

FIFTY-FOURTH ORDINARY SESSION

In re AYYANGAR (No. 3)

Judgment No. 632

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Seshadri Ayyangar on 27 April 1984, the WHO's reply of 23 July, the complainant's rejoinder of 28 August and the WHO's surrejoinder of 19 September 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rule 625, WHO Manual provisions II.6.70, 75 and 90 and provisions II.5.70 to 150 of the Handbook of the Regional Office for South East Asia (SEARO) of the WHO;

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, an Indian official of the WHO, was employed until November 1983 in its Regional Office for South East Asia, known as SEARO. WHO Staff Rule 625 reads: "When authorized by the appropriate supervisor a staff member may be required to work overtime⁽¹⁾ and may be compensated as follows, subject to procedures established by the Director-General...", and 625.2: "staff in posts subject to local recruitment shall be given compensatory leave or monetary compensation". On 1 October 1981 the complainant was promoted from grade ND.7 to ND.X as from 1 June 1980. Each year he had been authorised to do and had done overtime during sessions of the WHO Regional Committee and had been paid compensation in cash. But after his promotion to ND.X he was not paid cash for overtime, the reason given by SEARO being that it was longstanding practice not to compensate ND.X staff in cash. Nor, though already paid compensation at the ND.7 rate for overtime he had done in 1980 before his retroactive promotion, was he paid any supplementary compensation corresponding to the higher, ND.X rate. By Circular No. 4/81 of 31 December 1981 the Regional Director of SEARO announced his decision to amend provision II.5.110 of the SEARO Handbook to read: "Authorized overtime of up to 25 hours can be performed by a GS [General Service] staff member (ND.3 to ND.7) in SEARO during a month...". The complainant, who is an ND.X staff member not covered by the new text, appealed to the regional Board of Inquiry and Appeal. In its report of 12 November 1982 the Board recommended granting him time off and by a letter of 10 December 1982 the Regional Director informed him that he endorsed the recommendation. Not being satisfied, the complainant appealed to the headquarters Board of Inquiry and Appeal. In its report of 25 November 1983 the headquarters Board held that no staff member had a right to do overtime, or if he did it, to monetary compensation for it, the rules leaving the matter to the Administration's discretion, and it recommended rejecting his appeal. By a letter of 10 January 1984, the impugned decision, the Director-General informed the complainant that he did so.

B. The complainant observes that no rule gives SEARO discretion as to whether to authorise overtime and, if overtime was done, how to compensate it. For years he was paid cash for overtime, and neither the Handbook nor any other rules draw any distinction between ND.X and other General Service category staff. Indeed that was why the Handbook had to be changed on 31 December 1981 to exclude ND.X staff, and it was not until 6 November 1981, after the overtime had been done that the Regional Director decided not to compensate it, in the mistaken belief that that was a longstanding practice. At least one ND.X staff member was paid cash for overtime done in 1981. ND.X staff are covered by Staff Rule 625.2, and the decision discriminates against the complainant. He seeks cash compensation for the overtime he did in 1981 and additional cash compensation for the overtime he did in 1980. He claims interest at 18 per cent a year from the dates on which the compensation was due, and 500 United States dollars in costs.

C. In its reply the WHO contends that it has discretion as to how to compensate staff for overtime and that its decision on the complainant's case was reasonable. On promotion to ND.X he had to take on larger responsibility in return for a higher salary. Since ND.X staff have no right to cash compensation, there was nothing wrong in granting him time off. The Staff Rules require compensation for overtime done by General Service staff, either in cash or in the form of time off, and Handbook provisions II.5.70 to 150 keep that option open for SEARO staff in

grades ND.3 to ND.X. Provided that everyone in the same category or grade is treated alike in like circumstances, as here, there is nothing in the rules to prevent all General Service staff or staff in anyone grade from being compensated in time off rather than in cash. It is legitimate to treat ND.X staff as a distinct group of "senior staff" for the purpose of applying the rules. That the decision was taken in this instance after the complainant had done the overtime was not unlawful since it was the corollary of his retroactive promotion. The claims are therefore devoid of merit. In any event the rate of interest claimed is too high.

