

## SIXTY-NINTH SESSION

### Judgment 1030

#### THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. A. L. M. against the Food and Agriculture Organization of the United Nations (FAO) on 5 June 1989, the FAO's reply of 28 July, the complainant's rejoinder of 12 September and the FAO's surrejoinder of 2 November 1989;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulations 301.012, 301.015, 301.091, 301.10, 301.103, 301.111, 301.151 and .154, FAO Staff Rules 302.9031 and .9034, 303.01 and .03, FAO Manual paragraphs 314.22, 330.152(iv), (viii) and (ix), 330.241(i) and 330.32 and paragraph 28 of Chapter III of the Standards of Conduct in the International Civil Service;

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

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

A. The complainant, an Indian born in 1935, was employed under a continuing appointment in the Office of the FAO Representative for India in New Delhi. He served for some years as a senior programme assistant. An account of his career with the FAO appears under A and 1 in Judgment 824 of 5 June 1987 on his first complaint. He was promoted several times and for the last time, in 1983, to grade G.7/B.

By a memorandum of 31 October 1985 the FAO Representative informed him that he was transferred as from 1 December to a technical co-operation project in New Delhi, IND/78/020, later IND/83/020, as assistant to the director of the project. Judgment 824 sums up, under B, 1 and 2, the many grievances that prompted his first complaint. They included the transfer. The Tribunal dismissed the complaint, holding in particular that his challenge to the transfer was irreceivable because he had not exhausted the internal remedies.

The Administration was seriously dissatisfied with him in his new assignment and in a memorandum of 29 June 1987 the Director of the Agricultural Operations Division (AGO) at headquarters in Rome warned that if he did not do better he would have his appointment terminated. On 1 October 1987 the Director of Personnel (AFP) withheld his within-grade step increase. On 5 October the Assistant Director-General in charge of Administration and Finance sent a telex to New Delhi to say that he was forthwith suspended from duty with pay under Staff Rule 303.03 pending investigation of charges against him.

On 18 December 1987 he appealed to the FAO Appeals Committee against his transfer to the project.

After inquiry the FAO came to the view that his breach of the standards of the international civil service and of his contractual obligations had been to the FAO's detriment. On 21 January 1988 the Director of the Personnel Division sent him a memorandum of 18 January 1988 by the Director of AGO saying that his dismissal for misconduct was proposed under Regulation 301.10 and Rule 303.01 and asking him to answer in accordance with Manual paragraph 330.32. There followed allegations that he had hampered the project, refused to work for eight months, been unruly and, by talking of his grievances outside the Organization, been indiscreet.

The complainant answered the charges on 27 February 1988.

On 7 March he lodged an appeal against the withholding of his step increase and against the suspension.

By a memorandum of 4 August the Assistant Director-General informed him that he was dismissed for misconduct; in accordance with Rules 302.9031 and .9034 he would get three months' pay in lieu of notice and a termination indemnity reduced at discretion, in accordance with Regulation 301.154, to a quarter of the amount due under the schedule in Regulation 301.151. Having been informed that he had refused delivery of the memorandum, the Assistant Director-General sent him notice of dismissal in a telegram of 5 September. His dismissal took effect on 16 September 1988, when he got the telegram.

By a telex of 8 December 1988 he appealed against the dismissal, but by a letter of 21 February 1989, the decision impugned, the Director-General informed him that his appeal was rejected and that in accordance with Regulation

301.111 that was the final decision, even though he had not appealed to the Appeals Committee.

B. The complainant recounts the material facts as he sees them and goes over the history of his many grievances. He dwells at length on his objections to his transfer, which he sees as unlawful on many counts. He describes how the project fared in 1987 and submits that the treatment of him while he was assigned to it was humiliating and unfair. A headquarters official who went out in March of that year to see the project wrote a widely circulated report that libelled him. The FAO wished him ill. It distressed him by taking too long to answer his letters and sometimes by not answering at all. It wilfully wrote to him at the wrong address. He is still awaiting the outcome of his internal appeals.

He submits that the Organization trumped up the charges to get rid of him. It suspended him from duty without having met the requirements of Regulation 301.103 ("Staff members whose appointments are terminated by the Organization, or who are demoted or suspended, shall be entitled to a written statement of cause at the time notice is given, and an opportunity to reply in writing.") and Rule 303.03. It took almost four months to draw up the charges and then over nine months to put the decision into effect. He was denied due process. There was no proper inquiry before the decision to dismiss was taken. The purpose of his transfer was to pave the way for dismissal by making his job precarious and blocking his return to his original post.

As for the actual charges, he denies them outright. The FAO is in bad faith. That his performance was consistently good is plain from his having got three promotions in quick succession. He did not refuse work; he was given none though he kept asking for it. He had no post description and no terms of reference.

Neither he nor anyone at his address refused messages from the FAO, and the Organization belittled him by misdirecting its communications.

He seeks the quashing of the dismissal and his reinstatement in his original post in the FAO Representative's Office, moral damages, damages for the libel in the headquarters official's mission report, and costs.

C. In its reply the Organization gives its own version of the facts and submits that the complainant confuses the issues so as to mask the unhelpful behaviour that warranted his dismissal.

The FAO submits that the discretionary decision to dismiss him shows no fatal flaw.

There was no abuse of discretion in transferring him, in December 1985, under Regulation 301.012: "Staff members are subject to the authority of the Director-General, who may assign them to any of the activities or offices of the Organization, and to whom they are responsible in the exercise of their functions". He was recalcitrant. The transfer was intended to make the most of his experience and skills in a new job away from the FAO Representative's Office, where he had not got on well with others. Yet he at once declared the transfer "unacceptable", then went on annual and sick leave until November 1986, and, having got an order from the Director of AFP on 1 December 1986 to report for work, again stated his objections before taking up duty on 5 December.

He did have proper terms of reference; they had been in force since 1970 and were updated in January 1987, and the project director handed over the updated version to him before a witness. They were clearly defined and stated specific tasks. He even had a copy of his predecessor's terms of reference appended to the FAO's reply to his first complaint, which he got on or before 23 December 1986. His post had not been abolished, and even if it had been he would have had the protection of his continuing appointment anyway.

As he himself admitted in a letter of 3 August 1987 to the project director, he did no work. He was to blame for costly delay in processing proposals for fellowships and other matters and in making purchases. Others had to take on his work. He committed breach of Manual paragraph 330.152(iv) and (ix), which define "unsatisfactory conduct" to include "Any action calculated to impede the effective operation of the Organization" and "unwillingness to perform prescribed duties or unwillingness to perform them in a satisfactory manner". In refusing to obey orders from his supervisor to move into an office assigned for his use he was also in breach of Manual paragraph 330.152(viii), which forbids "insubordination, such as impertinence to a superior officer or refusal to obey instructions". On 3 August 1987 he wrote to the director alleging mismanagement and objecting to his own status, and he sent copies of his letter to senior Indian Government officials, whom he saw without even his superiors' knowledge. That was in breach of Manual paragraph 330.241(i), which forbids conduct that jeopardises

the Organization's reputation.

There was due process. The Director of AGO sent him a written warning on 29 June 1987 that his performance was unsatisfactory and must improve. Further reports of misbehaviour having reached headquarters, he was served notice of suspension on 5 October 1987 under Rule 303.03. The charges were fully set out, as prescribed in Manual paragraph 330.32, in the Director of AGO's memorandum of 18 January 1988; he was given his say; and he replied on 27 February. An official sent out by the Director of AGO saw him on 14 and 16 April 1988. Only after review of all the facts was the decision taken. The reason for the delay in conveying it was his own refusal to take delivery of the memorandum containing it.

The mission report he objects to merely suggested "alternative arrangements at the earliest to make better use of his services".

He offers no evidence to suggest that the charges were fabricated.

D. In his rejoinder the complainant points out what he sees as mistakes and misrepresentations in the FAO's version, enlarges on his case and seeks at length to refute the Organization's reply. He submits again that, for the reasons he develops, his transfer to the project was an improper exercise of discretion. The breaches of procedure were wilful. There was no due process as to the charge that he had not got on well with others. The FAO admits that he did not have proper terms of reference: though he was transferred in December 1985 it was still updating them in January 1987. He had no post, no status, no office and no work. He develops his contention that the charges were malicious and groundless.

Maintaining that the unlawful and even "highly criminal" treatment of him and the "mockery of justice" caused him and his family great material and moral injury, he presses his claims.

E. The FAO submits in its surrejoinder that the complainant's rejoinder, though long, puts forward no new material arguments, that its tone is "unfortunate" and that his many allegations are unproven and largely irrelevant anyway. It develops several pleas in its reply about the grounds for his dismissal, which it submits are fully substantiated and which he has failed to refute, and about the procedure followed, which it believes was "complete and correct".

#### CONSIDERATIONS:

1. Although the complainant has come to the Tribunal without first appealing to the FAO's Appeals Committee in the usual way, that is allowed by Regulation 301.111. Under that regulation a staff member who appeals against a decision that affects him adversely may ask the Director-General to "render a final decision without recourse being made to the said Committee". That is what the complainant did by his telex of 8 December 1988 and the Director-General accordingly decided on the appeal without reference to the Appeals Committee. By a letter of 21 February 1989, which is the decision impugned, he confirmed his earlier decision to dismiss the complainant for misconduct, adding that the letter constituted a "final decision" within the meaning of Regulation 301.111 and that if he wished he was free to submit a complaint to the Tribunal.

The complainant has done so within the time limit and his complaint is therefore receivable.

2. The material issue in this case is whether the complainant's dismissal for misconduct was unlawful. The dismissal was ordered on several grounds which are taken up in 7 to 9 below. It came about in the following way.

The complainant's transfer

3. By a memorandum of 31 October 1985 the FAO's Representative for India in New Delhi told him of his transfer as from 1 December 1985 from the Representative's Office to work under a technical co-operation project, also in New Delhi, as assistant to the director of the project. He took grave exception to his new assignment, and the Organization's case is that it prompted in him from the date of transfer an attitude and behaviour which amply warranted dismissal. His immediate reaction on receipt of the order of transfer was to declare it "unacceptable". He then went on annual and sick leave for some eleven months, until November 1986. In the end he was ordered point-blank to report for duty at once and he got the order on 1 December 1986; still he objected, and he did not turn up until four days later.

In his third complaint he challenges the decision to transfer him. For the reasons stated in Judgment 1031 that

complaint is irreceivable. The decision being therefore beyond challenge, the Tribunal will not entertain any of his objections to it in the context of the present complaint.

The complainant's plea of breach of due process

4. The complainant alleges that he was denied due process.

The procedure was as follows.

On 29 June 1987 the Director of the Agricultural Operations Division (AGO) at headquarters, which was in charge of administering the project, sent him a memorandum containing a formal warning about his unsatisfactory performance and telling that if he failed to change his attitude his dismissal for unsatisfactory services under Regulation 301.091 and Manual paragraph 314.22 would be recommended.

By the time that that warning had been given him, however, more information was reaching headquarters that gave cause for even greater dissatisfaction. Headquarters indeed came to the view that his behaviour amounted to misconduct. One step it took, on 1 October 1987, was to withhold his within-grade step increase, but that decision is not at issue in this case. Then, in a telex of 5 October, the Assistant Director-General in charge of Administration and Finance served him notice under Rule 303.03 of his suspension with pay pending investigation of the charges of misconduct.

On 21 January 1988, as prescribed by Manual paragraph 330.32 the Director of the Personnel Division transmitted to him a six-page memorandum of 18 January from the Director of AGO recommending that the disciplinary measure of dismissal be imposed on him for misconduct and stating the reasons for the recommendation. That memorandum set out each of the charges against him in detail and so gave him both a full explanation of what the Organization saw as his misconduct and an opportunity to answer the charges. He had ample time in which to do so and on 27 February he submitted a seven-page memorandum in reply.

On receipt of the reply the Director of AGO had a headquarters official go out to India to investigate the matter. That official saw the complainant on 14 April 1988 for two-and-a-half hours and on 16 April for two hours.

Lastly, by a memorandum of 4 August 1988, after review of the matter, the Assistant Director-General informed him of the decision to dismiss him on the grounds of misconduct under Manual paragraph 330.241(i).

5. It is plain from that summary of the procedure the FAO followed that it acted in strict compliance with the requirements of the material rules and that there is no substance to the complainant's contention that he was denied a full and fair hearing.

The grounds for dismissal

6. The charges of misconduct against the complainant come under three main heads: refusal to perform duties, refusal to obey instructions, and behaviour damaging to the FAO's reputation.

Refusal to perform duties

7. Maintaining that he had no terms of reference and that his post was "non-existent", he did not perform any significant work. He himself acknowledged as much in a letter of 3 August 1987 to the project director: "I have been completely and fully idle", he said, "for the last 8 months".

The Organization explains at length in its reply to the complaint that his idleness caused unnecessary and costly obstruction to the proper functioning of the project. It states:

"Because of his passivity and outright refusal to cooperate, there were exceptional delays in the processing of proposals for fellowships, consultancies and study tours. Copies of correspondence which should have been forwarded to the FAO Representative ... were, in fact, addressed to headquarters or not sent at all. There were also exceptional delays in obtaining requested information from sub-projects and transmitting the information to Headquarters so that the purchasing could be effected in time. As a consequence, over US\$ 1 million worth of purchase requisitions were awaiting action as at 28 July 1987. With regard to the shipments received for the various sub-projects at the port of entry, dispatch instructions were so delayed that demurrage costs were incurred,

chemicals were spoiled and time and money were spent to trace undelivered articles. Special procedures had to be established to ensure that the complainant's work be carried out satisfactorily by other staff.

