

**SIXTH ORDINARY SESSION**

***In re* SHERIF**

**Judgment No. 29**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Mohamed A. Sherif on 20 June 1956 and registered in the Registry under No. 5603 on 21 June 1956, and the reply of the defendant organisation of 8 August 1956, registered in the Registry under No. 5606 on 23 August 1956;

Considering the Staff Regulations of the defendant organisation and in particular Articles 10, 15, 24, 37, 38, 52 bis, 97, 99 and 114;

Having heard the parties in public hearings on 5 and 6 July 1957, as well as Mr. J. Rens, Deputy Director-General, as a witness on oath;

Considering that the facts in the case are the following:

The complainant was appointed as a "Member of Section" of the Organisation, after being selected by an ad hoc committee in Pakistan. He described his qualifications as a Master of Arts degree-holder with economics as his subject, together with the degree of Bachelor of Laws and a diploma in journalism.

He took up his duties with the Organisation on 5 September 1948, when he was assigned to the Agricultural Division. A favourable report was made on him by the Chief of the Division after his first six months' service as a probationer official; however, the Reports Board, on the basis of oral information, recommended on 30 November 1949 that the complainant's period of probation be extended for six months, with a corresponding postponement of salary increment. This recommendation was approved by the Director-General on 6 January 1950.

On 15 November 1949 the complainant was transferred to the External Services Division. On 18 February the Chief of the Division reported on his work favourably and on 30 March 1950 the complainant's appointment was confirmed and an increment granted. On 31 July 1950 the complainant was transferred to the Industrial Law and Labour Relations Division, where he was urgently required to replace an official who had left the Office at short notice. On 23 August 1950 the Chief of the External Services Division and the Chief of the Industrial Law and Labour Relations Division prepared a joint report on the services of the complainant covering the period 5 September 1949 to 4 September 1950 which was favourable and the granting of increment was approved on 26 September 1950. On the basis of two further annual reports made by the Chief of the Industrial Law and Labour Relations Division, the complainant was granted increments on 3 September 1951 and 27 August 1952.

From 29 December 1952 to 10 March 1953 the complainant was detached to the Technical Assistance Division. In March 1953, on the request of the Deputy Director-General, who was also Chairman of the Reports Board, the Chief of the Division made a confidential report on the work of the complainant, which was unfavourable. This confidential report was not submitted by the Chief of the Division to his responsible chief. It was not seen by the complainant or inserted in his personal file. On 6 November 1953 the Chief of the Industrial Law and Labour Relations Division prepared the five-yearly report on the complainant, covering the period 5 September 1948 to 31 August 1953. On the request of the Reports Board, this report was supplemented by further written statements from the Chief of the complainant's Division and from the chiefs of the divisions in which he had previously served. The statement of the Chief of the Technical Assistance Division, dated 23 November 1953, and which was unfavourable, was only communicated to the complainant on 28 January 1954, after the Board had made its recommendation to the Director-General, but before the Director-General had taken his decision. On the basis of this information and after hearing the complainant and his Chief, the Reports Board, on 28 January 1954, recommended the withholding of increment and the Director-General accepted this recommendation on 20 February 1954, against which decision the complainant made no appeal.

On 1 April 1954 the complainant was transferred to the Economic Division. On 12 November the Chief of the Division prepared the annual report for that year, which was unfavourable, and the Reports Board again recommended the withholding of increment. On 2 September 1955 the Chief of the Economic Division prepared a further annual report on the complainant which was again unfavourable. The Reports Board recommended the withholding of increment and also recommended that the complainant's appointment be terminated in application of Article 52 bis of the Staff Regulations. The complainant again did not appeal against these decisions.

On 1 February 1956 the complainant was notified that, on the recommendation of the Reports Board, the Director-General proposed to terminate his appointment for unsatisfactory service. This proposal was submitted to the Joint Committee, one of the members of which was the son of a high official who had served for the two previous years as Chairman of the Reports Board. The Joint Committee concluded unanimously that adequate grounds for the termination of the complainant's appointment had been adduced under Article 52 bis of the Staff Regulations, but recommended that in view of the fact that he was being terminated after eight years' service, that there was no criticism of his conduct, and of certain procedural irregularities which had occurred, the Director-General exercise his discretion to grant the complainant the maximum indemnity provided for in Article 97 of the Staff Regulations, namely, three months' salary. By letter of 14 April 1956 the Director-General informed the complainant that his appointment would be terminated on 14 July 1956 and that he would receive an indemnity of three months' salary in addition to his other entitlements upon termination.

Considering that the complainant requests that the Tribunal enjoin the Director-General to reinstate him, that the break in his service from the date of the termination of his appointment to the date of his reinstatement should be deemed a period of service and salary paid for this period, and that the complainant should be paid the expenses involved in the submission of his complaint or, alternatively, that the complainant be awarded compensation and expenses.

Considering that the complainant submits the following arguments. The decision of the Director-General to terminate the complainant's appointment violated his contract of employment and the provisions of the Staff Regulations of the defendant organisation. This decision, moreover, was a repudiation of the acquired rights of the complainant. A decision to terminate the services of an official is a sanction and, in accordance with the Staff Regulations, sanctions should be taken in a certain order of importance. Had the complainant known that his appointment could so be terminated he would not have taken up employment with the defendant organisation. Moreover, he would not have accepted employment if he knew that he would be appointed to a division for which he was not qualified. The frequent transfer of the complainant within the defendant organisation, without taking into account his qualifications, was in violation of the Staff Regulations. The favourable reports made on the complainant's services should have outweighed the unfavourable reports when the value of his services was assessed. There were irregularities in the administrative procedure applied to him which caused him prejudice and, moreover, the complainant submits that personal hostility was shown towards him and offers to show conclusive proof in the course of the oral proceedings.

