

TWENTY-FOURTH ORDINARY SESSION

***In re* SETHI**

Judgment No. 161

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Labh Singh Sethi on 30 March 1970, the Organization's reply of 31 July 1970, the complainant's rejoinder of 7 September 1970 and the Organization's further reply of 17 September 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 330.7, 510.6, 520, 530, 540.1, 670.6 and 975;

Having examined the documents in the dossier, oral proceedings having been neither requested by the complainant nor ordered by the Tribunal;

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

A. Towards the end of 1968 the Indian Government informed the Director of the WHO Regional Office for South East Asia in New Delhi that several members of the office staff were conducting illicit traffic in foreign currencies through the Organization's diplomatic pouch. Under Article 27, paragraph 4, of the Vienna Convention on Diplomatic Relations, the specialised agencies of the United Nations may use codes and despatch correspondence in sealed bags which are vested with the same immunities and privileges as diplomatic bags, provided they contain only diplomatic documents or articles intended for official use. On 11 December 1968, at about 3 p.m., in the presence of his assistants for administrative and financial questions, the Regional Director had the office pouch opened just before its despatch to the WHO Office in Kabul (Afghanistan) and found it to contain US\$18,000 in traveller's cheques, ordinary cheques and foreign currencies. He ordered an immediate investigation and on the next day, 12 December 1968, two high-ranking officials of the Regional Office left for Kabul to pursue inquiries. The resulting findings led to the implication of six members of the WHO staff - three in New Delhi and three in Kabul.

B. Mr. Sethi, one of the three New Delhi officials involved, was originally appointed to the WHO in April 1958 as a typist and was at the time responsible for the despatch of the office mail, sealing and franking envelopes and telex communications. When the Regional Director had the diplomatic pouch opened the complainant was not present. He was questioned on the same day and on the following days. On 16 December 1968 he made a written statement denying any connection with currency smuggling. On the next day he signed a second statement in which he confessed that for some five or six months he had been receiving envelopes from Mr. Bhandari and Mr. Sood and had despatched them in return for a commission of 50 rupees each. Mr. Sethi charges that he was "brainwashed" during lengthy interrogations by several officials, subjected to constant threats, insults and abuse and confined in a room for hours against his will without even being allowed to go to the lavatory. The Organization denies all this and maintains that the complainant was questioned on only three occasions. On the first two the investigating officers did not suspect him and he handed over the statement of 16 December of his own accord. The Organization maintains that only after Mr. Bhandari and Mr. Sood had confessed did the officers question him a third time in the presence of those persons. After conversing with his two colleagues in an Indian language unknown to the officers, Mr. Sethi freely signed his confession of complicity. At no time had he been subjected to pressure or coercion. On 18 December he was suspended under Staff Rule 530, which reads as follows: "If a charge of serious misconduct is made against a member of the staff, and it is considered that the charge is prima facie well founded and that the staff member's continuance in office pending an investigation of the charge would prejudice the service, the staff member may be suspended from his functions pending investigation ..." On 24 December he was dismissed for serious misconduct in accordance with Staff Rule 510.6.

C. Along with some of the other officials involved, Mr. Sethi appealed against this decision to the Regional Board of Inquiry and Appeal in New Delhi. The Board heard witnesses and examined several pieces of evidence, including some confidential documents withheld from the complainant. In a detailed report to the Regional

Director it recommended the dismissal of Mr. Sethi's appeal. It rejected his allegations of pressure, coercion and unlawful confinement and held that the overwhelming evidence contained in the statements of Mr. Bhandari and Mr. Sood had compelled him to confess to the truth on 17 December. In particular, the Board found that, since the questioning had taken place on the premises of the Regional Office and during working hours, insults, abuse and the forced confinement of anyone could not possibly have escaped notice in the office. Yet no one had corroborated the allegations. The Board nevertheless acknowledged some doubt as to the extent of the complainant's connection with the smuggling. Since he despatched the mail he might have been subjected to pressure by higher-ranking officials. Moreover, the sum paid him for each envelope was extremely small. The Board accordingly recommended the Regional Director to reject Mr. Sethi's request for reinstatement but to take account of his state of health and of the considerations mentioned above in computing his pension and other entitlements. On 30 June 1970 the Regional Director sent him an excerpt from the report and stated that he accepted its recommendation to dismiss the appeal. The headquarters Board of Inquiry and Appeal, to which the complainant then appealed, unanimously recommended the Director-General to confirm the Regional Director's decision, but suggested that for humanitarian reasons account should be taken of the consequences of the complainant's dismissal for his family. On 31 December 1969 the Director-General informed Mr. Sethi that he accepted the recommendation of the headquarters Board and that account had been taken of its suggestion in that the complainant's pension rights had been computed as if his employment had been terminated for reasons other than serious misconduct.

