

## SIXTY-SIXTH SESSION

### *In re* UNNINAYAR

#### Judgment 972

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Sushel Unninayar against the World Meteorological Organization (WMO) on 10 October 1988, the WMO's reply of 20 December 1988, the complainant's rejoinder of 6 January 1989 and the WMO's surrejoinder of 23 February 1989;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, Regulations 1.2, 4.2 and 4.5 and Rules 131.6, 145.1 and .2, 195.2(a) and 1111.3(a) and (b) of the WMO Staff Regulations and Staff Rules;

Having examined the written evidence;

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

A. The complainant, a citizen of the United States born in Ceylon in 1946, joined the WMO in Geneva on 10 February 1981 under a two-year appointment. He was a scientific officer at grade P.5 in an office in charge of a programme of research into climate. His appointment was extended to 31 December 1983, to 31 December 1985 and to 31 December 1987.

In a service note of 26 January 1984 the Secretary-General of the Organization announced, among other things, the complainant's appointment, still at grade P.5, as Chief of the World Climate Data Programme Division (CLD) of the World Climate Programme Department (WCP). In a service note of 26 July 1985 the Secretary-General announced changes in the structure of WCP: CLD disappeared and the complainant was assigned as "senior scientific officer", still at P.5, to a new unit known as the World Climate Data Office. He continued, however, to sign letters as "Chief of the World Climate Data Programme". He also answered on his own responsibility letters from permanent representatives of member States and directors of national meteorological services. He wrote on 14 September 1987 to the head of the meteorological service of Brunei asking her not to sign letters as "permanent representative" because all correspondence so signed had to be routed through the most senior officers and "replies will take forever".

The Secretary-General summoned the complainant to a meeting on 10 November 1987, together with the Assistant Secretary-General and the Director of WCP. According to a minute signed by the three senior officers the same day the purpose had been to "consider the renewal" of his appointment and point out his shortcomings but, "unwilling to accept his deficiencies", he had "suddenly stood up and said he was fed up and opened the Secretary-General's office door and left ...".

On 11 November the Secretary-General sent the complainant a minute to say that his contract would not be renewed. On 12 November he made a request for review of that decision under Rule 1111.3(a). A minute of 4 December from the Secretary-General accused him of insubordination and scorn for the rules and confirmed the decision. In a minute of the same date he undertook to abide by the rules in future, and he repeated the undertaking on 7 December, adding an apology for his behaviour at the meeting. On 18 December he appealed to the Joint Appeals Board under 1111.3(b).

In its report of 21 June 1988 the Board recommended by a majority rejecting the appeal. In a dissenting opinion the staff representative said that the Secretary-General was prejudiced and there were other flaws in the decision.

In a minute of 18 March 1988 the Secretary-General observed that the complainant's performance report for 1987 was incomplete and referred to his "professional deficiencies and shortcomings".

By a letter of 13 July 1988, the decision impugned, the Secretary-General informed him that his appointment had expired on 31 December 1987.

B. The complainant recounts the facts of the case and describes his work and what he believes it achieved. The

Secretary-General showed him hostility as early as April 1985 in berating him orally at a meeting of WCP staff. In July 1985, while he was absent on mission, CLD was downgraded to a mere "office" and he lost his title as chief. He was not warned of the meeting of 10 November 1987, of which he appends his own record, and it caused him great distress. He doubts the independence of the Board members whom the Administration appointed.

Rule 145.1(b)(ii) reads: "A staff member whose services are to be retained by the Organization after the completion of 5 years on fixed-term appointments, and who fully meets the standards required for the granting of a permanent appointment, shall be considered for a permanent appointment". According to (b)(iii) the Secretary-General may, "in special circumstances, decide that only a further fixed-term appointment can be offered". Since the complainant's services were always rated excellent and many acknowledged his achievements, he is entitled to a permanent appointment at P.5 under 145.1(b)(ii). Even supposing there were "special circumstances", he is entitled at least to a further fixed-term appointment under (b)(iii).

