

SIXTY-FIRST ORDINARY SESSION

In re KHAN

Judgment 800

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Habib Mohamed Khan against the Food and Agriculture Organization of the United Nations (FAO) on 24 June 1986 and corrected on 1 August, the FAO's reply of 11 September, the complainant's rejoinder of 13 October and the FAO's surrejoinder of 4 December 1986;

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

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a citizen of India, joined the FAO on 12 May 1980 as a driver and messenger in the Office of the FAO Representative in New Delhi. He was granted a one-year appointment with local status at grade G.2. He had it extended for successive periods of up to a year. Questioning claims from him to payment of dependency allowances, the FAO asked him in July 1982 to give evidence of the number of his dependants. Being dissatisfied with his answer the FAO Representative informed him in a letter of 16 January 1983 that the allowances would cease as from 1 January, but he produced further evidence in April and had the allowances restored as from 1 January.

By a minute of 12 October 1984 the Representative warned him that his post had been abolished and that his appointment, which was to expire on 31 December 1984, would not be extended. It was not, and he protested, in particular in a letter of 28 January 1985 to headquarters. In its reply of 13 March the Personnel Division confirmed that he had no hope of being taken on again. He submitted an internal appeal to the Director-General on 2 April; the Assistant Director-General for Administration and Finance rejected it on the Director-General's behalf on 17 May; and he appealed to the Appeals Committee on 23 May. In its report of 27 January 1986 the Committee found that his post had indeed been abolished and held that the non-renewal of his appointment, though it caused him hardship, was in line with the rules and not tainted with any extraneous consideration. On the Committee's recommendation the Director-General rejected his appeal and the Deputy Director-General so informed him in a letter of 1 April 1986, the decision he impugns.

B. The complainant alleges that the abolition of his post was not genuine. It was part of a policy of harassment which the Organization practised against him for years and of which the withdrawal of his dependency allowances in 1983 was an earlier sign. A post for a driver was granted to a Mr. Goswami, who was just an employee on an FAO project. As a member of the staff the complainant should have been given preference. His work was always good, as was clear from his getting a within-grade salary increment every year and a bonus for safe driving. He claims reinstatement as from 1 January 1985 and moral damages.

C. In its reply the FAO states that the complainant's fixed-term appointment expired because it wanted to save money by abolishing his post, thereby reducing the number of drivers from four to three. No similar post has been created since he left. That he worked well is not in question. Of the four drivers he had the lowest grade and seniority. In general no distinction is drawn between project staff and local staff in declaring redundancy. A fixed-term appointment carries no expectancy of renewal. The complainant was given ample warning of non-renewal. He was not harassed over the matter of dependency allowances: he was merely asked to comply with the administrative procedure that applies to everyone. He cannot be reinstated because there is no job for him. The decision impugned was lawful, he was treated fairly and there are no grounds for any award of compensation.

D. In his rejoinder the complainant again maintains that a member of the project staff should not have been preferred to himself. If a post for a driver was indeed abolished it was Mr. Goswami who ought to have been released. The decision has caused him serious hardship and he presses his claims.

E. In its surrejoinder the FAO observes that in declaring the redundancy the only criteria it applied were seniority

and grade. Those were fair criteria and the decision correctly applied them: Mr. Goswami had greater seniority than the complainant. The Organization again invites the Tribunal to dismiss the claims on the merits.

CONSIDERATIONS:

1. The harassment that the complainant alleges was in fact a quite proper administrative decision by the Organization that he should comply with regulations on eligibility for dependency allowances that apply to all employees. Indeed when the complainant produced satisfactory evidence to bring his case within the regulations he had his allowances restored.
2. The termination of the complainant's appointment may have caused him hardship. But there was nothing improper in reducing the number of drivers' posts from four to three for the sake of economy. It was in keeping with the usual practice of "last in, first out" that he, rather than one of the other three drivers, had his appointment terminated. Since he had the lowest grade and seniority it would have been unfair to prefer him to any of the other three.
3. The Tribunal finds no evidence to cast doubt on the Organization's assertion that it is unable to take him back because no post is available.
4. The complainant submits that when a driver's post is abolished, a driver who works for the local FAO office, as he did, should be preferred to one who works for a project, such as Mr. Goswami, on the grounds that the latter is engaged only for the duration of the project and his appointment is necessarily temporary. That, says the complainant, is why it is Mr. Goswami and not he who should have had his appointment terminated.

The plea fails. The FAO is right to draw no distinction between local project staff and local office staff when declaring redundancy and to give preference, in the event of abolition of post, to seniority.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 13 March 1987.

André Grisel
Jacques Ducoux
Mohamed Suffian
A.B. Gardner