

TWENTIETH ORDINARY SESSION

In re AGARWALA

Judgment No. 121

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Om Parkash Agarwala on 17 April 1967, the reply of the Organization dated 1 June 1967, the rejoinder of complainant dated 13 December 1967, and FAO's reply to that rejoinder dated 6 February 1968;

Considering Article II, paragraph 5 of the Statute of the Tribunal and FAO Staff Rule 303.03,

Having heard in public session on 4 October 1968 Maître Jacques Mercier, Counsel for complainant, and Mr. Roche, Agent of the Organization;

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

A. Mr. Agarwala, who is of Indian nationality, entered the service of FAO on 1 November 1963 after serving for about ten years with other international organisations. After an assignment to an FAO project in South Korea, which was terminated because of complainant's alleged inability to get on with his colleagues, he was attached from 29 April 1965, as administrative officer, to an Animal Husbandry Research and Training Project in Iraq, the project manager being Mr. Jones. On 6 November 1965 he was also assigned to an identical position under another FAO project in Iraq, the Institute of Co-operation and Agricultural Extension headed by Mr. Poulos. Complainant's contract was due to expire on 31 August 1966. On 19 October 1965 Mr. Jones applied for the extension of complainant's contract by two-and-a-half years. On 22 February 1966 FAO headquarters signified its agreement, in principle, to this proposal, indicating that a request for funds would have to be made to the United Nations Special Fund, but that this could be done later.

B. On 17 February 1966, however, on the occasion of a joint mission to Basrah, Mr. Agarwala had a difference of opinion with his Iraqi counterpart in the project managed by Mr. Poulos. Following this incident Mr. Poulos, on 27 February and 16 March 1966, requested headquarters to replace complainant. On 8 and 9 June 1966 Mr. Poulos and Mr. Jones transmitted to complainant a letter from the FAO Director of Field Services informing him that his contract, due to expire on 31 August 1966, would not be renewed because of the complaints received from the two project directors concerning his bad relationship with the local staff. At the same time the Directors of the two projects informed complainant that he should no longer present himself for work. In a telegram addressed to complainant on 19 June 1966, the FAO Director of Field Services instructed him to return to India and report on his assignment. In a letter dated 18 August 1966, it was confirmed that complainant's contract would not be renewed.

C. The Director-General of FAO having rejected an appeal from complainant on 6 September, complainant filed an appeal with the FAO Appeals Committee. The Appeals Committee found that complainant's service had been satisfactory except for his behaviour, which had not met the special requirements for field service officials; that no written warning had been issued to complainant drawing his attention to his unsatisfactory conduct, and that Staff Rule 303.03 concerning suspension had not been strictly observed; that, on the other hand, while it was true that fixed-term contracts cannot give rise to any expectancy of automatic renewal, Mr. Agarwala might reasonably have expected the renewal of his contract in view of the assurances given on 22 February 1966. The Appeals Committee accordingly recommended that the Director-General should grant complainant compensation for the moral and material injury he had suffered. The Director-General communicated the report of the Appeals Committee to complainant, and while reserving the Organization's position with regard to the Committee's conclusions, maintained his decision not to renew complainant's contract and offered him a sum of US\$2,500 in settlement of all accounts and claims between the Organization and complainant.

D. In his complaint against this decision Mr. Agarwala prays the Tribunal to quash it and, failing the granting to him of a new contract, to award him damages in the amount of \$28,992 for loss of salary and allowances and for prejudice to his career.

E. The Organization prays that the complaint be rejected.

F. The Tribunal having ordered the hearing of several witnesses at complainant's duty station, their evidence was taken under oath through the good offices of the Swiss Embassy in Baghdad. The Tribunal also arranged to obtain written testimony from several other witnesses.

CONSIDERATIONS:

As to the illegality of the suspension:

It is not contended by the Organization that they were or would have been justified in suspending the complainant, either as a disciplinary measure or pending the investigation of any charge against him. Their case is that they did not in fact suspend him at all but gave him a different assignment. The Tribunal cannot put this interpretation upon their actions. BY the letters of 8 and 9 June 1966 the complainant was relieved of his duties and in effect forbidden to call at his office. The nature of this act, which is clearly a suspension from duty, is not altered by the fact that some ten days later a duty of a nominal character in another country was proposed for him. The Organization has therefore committed a breach of contract by suspending the complainant otherwise than in accordance with the Staff Regulations. Since his emoluments have been fully paid, he has suffered no material damage, but he has suffered moral damage. He is entitled to compensation for the distress caused by the abrupt way in which he was treated, tantamount in its form to summary dismissal, and for the injury done to his reputation and to his prospects of obtaining other employment. The Tribunal fixes this compensation at 6,000 dollars.

As to the non-renewal of the contract:

The renewal or non renewal of a contract of employment is a matter within the discretion of the Director-General. Accordingly the Tribunal will not interfere with his decision unless it is taken without authority, is in irregular form or tainted by procedural irregularities, or if it is tainted by illegality or based on incorrect facts, or if essential facts have not been taken into consideration, or again, if conclusions which are clearly false have been drawn from the documents in the dossiers the Tribunal may not substitute its own judgment for that of the Director-General in regard to the work or conduct or qualifications of the person concerned. On the facts of this case none of the conditions which would justify interference by the Tribunal is present. In view of the report of strained relations which the Director-General had received, his decision not to renew the appointment was not an arbitrary one. The correspondence on which the complainant relies as indicating the probability of renewal does not amount to a promise or make the renewal a matter of good faith.

DECISION:

For the above reasons,

1. The Organization shall pay complainant the sum of six thousand United States dollars.
2. The other submissions in the complaint are dismissed.
3. Mr. Agarwala is awarded costs in the amount of one thousand United States dollars.

In witness of this judgment, delivered in public sitting in Geneva on 15 October 1968 by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Asst. Registrar of the Tribunal.

M. Letourneur
André Grisel
Devlin
Bernard Spy