

EIGHTY-SIXTH SESSION

In re Grover, Gupta (No. 4), Rana and Sahai

Judgment 1838

Grover, Gupta (No. 4), Rana and Sahai

The Administrative Tribunal,

Considering the complaints filed by Mr. Sada Nand Grover, Mr. Shiv Raj Gupta - his fourth - Mr. Kishan Chand Rana and Mr. Debi Sahai against the World Health Organization (WHO) on 11 November 1997, the WHO's single reply of 13 February 1998, the complainants' rejoinder of 19 March and the Organization's surrejoinder of 24 June 1998;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

Considering that the complaints raise the same issues of fact and of law and should therefore be joined to form the subject of a single judgment;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The WHO employs the complainants in the General Service category of staff at its Regional Office for South East-Asia (SEARO) at New Delhi. Salaries of staff in that category are set and reviewed according to the rules and method set out under A in Judgment 1160 (*in re Banota and others*).

By an information circular dated 15 May 1995 SEARO announced a revision, No. 37, of the salary scales applicable to the complainants and other General Service category staff as from 1 July 1994. In a circular of 2 June 1995 it issued an amendment to that revision, No. 37(1), which was also to take effect on 1 July 1994 and which made "small adjustments" in pay for grades ND.4 to ND.7 and raised the child allowance.

On 4 August 1995 the complainants lodged appeals against the new scales. In its report of 6 September 1996 the regional Board of Appeal found no flaws in the local survey and the findings that had afforded the basis for the revised scales, and it recommended rejecting their appeals. By letters dated 12 November 1996 the Regional Director told them that he did so. On 6 January 1997 they went to the headquarters Board. In a report dated 11 July 1997 it too recommended rejection. By letters of 12 August 1997, which they are impugning, the Director-General endorsed that recommendation.

B. The complainants submit that the WHO based the revised scales on a survey of local pay that showed fatal flaws. After the staff representatives on the Local Salary Survey Committee (LSSC) had resigned in protest at the "hasty manner" in which the survey was being done the Committee was no longer properly constituted or competent to discharge its duties. There was breach of Staff Regulation 8.1, which requires the Director-General to "make provision for staff participation in the discussion of policies relating to staff questions".

The "preparatory work" was inadequate. There were too many new "comparator" employers - i.e. the local employers taken for the sake of comparison - and some employers had a staff structure that failed to match the criteria. Taking all the employers from the financial and manufacturing sectors distorted the findings. What is more, comparisons were made with employers outside New Delhi at a time when the job market at that duty station was unstable. The job descriptions were flawed and the sample descriptions at odds with the work actually done. The questionnaire that the survey was based on was out of date. There were oddities in the new scales in that some grades contained too many steps, and yearly increments and the overlap between grades were reduced.

The complainants ask the Tribunal to quash the impugned decisions and set aside the revisions of the scales announced on 15 May and 2 June 1995. They want new scales that afford "a smooth progression of intergrade

differentials by applying the weighted average increase across-the-board or in the alternative to grades ND.1 to ND.4 (NEW) from the effective date". They claim "suitable" damages for moral injury and costs.

C. The WHO replies that the revisions complied with the rules and with the principles and "methodology" of salary surveys. It denies rushing through the preparatory work: 16 months went by from the announcement of the survey until the start of interviews with local employers. It did not infringe the staff representatives' right to take part in the work of the Local Salary Survey Committee: it was they themselves who withdrew. So there was no breach of Regulation 8.1.

In any event the survey began after the questionnaire and the descriptions of "benchmark jobs" had been drawn up. The Committee itself endorsed the list of comparator employers. The complainants offer not a shred of evidence to back up their allegations of flaws in the choice of employers, the matching of jobs and the structure of the scales. Trying to shift the burden of proof to the Organization will not do.

D. In their rejoinder the complainants enlarge on their pleas and comment on arguments in the reply. They maintain that, the Committee not being competent at the material time to approve the sample job descriptions, the survey it purported to carry out was unlawful. As to the salary scales, the WHO failed to maintain "harmonious progression" from grade to grade and the transition from the earlier scales was abrupt.

E. In its surrejoinder the Organization observes that the rejoinder is a mere rehash of earlier pleas. The voluntary withdrawal of the staff representatives from the Committee neither prevented it from doing its job nor invalidated its recommendations. Besides, the staff representatives did not withdraw until the descriptions of benchmark jobs had been made. The scales duly reflected the best terms of employment at New Delhi at the time, and the differentials between grades fell within the range that the methodology allowed.

CONSIDERATIONS

1. In March 1995, after several postponements, the World Health Organization made a survey of local pay in New Delhi for the purpose of revising salary scales for staff in the General Service category employed at that duty station by agencies belonging to the common system of the United Nations. The survey was done by the Organization's Regional Office for South-East Asia (SEARO) in New Delhi, but under direction from headquarters in Geneva.

2. On the strength of the findings of the survey the WHO revised the scales of pay for General Service staff in New Delhi. By circular 16 of 15 May 1995 SEARO announced the new scales - described as Revision 37 - for its own staff. They were to apply as from 1 July 1994. Circular 18 issued minor amendments of 2 June 1995, known as Revision 37(1).

3. The complainants are members of the General Service category of the staff of SEARO: Mr. Grover has grade ND.3, Mr. Gupta ND.4, Mr. Rana ND.2 and Mr. Sahai ND.2. In their view the new scales offered them more meagre increases in pay than staff in higher General Service grades and the survey had been done in utter disregard of the manual of the Committee of the United Nations on Administrative Questions. On 4 August 1995 they lodged appeals with the regional Board of Appeal asking that the survey be declared null and void and claiming "suitable across-the-board increases in pay-scales for all grades" in their category of staff. The Regional Director rejected their appeals on 12 November 1996 on the Board's recommendation, and on 6 January 1997 they appealed to the headquarters Board of Appeal. It too recommended rejection, the Director-General agreed, and he dismissed their appeals by letters dated 12 August 1997, which are the decisions now under challenge.

The material rules

4. The material rules were in two documents. One was the "general methodology" applied by the International Civil Service Commission (ICSC) in New York for carrying out surveys of the best conditions of service at duty stations other than headquarters. The other was the salary survey manual that the CCAQ had adopted as a guide for applying that methodology.

5. For New Delhi SEARO is what is known as the "designated agency" and the WHO the "responsible agency". The methodology and WHO Manual paragraph II.10.90 say that when a survey is to be made of local pay a body known as the Local Salary Survey Committee (LSSC) is to be set up. The chairman is to be a senior official of the designated agency and the Committee is to consist of representatives of management and staff of the United

Nations agencies that employ General Service staff at the duty station. It makes the preparations for a survey, coordinates the work and reports the findings of the survey to the responsible agency, which then decides on any revision of the pay scales.

6. According to the CCAQ's manual the purpose of the surveys is to establish "the salaries and conditions of service of locally recruited United Nations staff in the General Service category ... by reference to those of the presumed best employers in the locality, without being the absolute best". The methodology provides that no more than five years should elapse between surveys. The manual sets out in the following terms the steps to be taken to prepare for a survey.

Part II, step A

"The preparatory phase includes the monitoring of outside salary movements and the establishment of the LSSC, the selection of the jobs to be surveyed, the development of benchmark job description, the preparation of questionnaire and the establishment of the survey team. ..."

Those who carry out the survey are to get figures of local pay from a number of local employers for the sake of comparison.

Step A.1.1

"In respect of a comprehensive survey the monitoring function serves a dual purpose: it determines whether the employers retained for the previous survey remain among the best paying in the locality, and it serves to identify potential new comparator employers ..."

Step A.2.2

"... The work of the LSSC should commence approximately six months prior to the survey date."

The manual sets the criteria for choosing such "comparator" employers. Thus it says, under Step A.5.1:

"(a) employers selected should represent a reasonable cross-section of competitive economic sectors (including the public service of parastatal institutions) with no one sector unduly dominating the surveys;

(b) the employers to be surveyed should have been established in the locality for several years;

(c) there should be a considerable degree of continuity in the employers surveyed from one survey to the next, with a majority of employers from the previous survey normally being retained for the analysis and salary scale construction;

(d) the employers chosen should have both an established salary structure and a personnel system, and should preferably have at least 50 employees engaged in office work;

(e) an employer who uses United Nations salary scales as the primary basis for setting salaries should not be selected for comparison."

Further guidelines appear under step C.2.5:

"Where the comparator is a branch office of an organization with offices in a number of other cities, all data used in the computation should pertain to the locality where the salary survey is being conducted."

Lastly, the International Civil Service Commission approved as from 1 July 1993 a new "methodology" for carrying out surveys. The main changes of relevance to surveys in New Delhi were the requirements that the comparator employers should include at least seven with no fewer than 50 office employees and not more than two of those seven should belong to one and the same economic sector.

7. A working group of the LSSC drew up a list of some twenty employers for the survey in New Delhi and kept seven of them: Nocil, Glaxo, Citibank and ANZ Grindlays Bank, all of Bombay; and, from New Delhi itself, the Bank of America, American Express and Pepsico. Of those all but the first two - Nocil and Glaxo - were new: the

last survey, done in 1990, had not covered them.

8. The complainants submit that the 1995 survey and the resulting scales were flawed on the following dozen grounds, which they sum up at the end of their original brief:

The LSSC was "non-existent when vital survey exercises were undertaken".

The survey was "undertaken without adequate preparations".

The employers were confined to "banking/financial sector and the manufacturing sector, resulting in distorted data and job matches".

They "did not meet the conditions which qualified [them] to be treated as outside employers for comparison".

The survey was done at a time "when the employment market was in a state of flux and an 'ad hoc' approach should have been made".

Some employers "were not chosen from the locality but from outside, rendering the data irrelevant".

The descriptions of benchmark jobs "were not properly drafted", but sample descriptions offered in the CCAQ's manual were "used without comparison with the actual job descriptions".

The questionnaire used for the purpose of interviewing the employers was "not revised to reflect the present-day conditions as required".

The collection of data was "faulty and unreliable" as most of the employers belonged to the "banking/financial sectors where job matches were not likely to be found owing to specialised nature of work in those institutions".

The new scales "violated the existing structure of the pay scales and introduced sharp fluctuations in grades".

"Quantification of cash and non-cash benefits is suspect", the WHO having refused to let the complainants "inspect the survey data papers in this regard".

The Organization failed to consult the staff, more particularly when, the LSSC having broken down, "the staff participation in the survey exercise was absent".

The relief that the complainants seek is the quashing of the Director-General's decisions of 12 August 1997, the cancellation of the scales, the adoption of new ones, and awards of damages and costs.

The preparatory work

9. In its reply the WHO explains that, since there must be no more than five years between surveys and the last one had been done in January 1990, headquarters began in December 1993 to prepare for doing a survey in New Delhi in May 1994. Though the preparations went ahead, the survey was held over to July 1994. By June 1994 the LSSC felt that it could not keep to the schedule, but that the preparatory work might be over by the end of September and the survey done in the first week of October. That timing did not suit everyone and the start of the survey was held over yet again, with the LSSC's agreement, to 13 March 1995. There was another postponement to 27 March. The staff representatives on the Committee wanted another eight or ten weeks, but the Organization was adamant that everything was ready and it held to 27 March. On 20 March the staff representatives stopped taking part in the Committee's work on the grounds - according to a staff union bulletin of that date - that it was:

"... flouting the provisions of the ICSC Methodology and CCAQ Manual by embarking on an unilateral combined comprehensive survey for National Officers and [General Service] Staff in India in March 1995 disregarding the decisions of the Joint Local Committees responsible for conducting separate surveys for different categories of locally recruited staff."

10. The CCAQ's manual offers, in step A.4.4 and Annex II, a set of sample job descriptions for the purpose of ensuring "a high degree of consistency in the job descriptions" used for surveys. The LSSC found that they afforded a proper standard of comparison with jobs provided by the chosen employers. The manual says indeed in

A.4.4 that the LSSC may so use the sample descriptions. The full list of job descriptions was sent to headquarters for approval on 14 March 1995, two weeks before the survey was to begin.

11. A working group of the LSSC compiled a list of 20 employers it considered to be paying the best wages in the locality. It kept some from the last survey and added others. The Committee endorsed the list and on 22 March sent it to headquarters for approval.

12. For their interviews with those employers the specialists in charge of the survey were to use a questionnaire. It is a check list of questions which are neither compulsory nor exhaustive: the specialists may add others of their own if they see fit. Though the manual says, in step A.6.2, that the questionnaire "should be analysed and revised, if necessary, to reflect the local context", the one used this time had served the purpose before without difficulty, and the Committee saw no point in changing it for the new survey.

13. The complainants submit that two items of preparatory work were left undone: writing letters to the employers to announce the survey, and sending them the questionnaire.

14. The Organization's reply is that in fact those steps were taken before appointments were made to interview the employers.

15. On the evidence the Tribunal is satisfied that the requirements of both methodology and manual were complied with. The complainants' plea on that score has no substance.

The Local Salary Survey Committee

16. The complainants plead that the staff representatives having withdrawn, the LSSC was no longer competent to act and that the Organization was in breach of its duty of consulting the staff either through such a body or else, in accordance with Staff Regulation 8.1, directly.

17. That plea too must fail. Not only did the Committee and its working party - both comprising staff representatives - function for many months before the survey began, but the Committee did not, as the complainants make out, cease to exist after the staff representatives had withdrawn. The WHO repeatedly invited them to take part, and their refusal to do so did not have the effect of disqualifying the Committee or invalidating its recommendations. Nor was there any breach of Regulation 8.1. An analogy may be drawn with the issue that the Tribunal ruled on in Judgment 1565 (*in re Kashmiri Lal Malhotra No. 6*) under 8.

The application of the methodology

18. The complainants argue that the methodology was improperly followed in that the choice of local employers was flawed: the working party of the LSSC drew up the list of twenty and the Committee - at the time including the staff representatives - approved it. The twenty came from several sectors and were all interviewed. On the strength of the data obtained from the interviews the seven best employers were identified, and as many as three of the seven belonged to the financial sector. The Organization explains that that sector was one of the first to be "liberalized" and so was free to compete on the local market by offering higher wages.

19. It was quite in keeping with the CCAQ's manual for the survey to take the comparator employers from several sectors, provided that they were among the best employers and that no one sector was dominant. A document of the International Civil Service Commission (ICSC/37/R.18) reviews the general methodology for carrying out surveys at "non-headquarters" duty stations. It says in paragraph 121 that some employers may belong to the same economic sector provided that they account for fewer than half of the total number. And the remaining three came from three different sectors: petrochemicals, the manufacture of consumer goods, and pharmaceuticals. So no single sector was dominant, and there was a reasonably wide choice of sectors.

20. The complainants contend that the inclusion of Pepsico and Citibank in the list was a breach of the requirement in step A.5.1 of the manual that employers should have been "established in the locality for several years". The Organization replies that Pepsico had been in the country for six years and in New Delhi for about four, while Citibank had been in India for 88 and in New Delhi for 47. The complainants do not rebut that reply, and the Tribunal finds it acceptable: the objection therefore fails.

21. The complainants argue that, contrary to the requirements of the manual, the travel division of American

Express had fewer than fifty employees engaged in office work. The Organization replies that according to the information at its disposal the true number was 55. The complainants have adduced no evidence in support of their bald affirmation, which fails to discharge the burden of proof.

22. To their contention that bringing in five new employers was contrary to what is said in the manual (Step A.5.1(c)) the Organization replies that the manual requires, not that that rule be followed invariably, but merely that "a majority of employers from the previous survey" be "normally" retained for the purpose. So there was no breach of the requirement here, the seven employers chosen being the ones that paid the highest wages.

23. The complainants argue that the data did not relate to the locality; the Organization answers that they did. The Tribunal sees no reason not to accept the Organization's statement that, when it proved necessary to go to head offices in Bombay to interview some employers, care was always taken to ensure that the data related to staff in New Delhi, not in Bombay.

24. The complainants suggest that the choice of employers may have led to a mismatching of jobs and that the employers may have provided unreliable data because they have no system of grading. They do not, however, identify any particular case of such mismatching. The Organization replies that jobs were matched with due regard to the criteria set in the manual, including the functions performed and the level of supervision required. Only if the local job matched the "benchmark" job description in duties and responsibilities was it taken for the purpose of comparison. The Organization says, moreover, that all the employers confirmed that they had a grading system and did not reckon pay ad hoc. There is no evidence to suggest that the data provided were in any way unreliable.

25. The conclusion is that there was no breach of methodology or manual in carrying out the survey.

The salary scales

26. The complainants contend that the revised scales have introduced "sharp fluctuations" rather than "across-the-board" increases. The harmony of the salary structure has been destroyed by sharp increases in higher grades. They doubt that the structure of the scales duly reflected the best conditions of employment on the local market and they submit that the Organization acted in breach of the manual provision that precludes such fluctuations in pay from one set of scales to the next.

27. In reply the WHO cites step D of Part II of the manual, which under 1.4 sets out several considerations to be taken into account in setting differentials between grades. They include the following:

- (1) the differential should be between 15 and 35 per cent;
- (2) the percentage need not be the same at all levels; and
- (3) fluctuations should normally be avoided unless local practice shows a clearly different pattern.

The Organization argues that the differentials it set were in line: they ranged from 15 to 29 per cent and so fell within the span allowed by the manual. The WHO observes that increases resulting from comprehensive surveys are commonly staggered, unlike increases due to the findings of mini-surveys, which are ordinarily applied "across-the-board". In support it cites step D.2.1 of the manual:

"... It is preferable to avoid significant modifications to the characteristics of the scale. If however changing trends in the local economy, as reflected in the local conditions of employment, suggest that the structure of the scale needs to be revised, this may have to be considered in conjunction with the salary scale construction. ..."

The Organization points out that, whereas the survey revealed that senior General Service staff were earning much less than national counterparts and the staff of comparator employers, junior staff of the United Nations agencies were being paid more than holders of similar jobs on the local market. That is why the decision was taken to stagger the increases so as to take into proper account "trends and realities in the local economy", in line with step D.2.1, and afford a "just and equitable basis for future mini-surveys".

28. The complainants object to the new scale for having 19 steps for each grade while it is laid down that the scale should have at most 9 to 12. The Organization replies that for reasons linked to the local situation all the grades in

question have since 1988 had 18 steps. That was not a result of the 1995 survey. The differentials need not be the same at all levels and may vary as local practice changes.

29. The methodology in effect at the time provides in paragraph 62:

"The number of established steps should not be changed from survey to survey and the inter-step differential should also remain consistent unless it can be shown that local policies have changed."

The Tribunal has no reason to question the defendant's statement that the structure of the scales took account of local conditions in New Delhi, as indeed the last phrase of paragraph 62 allowed.

Application for disclosure

30. It is the complainants' "understanding" that the survey took into "computation cash as well as non-cash benefits available in some companies". To that the Organization replies that the quantification of benefits was in strict compliance with the criteria set in the manual. The complainants retort that the burden lies on the WHO to disprove their statement and apply for access to the records of the survey.

31. The Organization has refused them such access on the grounds that the data employers provide are obtained on the express condition that they are to be treated in strict confidence, employers needing an assurance that "sensitive" information on pay will not be divulged to competitors. The Organization declines to disclose to the complainants the information on the grounds that that would be in breach of privilege but it is willing to make the data available to the Tribunal.

32. The complainants offer no evidence whatever to bear out their "understanding" and enable the Tribunal to decide whether there is any sound reason for it to order disclosure. It therefore refuses to do so, a mere report of rumour or suspicion being clearly insufficient.

Conclusion

33. Since none of the complainants' pleas is upheld, the impugned decisions must stand and they are not entitled to the relief they seek.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 6 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella Carroll

James K. Hugessen

A.B. Gardner