

FORTY-NINTH ORDINARY SESSION

In re MARADEV

Judgment No. 530

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Alleppey Venketachalam Mahadev on 15 November 1981 and brought into conformity with the Rules of Court on 3 December, the WHO's reply of 19 February 1982, the complainant's rejoinder of 18 March and the WHO's surrejoinder of 19 April 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Regulations 1.1, 1.10 and 4.4, WHO Staff Rules 0.20, 0.50, 210, 220, 230, 410.4, 530.4, 570, 1230 and 1310.1 and WHO Manual sections II.1.50 and II.5.325.5;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant, a citizen of India, joined the WHO's Regional Office for South East Asia in New Delhi in 1949. In 1968 he was promoted to a new post, graded ND.X, as an administrative assistant. On 1 May 1970 grade ND.X was renamed ND.7. In March 1978 he was assigned to a project based on the Regional Office and on 28 June 1979 he applied for reinstatement in his former grade ND.X with effect from May 1972 and reclassification of his post to grade P.2. On 31 October the Personnel Officer recommended revising the post description, reclassifying his post at grade ND.X and promoting him to it. On 1 November 1979 he was duly promoted to ND.X. On 21 February 1980 (1) his grading at ND.X from May 1972 and (2) the reclassification of his post at grade P.2 were refused, and on 16 April he appealed to the Regional Board of Appeal. On the Board's recommendation the Regional Director rejected his appeal on 8 December, and he went before the headquarters Board of Inquiry and Appeal. He retired on 30 April 1981. In a report of 12 August 1981 the Board held that claim (1) was time-barred and claim (2) unjustified but that a "desk audit" should be carried out to grade the post ND.X or P.1. By a letter of 27 August 1981, which is the decision now challenged, the Director-General informed the complainant that he agreed with the first two but not with the last of the Board's conclusions and therefore rejected the appeal.

B. The complainant has four pleas. (1) There was personal prejudice, within the meaning of Staff Rule 1230.1.1, on the part of a Mr. George, the former Administrative officer to the Regional Director, and, under his influence, the Regional Director himself. Tracing the career of Mr. George since 1963, the complainant describes what he believes to have been Mr. George's vindictive, high-handed and intolerant attitude. He accuses Mr. George of getting all the ND.X posts designated ND.7 in 1970 so as to humiliate him and of influencing the Regional Director to his detriment. (2) Because of incomplete consideration of the facts within the meaning of Rule 1230.1.2 he was not reinstated in grade ND.X, which, though no better paid than ND.7, was superior in status. His assignments from 1968 to 1975 required professional skills and warranted reinstatement. His excellent record - borne out by the grant of salary increments for meritorious service - was overlooked. The duties of posts graded P.2/P.3 were no more responsible and demanding than his own, which he describes in detail. (3) The WHO failed, within the meaning of Rule 1230.1.3, to observe Staff Rules 0.20, 0.50, 210, 220, 230, 410.4, 530.4, 570 and 1310.1, Staff Regulations 1.1, 1.10 and 4.4 and Manual sections II.1 and II.5.325.5. He explains how he believes these provisions were violated, and how the breach caused him loss of status and the undergrading of the posts he held from 1970. (4) The Post Classification Standards were misapplied; in particular descriptions of the ND.X posts, including his own, created in 1968 were never made. His reclassification in 1979 took far too long. He seeks the quashing of the Director-General's decision, his reinstatement in ND.X from 1972 and corresponding payment, promotion to grade P.2 in his final post from April 1978 and corresponding payment, compensation amounting to 25,000 United States dollars for humiliation and loss of prestige and status, and costs.

C. The WHO replies that the claim to reinstatement in ND.X with effect from 1972 is time-barred. The

complainant protested on 14 May 1970 against the change made on 1 March 1970 from ND.X to ND.7, but he did not bring the matter up again until 28 June 1979, even though a higher grade, also called ND.X, was introduced in August 1972. As to his claim to promotion, what he is saying is that his promotion was too small and came too late. There is, however, no flaw in the regrading of his post which would warrant setting the decision aside. In particular Staff Rule 230 and Manual section II.1.50 were complied with, and the facts on which the decision was based were correct. Nor were essential facts overlooked: the duties of the post and its relation to other posts were carefully considered as part of a desk audit. The allegations of personal prejudice on the Regional Director's part are not borne out by the account of the career of Mr. George, who, moreover, had no part in the decision. Besides, the upgrading of the post belies the charges of prejudice. Nor was there any unreasonable delay in taking the decision on reclassification.

