

EIGHTY-SIXTH SESSION

***In re* Battra (No. 3), Gaur (No. 2), Lal, Phalswal, Sethi (No. 5) and Sinha**

Judgment 1839

The Administrative Tribunal,

Considering the complaints filed by Mr. Jogindar Singh Battra - his third - Mr. K.P. Gaur - his second - Mr. Chaman Lal, Mr. Dharam S. Phalswal, Mr. Devendra Nath Sethi - his fifth - and Mr. Rup Kishore Sinha against the World Health Organization (WHO) on 12 September 1997 and corrected between 19 and 27 November, the WHO's replies of 10 March 1998, the rejoinder entered by Mr. Battra, Mr. Sethi and Mr. Sinha on 8 May and the Organization's surrejoinder of 31 July 1998;

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

Considering the applications to intervene in Mr. Gaur's complaint from:

Ambigapathy, S.

Anand, P.K.

Anand, Rekha

Anand, Renu

Babu, C.S.

Bajaj, K.K.

Bajaj, S.K.

Balasubramaniam, S.

Batra, V.K.

Bhandari, R.C.

Bhatia, N.K.

Bisht, B.S.

Chand, G.

Chandra, P.

Chopra, D.

Chopra, T.R.

Das, K.

Dass, J.K.

Dass, R.

De'Souza, M.

Earland, R.
Frank, K.
Gupta, A.
Iyer, D.S.
Jagasia, N.K.
Jain, S.K.
Jayaraman, C.
Kapoor, Y.
Katyial, S.
Khanna, I.
Khanna, N.
Kohli, A.S.
Krishnan, R.
Luthra, B.
Malhotra, G.
Narula, J.S.
Pal, G.
Pal, R.
Pansar, B.
Pathak, D.C.
Pathania, G.P.S.
Pillai, G.B.
Sanghaliya, B.P.
Selvanayagam, D.
Sen, B.
Sethi, V.K.
Singh, G.
Singh, J.
Sharma, B.M.
Sharma, N.L.
Sharma, S.K.

Sharma, V.K.

Thakur, V.K.

Tokish, B.M.

Varma, V.K.

Veena, R.

Verma, J.K.

Vishwanathan, K.

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

Considering that the complaints raise the same issues of fact and of law and should therefore be joined to form the subject of a single judgment;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. At the material time the WHO employed the complainants in the General Service category of staff at its Regional Office for South-East Asia (SEARO) at New Delhi. Salaries of staff in that category are set and reviewed according to the rules and method set out in Judgment 1160 (*in re* Banota and others) under A.

By an information circular of 15 May 1995 SEARO announced a revision, No. 37, of the salary scales applicable to the complainants and other General Service category staff as from 1 July 1994. In a circular of 2 June 1995 it issued an amendment to that revision, No. 37(1), which was also to take effect on 1 July 1994 and which made "small adjustments" in pay for grades ND.4 to ND.7 and raised the child allowance.

On 11 August 1995 the complainants lodged appeals against the new scales. In its report of 22 October 1996 the regional Board of Appeal found no flaws in the local survey and the findings that had afforded the basis for the revised scales and it recommended rejecting their appeals. By letters dated 8 November 1996 the Regional Director told them that he did so, and they then went to the headquarters Board. In a report dated 2 May 1997 it too recommended rejection. By letters of 6 June 1997, which they are impugning, the Director-General endorsed that recommendation.

B. The complainants submit that the WHO based the revised scales on a survey of local pay that showed fatal flaws. After the staff representatives on the Local Salary Survey Committee (LSSC) had resigned in protest at the way in which the survey was being done the Committee was no longer properly constituted or competent to discharge its duties.

The "preparatory work" too was inadequate. The descriptions of "benchmark" jobs and the list of the comparator employers taken for the purpose of the survey did not get proper approval. WHO headquarters and the LSSC did not approve the questionnaire sent to the employers, and the procedure for consulting and questioning those employers was not completed. In short, the whole exercise was a "half-baked job, resulting in half-baked and faulty data". The WHO "rushed through" the process, knowing full well that it was "trampling upon" the guidelines in the local salary manual of the United Nations Consultative Committee on Administrative Questions (CCAQ) and on the principles set out in the "methodology" of the International Civil Service Commission (ICSC). Concurrent surveys were done of the pay of General Service staff and of the employees known as "national officers". Yet the guidelines in the manual plainly preclude such concurrent surveys, which result in distortions in the comparison of jobs. There were oddities in the new scales in that some grades contained too many steps, and yearly increments and the overlap between grades were reduced. There was breach of Staff Regulation 8.1, which requires the Director-General to "make provision for staff participation in the discussion of policies relating to staff questions".

The complainants ask the Tribunal to quash the impugned decisions and set aside the scales announced on 15 May and 2 June 1995. They want the Tribunal to order the WHO to carry out a "fresh" comprehensive survey. They

claim damages for moral and material injury and costs.

C. The WHO replies that the revision complied with the rules and with the principles and "methodology" of salary surveys. It denies rushing through the preparatory work: sixteen months went by from the announcement of the survey until the start of interviews with local employers. It did not infringe the staff representatives' right to take part in the work of the LSSC: it was they themselves, including Mr. Battra, who withdrew. So there was no breach of Regulation 8.1.

In any event the survey began after the questionnaire and the descriptions of "benchmark jobs" had been drawn up. The Committee itself endorsed the list of comparator employers. The complainants offer not a shred of evidence to back up their allegations of flaws in the choice of employers, the matching of jobs and the structure of scales. Trying to shift the burden of proof to the Organization will not do. As for the concurrent surveys of pay of General Service staff and national officers, the reasons for them were explained at the time to the staff representatives. Concurrent surveys offered several advantages and were not in breach of the manual or the methodology. Indeed they are common practice at over a hundred United Nations duty stations.

D. In their rejoinder Mr. Battra, Mr. Sethi and Mr. Sinha enlarge on their pleas and comment on arguments in the reply. They maintain that, the Committee not being competent at the material time to approve the sample job descriptions, the survey it purported to carry out was unlawful. As to the salary scales, the WHO failed to maintain "harmonious progression" from grade to grade and the transition from the earlier scales was abrupt.

E. In its surrejoinder the Organization observes that the rejoinder from Mr. Battra, Mr. Sethi and Mr. Sinha is a mere rehash of earlier pleas. The voluntary withdrawal of the staff representatives from the Committee neither prevented it from doing its job nor invalidated its recommendations. Besides, the staff representatives did not withdraw until the descriptions of benchmark jobs had been made. The scales duly reflected the best terms of employment at New Delhi at the time, and the differentials between grades fell within the range that the methodology allowed.

CONSIDERATIONS

1. In March 1995, after several postponements, the World Health Organization made a survey of local pay in New Delhi for the purpose of revising salary scales for staff in the General Service category employed at that duty station by agencies belonging to the common system of the United Nations. The survey was done by the Organization's Regional Office for South-East Asia (SEARO) in New Delhi, but under direction from headquarters in Geneva.

2. On the strength of the findings of the survey the WHO revised the scales of pay for General Service staff in New Delhi. By circular 16 of 15 May 1995 SEARO, announced the new scales - described as revision 37 - for its own staff. They were to apply as from 1 July 1994. Circular 18 issued minor amendments of 2 June 1995, known as revision 37(1).

3. The complainants are members of the General Service category of the staff of SEARO: Mr. Battra has grade ND.7, Mr. Gaur ND.5, Mr. Lal ND.2, Mr. Phalswal ND.1B, Mr. Sethi ND.X and Mr. Sinha ND.6. In their view the new scales offered them more meagre increases in pay than staff in higher General Service grades and the survey had been done in utter disregard of the manual of the Committee of the United Nations on Administrative Questions (CCAQ). On 11 August 1995 they lodged appeals with the regional Board of Appeal against the new scales. The Regional Director rejected their appeals on 8 November 1996 on the Board's recommendation. They appealed to the headquarters Board of Appeal. It too recommended rejection, the Director-General agreed, and he dismissed their appeals by letters dated 6 June 1997, which are the decisions now under challenge.

The material rules

4. The material rules were in two documents. One was the "general methodology" applied by the International Civil Service Commission (ICSC) in New York for carrying out surveys of the best conditions of service at duty stations other than headquarters. The other was the salary survey manual that the CCAQ had adopted as a guide for applying that methodology.

5. For New Delhi SEARO is what is known as the "designated agency" and the WHO the "responsible agency". The methodology and WHO Manual paragraph II.10.90 say that when a survey is to be made of local pay a body

known as the Local Salary Survey Committee (LSSC) is to be set up. The chairman is to be a senior official of the designated agency and the Committee is to consist of representatives of management and staff of the United Nations agencies that employ General Service staff at the duty station. It makes the preparations for a survey, coordinates the work and reports the findings of the survey to the responsible agency, which then decides on any revision of the pay scales.

6. According to the CCAQ's manual the purpose of the surveys is to establish "the salaries and conditions of service of locally recruited United Nations staff in the General Service category ... by reference to those of the presumed best employers in the locality, without being the absolute best". The methodology provides that no more than five years should elapse between surveys. The manual sets out in the following terms the steps to be taken to prepare for a survey.

Part II, step A

"The preparatory phase includes the monitoring of outside salary movements and the establishment of the LSSC, the selection of the jobs to be surveyed, the development of benchmark job description, the preparation of questionnaire and the establishment of the survey team. ..."

Those who carry out the survey are to get figures of local pay from a number of local employers for the sake of comparison.

Step A.1.1

"In respect of a comprehensive survey the monitoring function serves a dual purpose: it determines whether the employers retained for the previous survey remain among the best paying in the locality, and it serves to identify potential new comparator employers ..."

Step A.2.2

"... The work of the LSSC should commence approximately six months prior to the survey date."

The manual sets the criteria for choosing such "comparator" employers. Thus it says, under Step A.5.1:

"(a) employers selected should represent a reasonable cross-section of competitive economic sectors (including the public service of parastatal institutions) with no one sector unduly dominating the surveys;

(b) the employers to be surveyed should have been established in the locality for several years;

(c) there should be a considerable degree of continuity in the employers surveyed from one survey to the next, with a majority of employers from the previous survey normally being retained for the analysis and salary scale construction;

(d) the employers chosen should have both an established salary structure and a personnel system, and should preferably have at least 50 employees engaged in office work;

(e) an employer who uses United Nations salary scales as the primary basis for setting salaries should not be selected for comparison."

Further guidelines appear under step C.2.5:

"Where the comparator is a branch office of an organization with offices in a number of other cities, all data used in the computation should pertain to the locality where the salary survey is being conducted."

Lastly, the International Civil Service Commission approved as from 1 July 1993 a new "methodology" for carrying out surveys. The main changes of relevance to surveys in New Delhi were the requirements that the comparator employers should include at least seven with no fewer than 50 office employees and not more than two of those seven should belong to one and the same economic sector.

7. A working group of the LSSC drew up a list of some twenty employers for the survey in New Delhi, and kept

seven of them: Nocil, Glaxo, Citibank and ANZ Grindlays Bank, all of Bombay; and, from New Delhi itself, the Bank of America, American Express and Pepsico. Of those all but the first two - Nocil and Glaxo - were new: the last survey, done in 1990, had not covered them.

8. The complainants submit in their original brief that the 1995 survey and the resulting scales were flawed on the following nine grounds:

The survey was "*ultra vires* and void" because the General Service category staff did not take part in the exercise.

The preparations for it were inadequate.

Concurrent surveys of pay were "forced upon" General Service staff and on "national officers", who are nationals of the country and locally recruited to perform - says the manual of the CCAQ - "functions of a professional nature requiring local knowledge and experience".

For the purpose of the survey there were no proper "benchmark job descriptions".

The questionnaire used in interviewing comparator employers ought to have been revised.

The selection of comparator employers was never completed; there was "preponderance" of employers in banking and manufacturing, all other sectors being left out.

The data used for the purpose of reckoning the new scales were so "half-baked" that it is doubtful whether the best prevailing local terms of employment were duly reflected in the findings of the survey. In particular -

(a) the new scales give nineteen steps for all grades but ND.X, contrary to the manual, which prescribes nine to twelve in each grade;

(b) the scales reduce the yearly step increment, though the amount of it is an acquired right and so may not be altered; and

(c) the scales are "faulty with regard to intergrade overlaps".

Because of breach of the provisions of the manual and the methodology the scales should - say the complainants - be declared null and void.

The relief that the complainants seek is the quashing of the Director-General's decisions of 6 June 1997, the cancellation of the scales, the ordering of a new survey, and awards of material and moral damages and costs.

The preparatory work

9. In its reply the WHO explains that, since there must be no more than five years between surveys and the last one had been done in January 1990, headquarters began in December 1993 to prepare for doing a survey in New Delhi in May 1994. Though the preparations went ahead, the survey was held over to July 1994. By June 1994 the LSSC felt that it could not keep to the schedule, but that the preparatory work might be over by the end of September and the survey done in the first week of October. That timing did not suit everyone and the start of the survey was held over yet again, with the LSSC's agreement, to 13 March 1995. There was another postponement to 27 March. The staff representatives on the Committee wanted another eight or ten weeks, but the Organization was adamant that everything was ready and it held to 27 March. On 20 March the staff representatives stopped taking part in the Committee's work on the grounds - according to a staff union bulletin of that date - that it was:

"... flouting the provisions of the ICSC Methodology and CCAQ Manual by embarking on an unilateral combined comprehensive survey for National Officers and [General Service] Staff in India in March 1995 disregarding the decisions of the Joint Local Committees responsible for conducting separate surveys for different categories of locally recruited staff."

10. The CCAQ's manual offers, in step A.4.4 and Annex II, a set of sample job descriptions for the purpose of ensuring "a high degree of consistency in the job descriptions" used for surveys. The LSSC found that they afforded a proper standard of comparison with jobs provided by the chosen employers. The manual says indeed in

A.4.4 that the LSSC may so use the sample descriptions. The full list of job descriptions was sent to headquarters for approval on 14 March 1995, two weeks before the survey was to begin.

11. A working group of the LSSC compiled a list of 20 employers it considered to be paying the best wages in the locality. It kept some from the last survey and added others. The Committee endorsed the list and on 22 March sent it to headquarters for approval.

12. For their interviews with those employers the specialists in charge of the survey were to use a questionnaire. It is a check list of questions which are neither compulsory nor exhaustive: the specialists may add others of their own if they see fit. Though the manual says, in step A.6.2, that the questionnaire "should be analysed and revised, if necessary, to reflect the local context", the one used this time had served the purpose before without difficulty, and the Committee saw no point in changing it for the new survey.

13. The complainants submit that two items of preparatory work were left undone: writing letters to the employers to announce the survey, and sending them the questionnaire.

14. The Organization's reply is that in fact those steps were taken before appointments were made to interview the employers.

15. On the evidence the Tribunal is satisfied that the requirements of both methodology and manual were complied with. The complainants' plea on that score has no substance.

The Local Salary Survey Committee

16. The complainants plead that the staff representatives having withdrawn, the LSSC was no longer competent to act and that the Organization was in breach of its duty of consulting the staff either through such a body or else, in accordance with Staff Regulation 8.1, directly.

17. That plea too must fail. Not only did the Committee and its working party - both comprising staff representatives - function for many months before the survey began, but the Committee did not, as the complainants make out, cease to exist after the staff representatives had withdrawn. The WHO repeatedly invited them to take part, and their refusal to do so did not have the effect of disqualifying the Committee or invalidating its recommendations. The methodology provides in paragraph 6 that, though it is preferable to have representatives of both management and staff take part, the technical requirements will still be met even if one side prefers not to; so that actual participation by both sides is not a requirement. Nor was there any breach of Regulation 8.1. An analogy may be drawn with the issue that the Tribunal ruled on in Judgment 1565 (*in re* Kashmiri Lal Malhotra No. 6) under 8.

The concurrent surveys

18. The Organization says that concurrent surveys were not imposed for General Service staff and national officers. At no time did it intend to have joint preparatory work or analysis of data for those surveys, which were done separately for the two categories by separate salary survey committees: one for national officers and the other for the General Service staff. Joint work was to be limited to interviews: i.e. instead of having two separate sets of interviews the survey team would on the same occasion put questions both about national officers and about General Service staff.

19. The Tribunal is satisfied that there is no provision of the methodology or of the manual that precludes the approach that the Organization took.

The application of the methodology

20. The complainants argue that the methodology was improperly followed in that the choice of local employers was flawed: the working party of the LSSC drew up the list of twenty and the Committee - at the time including the staff representatives - approved it. The twenty came from several sectors and were all interviewed. On the strength of the data obtained from the interviews the seven best employers were identified, and as many as three of the seven belonged to the financial sector. The Organization explains that that sector was one of the first to be "liberalized" and so was free to compete on the local market by offering higher wages.

21. It was quite in keeping with the CCAQ's manual for the survey to take the comparator employers from several sectors, provided that they were among the best employers and that no one sector was dominant. A document of the International Civil Service Commission (ICSC/37/R.18) reviews the general methodology for carrying out surveys at "non-headquarters" duty stations. It says in paragraph 121 that some employers may belong to the same economic sector provided that they account for fewer than half of the total number. And the remaining three came from three different sectors: petrochemicals, the manufacture of consumer goods, and pharmaceuticals. So no single sector was dominant, and there was a reasonably wide cross-section of sectors.

22. The complainants suggest that the choice of employers may have led to a mismatching of jobs and that the employers may have provided unreliable data because they have no system of grading. They do not, however, identify any particular case of such mismatching. The Organization replies that jobs were matched with due regard to the criteria set in the manual, including the functions performed and the level of supervision required. Only if the local job matched the "benchmark" job description in duties and responsibilities was it taken for the purpose of comparison. The Organization says, moreover, that all the employers confirmed that they had a grading system and did not reckon pay ad hoc. There is no evidence to suggest that the data provided were in any way unreliable.

23. The conclusion is that there was no breach of methodology or manual in carrying out the survey.

The salary scales

24. The complainants doubt that the revised scales reflect the best terms of employment in the locality. They allege such "glaring anomalies" as having 19 steps in a single grade, "faulty ... grade overlap" and "reduction in annual increment".

25. The complainants offer not a shred of evidence to support their view that the scales were not a reflection of the best terms of employment in the locality. Their plea fails.

26. They object to the new scales on the grounds that they give 19 steps in each grade whereas the rules require that each grade should have at most 9 to 12. The Organization's answer is that for reasons that are linked to circumstances prevailing in New Delhi all the grades in question have since 1988 had 18 steps; that is not the outcome of the 1995 survey; and the differentials need not be the same at all levels and may vary as local practice changes.

27. The complainants' plea cannot succeed. The methodology says in paragraph 59 that the number of within-grade steps may be higher or lower in any particular locality, and there is therefore nothing wrong with the number of steps allotted to grades under the new scales.

28. As for what the complainants say about the overlap between grades, the WHO contends that the fact that it occurs at step VII of the higher grade is no "glaring anomaly": the overlap where grades have 12 steps would come at step III or IV of the higher grade, but when there are grades with as many as 19 steps the overlap is bound to occur at a higher step. The Organization points out that there has been the same structure of grades since 1988 and that it is quite consistent with the methodology. As to the decrease in the annual increment it submits that a reduction of a mere dozen Indian rupees - not even half a United States dollar - is no breach of the manual: adjustments may be made anyway if conditions in the locality warrant them, and there is no acquired right to the payment of increments at any particular level.

29. The complainants offer no argument in rebuttal of the Organization's reply on those issues. That being so, the conclusion is that they have not succeeded in proving any of the "glaring anomalies" they have alleged.

30. Mr. Battra, Mr. Sethi and Mr. Sinha state in their original brief that they do not understand how increases at higher levels came to be "capped" at about 55 per cent. The Organization denies putting any "cap" on the level of such increases, the 55 per cent increase for some grades being warranted by the relevant findings of the survey. The Tribunal is satisfied with that explanation, which those three complainants have failed to rebut.

31. The same three complainants further attempt to question the lawfulness of the new scales on the grounds that the WHO, the "responsible agency", constantly rejected recommendations from the LSSC for applying "staggered increases" in making interim adjustments to pay in 1990-95; instead - they say - the Organization decided to apply "across-the-board increases". To their mind that made "a mockery" of both methodology and manual. To support their plea they apply to the Tribunal for the issuance of "letters rogatory" under Article 11(2) of its Rules to obtain

what they call -

"raw market data, weighted averages per grade and their treatment when constructing the new scales together with copies of the reports of the LSSC for the interim adjustments from 1990 to 1995 with details of weighted averages per grade obtained and the reports of the Responsible Agency rejecting the recommendations."

32. The Organization points out that interim adjustments are not at issue and that the manner of applying them is irrelevant to revision of salary scales in line with the findings of a comprehensive salary survey.

33. The defendant is right because interim adjustments are not of any relevance to the present complaints. The complainants' application is disallowed.

Conclusion

34. Since none of the complainants' pleas is upheld, the impugned decisions must stand and they are not entitled to the relief they seek. Nor are the intervenors.

DECISION

For the above reasons,

The complaints and the applications to intervene in Mr. Gaur's complaint are dismissed.

In witness of this judgment, adopted on 6 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