

SEVENTIETH SESSION

In re BATTRA

Judgment 1055

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Jogindar Singh Battra against the World Health Organization (WHO) on 21 December 1989, the WHO's reply of 28 February 1990, the complainant's rejoinder of 29 March as supplemented on 6 April and the Organization's surrejoinder of 18 May 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Regulation 4.2, and WHO Staff Rules 510.1, 565.2 and 1230.1.1 and .2;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, an Indian citizen who was born in 1937, joined the staff of the WHO's Regional Office for South East Asia (SEARO) in New Delhi in 1964. He was appointed to a post in the Budget and Finance Unit of SEARO on 1 April 1965 at grade ND.3. He was promoted to assistant accountant in 1969 at grade ND.4 and to accountant at ND.5 in 1979. He was granted fixed-term appointments that were ordinarily for periods of five years.

In 1970 Mr. Mittar joined SEARO, also as an accountant in the same Unit. From the outset the complainant got on badly with him. Mr. Mittar took over as Budget and Finance Officer in 1984, and the complainant criticised him openly for giving work to two relatives. In minutes to the executive committee of the Staff Association the complainant indeed accused him of "clear and unabashed nepotism".

In 1986 he had his fixed-term appointment renewed for a period of two years.

The WHO transferred him as from 15 October 1987 from the Budget and Finance Unit, where he had reached ND.7 as a senior accountant in the budget sub-unit, to the Medical Supplies Unit. In his new unit he was employed as shipping assistant, still at grade ND.7.

He appealed in December 1987 against his transfer to the SEARO Board of Appeal. In its report of 25 May 1988 the Board recommended by a majority rejecting his appeal and the Regional Director accepted the recommendation. The complainant appealed in September to the headquarters Board of Appeal. In its report, put to the Director-General on 21 August 1989, the headquarters Board found "no conclusive evidence of personal prejudice" but held that the complainant's reassignment had been in violation "of certain Staff Regulations and Staff Rules". It recommended returning him to the Budget and Finance Unit and meeting his costs. But by a letter of 21 September 1989, the impugned decision, the Director-General rejected the Board's recommendations and the appeal.

B. The complainant has two main pleas. The first is that his transfer, having been prompted by Mr. Mittar's personal hostility towards him, was in breach of Staff Rule 1230.1.1. He cites the case law in support of his contention that in certain circumstances personal prejudice may be inferred. He further alleges that the Administration of SEARO was prejudiced against him on account of his militant defence of staff interests.

His second plea is that there was breach of Rule 1230.1.2, which requires complete consideration of relevant facts before a decision such as transfer is made. In his submission the decision to transfer him to a clerical post as a shipping assistant failed to take proper account of his particular abilities and qualifications and of his extensive experience of budgeting and finance.

He seeks reinstatement in a suitable post in the Budget and Finance Unit, and awards, totalling 65,000 United States dollars, of damages on the grounds of personal prejudice, distress and loss of earnings due to diminished expectancy of promotion and costs.

C. The WHO observes in its reply that on 28 July 1981 a programme committee agreed to proposals for introducing a policy of rotation of General Service category staff in SEARO and that it was in furtherance of that policy that the complainant was transferred. Indeed his transfer, which the Director of SEARO ordered in the exercise of his discretionary authority in the matter of transfers, formed part of moves that affected no fewer than eleven SEARO staff members. The policy affords General Service category staff excellent prospects of career development in the long term.

The WHO submits that, as the Tribunal affirmed in Judgment 325 (in re Verdrager), the general principles of international public service affirm the priority of the general interest over individual interests. The policy of rotation is intended to give staff wider experience and opportunities for promotion in more than one unit. In the complainant's case it was the more likely to achieve that purpose in that, as his job description makes plain, the duties of shipping assistant carry responsibility, including as they do the making of arrangements for the import and export of supplies and the drafting of papers.

As for the complainant's allegations of prejudice, if prejudice has to be inferred the burden is on him to prove them, not on the defendant to refute them. In point of fact they rest on the mistaken assumption that his new post was less responsible than the one he held before. Since the transfer enhanced his prospects of promotion it cannot be seen as amounting in any way to a hidden sanction.

His contention that there was incomplete consideration of the facts is groundless. It is well-established policy not to consult staff on reassignments under the system of rotation. Rotation being common in SEARO, every staff member knows full well that he may have to change jobs at any time.

There being no evidence to suggest that the complainant's transfer has damaged either his prospects of promotion or his reputation, his complaint should be dismissed as devoid of merit.

D. In his rejoinder the complainant seeks to correct what he sees as misrepresentation by the WHO of several issues of fact.

He contends that the Director of SEARO, though he does have discretion in the matter of transfer, must exercise it in accordance with the requirements of the Staff Regulations, Staff Rules and Manual. As the Tribunal held in Judgments 367 (in re Sita Ram) and 447 (in re Quiñones) on two earlier WHO cases, the reassignment of a staff member without due consideration of his abilities and interests amounts to breach of Staff Regulation 4.2 and Staff Rule 510.1.

It is mistaken to laud the advantages of rotation to the Organization when his own transfer has cost it the benefit of his many years' experience of accounting and finance, of which he makes little use in his new post. In fact the Administration is turning the policy to its own ends so as to block promotion for those it has taken a dislike to.

As for the burden of proof of personal prejudice, he discusses the case law and submits that the facts raise a presumption in his favour which the Organization has failed to rebut.

He reaffirms that it was the WHO's duty to make sure that his interests and abilities were properly taken into account in deciding to transfer him, that SEARO's discriminatory treatment of him has irreparably harmed his reputation as an accountant and that he has lost face in the eyes of other WHO staff, who are questioning his ability.

In a supplement to his rejoinder he submits evidence in support of his contention that the Organization is continuing to show prejudice against him because he has pressed his case and because of his Staff Association activities.

E. In its surrejoinder the WHO submits that the complainant fails to offer any new material evidence in support of his allegations.

It rejects his view that its policy of rotation serves as a means of blocking anyone's advancement: on the contrary it is intended to enhance, and does enhance, promotion prospects by broadening the experience of staff. What the complainant seems to be arguing is that long service in one unit should prevent the Administration from transferring him to another; yet no organisation could work efficiently under such a restrictive policy.

The Organization submits that the incidents the complainant cites in the supplement to his rejoinder afford, for the reasons it explains, no evidence of any personal prejudice against him on SEARO's part.

CONSIDERATIONS:

1. The complainant, who has served in SEARO since September 1964, was transferred in October 1987 from the Budget and Finance Unit, where he had reached grade ND.7 as a senior accountant in the budget sub-unit, to the Medical Supplies Unit, where he is employed as a shipping assistant, still at ND.7. In December 1987 he appealed against the transfer to the Regional Board of Appeal. On the Board's majority recommendation the Regional Director declared his transfer valid and rejected his appeal. The headquarters Board of Appeal, to whom he appealed in September 1988, though it rejected for lack of evidence his allegations of personal prejudice, held that there had been breach of several Staff Regulations and Staff Rules and recommended reinstating him in the Budget and Finance Unit and awarding him costs. But by the impugned final decision of 21 September 1989 the Director-General rejected the Board's recommendation and the appeal.

2. One of the complainant's two main pleas is that his transfer was in breach of Rule 1230.1.1, which makes personal prejudice grounds for declaring a decision unlawful. In his submission the transfer was prompted not only by the personal hostility of his supervisor, who had been Budget and Finance Officer since 1984, but by animosity on the part of the Administration of SEARO because of his militant support of staff interests.

His other main plea is breach of Rule 1230.1.2, which requires complete consideration of all relevant facts. He argues that the decision to put him on a post with clerical duties overlooked his talents and made no use of his many years' work in budgeting and finance.

The relief he seeks is as stated at the end of B above: reinstatement and awards of damages and costs.

3. Transfer is at the Director-General's discretion, as is clear from the wording of Rule 565.2, which reads:

"A staff member may be reassigned whenever it is in the interest of the Organization to do so."

That rule merely reflects a general principle which was stated in Judgment 810 (in re Najman No. 5) in the following terms and which would apply even in the absence of express provision:

"... the general principles that govern the international civil service make it plain that an executive head has wide discretion in assigning staff in the organisation's interest."

4. Yet the Director-General's authority in the matter of transfer, being discretionary, is not absolute. As the Tribunal further affirmed in Judgment 810:

"... the lawfulness of his decision is subject to review, albeit limited review because the Tribunal may not meddle in the actual running of the organisation. It will determine whether there is a formal or procedural flaw or a mistake of law or of fact, or whether some essential fact has been overlooked or a clearly mistaken conclusion drawn from the evidence, or whether there is abuse of authority."

Another general principle that the Tribunal affirmed as applicable to the international civil service is that of good faith.

Lastly, Rule 510.1 requires that "In determining the initial and any subsequent assignment, consideration shall be given, to the extent possible, to the staff member's particular abilities and interests".

The alleged disregard of essential facts

5. Turning to the circumstances of the present case, the WHO first explains that the complainant on being recruited 26 years ago was appointed as a typist/clerk. Though he picked up some working knowledge of accountancy while on the job, he had no formal or specialist training in accountancy, and the requirement in Rule 510.1 therefore did not stand in the way of assigning him clerical duties.

6. Secondly, the WHO explains that the complainant was transferred in accordance with a policy for rotating staff in the General Service category: the policy has the effect of training up staff and giving them more varied

experience and skills and offers the advantage of allowing a wider choice of candidates for appointment to vacant posts.

7. The policy is in itself quite lawful. It was duly decided upon by the Regional Director himself as early as 1981 on the strength of a proposal from a programme committee and, besides conferring on the Organization the advantage mentioned in 6 above, it is to the benefit of the staff, who, by broadening their experience and skills, have better prospects of promotion since they can be employed in more than one unit. This is especially true of staff in the General Service category such as the complainant.

8. Whether it is contrary to Rule 510.1 and therefore wrong to apply the policy to specialist staff is immaterial since, as was said in 5 above, the complainant is in the General Service category and just as capable of doing the job he was assigned to as his former one.

9. In any event the Tribunal is satisfied on the evidence that the complainant's transfer was not contrary to his own interests.

For one thing, since in April 1983 he himself applied for promotion to a post in the Medical Supplies Unit he cannot have had any objections to working in that unit. For another, the actual post he was assigned to in the unit bore the same grade as had his previous one: the regional classification plan puts the two posts on an equal footing. Moreover, the description of the new post shows that it is a responsible one, involving among other things the making of arrangements for the import and export of supplies, such as the drawing up of shipping documents. The post being at the same duty station, there can have been little or no disruption of the complainant's private life. Nor is the assignment such as to have injured his reputation or humiliated him. A hundred or so staff members have been rotated in keeping with the same staff policy and ten others were reassigned at the same time as he.

The allegations of personal prejudice

10. The complainant cites two grounds for the allegation that his transfer was prompted by prejudice.

One is that the WHO failed to appoint him to posts he was qualified for. The answer to that is that selection is a matter of discretion and refusal to pick a candidate, whatever his own assessment of his merits may be, does not necessarily afford evidence of personal prejudice against him.

Secondly, he points out that his appointment was renewed for only two years on 1 April 1986 and that there was unfair criticism of him in his performance report for the period from November 1984 to October 1985. But in a memorandum dated 3 April 1986 he told the Personnel Department that he had talked the matter over with the Budget and Finance Officer and that the matter could be treated as closed. He cannot now reopen his complaint about the criticism of him in his performance report from November 1984 to October 1985. Besides, there is evidence that one of the reasons for the short renewal was funding difficulties. His report for 1985-86 was highly favourable and the one for 1986-87 was not adverse. In any event a supervisor must be allowed full freedom in commenting on a staff member's performance and uncomplimentary remarks are not necessarily evidence of prejudice.

Though his appointment was extended for only two years in 1986 as against earlier periods of five years, he was given a career service appointment in 1988. The Tribunal is satisfied that the complainant has not been the victim of any personal prejudice and that his contention that his transfer was a hidden sanction is far-fetched and quite unsupported by the evidence.

DECISION:

For the above reasons,

The complaint is 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, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mohamed Suffian
William Douglas
A.B. Gardner

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