

NINETIETH SESSION

In re Bajaj

Judgment No. 2023

The Administrative Tribunal,

Considering the complaint filed by Mr Krishan Kumar Bajaj against the World Health Organization (WHO) on 10 January 2000 and corrected on 25 January, the WHO's reply of 17 April, the complainant's rejoinder of 23 May and the Organization's surrejoinder of 24 August 2000;

Considering Article II, paragraph 5, 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, an Indian national born in 1948, joined the WHO on 12 July 1979 as a clerk typist at grade ND.3, step 1, in the Organization's Regional Office for South-East Asia (SEARO) in New Delhi. He was promoted to ND.4, step 1, on 1 February 1985. At 1 July 1997 his grade was ND.4, step 13.

On 7 April 1998 the complainant wrote to the SEARO Administration protesting about his salary step, because he was receiving less in salary than two colleagues who were promoted to ND.4 later than he was. He indicated that one colleague (Mr T.) was promoted to that grade in July 1985 and the other (Mr G.) was promoted in July 1992 but both were currently two steps ahead of him in the salary scale. On the grounds that an adjustment had once been made to Mr T.'s salary he asked the Administration to grant him grade ND.4, step 3, retroactively as from 1 February 1985 - the date of his promotion. Having reviewed his request the Regional Personnel Officer told him in a memorandum of 5 June 1998 that there was nothing amiss with the way in which his step had been determined when he was promoted; Mr T.'s case involved different facts and the complainant's situation was not the same.

The complainant filed an appeal with the Regional Board of Appeal which partly found in his favour. It too held the view that his case could not be compared to that of Mr T. It recommended, however, that his salary should be fixed on a par with Mr G.'s from the time in 1992 when the divergence in salary had first become apparent.

In a letter of 9 April 1999 the Regional Director rejected his appeal and the complainant appealed to the Headquarters Board of Appeal. In its report of 25 September 1999 the Board said that the disparity in steps between the complainant and Mr G. had stemmed from the change incorporated in the version of Staff Rule 320.2 [\(1\)](#)

which came into force on 1 July 1990. Whereas prior to that date an increase in net base salary corresponding to one step in the new grade was granted on promotion, the subsequent version provided for an increase equivalent to the granting of two steps in the grade held by the staff member before promotion. The Board held that all the relevant rules had been correctly applied, and recommended the rejection of his appeal while urging that the Administration should pay careful attention to the "possible unintentional consequences of changes in the Staff Rules". On 27 October 1999 the Director-General accepted the Board's recommendation and dismissed his appeal. That is the decision which is now under challenge.

B. The complainant pleads unequal treatment. He regards it as an "anomaly" that two officials who were promoted to grade ND.4 after him are now at a higher step and receive a higher salary than him. He sees no legal justification for the argument that his colleague, Mr G., is two steps ahead of him solely as a result of the change in Rule 320.2, the more so because he was promoted more than seven years before that official. The fact that this colleague has been getting a higher salary violates the principle of equal pay for work of equal value. It constitutes breach of the terms of his contract and conditions of service which lead him to expect "fair and just treatment".

He draws attention to Judgment 1190, *in re* Bansal (No. 2) and others, in which it was said that the staff members who filed the complaint "were passed over in step by someone who had been promoted years later than they". The Tribunal, he says, took a stand on the matter by saying that the Organization was to blame for the "odd result", and that step increases "must depend on the quality of ... services" and not on "improper changes" made by the Organization in its rules. In ruling on that case the Tribunal was applying a general rule with which the WHO Administration is now bound to comply.

Referring to the case of his colleague, Mr T., the complainant contends that that official had his salary adjusted and was granted a lump-sum payment as a result of receiving a salary lower than that due.

The complainant seeks the quashing of the Director-General's decision of 27 October 1999. He wants his pay from 1 July 1992 to be on a par with that of Mr G. who at that date was on step 10 in grade ND.4, and wants to receive back pay and allowances. He also seeks compensation for moral injury and costs.

C. In its reply the Organization asserts that the principle of equality of treatment was not violated: the situations of the complainant and his two colleagues were not the same.

