

FIFTEENTH ORDINARY SESSION

In re PRASAD

Judgment No. 90

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations, drawn up by Mr. Ram Prasad on 12 June 1965, and the Organisation's reply of 4 August 1965;

Considering Articles II and VIII of the Statute of the Tribunal and Article 301.091 of the Staff Regulations of FAO, and Section 314.221 of its Administrative Manual;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal;

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

A. The complainant was appointed as staff member of the FAO on 14 November 1951 as a porter at the G.1 grade, serving in the New Delhi Office. The complainant's appointment was converted into a permanent appointment effective on 1 May 1961. On 1 January 1963 his post was reclassified from porter at G.1 grade to driver-messenger at the G.2 grade. For the purpose of his duties as driver-messenger, he used a motorscooter belonging to the Organisation.

B. On 7 January 1963 the complainant was given a cheque for 1,000 rupees to draw cash from the bank. He gave the money to Mr. Singh, the administrative assistant, who on checking it found that there were 99 ten-rupee notes. The complainant immediately put his hand in his pocket and found another ten-rupee note which he gave to Mr. Singh. Mr. Singh alleged that this sort of thing had happened on several occasions previously and that the complainant had explained it by saying that he distributed the cash in all his pockets to avoid losing the full sum if robbed. Following upon this incident Mr. Hachiya, the administrative officer, gave the complainant a written reprimand in which he said: "In future, whenever you are deputed for cash drawings you should be very cautious in many matters and always count the cash before giving it to anybody".

C. On 29 January 1963, Mr. Hachiya gave the complainant a written reprimand for using the Office address for his private affairs, saying: "You are therefore immediately instructed to take suitable steps to correct your private address as soon as possible".

D. On 2 August 1963, the complainant, while driving the Office scooter along the Lodhi road in Delhi collided with a cyclist coming out of a side lane. The complainant sustained minor injuries and was on sick leave for a fortnight. Since the cyclist also sustained only minor injuries, the matter was amicably settled. It is alleged by the Organisation that the police report (which has not been produced) placed the principal blame for the accident on the complainant because of excessive speed. No criminal prosecution was, however, brought against him. On being questioned by Mr. Hachiya, the complainant admitted that on an earlier occasion, the date of which is not stated, he had been fined for a minor traffic infringement. Mr. Hachiya gave the complainant a written reprimand, reminding him to drive the scooter very carefully and not to over-speed.

E. On 30 September 1963 a dispute arose between the complainant and Mr. Singh as to whether the complainant had been paid his September salary. Mr. Singh asserted that he had been paid on 27 September and the complainant denied it. Mr. Hachiya, feeling that the dishonesty was on the part of the complainant, instructed him not to come to the Office after 2 October until further notice. The complainant asked the Acting Deputy Regional Representative in Delhi, Mr. Cedric Day, for an investigation.

F. On 18 October 1963, Mr. Hachiya wrote to the Director of Personnel and Management of the FAO in Rome recounting the incidents set out above and saying he wished to dismiss the complainant "since his daily interference in many matters is creating a bad impression on the other local staff members". He added that he had carefully watched the complainant's job during the last 11 months and found that it was not satisfactory. Consequently, the complainant was informed that "as several facts indicative of misconduct have come to the

attention of the Organisation", he was formally suspended from 25 October 1963 pending investigation.

G. Meanwhile, on 1 October 1963, the day when the complainant was first suspended for suspected dishonesty, he drove a motor-scooter down a one-way street in the wrong direction. His excuse was that he had not observed it to be a one-way street. The Organisation was unaware of this offence until 4 November 1963 when they received a police notice. It does not appear that the complainant was prosecuted.

H. Mr. Day was unable in his investigation to reach a firm conclusion on the dispute about payment of salary and, in fact, the complainant was paid the amount *ex gratia*. Mr. Day dealt in detail with the incidents recounted above and also with the general charge of unsatisfactory conduct. Under this head, he reported that the complainant's behaviour and attitude during the last three years had gradually deteriorated and that it was necessary for his supervisors to reprimand him for lack of attention to duty, disobedience, argumentativeness and insolence. He reported that the complainant had been surly and aggressive in his attitude towards senior members of the local staff and that, despite repeated warnings, he had been guilty of such behaviour as late appearance on duty, early departure from the Office, failure to return from delivery missions, over-staying annual leave and taking unreasonably long breaks during Office hours.

The Tribunal has observed that no statements have been furnished by persons complaining of the complainant's misbehaviour in these respects, that no specific incidents are detailed and that no written reprimands on this subject were addressed to the complainant. It appears that the practice of issuing written reprimands was not introduced into the Delhi Office until 1963.

I. The complainant strongly denies any misbehaviour of the sort described in the preceding paragraph. He relies on the fact that the evaluations of his service, the last of which was dated 13 March 1962, have never been unfavourable. He relies on the fact that on 1 January 1963 he was upgraded from G.1 to G.2. The Organisation has pointed out that the upgrading occurred because the post which the complainant held was reclassified from porter at the G.1 grade to driver-messenger at the G.2 grade; and it states that at the time of the reclassification it was decided to retain the complainant in the post he was occupying rather than to transfer him to another post since he was the oldest and most senior eligible staff member.

J. On 6 April 1964, the Deputy Regional Representative notified the complainant that he had decided that the complainant's appointment should be terminated, effective immediately on the grounds of unsatisfactory performance of duty. He said: "In coming to this decision I have in mind especially the occasions of unsatisfactory service which have been brought to your attention such as careless handling of cash entrusted to you, careless driving, your accident record, and your general attitude of non-cooperation with your supervisors and colleagues, all of which had made your job performance below the acceptable level".

K. By letter of 18 April 1964, the complainant requested the Director-General to reconsider the decision to terminate the complainant's appointment and, on 18 May 1964, the Director-General informed the complainant that he maintained his decision. The complainant thereupon submitted an appeal to the FAO Appeals Committee, which heard the case on 19 November 1964 and submitted its recommendation in the following terms: "After due consideration of this appeal in all its aspects, the Committee strongly recommends that the Director-General reconsider his decision of termination". The Director-General felt that he could not follow the recommendation of the Appeals Committee but, by letter of 18 March 1965, which reached the complainant on 5 April 1965, the Director-General informed the complainant that, while maintaining his decision to terminate his appointment, he was prepared to convert the termination for unsatisfactory service into a termination in the interest of the good administration of the Organisation, with consequent increase in the termination indemnities payable to the complainant. Under Staff Regulation 301.0911, such action can be taken provided it is not contested by the staff member concerned. Complainant declined this offer and instituted proceedings before the Tribunal, praying for the quashing of the decision to terminate his appointment and for reinstatement. The Organisation prays the Tribunal to find that the Director-General's decision to terminate the complainant for unsatisfactory service was in conformity with the applicable Staff Regulations, Staff Rules and the Administrative Manual, and to dismiss the complaint.

CONSIDERATIONS:

1. Staff Regulation 301.091 provides that the Director-General may terminate an appointment of a staff member who holds a permanent appointment if the services of the individual concerned prove unsatisfactory. Staff Manual provision 314.221, relating to termination for unsatisfactory service, lays down that a staff member may be

separated following written warning for failure to perform prescribed duties in a satisfactory manner (e.g. because of lack of fitness, aptitude or suitability for the post).

2. For the purpose of fulfilling the requirement in Staff Manual provision 314.221 that there must be a written warning of failure to perform prescribed duties, the Organisation relies upon the three reprimands referred to in paragraphs B, C and D of the summary of facts.

As to the first, it is not alleged that after the receipt of the reprimand there was any further cause for complaint about the careless handling of cash. As to the second, the reprimand related to an incident that is not relied upon as evidence of unsatisfactory service and furthermore it is not alleged that the instruction contained in it was disregarded.

The only reprimand therefore that it is relevant to consider is the reprimand for over-speeding which was followed by the careless entry into the one-way street.

3. The Tribunal notes that none of the specific incidents recounted above is relied on as of itself sufficient to justify the termination of the complainant's employment. They are presented as evidence of unsatisfactory service. It is unnecessary for the Tribunal to consider whether, taken together and viewed against the background of 12 years' service, they amount to sufficient evidence; or whether the general charge of unco-operative conduct is sufficiently proved; or to what extent the Tribunal should, in a case of this sort, review a decision of the Director-General.

4. The Tribunal can dispose of the case on the ground that there was no written warning as required by the terms of Staff Manual provision 314.221 and as indeed is necessary to protect the employee from sudden dismissal on a general charge. A warning is different from a reprimand. It is not enough that the employer should be able to point to several occasions in the course of a long service when a rebuke has been administered. What is contemplated by the provision is that the employee should be told in what respects his service as a whole has proved unsatisfactory and warned that if he does not give better service, he faced the possibility of dismissal. A reminder to drive more carefully and not to over-speed is not a warning, the disregard of which is sufficient to justify a dismissal for unsatisfactory service.

DECISION:

For the above reasons,

The decision of 18 March 1965 to terminate the complainant's appointment for unsatisfactory service is quashed.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

M. Letourneur
André Grisel
Devlin
Jacques Lemoine