

SEVENTY-NINTH SESSION

In re SHARMA (No. 5)

(Application for execution)

Judgment 1427

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Hari Chand Sharma on 16 May 1994 for the execution of Judgment 1313, the reply of 2 September from the World Health Organization (WHO), the complainant's rejoinder of 16 October and the Organization's surrejoinder of 5 December 1994;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS:

1. The WHO employed the complainant as a storekeeper at grade ND.4 on post 5.C008 in its Regional Office for South East Asia (SEARO). It terminated his appointment at 21 July 1987.
2. By Judgment 1238, which it delivered on 10 February 1993, the Tribunal ordered the Organization to do its utmost to reinstate the complainant as from that date in the post which he had held on 21 July 1987 or in any comparable post acceptable to him and only if that proved impossible to pay him additional damages equivalent to two years' salary and allowances.
3. In a letter of 20 May 1993 the Director-General said that he was not in a position to reinstate the complainant, who would therefore be paid the additional damages. By Judgment 1313, delivered on 31 January 1994, the Tribunal set aside that decision insofar as it refused to reinstate the complainant as from 10 February 1993, sent the case back for a new decision as to reinstatement and awarded him further damages equivalent to one year's salary for the failure to execute Judgment 1238.
4. By a letter dated 28 February 1994 the Director-General informed the complainant that he had instructed SEARO to send him all vacancy notices for positions in the General Service category of staff "to enable [him] to apply" for those he considered himself qualified for. The complainant replied on 17 March 1994 that the Tribunal's judgment did not require him to apply for a post and that the Organization had simply to reinstate him in an appropriate one. Observing that the very post which he had held had recently fallen vacant, he asked that he be reinstated in it. He sent a copy of his letter to the Regional Director for South East Asia. The Regional Director wrote to him on 23 March 1994 repeating that he would be sent vacancy notices to enable him to apply for posts he considered himself qualified for, but saying nothing about his reinstatement as storekeeper.
5. The complainant sent the Director-General one reminder on 13 April and a second on 10 May 1994. The Organization says that his letters of 17 March and 13 April were not received at headquarters and that it sent a reply on 25 May only to his second reminder reiterating what the Director-General had said at the outset.
6. On 16 May 1994 the complainant lodged this complaint pleading that the Organization had failed to comply with Judgment 1313 by requiring him to apply for a post, as if it were a matter of recruitment, and by not responding to his requests for reinstatement in his post as storekeeper. He asks for reinstatement in that post and for damages and costs.
7. On 5 July 1994 he received from SEARO notice of a vacancy for a storekeeper. He immediately repeated his request for reinstatement in that post. On 8 August he was allegedly "considered" for it by the Director of Support Programme at SEARO. After discussion about that post and others he was reinstated as a clerical assistant at grade ND.4 on post 5.C082 with effect - according to a personnel action form dated 6 October 1994 - from 11 February 1993. He took up duty on 16 August 1994.

8. In its reply to the complaint the Organization states that the complainant has been reinstated and his entitlements are being recalculated and it expresses the hope that he will withdraw suit. In his rejoinder he asks the Tribunal to rule on his claims other than to reinstatement and to arrears of pay. The Organization's surrejoinder makes it clear that he has since received the sums awarded in Judgments 1238 and 1313 as well as arrears of pay.

9. Yet the Organization did not execute Judgment 1313 as promptly as it should have. Instead it caused the complainant needless uncertainty by requiring him to apply for vacancies and by ignoring his request for reinstatement in the vacant post of storekeeper. It thus virtually compelled him to come back to the Tribunal, on 16 May 1994, and only on 16 August 1994, over six months after the date of Judgment 1313, did he return to duty.

10. The complainant has suffered no financial loss because he has been paid for the entire period since 10 February 1993. But he is entitled to moral damages for the injury due to the thwarting of his legitimate expectation of prompt and correct execution of the Tribunal's judgment. The Tribunal accordingly awards him 500 United States dollars under that head. It also awards him 200 dollars in costs.

DECISION:

For the above reasons,

1. The World Health Organization shall pay the complainant the sum of 500 United States dollars in moral damages.

2. It shall pay him 200 dollars in costs.

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

Delivered in public in Geneva on 6 July 1995.

William Douglas
P. Pescatore
Mark Fernando
A.B. Gardner