

SEVENTY-FIFTH SESSION

***In re* BANSAL (No. 3),
HARPALANI (No. 3),
KUMAR (No. 2)
and MARWAH (No. 3)**

(Applications for execution)

Judgment 1254

THE ADMINISTRATIVE TRIBUNAL,

Considering the applications for execution of Judgment 1160 filed by Mr. Prem Kumar Bansal on 29 May 1992, by Mr. Mohan Amulrai Harpalani and Mr. Dharam Pal Marwah on 8 June and by Mr. Surindar Nath Kumar on 27 July, the World Health Organization's single reply of 30 September, the complainants' rejoinder of 15 October and the Organization's surrejoinder of 20 November 1992;

Considering the applications by Mr. V.V. Bhotlu, Mr. Amarjit Singh Chhatwal, Mr. Nirmal K. Jagasia, Mr. Jaswant Singh Narula and Mr. P.S. Thakur to intervene in Mr. Bansal's application;

Considering Mr. Jagdish C. Juneja's application to intervene in Mr. Harpalani's and Mr. Marwah's applications;

Considering the WHO's observations of 30 September 1992 on the applications to intervene;

Considering that the applications raise the same issues and should therefore be joined to form the subject of a single ruling;

Having examined the written evidence;

CONSIDERATIONS:

1. The World Health Organization approved as from 1 January 1986 the application of new salary scales to staff in the General Service category of its Regional Office for South East Asia (SEARO) in New Delhi. It so informed the staff by a memorandum of 8 October 1986. Interim adjustments were made in the scales in 1987 as a result of what was known as a "mini-survey" and were approved as from 1 January 1987. The nine complaints, including those of the present complainants, which the Tribunal joined and ruled on in Judgment 1160 of 29 January 1992 challenged both the 1986 and the 1987 scales. That judgment held the challenge to the 1986 scales to be irreceivable but quashed decisions that the Director-General had taken applying the findings of the 1987 survey and ordered him to take a new decision in the light of the judgment.

2. In execution of Judgment 1160 the Director-General wrote the complainants a letter dated 30 April 1992 in which he stated:

"In view of the Tribunal's decision that the appeal against the 1986 comprehensive salary survey is time-barred and irreceivable and considering the fact that the 1987 mini-survey was based on the elements (e.g. comparator employers, job matching, quantification of benefits, negative indexation, etc.) approved in the 1986 survey, there is no possible review of the 1987 mini-survey. As you know, the 1987 mini-survey only updated the results of the 1986 comprehensive salary survey. However, in order to lay to rest this long-standing complaint, but without prejudice to the legal principles involved in the decisions relating to those surveys, I am prepared to offer you a lump-sum payment based on the overall results of the 1987 interim adjustment to be applied across the board. Of course, the supplementary financial compensation given to you as per the memorandum of Director, Support Programme of 24 May 1989 would be deducted."

3. The complainants object to that offer and appear from their arguments to have taken Judgment 1160 to mean that the Tribunal thought a new survey certainly possible. Their interpretation is mistaken. In the judgment the Tribunal referred under 17 to the claim by the complainants in that case that "they should be paid lump-sum compensation if

a new survey is administratively impossible". It was because it was not satisfied that a new survey was administratively impossible that the Tribunal dismissed that claim, and it stated its ruling in those terms because the Organization had omitted to explain why a new survey was administratively impossible.

4. In his letter of 30 April 1992 the Director-General points out that the results of the comprehensive survey for 1986 held good because the challenge to them had been dismissed and that the mini-survey for 1987 had been based on elements approved in the comprehensive one - comparator employers, job matching, the quantification of benefits, negative indexation, and so forth - and did no more than update the results of the 1986 survey.

5. The complainants are not contending that a new mini-survey is possible. Instead they call for "a fresh and a complete independent/fully-fledged comprehensive survey with a base date of 1 January 1987". That cannot be: the results of the comprehensive survey for 1986 being valid, all that is at issue is the results of the mini-survey for 1987. The explanation the WHO has now given as to why a new mini-survey is not possible for 1987 is satisfactory.

6. The sole remaining issue is therefore whether the offer of lump-sum payment is reasonable.

At the close of the mini-survey for 1987 the Organization decided to grant General Service staff the following percentage increases in salary according to grade:

ND.1 to ND.4 - 10.6

ND.5 - 8.9

ND.6 - 5.1

ND.7 and 8 - 3.0

Staff at ND.X, step 1, were also to be granted 2,000 Indian rupees above the rate for ND.8, step XV.

The Director-General has offered lump-sum payments corresponding to an increase of 10.6 per cent for all grades.

The Tribunal is satisfied that the offer is fair in the circumstances and that the applications are unsound.

7. Since they fail so too do the applications to intervene.

DECISION:

For the above reasons,

The applications for execution and the applications to intervene therein are dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Sir William Douglas, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

José Maria Ruda
William Douglas
Mella Carroll
A.B. Gardner