

SEVENTY-FOURTH SESSION

In re KAPOOR (No. 2)

(Application for execution)

Judgment 1220

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Dhoomi Chand Kapoor on 30 December 1991 for execution of Judgment 1049, the reply of 25 March 1992 from the World Health Organization (WHO), the complainant's rejoinder of 29 April and the WHO's surrejoinder of 5 June 1992;

Considering Articles II, paragraph 6, VII, paragraphs 1 and 2, and VIII of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS:

1. This is an application for the execution of Judgment 1049, which the Tribunal delivered on 26 June 1990 on Mr. Kapoor's first complaint. Although the text was notified to the World Health Organization on 3 July 1990, no action was taken to execute the judgment within thirty days, the period that the Organization has accepted would have been reasonable in the circumstances. Since the damages and costs awarded to the complainant, totalling 3,500 United States dollars, were not paid to him until 3 October 1990, payment of interest to compensate two months' delay was offered to him, and made on 3 March 1991.

The application is not about that part of the Tribunal's decision but arises out of the quashing of the decision by the Director-General to appoint Mr. Ashok Mitra to an ND.X post, No. 5.1801, in the WHO's Regional Office for South East Asia (SEARO). The complainant claims what he sees as full execution of the Tribunal's rulings.

2. By instructions in memoranda dated 17 September, 17 October and 13 November 1990 the Organization removed Mr. Mitra from the ND.X post and reassigned him to an ND.8 post, No. 5.0017, though it allowed him to keep his ND.X grade on a personal basis. By a letter of 18 December 1990 its Legal Counsel informed the complainant on behalf of the Director-General that Mr. Mitra's appointment to post 5.1801 had been cancelled, that the selection procedure for filling that post had been "initiated" and that pending a new appointment Mr. Mitra was performing some of the duties of the post besides those of his own.

The complainant protested to the Director-General in a letter of 28 December 1990, alleging in substance that Mr. Mitra was to all intents and purposes continuing to perform all the duties of the ND.X post and enjoying all the rights and emoluments of grade ND.X and that there was no vacant post at ND.7, the grade to which he should have reverted. He concluded:

"Accordingly, it is essential that WHO Geneva ensures that the Tribunal judgment No. 1049 is implemented in full, so that I do not have to approach the Tribunal with a fresh complaint."

In his reply of 23 January 1991 the Legal Counsel confirmed that Mr. Mitra's appointment to post 5.1801 had been cancelled and said that a notice of vacancy would be issued after review of the post description and that the Director-General had "agreed to assign Mr. Mitra to an ND.8 post and to grant him a personal promotion to grade ND.X retroactively from the date of his invalid appointment to post No. 5.1801".

On the strength of the new notice Mr. Mitra was once again selected for post 5.1801 and he was appointed to it. There is no challenge to that appointment.

3. In the light of the foregoing the gravamen of the present application is that the quashing of the appointment of Mr. Mitra invalidated it ab initio and required full restoration of the status quo; that Mr. Mitra should therefore have reverted to the ND.7 post he had held at 2 March 1987, the date of his impugned promotion; that the Organization should have recovered the excess payments made to him from that date; and that the decision to

assign him to an ND.8 post, with retroactive personal promotion to ND.X that allowed him to keep those excess payments, was not execution but circumvention of Judgment 1049.

He further asks the Tribunal to "reprimand" the WHO and order it to respect that judgment in all respects and to award him "token relief ... for the continuing moral injury".

4. The complainant is challenging a decision whereby, he alleges, Mr. Mitra was wrongfully granted or allowed to keep financial and other benefits.

The complainant was no longer in the Organization's service when that decision was made. So, even if his allegation were justified, it caused him no injury, and in particular no moral injury, whatever grounds for objection some of Mr. Mitra's present colleagues may have had.

As the Tribunal held in Judgment 732 (in re Lorocho No. 3), a complaint "would succeed only if the complainant had suffered injury and established a sufficient causal link between the Organization's act and the injury"; and again, in Judgment 764 (in re Berte No. 2), "A decision by an international organisation is challengeable before the Tribunal only if it causes the complainant injury".

The complainant having suffered no injury and being therefore unable to show any cause of action, his application is irreceivable and must fail.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas
E. Razafindralambo
Mark Fernando
A.B. Gardner