

EIGHTY-SIXTH SESSION

In re Baliga (No.2)

(Application for execution)

Judgment 1784

The Administrative Tribunal,

Considering the application filed by Mr. Kalyanpur Yeshavantha Baliga on 27 February 1998 for the execution of Judgment 1342, the reply of 3 June from the World Health Organization (WHO), the complainant's rejoinder of 8 July and the Organization's surrejoinder of 12 October 1998;

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

Having examined the written submissions;

CONSIDERATIONS

1. This is an application for the execution of Judgment 1342, which the Tribunal delivered on 13 July 1994. The judgment ordered the World Health Organization, in 15 to pay the complainant "full compensation equivalent to the salary, allowances and any other benefits that would have been due to him under a contract from 1 October 1988" up to the date at which he reached the normal age of retirement - which was 31 October 1994 - "less any occupational earnings and indemnity" he might have received in the meantime; and 4,000 United States dollars in damages for moral injury.

2. On 13 November 1994 the Organization paid him the \$4,000 in moral damages and in partial execution of the judgment. On 4 May 1995 it paid him another \$204,120. That sum was equivalent to the basic salary, including within-grade salary increments, and post adjustment and child allowances that he would have received from 1 October 1988 to 31 December 1993, less his occupational earnings during the same period. Having got from him details of his earnings up to October 1994, the Organization paid him on 6 June 1995 the balance due, which came to \$28,177. On account of the lapse of time since the date of the judgment it let him have interest amounting to \$133 on the \$4,000 and to \$5,106 on the \$204,120. Lastly, in May 1996 it made over \$105,492.28 by way of reimbursement of all taxes payable by him to the Government of the United States on the amounts he had received in execution of the judgment.

3. In a letter of 22 February 1995 the Director of the Division of Personnel told him that the Organization would pay him the education grant he would have received for the "1988-89 scholastic year" and "exceptionally" for 1989-90 as well, provided he supplied "copies of receipts in support" of his claim to the grant for those years.

4. Though the complainant does not dispute the reckoning, he is further claiming -

(1) payment of interest at the rate of 10 per cent a year on the amounts equivalent to salary, allowances and benefits "from the date at which each sum fell due until 25 May 1995", plus interest on the interest to be reckoned at the same rate from the same date;

(2) various pension entitlements from October 1988 to October 1994;

(3) payment of education grants for his two children up to October 1994; and

(4) the costs of the present application.

5. On the termination of his appointment on 30 September 1988 the complainant returned to his permanent residence in California. In 1990 he applied for, and was granted, payment of an early, reduced, pension by the United Nations Joint Staff Pension Fund.

The claim to interest

6. In support of his claim to interest the complainant argues that he was to receive the equivalent of the salary, allowances and benefits that would have been due to him under a contract from 1 October 1988 to 31 October 1994, he would have been paid those sums each month, and so he is entitled to interest on each sum as from the date at which it would have fallen due. He points out that the judgment said in 15 that, though he "was entitled to reinstatement for the same reasons" as those explained in Judgment 1371 (*in re Ortiz*), it was too late to order his reinstatement because he was to reach the age of retirement within a few months. In his submission the judgment amounted to a "quasi-reinstatement order" warranting the payment of interest.

7. The answer to his claim is that the Tribunal did not award him interest on the sums payable as if they were monthly payments and as they fell due, but compensation merely "equivalent" to salary and allowances. He is in fact seeking to amend the award, and that he may not do.

The claim to pension entitlements

8. The complainant seeks payment, with interest, of the Organization's contributions for him to the Pension Fund for the period from 1 October 1988 to 31 October 1994 and of "the amounts he has lost, through the WHO's failure to pay such contributions since he has been receiving his ... pension in 1990".

9. Ruling in Judgment 1219 (*in re Manaktala No. 2*) on an application for the execution of Judgment 1133, the Tribunal did not order reinstatement but awarded "damages equivalent to the amount of salary, allowances and other entitlements" that Mr. Manaktala would have received in a stated period. On an application for the execution of Judgment 1219 the Tribunal ruled, in Judgment 1338 (*in re Manaktala No. 3*), that, not having been reinstated, Mr. Manaktala had no right to further pension entitlements. Neither was Mr. Baliga reinstated. Though the Tribunal knew that he was receiving the pension from the Pension Fund, it said in Judgment 1342 under 16 that his "pension payments" were not to be set off against the amount of the award. Moreover, since it did not order any payments in respect of pension, he may not now seek them.

The claim to education grant

10. The complainant claims the payment of the education grant for a daughter born in 1970 and a son born in 1972 who were both still receiving full-time higher education up to October 1994.

11. The Organization points out that according to Staff Rule 350 education grant is payable only for expenses actually incurred and for periods in which the staff member is assigned outside the country of his recognised place of residence. But by way of exception Rule 350.3.1 allows payment of the grant for the rest of the school year on the staff member's return to that country. The complainant returned to the United States - the country of his recognised place of residence - in October 1988. The Organization's letter of 22 February 1995 - referred to in 3 above - allowed him the grant not just for 1988-89, as provided for in 350.3.1, but for 1989-90 as well on the exceptional grounds that he needed more time to settle again in the United States; but for no longer than that, and in any event only if he provided proper evidence of payment of education expenses.

12. In support of his claim to payment of the grant up to October 1994 he says that it was not by choice that he went back to the United States but because of wrongful termination of his appointment. The Organization replies that it was not a foregone conclusion that it would have kept him on at his duty station in Uganda - i.e. outside his country of residence - until October 1994.

13. In these circumstances, and according to the Staff Rules, the complainant is not entitled to any education grant over and above the offer the WHO has already made him.

14. The WHO says that in any event he has supplied no receipts to show that he incurred education expenses. He pleads difficulty in doing so in that the schools his children were attending do not keep financial records and he asks the Tribunal to order payment of the grant on the strength of cancelled cheques.

15. Under Manual paragraph I.2.510 the Organization is empowered to require that the original bills be attached to the form that the staff member must fill up to claim the education grant. It does not have to accept evidence of the sort the complainant is offering. It will evaluate any alternative proof he may produce in the absence of the bills. Original documents must have gone astray before, and it is often possible to reconstitute them. It is up to the Organization to decide - subject to review by the Tribunal - whether the proof offered is satisfactory.

16. Since in any event the application fails on the merits, there is no need to rule on the issue of receivability.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner