

SIXTH ORDINARY SESSION

***In re* SHARMA**

Judgment No. 30

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. V.D. Sharma on 12 March 1957, received by the Registry and registered on 15 March 1957 under No. 5716, and the reply of the defendant organisation dated 15 April 1957, received by the Registry and registered on 17 April 1957 under No. 5718;

Considering Article 9 of the Constitution of the International Labour Organisation;

Considering the Staff Regulations of the International Labour Office and in particular Articles 104, 114 and 116 thereof;

Having heard the parties in public hearing on 8 July 1957;

Considering that the facts of the case are the following:

The complainant was engaged as a shorthand typist in the I.L.O. Branch Office at New Delhi on 15 November 1928. In 1930 he was promoted to Head Clerk, in 1944 he was designated Private Secretary of the Director of the Branch Office, and finally, as from 16 January 1945, he was appointed Secretary of the Branch Office. By a letter dated 7 November 1947, Mr. Rens, then an Assistant Director-General of the I.L.O., established on behalf of the Director-General a new salary scale for the staff of the New Delhi Branch Office, with retroactive effect as from 1 January 1947. In this scale, which included the names of the persons assigned to each grade, the complainant is listed as one of the two holders of the grade of Secretary. It was specified in the letter that this designation was intuitu personae inasmuch as the relevant salary scale would not be automatically applicable to future holders of the post. As a result of recommendations made by the Deputy Director-General and by Mr. Rao, Assistant Director-General of the I.L.O., following a visit to New Delhi, new salary scales came into effect on 1 November 1953. This decision left the designation of the complainant unchanged. By an office order dated 17 August 1956, the Director of the New Delhi Branch Office assigned to the complainant the designation of "Administrative Assistant" and indicated that the post of Secretary of the New Delhi Branch Office was vacant and would be filled at a later date. This decision having been appealed to the Director-General of the I.L.O., the latter confirmed the decision of the New Delhi Branch Office and the complainant thereupon appealed further to the Tribunal;

Considering that the complainant asks that the decision to substitute the title of Administrative Assistant for that of Secretary be rescinded, that the Tribunal be pleased to order that he should be given the title of Secretary with retrospective effect as from the date of the impugned decision, that his salary, hierarchy and status as the official ranking immediately below the Director of the Branch Office be upheld, and that effect be given to the recommendations for his promotion made in 1951 and 1952 by his then chief, on which no action was taken by the Director-General of the I.L.O., and that he asks for reimbursement by the defendant organisation of the expenses arising out of his complaint;

Considering that the complainant alleges that the decision depriving him of the title of Secretary is illegal and has adversely affected his prestige, and submits that the terms of service of the staff of the New Delhi Branch Office are established by analogy with those governing Indian government officials; that in India the title of Secretary corresponds to a high rank in the Administration, whereas that of Assistant is reserved for lower-grade employees entrusted with clerical duties; that, therefore, while his designation as Administrative Assistant has affected neither his salary nor his position in the New Delhi Branch Office, it has given the impression of a demotion on the outside; that a demotion constitutes a sanction and can be ordered only as a result of disciplinary proceedings; that the complainant has never been subjected to any sanction and that his designation as Administrative Assistant was not preceded by disciplinary proceedings, and that therefore the substitution of the new title for that of Secretary is

illegal and unwarranted;

Considering that the defendant organisation rejects the complaint on the ground that the latter, in the absence of any violation of the terms of the contract of employment or of the relevant provisions of the Staff Regulations and of any prejudice, is unfounded and that the said organisation adduces the following arguments. The complainant was not demoted since neither his salary nor the nature of his responsibilities, which are the essential criteria on which the concept of grade is based, have been altered by the impugned decision. Officials do not enjoy a right to retain a title. When the title describes a function, assignment to another function entails loss of the right to bear the title corresponding to the earlier function. When the title describes a grade, it may be changed for all officials of the grade concerned. The terms "Secretary" and "Assistant" by themselves have no distinct meaning, either etymologically or administratively, since the former refers to a high official in India and to a clerical employee at the headquarters of the defendant organisation, whereas the reverse is true in the case of the latter term. These terms therefore have meaning only within a given administrative context. In so far as the complainant ceased to act as personal assistant of the Director of the New Delhi Branch Office, he lost his claim to the title of "Secretary", whereas the title of "Administrative Assistant" was conferred upon him by virtue of the fact that it had been used in other branch offices to designate the official ranking immediately after the Director. The titles used in the New Delhi Branch Office have never corresponded to those of Indian public officials performing similar duties. These titles therefore have no meaning outside of the service in which they are used, and the loss of prestige alleged by the complainant is imaginary. No disciplinary procedure is required for a change in title which does not constitute a demotion;

Considering that the defendant organisation alleges that no right to promotion exists, that the promotion of the complainant is not warranted by his abilities and qualifications, and that the complaint in respect of this point should accordingly be dismissed;

Considering that Article 116, paragraph (c) of the Staff Regulations provides that officials of branch offices shall be subject to conditions of service to be determined by the Director-General after consulting the Administrative Committee; that the Tribunal already deplored in Judgment No. 11 (Desgranges) the absence of regulations laying down the conditions of employment of such officials; that it is regrettable that such regulations have still not been drawn up and that consequently there are no rules of positive law governing the conditions of employment of such officials; that, although the Staff Regulations exclude officials of branch offices from the scope of their provisions, it does not follow that such officials should be exposed to arbitrary action by the Director-General or the directors of branch offices; that consequently, the conditions of employment of such officials are governed primarily by general decisions of the Director-General and rules resulting from the partial assimilation of the conditions of service of such officials to those of public servants in the country where the branch office is located and, in a subsidiary way, by general principles of law and, in particular, administrative law;

Considering that the complainant was personally appointed Secretary of the New Delhi Branch Office by a decision of the Director-General dated 7 November 1947, which was confirmed by a further decision of the Director-General dated 1 November 1953; that these decisions were of a definitive nature and could be modified to the disadvantage of the complainant only by way of a sanction;

Considering that the decision to modify the title of the complainant was not described as a sanction; that it did not entail a reduction in salary; that the duties subsequently assigned to the complainant were not incompatible with his professional dignity; and that consequently no sanction was applied;

Considering that although the said title does not have the same meaning in the Organisation as in the Indian civil service, it was natural that the complainant should set great store by a distinction granted to him after 25 years of service, and that nothing in his behaviour had justified the withdrawal of such a distinction nor that he should be deprived of the prestige which it carried in his eyes;

Considering that the decision to change the complainant's title unjustifiably modified a former decision which had been in the nature of a personal reward;

Considering that there can be no acquired rights as regards the relative position of an official within the administrative hierarchy, nor any right to promotion, the latter being within the exclusive authority of the official's superiors, and that, with regard to the remaining heads, the complaint is therefore unfounded;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Finds for the complainant, in so far only as the retention of the title of Secretary is concerned, and rejects the remainder of the complaint.

In witness of which judgment, delivered in public sitting on 13 July 1957 by His Excellency Albert Devèze, President, Professor Georges Scelle, Vice-President, and Sir John Forster, K.B.E., Q.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signatures)

Albert Devèze

Georges Scelle

John Forster

Jacques Lemoine