

EIGHTY-EIGHTH SESSION

In re Kohli (No. 2)

Judgment 1927

The Administrative Tribunal,

Considering the second complaint filed by Mr Amrik Singh Kohli against the World Health Organization (WHO) on 8 February 1999 and corrected on 7 April, the WHO's reply of 2 July, the complainant's rejoinder of 28 July and the Organization's surrejoinder of 6 October 1999;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a citizen of Pakistan who was born in 1938, entered the service of the WHO's Regional Office for South-East Asia (SEARO) in September 1962. He retired in July 1998. At the time of the material facts, he was administrative assistant at grade ND.X with responsibility, among other matters, for handling issues related to the duty-free importation, registration formalities and the export of private motor vehicles for WHO personnel.

In October 1997 a staff member who was to be reassigned to Africa asked the complainant to obtain the necessary authorisations for the sale of his vehicle. In mid-November the presumed purchaser of the vehicle withdrew from the transaction. She stated that she had taken this decision following a telephone conversation with the complainant. In a letter of 25 November 1997 the Regional Personnel Officer asked the complainant to provide him with explanations concerning his involvement in the sale of the vehicle. He also informed him that an investigation had been initiated into the manner in which he had handled the matter. Pending the outcome of the investigation, he was suspended from certain duties. These consisted of the duties relating to the sale and registration of motor vehicles for staff, the importation or exportation of personal effects belonging to staff and the purchase of duty-free products for staff.

By a letter of 3 December the complainant provided his explanations to the Regional Personnel Officer, refuted the allegations made against him and asked him to kindly withdraw his letter of 25 November.

On 17 December 1997 he appealed to the regional Board of Appeal. He once again sought the withdrawal of the letter of 25 November, as well as his reinstatement in all his duties and compensation for moral damages. On the same day, the Regional Personnel Officer replied to the complainant's letter of 3 December 1997. He informed the complainant that the investigation had not turned up any new information and that he was absolved and restored to all his duties.

The regional Board of Appeal issued its report on 27 February 1998 and recommended the dismissal of the appeal on grounds of irreceivability, since the complainant had not challenged a final decision. In a letter of 9 March 1998, the Regional Director informed the complainant that he had accepted this recommendation. He assumed that as the complainant had been absolved he had obtained satisfaction, but told him that he was nevertheless withdrawing the letter of 25 November 1997.

In April 1998 the complainant appealed to the headquarters Board of Appeal, maintaining only his claim to moral damages. The Board reported on 7 October 1998. It too was of the opinion that his initial appeal to the regional Board was irreceivable. It found that in suspending the complainant from some of his duties the Administration had acted within the scope of the Staff Rules and Regulations and concluded that there was no justification for a payment of compensation to the complainant. By a letter of 11 November 1998, which is

the impugned decision, the Director-General confirmed those reasons to the complainant and rejected his appeal.

B. On the receivability, the complainant argues that the decision of 25 November 1997 was "final" within the meaning of Staff Rule 1230.8.1 inasmuch as it had been taken by a "duly authorized official" and had been notified to him in writing. Furthermore, his request for the withdrawal of that decision made in his letter of 3 December 1997 did not negate his right to challenge it in his internal appeal.

On the merits, the complainant says that there was a breach of the Staff Rules, since there is no provision authorising a partial suspension of duties. By taking a decision to divest the complainant of most of his duties, the Regional Personnel Officer showed bias. He also damaged the complainant's reputation and wounded his dignity.

He adds that the testimony of the presumed purchaser was worthless and that he always discharged his responsibilities for the sale and purchase of vehicles to the satisfaction of the staff.

The complainant requests the Tribunal to grant him 200,000 United States dollars as compensation for moral injury and 2,500 dollars in costs.

C. In its reply the WHO refers to the findings of the two Boards of Appeal in support of its contention that the complaint is irreceivable. It explains that the complainant did not wait three months before appealing to the regional Board of Appeal, as required by Staff Rule 1230.8.2. Furthermore, the decision to suspend him from some of his duties was not final, since it consisted of an interim decision pending the outcome of the investigation. Finally, by absolving the complainant and reinstating him in all his duties, and then withdrawing the letter of 25 November 1997 from his file, the Administration gave him complete satisfaction. The complaint therefore shows no cause for action.

On the basis of Judgment 447 (*in re Quiñones*) under 11, the WHO explains in subsidiary argument that "where the impugned decision is not unlawful ... compensation [for moral prejudice] is due only in exceptional circumstances, viz. where the wrong is especially grave". In the present case, the decision to remove the complainant from certain of his duties as an interim measure was indeed lawful since it was in line with Staff Rule 1120 on "suspension pending investigation". Moreover, the complainant has provided no evidence of the injury which he claims to have suffered. Indeed, by only suspending him from the duties directly implicated, the WHO respected his dignity. The conditions for granting compensation for moral injury have not therefore been met.

For the purposes of the investigation, it was essential to seek the testimony of the prospective purchaser. As the investigation was inconclusive and the complainant's career record in the Organization was good, it was decided to give him the benefit of the doubt.

D. In his rejoinder the complainant adds that prolonging the investigation beyond 25 November 1997 constituted abuse of authority.

The private dealings between the seller and the purchaser did not concern him. He says that he was treated as a "scapegoat" even though he had at no stage interfered in the sale of the vehicle in question.

E. In its surrejoinder the Organization maintains its arguments. It indicates that the continuation of the investigation after 25 November was essential to due process and observance of the rules.

CONSIDERATIONS

1. The complainant was a staff member in the General Services category of the WHO's Regional Office for South-East Asia (SEARO) for over thirty-five years. He retired on 31 July 1998. In 1997 he was employed as administrative assistant in charge of the Central Services Unit where, among other duties, he had to handle all issues concerning private motor vehicles of staff members including matters related to duty-free importation, registration formalities, and the exportation of cars.

Following an incident concerning the sale of a vehicle belonging to a member of the staff who, as a result of the alleged intervention of the complainant, was not able to sell his vehicle to the presumed purchaser, the

WHO's Regional Office decided to initiate an investigation. By a letter of 25 November 1997, the complainant was requested to provide a written explanation of the incident before 5 December 1997 and he was informed that, pending the finalisation of the investigation, he was removed from all his duties which related to the sale and registration of motor vehicles for staff and the importation or exportation of their personal effects, as well as the purchase of duty-free products.

2. On 3 December 1997 the complainant sent a letter containing explanations and justifications to the Regional Personnel Officer, requesting him to withdraw the letter of 25 November, failing which he would initiate appeal procedures. On 17 December 1997 he was informed in reply that following the investigation, which had been closed, there appeared to be outstanding contradictions between his statements and those of the prospective purchaser of the vehicle and that, in view of the impossibility of clarifying the matter further, he was absolved and reinstated in all his duties. On the same day, the complainant had lodged an appeal with the regional Board of Appeal seeking the withdrawal of the decision of 25 November 1997 and a payment of compensation for moral injury. However, his appeal was found to be premature and therefore irreceivable both by the regional Board and the Regional Director. The complainant then appealed to the headquarters Board of Appeal, which confirmed the recommendation of the regional Board and recommended that the Director-General reject his appeal. In a decision of 11 November 1998, the Director-General accepted this recommendation, while referring to the Board's comments which emphasised that the complainant had been absolved, that he had suffered no injury, that the allegations were such that an investigation had been justified and that there was no justification for an award of moral damages.

3. The complainant filed a complaint with the Tribunal impugning the decision of 11 November 1998, received by him on 20 November. In his complaint he claims compensation from the WHO for the injury suffered by him as a result of the serious faults committed by the Organization and the harm done to his reputation.

4. In reply to the complaint, the WHO has three pleas of irreceivability. In the first place, it says that the complainant's appeal to the regional Board was premature because he should have waited three months after receiving the decision of 25 November 1997 before taking action. It adds that the decision to remove him from his duties was an interim measure and could not be considered "final" within the meaning of Staff Rule 1230.8.1. Finally, it contends that the complainant should be regarded as having obtained satisfaction in view of his restoration to all his rights as of 17 December 1997. These pleas are not convincing.

5. In practice, while suspension is indeed an essentially interim measure which maintains the rights of the staff member concerned, as the Tribunal recalled in Judgment 353 (*in re Bastani*), it is nevertheless a decision which causes injury to the person concerned. While it is also true that the complainant should in principle have waited three months before appealing against the suspension, in the circumstances of the present case that time period is of no relevance as the decision the complainant appealed against had been revoked. Finally, while the complaint may seem to show no cause of action, since the decision to suspend him has been revoked, the measure did have material - although not financial - and particularly moral consequences during the period for which it was in effect. Certain of the complainant's duties were withdrawn, although he continued to receive full pay. In these conditions, the complaint does still show cause for action: see, in this respect, Judgment 1680 (*in re Byng-Clarke and others*), delivered on 29 January 1998.

6. The evidence shows that, as noted by the headquarters Board of Appeal, an investigation was justified in view of the allegations made against the complainant. The suspension of the complainant, which was in any case limited in scope, was not by its nature a sanction, but was justified by the needs of the investigation. The Organization would have been legally justified in suspending the complainant from all his functions, but it preferred to confine the suspension to certain of his duties, which demonstrates that it did not intend the measure to have any disciplinary effect. Moreover, the measure decided upon on 25 November was revoked on 17 December 1997 after a rapid and discreet investigation and, as noted above, the complainant continued to receive full pay. There is no evidence that the decision to suspend him had its origins in personal animosity or was based on unfounded or unlawful reasons.

7. There are grounds for doubting the receivability of his claim that the Organization should be ordered to compensate the complainant for the moral injury which he says he suffered since, as emphasised by the WHO, no final decision was taken within the meaning of Staff Rule 1230.8.1. Without ruling on the receivability of the above claim, the Tribunal dismisses it on the merits. The decision to suspend the

complainant was lawful and the evidence shows no fault which can be attributed to the Organization in this delicate matter, in which it was necessary to ascertain the truth, while protecting the dignity and reputation of the complainant.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

**Michel Gentot
Mella Carroll
James K. Hugessen**

Catherine Comtet