

THIRTY-FIRST ORDINARY SESSION

In re DHAWAN (No. 3)

Judgment No. 214

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Madan Mohan Lal Dhawan on 21 May 1971 and the Organization's reply of 28 July 1971;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 330.7, 910.2 and 980;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. By letter of 22 June 1969 Mr. Dhawan, an assistant accountant in the WHO office in New Delhi, informed his superior that he would be ill for several days, and shortly afterwards he sent in medical certificates. A nurse sent by the office did not find him at home and was told that he had gone away with his family. At the beginning of July 1969 the WHO staff physician summoned him, but he refused to go, pleading ill health, and asked to be visited at home. On 16 August 1969 the staff physician, a New Delhi doctor and a nurse went to the complainant's home where they unanimously found him to be quite fit for work. On 21 August the Organization asked him to report for work. He did not comply. On 13 September two doctors went to his home and found him to be absent. On 16 September the Organization warned him by registered letter that his appointment would be terminated for abandonment of post under Staff Rule 980 unless within one week he gave a satisfactory explanation of his absence. On 23 September he sent the office a telex to explain his absence. On 10 October 1969 the Organization informed him by letter that the Regional Director found his explanation unsatisfactory and confirmed the decision to dismiss him with effect from 11 October 1969 for abandonment of post.

B. The Regional Board of Appeal dismissed Mr. Dhawan's appeal on the grounds that there was no evidence to support his allegations. The headquarters Board of Inquiry and Appeal examined his appeal on 20 and 21 July 1970. It held that the whole case turned on whether or not he had been unwell during the critical period, September-October 1969. It found that he had not undergone the end-of-contract medical examination. It held that, although there had been no abuse of authority or infringement of the Staff Rules, the medical aspects of the case had not been properly investigated and in view of the contradictory medical findings recommended asking the complainant to undergo a "cardiological and neuropsychiatric examinations. The Director-General accepted that recommendation and in July 1970 invited Mr. Dhawan, who was then in New York, to report to the United Nations Medical Service there. On 1 December 1970 the complainant saw the Director of the United Nations Medical Service. He refused to undergo a medical examination, but agreed to consult an outside psychiatrist. On 4 February 1971 the Director of the Joint Medical Service of the international organisations in Geneva informed the Chief of Personnel of the WHO that in the opinion of the Director of the United Nations Medical Service in New York and of the New York psychiatrist consulted by Mr. Dhawan he was fit to perform his work as an accountant. On 25 February 1971 the Director-General dismissed Mr. Dhawan's appeal and confirmed the Regional Director's decision to dismiss him for abandonment of post. The complainant is impugning the decision of 25 February 1971.

C. The complainant contends that Staff Rule 980 on abandonment of post cannot be applied to a staff member in any period in which he was suffering from an illness duly confirmed by medical certificates. In any case, under Staff Rule 330.7 the Organization could not dismiss him before carrying out his end-of-contract medical examination. He claims that he is still unwell, but refused to undergo a medical examination in New York because he wanted the Organization first to withdraw the allegedly unlawful decision to dismiss him, before carrying out any such examination. He also alleges "racial discrimination against [the] Indian community".

D. In his list of claims the complainant asks the Tribunal to order his immediate reinstatement "with retrospective effect and release of his salary"; his reinstatement at the grade which he would have attained by the date of judgment had he remained in the service of the Organization the dismissal of, or imposition of other disciplinary sanctions on, certain named officials and former officials of the WHO; and the award of damages amounting to

7,500 million Indian rupees for bringing him and his nation into international public disrespect.

E. The Organization points out that according to the medical findings the complainant was quite fit for work during the period in question and that it therefore properly applied Staff Rule 980 on abandonment of post. The provisions of Staff Rule 330.7 on the end-of-contract medical examination apply only to ordinary cases of termination of appointment and not to the exceptional case of termination for abandonment of post under Staff Rule 980: otherwise the Organization might never be able to dismiss for abandonment of post a staff member who refused to undergo the medical examination. The Organization therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

1. Staff Rule 980 provides that the appointment of a staff member who is absent from duty without satisfactory explanation for more than fifteen days shall be terminated he being considered to have abandoned his post. The complainant became absent on 22 June 1969 and his absence continued until 11 October 1969 when he was notified of termination under the above Rule. The explanation given by the complainant is that during the whole of this period he was too sick to attend. In the light of the uncontradicted evidence this explanation can only be regarded as unsatisfactory. Accordingly the complainant's appointment was validly terminated under Staff Rule 980.
2. Staff Rule 330.7 provides that staff members shall be examined by the staff physician or by a duly recognised physician immediately prior to their termination from the Organization. The complainant was not so examined. Non-compliance with this Rule does not of itself render a termination invalid.
3. There is no evidence to support any of the other grounds alleged in the complaint.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

M. Letourneur
André Grisel
Devlin

Roland Morellet