The charges against him did not warrant non-renewal. True, he should not have gone on signing as chief of CLD any more than the Secretary-General should have downgraded his division for the sole purpose of taking away his title. But the decision was unwarranted, and he ignored it. The other charges are unfounded. As his former supervisor, the director of WCP, told the Board, there was no objection to his writing directly to permanent representatives on technical matters, as indeed he had, quite openly, for years. As reasonably construed the standing instructions did not preclude that. His letter of 14 September 1987 to the Permanent Representative of Brunei was informal and about technical matters anyway: his remark may have been ill-advised but scarcely amounted to criticism of management: even in well-run offices it takes time to follow channels.

The Organization failed to make out a report on his performance for the last year of his appointment: when the renewal of an appointment depends on performance, that amounts to a procedural flaw. He was not allowed to answer let alone know the precise charges against him. There was a mistake of law in that the Secretary-General's minute of 4 December 1987 based the non-renewal on Rule 195.2(a) without putting it in the context of Regulation 4.5 and Rules 145.1 and .2. Lastly, the Secretary-General overlooked an essential fact, the complainant's fine record.

The complainant asks that the decision be quashed; that the Secretary-General's minute of 18 March 1988, which makes knowingly false allegations, be removed from his personal records; that the Organization pay him 50,000 Swiss francs in moral damages; that he be reinstated in a P.5 post as chief of division under a permanent appointment or, failing that, a fixed-term appointment for two years as from 1 January 1988; that he be awarded the expenses of travel back to Geneva for him and his family should they leave before the Tribunal passes judgment; failing reinstatement, that he be awarded the equivalent of ten years' salary and allowances in compensation. He claims costs.

C. In its reply the WMO gives its own version of the facts. It challenges the complainant's account of the meeting of 10 November 1987. His ill-tempered refusal to discuss his shortcomings showed him to be unfit for international civil service and would have warranted disciplinary action. He was self-important, insubordinate, recalcitrant and given to complaining. Many of his allegations of fact are false, some are mischievous and malicious. The integrity of the Board members is beyond dispute.

As to the merits the Organization points out that the Secretary-General has discretion in the matter of the grant of a permanent appointment and renewal of a fixed-term one under Rule 145.1. The complainant has no right to a permanent appointment; besides, the claim is irreceivable because he has failed to exhaust the internal means of redress: the last renewal was notified to him on 30 October 1985, and to claim a permanent appointment he should have challenged it within the time limits in 1111.3.

His subsidiary claim to renewal is unfounded because the Secretary-General properly exercised his discretion. There was no procedural or formal flaw. In particular, the rules do not require a report on the staff member's performance in his "last year". Besides, a report was made on him in February 1987 and he signed it on 4 February. He knew all along the Secretary-General's criticisms and had every chance to answer them at the meeting on 10 November 1987, in his request for review and in his appeal. The decision took account of all the essential facts, but his satisfactory performance was outweighed by many defects of character and misdemeanours, which the Organization describes. The Secretary-General was guided solely by the Organization's interests, which preclude letting senior staff become "lone rangers". He drew no mistaken conclusion from the facts of the case.

The Organization is opposed to the striking out of the Secretary-General's minute of 18 March 1988.

D. The complainant rejoins that the Organization pleads no new material fact but casts slurs on his personality and behaviour that are unproven, and belied anyway by his excellent performance reports, which he submits, and by the esteem he enjoyed among the staff. He challenges its tendentious narrative and gives his own version of what happened at the meeting of 10 November 1987. He cites the names of many witnesses who would confirm under oath his own account if the Tribunal ordered hearings. He maintains that his achievements are belittled. He accuses the Secretary-General of introducing a "reign of petty terror" and submits written testimony from other senior officers who fell victim to his "bully tactics". In alleging that he was given opportunities to state his case the Organization shows utter "incomprehension of procedural guarantees".

He presses his claims.

E. In its surrejoinder the WMO points out that the changes in the complainant's title had no effect on his work: he held grade P.5 throughout and was neither promoted nor relegated. In any event it is too late for him to challenge the validity of the service notes that announced his reassignment. By clinging to his old title after the World Climate Data Office had been set up he led outsiders to believe that there were two units doing the same work.

The Organization submits that his account of the meeting of 10 November 1987 is "despicable invention not worthy of a former international civil servant" for which the dispute affords no excuse. It adds that the "foulness" of the language he used on that occasion "reached the high heavens". His allegations of petty terror are the figment of an over-fertile imagination: in their great majority the staff and former staff know the Secretary-General to be utterly different from the portrayal by the complainant and his "disgruntled cronies". By the end of the Secretary-General's first term of office member States were so "overwhelmed by the very high quality of his performance" that they re-elected him unanimously. The complainant has failed to show that the Secretary-General's decision not to renew his appointment was not in the Organization's interests.

#### CONSIDERATIONS:

The complainant's application for oral proceedings

1. The Tribunal disallows the complainant's application since the evidence and the parties' submissions on the material issues are adequate.

The material issues

2. The complainant, who is an expert in data management, joined the WMO on 10 February 1981 as a scientific officer at grade P.5. His fixed-term two-year appointment was later renewed and was to expire on 31 December 1987. On 11 November 1987 the Secretary-General of the Organization informed him that it would not be renewed. The complainant asked for review of that decision under Rule 1111.3(a), but the Secretary-General confirmed it on 4 December. On 18 December 1987 the complainant appealed to the Joint Appeals Board under Rule 1111.3(b). On the recommendation of the majority of the Board the Secretary-General decided on 13 July 1988 that the complainant's contract would not be renewed and that is the decision impugned in this case.

After years of intensive planning the WMO decided in 1979 to undertake a World Climate Programme to monitor climatic changes. It was on the data component of the Programme that the complainant worked. Although the Organization seeks to belittle his part in planning, developing and carrying out the work, the evidence before the Tribunal supports the view that he made a substantial contribution and his energy and expertise were largely responsible for the success of the work.

3. In a service note dated 26 January 1984 the Secretary-General appointed him, still at grade P.5, as chief of the World Climate Data Programme Division (CLD). In a service note of 26 July 1985 the Secretary-General announced reforms in the structure of the World Climate Programme Department and assigned the complainant as "senior scientific officer" to a new unit in the Department known as the World Climate Data Office. When writing to correspondents outside the Organization the complainant continued to use his former title of chief of CLD.

4. On 10 November 1987 the complainant was summoned to a meeting with the Secretary-General, the Assistant Secretary-General and the new Director of the World Climate Programme Department. According to the Secretary-General the purpose of the meeting was to consider the renewal of his fixed-term appointment and, if he sought

renewal, to draw to his attention "his deficiencies and shortcomings during his present contract". Though there is disagreement between the parties about what was said at the meeting, it appears that there was discussion about the complainant's signing letters as chief of CLD and asking the permanent representative of one member State to write to him directly in her capacity as head of a national meteorological service to prevent the delay that would occur if her letter were routed through official channels. The meeting, which seems to have been conducted in an atmosphere of discord, ended abruptly when the complainant used what he admitted to be a "coarse expression" and left the Secretary-General's office.

5. Regulation 1.2 of the WMO Staff Regulations and Staff Rules states:

"Staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the Organization. They are responsible to him in the exercise of their functions. ..."

It follows that as the executive head of the Organization the Secretary-General is under a duty to lay down and enforce rules that are consistent with the broad principles of policy set out in the Staff Regulations for the staffing and administration of the secretariat and to ensure respect for the fundamental conditions of service and basic rights of staff members set out in the rules.

6. Rule 145.1(a)(ii) reads:

"Fixed-term appointments may be renewed or converted into permanent appointments. They shall not, however, carry any expectation of, nor imply any right to, such extension or conversion and shall, unless extended or converted, expire according to their terms without notice or indemnity."

The decision whether or not to renew or convert is at the Secretary-General's discretion and the Tribunal's case law is that it will interfere only if such a decision was taken without authority or in breach of a rule of form or procedure, or was based on an error of fact or law, or if an essential fact was not taken into consideration, or if there was abuse of authority, or if a clearly mistaken conclusion was drawn from the facts.

The complainant's claim to a permanent appointment

7. The complainant argues that according to the terms of his contract he is entitled to a permanent appointment with the Organization at grade P.5.

Rule 145.1(b) provides:

"(ii) A staff member whose services are to be retained by the Organization after the completion of 5 years on fixed-term appointments, and who fully meets the standards required for the granting of a permanent appointment, shall be considered for a permanent appointment.

(iii) Notwithstanding the provisions of (ii) above the Secretary-General may, in special circumstances, decide that only a further fixed-term appointment can be offered."

The complainant's argument fails because he has never challenged any administrative decision on his entitlement to a permanent appointment. Any complaint about refusal by the Organization to grant him such an appointment is irreceivable under Article VII(1) of the Statute of the Tribunal because he has failed to exhaust the internal means of redress.

The claim to renewal of appointment

8. The complainant contends that the Secretary-

General's decision not to renew his appointment is flawed by procedural error, error of law and failure to take essential facts into consideration.

9. Regulation 4.2 of the WMO Staff Regulations states that "the paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity". Rule 145.2(d) makes the evaluation of performance as reflected in periodic reports the basis for "decisions concerning the staff member's status and retention in the Organization", and Rule 145.2(c) requires the

communication of any adverse report to the staff member in writing.

The reports on the complainant's performance show that his work was excellent, that he performed valuable services for the Organization and that, as provided for in Rule 131.6, he was granted yearly salary increments on the strength of "satisfactory performance and conduct". Apart from the performance reports many items of evidence attest to his reputation as a highly skilled and efficient executive whose initiative earned the admiration and support of administrators in meteorological agencies in different parts of the world.

10. In a memorandum of 4 December 1987 in answer to the complainant's request for review the Secretary-General put forward five reasons for not renewing the complainant's appointment:

(a) he had continued to sign correspondence as chief of the World Climate Data Programme Division even though his title, clearly designated in service note 13/85 of 26 July 1985, was senior scientific officer;

(b) he had corresponded directly with WMO permanent representatives on official matters instead of routing the correspondence according to the standing instructions;

(c) he had addressed a letter to one permanent representative "characterizing the WMO senior management as inefficient and urged the Permanent Representative to contravene normal communication channels";

(d) he had indicated orally to the Secretary-General in the presence of Mr. Boldirev, the Director of the World Climate Programme, and Mr. Czelnai, Assistant Secretary-General, that he could accept only "the generalities and not the details of WMO Rules and Regulations, Standing Instructions and Service Notes"; and

(e) he had been warned in earlier discussions with Mr. Bruce, Deputy Secretary-General, and with Mr. Potter, the Director of the World Weather Watch and former Director of the World Climate Programme Department, of the possible consequences of breach of the rules.

11. The complainant laboured under an acute sense of grievance at having been deprived of the title of chief of the World Climate Data Programme Division, though he says that his supervisors never asked him to discontinue the practice of signing as chief. He states that Mr. Bruce told him some ten days before 10 November 1987 that the Secretary-General was apparently seeking assurances that he would comply with the rules of the Organization and that both Mr. Bruce and Mr. Potter, the complainant's supervisor from 26 July 1985 until late in 1987, referred to a letter which he had written to a permanent representative and which the Secretary-General held to be critical of the management of the Organization.

12. As to his corresponding directly with permanent representatives, Mr. Potter did not consider his writing to officials in other administrations at a semi-official level to be in breach of any of the Organization's rules and saw no difficulty over his answering correspondence on technical matters. In particular, the text of the letter he wrote to Mrs. Ja' Afar, the Director of the Meteorological Service of the Civil Aviation Department of Brunei, does not support the charge that he urged a permanent representative not to follow the normal communication channels. The letter gave advice on the electronic processing of data by the meteorological service in Brunei, the training of computer staff and other technical matters. The complainant sought Mrs. Ja' Afar's opinion on matters that were of concern to her solely in her capacity as head of her country's meteorological service; he was entitled to invite her to reply in that capacity; and his remark that time would be saved by her writing to him directly could not reasonably be regarded as critical of senior management.

13. The fourth reason for the non-renewal is that the complainant told two senior officers orally that he could accept only "the generalities and not the details" of WMO Rules and Regulations, standing instructions and service notes.

That charge is so vague and lacking in particulars that no fact-finding body exercising disciplinary jurisdiction could entertain it.

14. As to the complainant's being warned in discussions with Mr. Bruce and Mr. Potter of the possible consequences of his breaking the rules, there is serious doubt about what was actually said. The evidence before the Tribunal includes no minute from the Secretary-General or indeed from any of the complainant's superiors drawing his attention to the relevant rules and directives, requiring him to conform or pointing out that refusal to do so would prompt disciplinary proceedings. In giving evidence to the Joint Appeals Board Mr. Potter stated that he

assessed the complainant's performance as excellent both in professional skill and in conduct. In answer to a question about his shortcomings, Mr. Potter said that they should be looked at in the context of the work and that he never went against the rules in such a way as to embarrass the Organization or cause prejudice to the interests of member States.

#### The Tribunal's findings

15. The complainant's performance reports all show that he was a highly competent and dedicated officer who did valuable work for the Organization, and letters in the dossier support the view that administrations in several countries appreciated the effectiveness of the programme he supervised. There is therefore no question of the non-renewal's being justified by unsatisfactory professional performance on his part.

16. As to the alleged breaches of the Staff Rules and Regulations, standing instructions and service notes on which the Secretary-General based his decision, the complainant was never afforded an opportunity to answer the charges or even to comment on them. Thus he was prevented from denying all or any of them and from giving, in answer to any charge which he may have admitted, an explanation or an undertaking about his future conduct.

17. No question arises in these proceedings in respect of the Secretary-General's dealings with staff members other than the complainant because the only material issue is whether he reached an informed and unprejudiced conclusion on whether the complainant's services should be retained.

18. The Secretary-General not only omitted to give due weight to the complainant's excellent record of service over a period of seven years, but also, as is stated in 10 to 14 above, overlooked essential facts. The five reasons stated are based on mistakes of fact which could have been put right if the Secretary-General had agreed to give him a hearing. In so holding the Tribunal is not interfering in the actual management of the Organization. Because of those flaws his decision not to renew the complainant's appointment must be set aside.

#### Relief

19. The complainant seeks the quashing of the Secretary-General's decision of 13 July 1988, the removal from his personal records of the Secretary-General's memorandum of 18 March 1988 stating that there were professional deficiencies and shortcomings in his performance as a staff member of the WMO, reinstatement with effect from 1 January 1988 in a P.5 post as chief of a division either under a permanent appointment or under a two-year fixed-term appointment with full benefits and entitlements, after deduction of any salary and benefits he may have received from 1 January 1988 until the Tribunal's decision. As an alternative to reinstatement, should the Tribunal consider it inadvisable, he claims compensation equivalent to 10 years' salary, including all benefits and post-adjustment allowance. He claims costs.

20. The Tribunal is satisfied that in the circumstances the complainant's reinstatement would not be advisable. It notes from the Joint Appeals Board's report that the complainant obtained a temporary appointment with the United States University Space Research Association in Geneva from the end of January 1988: doubtless his special skills will not go unnoticed by those who need the services of an expert in data management. The Tribunal will therefore award compensation in place of reinstatement, damages for moral injury, and costs.

But it sees no need, having rendered this judgment, to order the removal of the Secretary-General's minute of 18 March 1988 from the complainant's personal records.

#### DECISION:

For the above reasons:

1. The Secretary-General's decision of 13 July 1988 is quashed.
2. The Organization shall pay the complainant the equivalent of two years' salary and allowances at the rates that obtained at the date of his separation as damages for material injury.
3. It shall pay him 25,000 Swiss francs as damages for moral injury.
4. It shall pay him 10,000 Swiss francs as costs.

5. His other claims are dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

Jacques Ducoux  
Mohamed Suffian  
William Douglas  
A.B. Gardner

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