The difference in step between the complainant and Mr G., who both joined the Organization on the same day, came about partly because a different version of Staff Rule 320.2 was in force at the time when each was promoted and partly because Mr G. was able to defer the date of his promotion to take advantage of a within-grade increase. The 'old' version of Rule 320.2, which governed the complainant's promotion, allowed for an increase of just one step, whereas the subsequent version, in force after 1 July 1990 and applicable at the time of Mr G.'s promotion to ND.4, allowed for an increase of two steps. The complainant was not in the same position in law as his colleague and therefore was not discriminated against. The grade and step for both of them were established correctly.

The complainant's arguments in respect of his other colleague, Mr T., are unfounded. The latter, who joined the Organization in June 1974, five years and one month before the complainant, received a two-step meritorious increase after twenty years of service. On 1 July 1999 the complainant received the same meritorious increase; since then they have been at the same step and grade. Mr T. was paid a "temporary personal transitional allowance" to compensate him for receiving slightly lower pay following a promotion, owing to a revision in the salary scale, but the payments he received did not affect his grade or step; he was subsequently paid a one-off lump-sum payment. Their situations are not therefore comparable.

The defendant argues that there was no breach of the relevant Staff Rules and notes that the complainant does not contend otherwise. His reliance on Judgment 1190 is misplaced: the situation at issue in that judgment was different from the one giving rise to the present complaint, inasmuch as the case involved the effects on all General Service staff of a simultaneous application of the results of a salary survey which had led to certain staff members being paid less than others who were on lower grades and had less seniority. Although the WHO had discretion in the implementation of the salary survey at issue in Judgment 1190, the adjustment of steps on promotion pursuant to Staff Rule 320.2 is not a discretionary matter.

D. In his rejoinder the complainant contends that Judgment 1190 is relevant to his case. The Organization is distorting that judgment, and is simply "hiding" behind its rules. In his view, the general principles of law and equity prevail over the provisions of the Staff Rules. Where an inequitable situation results from a change in the rules, the defendant should provide for "redress of a resultant hardship" in certain individual cases. Similarly, when the determining of pay under Staff Rule 320.2 results in an anomaly, the situation should be suitably remedied. He views the situation that has arisen as "unfair, unreasonable and illogical".

He does not regard the matter of the meritorious service increase as relevant in the context of his complaint. The important issue is how Mr T.'s salary could be set at a higher step in ND.4 when his colleague's promotion to that grade occurred several months after his own. Since the Organization concedes that the colleague in question was given a "temporary personal transitional allowance" it could apply a similar procedure and grant him parity of salary with Mr G., as claimed, from 1 July 1992.

E. In its surrejoinder the Organization holds that it accurately interpreted Judgment 1190. It denies that it was "hiding" behind its rules when it determined the complainant's salary. It applied those in force at the relevant time.

It disputes the complainant's argument that principles of "equity and general law" should override provisions in the

Staff Rules, and says that in the circumstances of the present case that argument is not upheld by the case law of the Tribunal. The determining principle is that staff members in similar circumstances must be treated similarly. Those circumstances can change when there is a change in the rules, and the principle of equality of treatment may not then apply.

Since the complainant is seeking parity of salary with Mr G., the Organization questions the relevance of his arguments regarding Mr T.'s situation. The payment of a transitional allowance to the latter can in no way justify permanently granting the complainant an additional step. The allowance was paid to Mr T. alone to compensate him for a decrease in his salary following a promotion.

CONSIDERATIONS

1. The complainant joined the WHO's Regional Office for South-East Asia (SEARO) on 12 July 1979 at grade ND.3, step 1, at the same time as Mr G. who was also at ND.3, step 1. On 1 February 1985 the complainant was promoted to grade ND.4, step 1. On 1 July 1992 Mr G. was promoted to the same grade at step 10. At that time, the complainant was at step 8. He complains that someone who was promoted seven years after him is two salary steps ahead of him.
2. He also complains that Mr T. who was promoted to grade ND.4 on 1 July 1985, five months later than him, was two steps higher than him in 1992.
3. The position is that when the complainant was promoted in 1985 Staff Rule 320.2 provided that on promotion the net base salary of a staff member would be fixed at the lowest step in the new grade that would provide an increase of an amount corresponding to one full step in that grade. The rule was changed on 1 July 1990 so that the increase in salary on promotion corresponded to two steps in the grade held before promotion. Also Mr G. was permitted to defer his promotion for two months, until his next annual step increase was due, in order to take advantage of that increase. This resulted in the anomaly whereby Mr G. was paid two salary steps more than the complainant.
4. The facts in relation to Mr T. are that he joined SEARO five years and one month before the complainant. On completing twenty years of service he received a meritorious two-step increase under Staff Rule 555.2. (He also received a "transitional allowance" and a lump sum.) On 1 July 1999 the complainant received the same meritorious increase and as from that date they have been at the same step.
5. In the internal appeal process the Regional Board of Appeal recommended on 1 March 1999 that the complainant's salary should be "fixed at par" with Mr G.'s but this recommendation was not followed by the Regional Director. His case went to the Headquarters Board of Appeal, which reported on 25 September 1999. It found no evidence of failure to apply the provisions of the Staff Regulations and Rules correctly or breach of the terms of the complainant's contract. It recommended that the appeal be dismissed. By a letter of 27 October 1999 the Director-General accepted the Headquarters Board's recommendation. This is the decision under challenge.
6. In his complaint the complainant seeks parity of payment with Mr G., compensation for moral injury, and costs.
7. The complainant does not claim that the Organization was not entitled to change its rules; or that former Staff Rule 320.2 was incorrectly applied to him; or that the revised Staff Rule was incorrectly applied to Mr G.; or that Mr G. was not entitled to defer his promotion for two months to take advantage of the within-grade step increase which was due in July 1992. He cites Judgment 1190 (*in re* Bansal No. 2 and others) dealing with anomalies arising from the application of the results of a salary survey to General Service staff, and claims that the fact that Mr G. gets a higher salary than him violates the principle of equal pay for work of equal value and also infringes the terms of his contract and conditions of service which lead him to expect "fair and just treatment".
8. As regards Mr T., the difference of within-grade steps was due to the two-step increase he was granted for twenty years of meritorious service, which the complainant has since obtained too. The Tribunal accepts that the payment which Mr T. received in 1994 was not an adjustment in grade or step, but was a lump sum he received following the cessation of his personal "transitional allowance". Therefore no point arises in relation to Mr T.
9. In relation to the difference in the salary steps of Mr G. and the complainant, since the Staff Rules were changed after the complainant's promotion the question of equality of treatment does not arise: the complainant and Mr G.

were not in similar circumstances (Judgment 409 *in re de Gregori*). The material rules are those that obtain at the time of promotion (Judgment 674 *in re Wäckerlin*).

10. The aforesaid Judgment 1190 is not a case in point. It concerned the application of the results of a salary survey whereby persons junior in grade and with less seniority earned more than the complainants. The principle of equal pay for work of equal value applies to the grading of posts (WHO Manual: Part II, section 1, paragraphs 20 and 30.1). Step increases within a grade are not contrary to the principle of equal pay. The complainant's step in grade was correctly determined in accordance with the rules in force at the time. After the change in Rule 320.2 Mr G.'s step in grade was also correctly determined. The circumstances were different and there was no breach of equality of treatment or breach of the terms of the complainant's contract of employment.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mrs Flerida Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

Michel Gentot

Mella Carroll

Flerida Romero

Catherine Comtet

1. Before 1 July 1990 Staff Rule 320.2 read in part:

"On promotion to a higher grade the net base salary of a staff member shall be fixed at the lowest step in the new grade that will provide ... an amount corresponding to one full step in the new grade more than he would have received without promotion..."

In its version of 1 July 1990 it read:

"On promotion to a higher grade the net base salary of a staff member shall be fixed at the lowest step in the new grade that will provide an increase in net base salary at least equal to that which would have resulted from the granting of two steps within his present grade."