D. In his rejoinder the complainant enlarges on his main submissions. The WHO cannot point to any provision that authorises the Regional Director to decide on the method of compensation for overtime to be applied to each case; the fact that SEARO did compensate some ND.X staff in cash belies the WHO's contention that the long-standing practice was not to do so; and there is no authority in the rules for treating ND.X staff differently from other General Service category staff. SEARO is prejudiced against him. He claims compensation under Rule 625.2 for the overtime he did, plus interest -- at the reasonable rate of 18 per cent a year -- and costs.

E. In its surrejoinder the WHO submits that the Regional Director had authority under the Handbook provisions cited in its reply. Although in the period of transition following the issue of Circular 4781 some difference in treatment might occur according to individual circumstances, the Organization was free to exercise its discretion under the rules as it thought fit without any breach of the principle of equality. Since the complainant refused to take time off -- the form of compensation offered to him -- while still on the staff, the WHO considers it has fulfilled its obligations toward him.

CONSIDERATIONS:

The complainant served in the New Delhi office of the WHO as a locally recruited staff member from 4 October 1956 until his retirement on 1 November 1983. On 1 October 1981 he was promoted from grade ND.7 to grade ND.X with retroactive effect from 1 June 1980.

Discriminatory treatment

The complaint is that other grades of the General Service were given overtime pay and that staff members in his own grade were at times given overtime pay, while this was denied to the complainant.

WHO Staff Rule 625 requires a staff member to work over time when authorised by the appropriate supervisor. When so required, General Service category staff may be granted either compensatory leave or overtime pay in accordance with the locally established conditions of employment. These conditions are set out in the South East Asia Regional Office (SEARO) Handbook, which at all times relevant to these proceedings provided at paragraph 100 that prior approval has to be obtained for all overtime work for which compensation is requested, and at paragraph 110 that authorised overtime of up to 25 hours may be performed by a General Service category staff member in SEARO (ND.3 to ND.X) during a month. The revision of paragraph 110 on 11 December 1981 does not affect the complainant's claim, which is for overtime worked in 1980 and for overtime worked in September 1981.

Staff Rule 625 thus confers on the Regional Director a discretion as to whether compensatory leave or overtime pay should be given when a General Service staff member is authorised to work beyond normal hours. The mere fact that one of two equally permissible methods of compensation is adopted does not support any inference of discrimination against the complainant and the complaint on this ground must fail.

Overtime worked in 1980

It is not disputed that when the complainant worked overtime in 1980 he received overtime pay at the ND.7 rate. On his retroactive promotion he was paid the difference in salary between his old and his new grade, but his claim for the difference in overtime pay was refused.

The claim for overtime at the higher rate for the period in 1980 subsequent to 1 June is well founded. First, the Staff Rules, the WHO Manual and the SEARO Handbook all contemplate the exercise of discretion as to the method of compensation prior to the work being done, and here the choice was for monetary compensation. Secondly, paragraph 150 of the Handbook provides that compensatory leave must be taken within two months of the date of accrual. Indeed it is difficult to see how leave can be compensatory if it is taken at a time far remote from the period when the overtime was performed. Thirdly, the complainant has retired from the WHO and it is not now possible to grant compensatory leave to him. In these circumstances the Tribunal has come to the conclusion

that the only solution is for the WHO to pay the complainant the difference in overtime rates which he claims for the period beginning 1 June 1980 and ending 31 December 1980.

Overtime worked in 1981

It appears from the report of the South East Asia Regional Board of Appeal that the complainant was compensated by equal time off for the period of overtime work performed in 1981. That is all he is entitled to and his claim for monetary compensation under this head fails.

DECISION:

For the above reasons,

1. The Organization shall pay the complainant the difference between ND.7 and ND.X overtime rates for overtime performed between 1 June and 31 December 1980.
2. All the other claims of the complainant are dismissed.

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

Delivered in public sitting in Geneva on 5 December 1984.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

1. Manual provision II.6.70 defines overtime as "time worked in excess of eight hours a day or forty hours a week".