The complainant was specifically instructed to complete the terminal report of [the project]. Despite clear instructions signified to him on several occasions, and for the last time on 1 July 1987, he made no effort to do so."

The complainant fails to rebut those charges: he merely denies them with allegations that the Organization is "obviously exaggerating" and is seeking to misrepresent the nature of his duties as administrative assistant. He offers no cogent evidence whatever in support of his attempts at rebuttal.

The Tribunal is satisfied that the tasks he was being asked to take on not only formed part of his prescribed duties but were such as he was qualified to carry out and that the charges as stated by the Organization are substantially true.

On that account alone he was guilty of "unsatisfactory conduct" within the meaning of Manual provision 330.152, which describes as such, under (ix), "Unwillingness to perform prescribed duties or unwillingness to perform them in a satisfactory manner".

#### Refusal to obey instructions

8. Secondly, the FAO asserts that he refused to move into an office after his supervisor had told him to do so. The deputy secretary of the project wrote to him on 6 May 1987 to say that he was to take up an office near the director's. The Organization goes on:

"Instead of abiding by this instruction the complainant wrote a note stating that the room was 'make-shift' and stating that it was not appropriate to move.

On 14 May 1987, the National Director had to instruct the complainant to move and once again the complainant refused to do so. ..."

The complainant simply retorts that the allegation is "absurd" and that all the director of the project need have done was "order his men to move the furniture" to the new office. That is no answer to the charge, which is that he refused to comply with instructions from his supervisor.

The conclusion again is that his conduct was unsatisfactory because he was guilty of "Insubordination, such as impertinence to a superior officer or refusal to obey instructions" within the meaning of Manual paragraph 330.152(viii).

#### Behaviour damaging to the Organization's reputation

9. Thirdly, the FAO objects to his having on 3 August 1987 sent the director of the project a letter alleging mismanagement over the purchase of uniforms and equipment and again objecting to his administrative status.

The very text of the letter reveals not only that he sent copies of it to the director-general and two other officers of the Indian Council of Agricultural Research, the national agency in charge of carrying out the project, but that he had had meetings with them on 16, 22 and 29 July 1987 about the matters he discussed in the letter, and he did so without the knowledge, let alone the approval, of his supervisors or of the Administration. The complainant's answer is that he is entitled to send his employers copies of correspondence about his personal situation.

For one thing, his letter was not confined to matters of his own status since it contained allegations of mismanagement; for another, those he sent copies to were officials of the Indian Government, whereas he was employed, not by the Government, but by an international organisation.

Again, the Tribunal is satisfied that his conduct was in breach of paragraph 28 of Chapter III of the Standards of Conduct in the International Civil Service, which reads:

"Adequate arrangements ... exist within the international organizations for a staff member to secure fair treatment in respect of his personal administrative status. It is thus inexcusable for an official to lobby with governmental representatives ... in order to secure support for improvements in his personal situation ..., or for blocking or

reversing unfavourable decisions regarding his status. ..."

His conduct was, more particularly, in breach of FAO Staff Regulation 301.015:

"Staff members shall exercise the utmost discretion in all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Director-General. ..."

His failure to keep his grievances to himself also put the FAO's reputation at risk and was therefore in breach of Manual paragraph 330.241(i), which defines "dismissal for misconduct" as "a termination for unsatisfactory conduct that has jeopardised ... the reputation of the Organization and its staff".

The claims to reinstatement and to moral damages

10. The conclusion is that the sanction of dismissal was correctly based on the charges set out under the above three heads and shows no flaw that warrants setting the impugned decision aside. The complainant's claims to reinstatement and to an award of moral damages must therefore be rejected.

The claim to damages for libel

11. He is further seeking an award of damages on the grounds that an official of the Agricultural Operations Division wrote a report dated 8 May 1987 on a mission he had carried out to see the project in March 1987, that that report had said that the Organization "should make alternative arrangements at the earliest to make better use of his services", and that that "highly libellous reference" had destroyed his "social and official image amongst his colleagues in the United Nations system as well as amongst the Government of India officials".

His claim fails. The author of the mission report had authority to make the comment the complainant objects to since he represented the division in charge of administering the project. Moreover, there was nothing offensive about his suggestion: indeed it had been one of the complainant's grievances for some time that his services were not being put to proper use.

The claim to costs

12. Since his complaint is devoid of merit the complainant's claim to costs is also disallowed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux  
Mohamed Suffian  
E. Razafindralambo  
A.B. Gardner