Considering that the defendant organisation submits that the complaint should be rejected and submits the following arguments. The complainant's appointment was properly terminated in accordance with the Staff Regulations and the application of the Regulations in this case did not constitute a sanction but an honourable termination. Consequently, the progressive application of sanctions was not in issue. The complainant received ample warning that his services were unsatisfactory. There was no violation of the complainant's acquired rights, the provisions of Articles 10, 24, 52 bis, 99 and 114 of the Regulations being statutory and not contractual. The complainant must have known that when he was appointed his services could be terminated if unsatisfactory under the Regulations in force at that time. Moreover, his transfer within the Organisation was based on qualifications which the complainant himself had put forward at the time of his appointment. The determination of the quality of an official's services is a discretionary power of the Director-General, this being amply recognised by precedent. The evaluation of the complainant's services considered as a whole fully justified the termination of his appointment. Such procedural irregularities as may have taken place did not affect the substance of the matter and did not cause any prejudice to the complainant, and the complainant has failed to produce any evidence that there was personal hostility towards him.

Considering that the Director-General would have grounds for acting within his discretionary powers in terminating the complainant's appointment for unsatisfactory services after having attempted for almost eight years to make use of his talents;

Considering that the five varying and successive postings during this period and against which the complainant does not show that he made objection, were based also on the same discretionary power and could also have arisen as a result of efforts of the Administration to take account of the qualifications of the complainant rather than from a tendency to harass him;

Considering that the hearing of the witness called by the Tribunal on the request of the complainant as a result of which the complainant purported to show that there was a concerted hostile attitude of a political nature against him, has not resulted in any such proof but has only shown that certain frivolous and slanderous allegations were brought in issue, while no misuse of authority has been proved;

Considering that on the contrary the said testimony has shown that a particular administrative procedure set up to advise the Director-General on the technical ability and services of officials may in certain cases become subject to caution as a result of the friendship which may arise between supervisors and their subordinates and the resulting tendency to be over-favourable in the drawing up of reports;

Considering that arising therefrom, after a period of five years' service, during which the reports of the supervisors were favourable or in any case normal, with the exception of the extension of the probationary period, and increments regularly granted, the complainant was the subject at the time of his first five-yearly report in 1953 of a series of reports which were either unfavourable or did not disclose a full appreciation entailing in two successive years a refusal to grant the increment to which the complainant would otherwise have been entitled under the Regulations;

Considering that arising therefrom the complainant contends that he has suffered damage in that following a series of favourable appreciations he has been deprived of the certitude that he submits he had acquired of security of employment;

Considering, however, that it is with surprise that the Tribunal notes that despite the continuing unfavourable reports and refusals to grant increments the complainant systematically abstained from taking recourse against the recommendations of the Reports Board and that he did not take advantage of his right of appeal within a stipulated time against the Joint Committee;

Considering that he only introduced his complaint after it was proposed that his appointment be terminated and that in the event of his objection thereto he would be threatened with dismissal for unsatisfactory services;

Considering that he adduces as a reason for failing to exercise his rights of recourse a somewhat unusual respect for his professional duty and discipline;

Considering that it is far more probable that he had good reason to fear the intervention of the Joint Committee and its appreciation of his work since this Committee in the last resort decided unanimously to uphold the decision taken against him;

Considering that at this point he suddenly altered his tactics and brought his complaint before the Administrative Tribunal on grounds which were quite different from those on which he relied in order to justify his earlier abstention from acting, particularly the allegations of a private and political nature to which reference is made above;

Considering that it is to no purpose that similarly he has made every effort to try and persuade the Tribunal to investigate the professional value of the work which was given to him or the postings of which he was the subject, which is neither within the jurisdiction nor the possibility of this Court;

Considering that he submits that the insertion into the revision of the Staff Regulations in 1955 of Article 52 bis was illegal, whereas this revision was fully in conformity with the provisions for amending the Regulations which had already taken place twice, this insertion modifying the rules applying to sanctions and in particular Article 99 of the existing Regulations by the abolition of the disciplinary nature of the termination of an appointment for unsatisfactory services;

Considering that he went so far as to assume that this amendment of the Regulations was done for the sole purpose of legitimating his termination, such an allegation being singularly presumptuous;

Considering that he maintains that the provisions relating to acquired rights in Articles 24 and 114 of the Staff Regulations prohibited any modification of pre-existing contracts, that is to say barring almost any eventual modification of the Regulations since the appointment of all officials of the Organisation is by contract;

Considering that in fact the term "acquired rights" has no other import than that, up to the date of amending the Regulations in force, there shall be no interference with the application of the said Regulations to an official and that the amended Regulations shall have no retrospective effect;

Considering that finally he has borne at great length on certain irregularities which took place at the time of the procedure for examining the five-yearly report in 1953 and which were referred to by the Joint Committee, whereas this matter is not in issue in the case and is not subject to review since the statutory periods relating to the introduction of an appeal have long since run out and cannot be reopened;

Considering that in any event these were minor irregularities, with the exception of one which the defendant organisation has never sought to deny;

Considering that the only decision which is before the Tribunal for examination as to its validity is the decision of the Director-General dated 14 April 1956 and that the complainant has adduced no arguments challenging the validity of this decision;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Rejects the complaint.

In witness of which judgment, pronounced in public sitting, on 13 July 1957, by His Excellency Albert Devèze, President, Professor Georges Scelle, Vice-President, and Sir John Forster, K.B.E., Q.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Gutteridge, Assistant Registrar, acting as Registrar of the Tribunal.

(Signatures)

Albert Devèze  
Georges Scelle  
John Forster  
Frank Gutteridge