

FIFTY-FIRST ORDINARY SESSION

In re SARNA

Judgment No. 594

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Kewal Krishan Sama on 24 September 1982 and brought into conformity with the Rules of Court on 8 October, the WHO's reply of 14 December, the complainant's rejoinder of 25 February 1983 and the WHO's surrejoinder of 13 April 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 210, 230 and 1230 and WHO Manual sections II.1.40.1 to 5, II.1.60 and Annex C;

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 born in 1926, joined the Regional Office of the WHO in New Delhi in September 1962 as an administrative assistant. His post, No. 5.1136, was graded ND.6. He applied for regrading in 1970, 1972 and July 1979. His post description was revised in 1967, 1977 and October 1979. His post was regraded ND.7 with effect from 1 November 1979 and he was promoted to ND.7 as an assistant in building maintenance. In a minute of 27 December 1979 to Personnel he described the new grade as "grossly inadequate" and said that his promotion should take effect from April 1967 or at least April 1970. The Regional Director rejected this on 29 August 1980. A review of his grading, which he had formally applied for on 1 August 1980 under Staff Rule 230, began in April 1981. On 9 July 1981 the Chief of Personnel confirmed the grading but told him that the Director-General granted him personal promotion to ND.X. This was confirmed on 24 September 1981, his promotion being backdated to 1 June 1980. His post description was revised again on 1 September 1981, without change of grade. He appealed to the headquarters Board of Inquiry and Appeal on 23 November 1981. In its report of 5 April 1982 the Board recommended further review of the description and grade. By a letter of 5 July 1982, the challenged decision, the Director-General informed the complainant that he rejected the recommendation.

B. The complainant contends that the grade of post 5.1136 has not risen with the level of duties, which match those of a Professional category building management officer or building engineer as defined in WHO Manual section II.1, Annex C (the Post Classification Plan). The post description of 1979 was much the same as the one of 1967, and the regrading to ND.7 -- granted after inexplicable delay -- should have dated from 1967. Nothing happened on 1 June 1980 to warrant promotion from that date. The post description of September 1981 belittled his duties and left out those which would have required upgrading. He was not properly consulted, and the technical difficulties of his work were underestimated. He alleges incomplete consideration of the facts (in breach of Staff Rule 1230.1.2), misapplication of

the post classification standards in WHO Manual section II.1.40, particularly 1, 2, 3 and 5 (in breach of 1230.1.4) and personal prejudice (in breach of 1230.1.2). There is a P.3 post in Brazzaville which calls for no higher qualifications or responsibility than the complainant's work. There was breach of Manual section II.1.60: "A staff member may be assigned new duties not included in his post description ... If the period exceeds 90 days, a new post description should be established and a classification review undertaken". He seeks reclassification of his post at a Professional grade and promotion with effect from 21 February 1967, 16,000 United States dollars as damages for material and moral injury, and \$2,000 as costs.

C. In its reply the WHO explains that only in Brazzaville, where it has a large complex of buildings, does it need Professional category staff for building management in the regional offices. Grading is a matter of discretion, and the Tribunal will quash the decision only if there is a defect. There were no procedural defects in this case. The complainant provided details of his duties and had talks with an experienced classification officer from headquarters. A post description is not a matter to be negotiated, but says what the duties should be. The

description of September 1981 did not belittle the complainant's duties. In fact they are on a par with those of a technical assistant in building management at headquarters, who will hold the equivalent of ND.7. It does not matter how long the complainant held ND.6 or what his own qualifications and experience may be. His claim to retroactive reclassification is time-barred. He does not seek to justify the amount he claims in damages: in fact he has suffered neither moral nor financial injury. Even if his claim to reclassification succeeded he would have no right to special damages since the rules and procedures were correctly followed.

D. In his rejoinder the complainant enlarges on his arguments. He describes how he has suffered from personal prejudice on the Administration's part, of which he cites many examples. Undue favour such as promotion has been shown to a former subordinate of his, Mr. Sethi. Another example of bias is the resolve not to give his post a Professional category grade. The desk audit of his post in 1981 was futile. The classification officer had only two short meetings with him and did not respect the rules and correct methods of grading. The latest post description is wilfully distorted. His duties, which he analyses in detail, match in level those of the P.3 building management officer in Brazzaville, and he insists that the WHO needs him to perform duties which merit a Professional category grading. The post description forms part of his contract of employment and cannot be changed unilaterally. He is entitled to damages for injury to his professional reputation and for distress.

E. In its surrejoinder the WHO answers points raised in the rejoinder. It says there is no evidence to suggest that Mr. Sethi's promotion caused the complainant any prejudice; besides, it need not justify the position of someone not involved in this case. There is no formal definition of a desk audit, and since the complainant gave an account of his duties he cannot object to the procedure followed in this instance. The WHO will not reject out of hand a claim for regrading from the General Service to the Professional category, but if an official thinks that he is providing or ought to provide services the WHO does not want it will not accept his own account of his duties. In fact it does not need the services of professional engineers in smaller regional offices like New Delhi. It explains why promotion was backdated to 1 June 1980 and submits that no further backdating is warranted. It finds no evidence of mental distress, loss of reputation or other moral injury, nor any reason to suppose that it disregarded or neglected material facts.

CONSIDERATIONS:

1. The complainant was appointed on 11 September 1962 to post No. 5.1136 as administrative assistant, grade ND.6, in the WHO's Regional Office at New Delhi.

Reclassification of the complainant's Post

2. On 2 April 1970 and on 17 February 1972 the complainant requested a reclassification of his post on the ground that the responsibilities attached to that post and those which he was shouldering in practice called for a higher grading. On 5 July 1979 the complainant questioned the WHO's action in keeping him at grade ND.6 in spite of his request for the reclassification of his post and in spite of the revision of his post description in February 1967 and in January 1977. On 1 November 1979 the complainant was promoted to assistant (building maintenance) at grade ND.7 without any change in the duties and responsibilities attaching to his post.

3. On 27 December 1979 the complainant contested this decision claiming that the reclassification was "grossly inadequate" and that similar posts in the WHO were graded at P.2 to P.4. Further, he claimed that the reclassification to ND.7 should be retroactive to April 1967.

4. After investigation during May 1981 by Mr. Narayanan, a classification officer attached to headquarters, a new post description was adopted and on 24 September 1981 the complainant was promoted to grade ND.X with effect from 1 June 1980.

5. The annual appraisal reports on the complainant reveal that he is a competent and efficient staff member who, apart from his normal building maintenance duties, prepared plans and specifications for structures such as a storage building, car sheds, a temporary office building and a scooter shed. The WHO admits that the complainant performed these tasks, and did so efficiently, but the WHO's principal submission is that neither the technical complexity of the duties of the post nor the normal workload involved would justify the establishment of a Professional post.

6. The basic principles of post classification within the WHO are set out in the Organization's Manual as follows:

II.1.40.1 there should be equal pay for equal work;

40.2 posts of approximately equal difficulty and responsibility and requiring approximately the same qualifications should be placed in the same class, given a common title and assigned to the same pay level. In general the number of classes should be kept to a minimum;

40.3 entitlement to a higher grade and pay level must be based on the increased duties and responsibilities of a post;

40.4 unless the duties and responsibilities of a post increase substantially, better performance by a staff member is recognised by reassignment to a better post or by within-grade increases, not by an increase in grade;

40.5 the grading of a post is dependent upon the duties and responsibilities required and not on the qualifications of the incumbent.

Personal bias

7. The complainant contends that the WHO has failed to adhere to the foregoing principles. He states that the entire approach of the WHO is based on personal prejudice and bias against him on the part of the Regional Director, the Chief of Administration and Finance and the personnel officer. He refers to the rapid promotion of another staff member, Mr. Sethi, from a post under the complainant's supervision to one of equal status. He also mentions the reimbursement to Mr. Sethi of the cost of his visit to headquarters in July 1974 and his subsequent promotion. As can be seen in the letter dated 23 July 1974 annexed to the rejoinder the reimbursement to Mr. Sethi was entirely justified, and his promotion was the result of his outstanding work. The matters cited by the complainant as showing prejudice and bias fall far short of establishing any abuse of authority on the part of the WHO and the allegation of personal prejudice and bias must be dismissed as groundless.

The duties and responsibilities of the complainant's post

8. The complainant contends that the WHO has acted in breach of II.1.40.3 above by ignoring the increased duties and responsibilities of his post. He draws attention to the revision of the description of his post in February 1967, and compares it with that of 1962. The 1962 post description speaks of supervising "the staff of janitors, cleaners, gardeners and maintenance personnel required to clean, maintain in good working order, and repair a six-storey office building, its equipment, and furniture, a conference hall, and any other premises that may be assigned..." The 1967 description, which set out fewer duties and made no mention of training maintenance staff, conferred responsibility for maintenance, cleanliness, security and general upkeep and required the holder to "plan, advise on and oversee repairs and constructions". It is not every reformulation of the duties of a post that produces the result that there are increased duties and responsibilities within the meaning of II.1.40.3. What must be shown is that the totality of enumerated duties, taken in the light of the everyday functioning of the post, in all the circumstances surrounding such functioning, represents an increase in the duties and responsibilities of the post. This the complainant has been unable to show.

9. The complainant contends, further, that in revising the post description of post 5.1156 with effect from 1 September 1981 the WHO deliberately "diluted" the complainant's duties in order to prevent the post being reclassified to a Professional grade. The 1981 post description covers basically the same duties as that settled in 1979, which the complainant concedes are not materially different from those which he had been performing since 1962. The complainant's real grievance is that the WHO does not accept what he says are the duties of his post, but insists that the post description should set out only those duties which the WHO requires him to perform. The extent of the duties and the nature of the responsibilities attached to a post are questions of fact. These facts were the subject of investigation and assessment by Mr. Narayanan, after interviews with the complainant and after consultation with the regional administration and the technical staff at headquarters. The Tribunal will not substitute its own assessment or direct that a new assessment be made unless it is shown that the WHO acted on some wrong principle. The Tribunal does not review a decision of this sort unless it was taken without authority, or violated a rule of form or procedure, or was based on a mistake of fact or of law, or unless essential facts were overlooked, or there was abuse of authority, or clearly mistaken conclusions were drawn from the facts. As the complainant has been unable to prove any such defect, the claim for reclassification fails.

Retroactivity

10. The complainant claims that the reclassification in 1979 of his post to ND.7 should have been made retroactive to April 1967. He contends that he had been performing increased duties from that date. The WHO maintains that the promotion was the result not only of the 1979 revisions of the GS Classification Plan, but also of a survey undertaken by a consultant. Since it has not been shown that any substantial increase in the duties and responsibilities of the complainant's post took place before 1979, the claim for retroactivity fails.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 20 December 1983.

André Grisel

Devlin

William Douglas

A.B. Gardner