D. Mr. Sethi is appealing to the Tribunal against the decision communicated to him on 31 December 1969. He alleges that he signed the statement of 17 December under duress and coercion and that only his genuine statement of 16 December, which, unlike the second one, is drafted in his own style, contains the truth. Being overworked he had been unable to check the contents of the pouch and since there was a constant stream of people entering and leaving his office anyone could slip in mail without his knowledge. The procedure of inquiry was tainted by serious infringements of the Staff Rules, particularly Staff Rule 540.1, which requires that charges should be notified in writing to the staff member concerned and that he should be allowed eight days to reply. The only evidence against him is the testimony of Mr. Bhandari and Mr. Sood, who later withdrew their confessions since they had been obtained under duress, and the testimony of a Kabul official with whom he had quarrelled in the past and who incriminated him in revenge. No independent witness was present at the opening of the pouch or at the questioning. In acting as they did the heads of the Administration usurped the authority of the police. Finally, during the proceedings before the Boards of Inquiry and Appeal he did not receive copies of important documents which were crucial to his defence. He accordingly requests the quashing of the decision to dismiss him, his reinstatement in the Regional Office, the payment of his remuneration until reinstatement and the award of fair damages and of US\$1,000 to cover his defence costs.

E. In its memoranda the Organization replies that the currency smuggling through the WHO pouch constituted an extremely grave infringement of its rules and placed it in a situation which at best could be described as delicate in its relations with two member States. It therefore had to act promptly and severely. It was naturally unable to communicate to the complainant certain confidential documents concerning its relations with those member States and, in particular, the sections of the Regional Board's report referring to those relations. A scrupulous check carried out by the Board established that the complainant had suffered no coercion and had made his confession voluntarily. Being disciplinary and administrative the proceedings initiated by the Regional Director did not fall within the scope of Indian legislation. The Organization was in no way bound to observe Indian rules of criminal procedure and in particular to draw up a list of charges. The behaviour of the investigating officers in no way infringed the Staff Rules or the principles of natural justice. In particular the Organization was not required to notify the complainant in writing of the charges against him in accordance with Staff Rule 540.1, since he had himself confessed to his serious misconduct. The Organization therefore prays that the complainant's claims be dismissed.

CONSIDERATIONS:

As to the charges against the complainant:

1. The Organization's decision to dismiss the complainant was based on the statements signed by him on 17 December 1968 in which he admitted having taken part in the traffic in foreign currency through the diplomatic pouch. The complainant denies the validity of this document and accuses the officials who interrogated him of having forced him by improper treatment to confess to misconduct which he had not committed. However, the Tribunal finds that the complainant's statement must be held to be true in spite of his denials for the following

reasons.

That statement contains detailed particulars of the persons implicated in the traffic in foreign currency, the payments they received and the precautions they took to conceal their illicit operations. These particulars are clearly too detailed to have been invented by third parties not implicated in the acts with which the complainant is charged; moreover, they are corroborated by similar statements made by five other persons charged, two of whom have not retracted their confessions. Finally, the complainant's statement is all the more convincing in that it was signed in the presence of several officials, including two of the accused. In these circumstances the complainant must be regarded as bound by his signature to the document concerned even if he did not himself draft it.

It is true that the complainant claims to have yielded to the threats of the officials interrogating him after a prolonged period of confinement. These allegations, however, are not only entirely unproven, but are highly improbable. The treatment alleged by the complainant was in any case not of such a kind as to force him to confess to imaginary acts of misconduct. It was in fact after being informed of the confessions of the other two persons implicated in the traffic in foreign currency that he decided to make his own confession.

There is no evidence to indicate that the officials by whom the complainant alleges he was victimised acted in a spirit of animosity or in order to protect their own interests. On the contrary, the fact that the investigation was carried out by several officials excludes any suspicion of bias.

As to the decision to suspend the complainant:

2. Under Staff Rule 530, the suspension of a staff member is subject to three conditions. The person concerned must be charged with serious misconduct; there must be prima facie evidence that the charge is well founded; and the staff member's continuance in office pending the result of an investigation must be presumed to be prejudicial to the service. In the case at issue these three conditions were fulfilled and the Regional Director was therefore entitled to suspend the complainant and to withhold payment of his salary for the duration of his suspension. The charge that he had engaged in traffic in foreign currency for reward constitutes serious misconduct, since any act by which an official takes advantage of his official status for personal profit falls within the definition contained in Staff Rule 510.6. Secondly, the confession signed by the complainant affords evidence of the charges against him; and thirdly, the misconduct of which the complainant was accused was such as to deprive him of the confidence of his chiefs, so that his continuance in office was liable to be prejudicial to the Organization.

Under Staff Rule 530, the suspended official forfeits his right to the salary withheld if the charge against him is proved. It follows that as the charges against the complainant have been admitted there is no reason to order payment of the salary withheld from him.

As to the decision to dismiss the complainant:

3. Staff Rule 520, second paragraph, provides that an official may be summarily dismissed for serious misconduct. It is clear from the considerations set forth above that this provision was correctly applied in the present case. As for the procedural irregularities alleged by the complainant and the other accused persons, they are non-existent or at least do not affect the validity of the decision impugned.

The officials responsible for investigating the charges against the complainant were undeniably competent to do so. The investigation carried out by them aimed at identifying the persons responsible for breaking the rules of the Organization and was necessarily followed by the sanctions provided for in those rules. The investigation was therefore necessarily entrusted to the agents of the Organization itself rather than to the authorities of the State in which the complainant was employed. The rules of the Organization itself alone were applicable, and not any national legislation.

The accused persons claim further that Staff Rule 540.1 was not observed. The rule in question provides that a staff member may not be dismissed for serious misconduct before being formally notified in writing of the charges made against him and given an opportunity to reply to those charges within eight days, a reduction in this time limit being allowed only in urgent cases. The procedure laid down for the purpose of enabling an official to defend himself against the charges against him is inapplicable once the person concerned has admitted those charges. The safeguard provided by Staff Rule 540.1 has become pointless in the present case, since the complainant had admitted his misconduct in statements which the Tribunal has found to be true.

There is no foundation for the complaint by the accused persons that they were unable to consult certain documents, and in particular the correspondence between the Organization and the Indian authorities. To dismiss this argument it suffices to observe that the right of a party is confined to consulting the documents on which the decision is based, and in the case at issue the decision made by the Regional Director and subsequently confirmed by the Director-General is fully justified on the basis of the statements signed by the interested parties, the contents of which were thus known to them. The headquarters Board of Inquiry and Appeal expressly confirmed this. It is therefore unnecessary to consider whether the Organization was entitled to regard as confidential the documents which it withheld from the accused persons. For the same reasons, it is immaterial that the complainant received only an extract of the report of the Regional Board of Inquiry and Appeal.

Lastly, it is unnecessary to consider whether the complainant underwent the medical examination provided for by Staff Rule 330.7, since this formality is merely a consequence of dismissal and not a condition of its validity. In any event the provisions concerning sickness leave were no impediment to dismissal, since Staff Rule 670.6 provides that the right to sickness leave expires on the expiry of the contract.

In conclusion, as the decision to terminate his appointment was not in violation of the applicable provisions, the complainant can claim neither reinstatement nor compensation. The complaint is therefore unfounded in its entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 October 1970.

(Signed)

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy