "lack of actual socio-economic research experience" of

someone with his particularly thorough training and his seniority in the ILO, who has done important work for the Organisation and acquired vast experience, can be accounted for only by prejudice and is contrary to the spirit of Article 4.2 of the Staff Regulations.

The premisses may be true, but the conclusions he draws are not necessarily correct. The Tribunal will not declare whether the complainant was fit to hold the post. It merely observes that his possession of the qualifications he mentions does not mean that he was necessarily the right person for the vacancy. Seniority does not always mean greater merit.

9. The complainant observes that the successful candidate is much younger, joined the ILO later, has worked on only one programme and was promoted to grade P.4 only a year before getting the higher post in the competition. The complainant believes that for those reasons he himself ought to have been chosen instead.

As it said in 3 above, it is not for the Tribunal to express an opinion on the candidates' merits. In particular it will not compare their various publications. If it passed comment on such matters, it would be substituting its own opinion for that of the selection board and the Administration and would clearly be exceeding its judicial function.

In any event it is no breach of any provision of the Staff Regulations to promote someone who has been in his previous grade for only a year. It is immaterial whether that is common practice or not.

10. Lastly, the complainant contends that he has been discriminated against throughout his ILO career. As proof he cites his failure in all the competitions he has taken part in, the refusal to give him a higher grade, the lateness of his performance reports, the fact that he has never been asked to sit on a selection board, and so forth.

These grievances relate to claim(b), which the Tribunal has held to be irreceivable, and it therefore need not consider them.

11. For the foregoing reasons the complaint, in so far as it is receivable, must be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 20 December 1983.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner