

Registry's translation, the French text alone being authoritative.

## FIFTIETH ORDINARY SESSION

In re ALI KHAN

(Preliminary questions)

Judgment No. 556

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Bahauddin Ali Khan on 15 October 1982, the Organisation's reply of 21 December, the complainant's letter of 19 January 1983 and the Organisation's observations thereon of 11 February;

Considering Article II, paragraph 1, of the Statute of the Tribunal, and Articles 11, paragraph 1, and 19 of the Rules of Court;

Having examined the written evidence and disallowed the complainant's application for oral proceedings on the preliminary questions in this case;

### CONSIDERATIONS:

1. The complainant, who was born in 1932, joined the staff of the ILO in 1960 and holds a grade P.4 post as a specialist for the textiles industry in the Manufacturing Industries Branch.

In 1981 the ILO put up for competition a post for a senior research officer in the Bureau for Labour Problems Analysis. The incumbent of the post was to hold grade P.5.

The complainant applied for the vacancy, was unsuccessful and submitted an internal "complaint" to the Director-General, who rejected it.

In a complaint he has filed with the Tribunal he invites it: (1) to declare the result of the competition null and void, (2) to order the ILO to stop all discriminatory practices against him and give him full justice in the matter of career advancement and (3) to award him compensation for material and moral prejudice.

2. In his complaint and in a brief dated 14 October 1982 the complainant applies to the President of the Tribunal for a provisional order under Article 19 of the Rules of Court.

That article empowers the President to make such orders only in the interval between sessions. Thus when in session the Tribunal itself will order measures of investigation in accordance with Article 11(1) of its Rules. It is meeting from 15 to 18 March 1983, before the closure of the written proceedings, and will therefore hear the application itself.

3. The complainant is seeking the disclosure of:

(a) the full text of the inquiry into his internal complaint, as well as any other relevant papers and the Director-General's decision;

(b) the report of the selection board and all documents submitted to it;

(c) a statement of the reasons for his elimination and information as to whether permission to notify it to him was obtained from the Director-General;

(d) the report or reports of the Administrative Committee to the Director-General and his decisions on them;

(e) all reports of the juries in competitions which the complainant has entered since 1964;

(f) the secret file maintained by the Office on the complainant.

The ILO seeks the rejection of the application, adding that it is willing to disclose to the Tribunal the items it regards as confidential.

4. The Tribunal decides as follows on the various heads of claim.

(a) The ILO says that there is no such document as the "text of the inquiry". Presumably all the papers relating to the internal complaint were filed by the parties, who appended to their briefs several minutes as well as the text of the decision notified on the Director-General's behalf. The application fails on this point.

(b) The ILO has produced a report by the selection board, with all names other than the complainant's obliterated. This report gives as the reason for his elimination "lack of actual socio-economic research experience". The complainant may not obtain any further explanation. In particular he has no right to know the identity of all the candidates who were eliminated, who may have good reason to wish to remain anonymous. Nor is he entitled to consult any record there may be of discussion by the selection board. Members of selection boards would not feel free to discuss candidates independently in future if they were at risk of having their personal views divulged.

(c) For the same reasons as are given under (b) the complainant is not entitled to further information on the reasons for his elimination. The part the Director-General may have taken in the notification of the decision is immaterial.

(d) The ILO objects to disclosure of the report or reports of the Administrative Committee and the Director-General's decisions on them, contending that, even assuming such texts exist, they are confidential and add nothing to what the complainant already knows. The Tribunal feels bound to verify this contention and therefore orders the ILO to submit the available texts to it. It will then decide whether they should be included in the dossier of the case.

(e) The reports of selection boards in competitions which the complainant has entered since 1964 are immaterial. Even if injustice may have occurred in the past it does not follow that it has occurred again. Besides, it is at least unlikely that such reports would reveal any evidence of discrimination.

(f) As to the secret file, the ILO merely cites the case law and fails to explain for what purpose there is such a file. The Tribunal cannot determine from what it says whether the allegedly secret nature of the file is a bar to disclosure in this case, and it therefore orders the ILO to submit the file to it. It will then take a decision on the matter.

5. In a brief dated 19 January 1983 the complainant asks for disclosure of the names of the members of the selection board. The ILO does not comment. There being no apparent reason why it should not reveal the names, it is ordered to do so.

DECISION:

For the above reasons,

1. The ILO shall submit to the Tribunal the items mentioned under 4(d) and (f), in so far as they exist.

2. The ILO shall supply to the Tribunal, for notification to the complainant, the names of the members of the selection board.

3. The other preliminary claims are dismissed.

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

Delivered in public sitting in Geneva on 30 March 1983.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.