D. The complainant develops his arguments in his rejoinder. He denies that his claim to reinstatement in ND.X is time-barred, in particular because the circumstances surrounding his regrading to ND.X in 1979 were "sequential" to the change in grade from ND.7 to ND.X in 1970. The regrading of his post in 1979 was required by its improper grading under the Post Classification Standards and in any case was mere restoration of the original grade. The decision of 1979 was flawed because it was not taken on the strength of the desk audit - a mere "camouflage" - but gave effect to a desire already formed by the Regional Director. The complainant elaborates his allegations of personal prejudice and contends that Mr. George did influence the Regional Director against him. The reclassification took nearly a year, and in other cases reclassification has been back-dated by a year.

E. In its surrejoinder the WHO observes that a cause of action extinguished in the early 1970s cannot be revived by a factual situation which arose some years later. The claim to reinstatement in ND.X from 1972 is therefore timebarred. The claim to promotion to P.2 is unfounded. In 1968 the complainant was promoted to a grade then known as ND.X which in 1970 became ND.7. In 1979 he was promoted again to the next higher grade, which was then and still is known as ND.X. The ND.X of 1979 was one grade higher than that of 1968. The complainant has failed to prove his allegation that the Regional Director had decided before the desk audit to promote him to ND.X. His allegations of personal prejudice are also unproved. In fact he was highly regarded and even promoted. The review of the post classification took longer because of a change in his supervisor's post, his own submission of an application for review in August 1979 and his own reluctance to submit to the desk audit.

CONSIDERATIONS:

1. The complainant was a member of the staff of the WHO from 1949 until 1981 and the matters in issue in this appeal relate to the designation of the grade to which he was entitled at different times in his career as well as the proper classification of his post.

He complains that he should have been at ND.X level with effect from August 1972. On 1 August 1968 the complainant was promoted to ND.X level and on 1 May 1970 that grade was re-designated ND.7. On 11 May 1970 the complainant wrote to the head of his department, Administration and Finance, complaining that with the change of classification the importance of the grade was being reduced from being a sub-Professional cadre to an ordinary General Service level. He asked for clarification of his position. No clarification was forthcoming and the complainant did nothing further in regard to this first re-designation.

The second complaint arises out of the refusal of the WHO to reclassify his post to a Professional grade - P.2. On 6 August 1979 the complainant formally requested the reclassification of his post in the project IND MPO 001, to which he had been reassigned in March 1978. As a result of this request the Personnel Officer conducted a survey of the duties and responsibilities of the post. The survey took the form of a desk audit, the findings of which include the following:

"Whilst the duties pertaining to the post in the Regional Office may be considered fairly normal for the ND.7 level, there is no doubt a high level of judgment and responsibility involved in the liaison function with the Indian National Headquarters of the Programme in NMEP, New Delhi and the zone offices. This requires fully independent action and decision-making albeit within the framework of fairly routine matters; nevertheless the significance of the judgment involved not merely in terms of the consequence of errors but also in terms of the 'image' of WHO to an outside body should not be under-estimated."

The complainant describes the desk audit as a "farce" and points to several cases where posts were reclassified without any desk audit being undertaken. He compares his post to others which are classified at P.2 or P.3 level

and maintains that his post is comparable with the P.2/P.3 posts.

2. As to the first complaint, having regard to the length of time that has elapsed since the complainant's letter of 14 May 1970, that claim is time-barred.

In regard to the second complaint the Administrative Tribunal will not quash a post classification unless the decision was taken without authority, or violated a rule of form or procedure, or was based on a mistake of fact or of law, or essential facts were overlooked, or there was misuse of authority, or clearly mistaken conclusions were drawn from the facts. In this case the reclassification was regular both as to form and as to procedure. It is clear from the Personnel officer's report made on the desk audit that the essential facts were considered and that a reasonable conclusion was reached based on those facts.

The complainant's claim for US\$25,000 for humiliation and loss of prestige is entirely without merit and must be rejected.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner