

## EIGHTY-FIRST SESSION

### *In re* SETHI

#### Judgment 1557

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Devendra Nath Sethi against the World Health Organization (WHO) on 2 June 1995 and corrected on 14 June, the WHO's reply of 21 September, the complainant's rejoinder of 31 October 1995 and the Organization's surrejoinder of 6 February 1996;

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

Having examined the written submissions and decided not to order hearings, 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 1939, joined the staff of the WHO's Regional Office for South-East Asia (SEARO) at New Delhi in 1962 under a temporary contract. He was an operator of air-conditioning equipment at grade ND.3. He was granted a fixed-term contract at ND.4 in 1963. He had several promotions, the last being a personal one in 1980 to the highest grade in the General Services category, ND.X, on an ND.8 post for an assistant in air-conditioning and electrical services. On completing 20, 25 and 30 years' service he was granted within-grade increments of two steps each. At the material time he was Head of the Air-conditioning and Electrical Sub-unit.

By a memorandum of 22 April 1993 he asked the Administration to reclassify his post under Manual paragraph II.1.210. A personnel officer replied in a memorandum of 9 July 1993 that the Regional Director would take a decision "very soon" after review of the air-conditioning sub-unit.

On 22 July 1993 the complainant appealed to the regional Board of Appeal against the Administration's failure to revise the description of his post and upgrade it to P.2/P.3. He alleged:

"(a) personal prejudice on the part of a supervisor or other responsible official ([Staff] Rule 1230.1.1)

(b) incomplete consideration of facts (Rule 1230.1.2)

(c) failure to observe or apply correctly the provisions of Staff Regulations and Rules, or the terms of his contract (Rule 1230.1.3)

(d) improper application of the WHO post classification standards (Rule 1230.1.4)"

In a report submitted to the Regional Director on 29 July 1994 the regional Board recommended rejecting the appeal. By a letter of 3 August 1994 the Regional Director told the complainant he had endorsed that recommendation.

The complainant having put the matter to the headquarters Board of Appeal on 8 September 1994, it too, in a report dated 14 February 1995, recommended rejection. The Director-General informed him in a letter of 12 April 1995, which he impugns, of the rejection of his claim.

B. The complainant submits that the impugned decision is unlawful. He pleads breach of WHO Staff Rule 230, which requires the Organization to review the classification of a post whenever the staff member so asks. The Organization failed to observe the procedure on the upgrading of posts to the Professional category. Instead it tried, out of sheer personal prejudice, to "dilute" his duties.

He wants the Tribunal to set aside the impugned decision and that of the Regional Director dated 3 August 1994; order the WHO to revise his post description and classification in keeping with the International Civil Service Commission's master standards; and award him (a) 100,000 United States dollars in damages, (b) the difference

between the present amount of his pay and the sums he would have been paid had he held grade P.2 since 24 April 1993, plus interest, and \$10,000 in costs.

C. In its reply the WHO argues that its refusal to reclassify his post was a lawful exercise of discretion. It carried out two classification reviews and both confirmed that ND.8 was the proper grade of the post. The reason why no new post description was made was the "legitimately-held" belief that the description of 1981 held good. The Organization denies the charges of personal prejudice and attempts to "dilute" his duties.

D. In his rejoinder the complainant presses his case and describes the WHO's treatment of him as "unequal and step-motherly".

E. In its surrejoinder the Organization comments on the main points in the rejoinder and says that after giving his request "full" consideration it found no evidence of any change in the nature of his duties that might warrant putting his post in the Professional category.

#### CONSIDERATIONS:

1. In 1962 the complainant joined the WHO's Regional Office for South-East Asia (SEARO) at New Delhi under a temporary contract as an operator of air-conditioning equipment. He received a fixed-term appointment at grade ND.4 in 1963 and several promotions thereafter. On 1 June 1980 he was promoted to a grade ND.8 post as an assistant in air-conditioning and electrical services. He was also granted personal promotion to ND.X, the highest grade in the General Service category. He later became head of the Air-conditioning and Electrical Sub-unit, and he is objecting to the Organization's refusal to regrade his post to P.2/P.3.

2. The complainant made unsuccessful requests for the revision of the description and grade of his post. To one such request that he made in a memorandum of 19 August 1991, and pressed in reminders, the Personnel Division of SEARO replied in a memorandum of 14 September 1992 that his post had been "rightly graded" at ND.8. He wrote again on the subject on 30 October 1992, and again the Division replied, on 3 November 1992, confirming the description and grade of his post.

3. The WHO commissioned a consulting engineer to review, among many other matters, the air-conditioning system of SEARO.

In February 1993 the engineer submitted a report headed "Facility survey and engineering study". He found the complainant's duties clearly to "exceed the normal responsibilities of a Chief Maintenance Engineer" and to be appropriate to a consulting engineer. The complainant referred to those comments in the report appraising his performance from 1 June 1992 to 31 May 1993. Under the heading "Self appraisal" he himself wrote:

"Carried out all the activities as per post description [of 28 August 1981]. With the addition of latest equipment the system has become more complex and complicated. A revised [post description] has already been submitted ..."

His first-level supervisor agreed with the complainant's self-appraisal and said that the post description of 1981 needed revision and that a new one "will follow". His second-level supervisor agreed with the comments of the first-level one. Yet there came no new post description.

4. On 22 April 1993 the complainant made another request for revision of the description and grade of his post. The Personnel Division replied in a memorandum of 9 July 1993 that "a study of the new structure and post descriptions of the [Air-conditioning Sub-unit] has recently been completed", the recommendations made therein were under study by the Regional Director, and a decision was "expected very soon". Yet never was any such decision communicated to the complainant.

5. WHO Staff Rule 230 entitles a staff member to request at any time a review of the classification of his post, and WHO Manual paragraph II.1.130 sets out the following procedure for such review:

"130 Requests for classifications and classification reviews are routed as follows:

...

130.3 ... for all regional general service posts ... to the regional personnel officer for processing in accordance with

the regional procedures and submission to the regional director for decision.

130.4 For extended general service - EGSL - level posts in the regions: to the regional personnel officer for processing in accordance with the regional procedures and transmission to Personnel at headquarters for decision."

Manual paragraph II.1.200 confirms that it is the regional director who determines the grade of filled General Service posts in a regional office but that:

"... upgrading to extended GS level or to a professional grade are decided by Personnel at headquarters."

Manual paragraph II.1.210 further provides:

"A staff member may be assigned new duties not included in the post description on a full-time basis for a temporary period not exceeding 90 days. If the period exceeds 90 days, a new post description should be established and a classification review undertaken ... to determine the grade of the post."

6. Three months having elapsed, and having got no decision on his request for regrading, the complainant inferred a final refusal under Staff Rules 1230.8.1 and 1230.8.2 and on 22 July 1993 appealed to the regional Board of Appeal on the grounds set out under A above. The Tribunal need entertain only one of his pleas, namely failure to apply correctly the relevant provisions of the Staff Regulations and Rules.

7. In its report the regional Board held by a majority that the complainant had not at any time been carrying out duties higher than those set out in the description of 1981 and that his supervisor had confirmed, year after year, that his duties and responsibilities were reflected adequately in that post description. In a cogent dissenting opinion dated 29 January 1994 one member observed that it was not for the Board to determine the adequacy of the post description; that the complainant's first-level supervisor had recognised the need to revise it; that the Administration had provided no evidence to show that any review had taken place after 90 days; that SEARO should have submitted the post description proposed by the complainant to headquarters for evaluation; and that by failing to do so it had denied him due process and violated the relevant provisions. By a letter of 3 August the Regional Director informed the complainant that he accepted the majority view and dismissed the appeal.

8. On 8 September 1994 the complainant appealed to the headquarters Board of Appeal on the same grounds. In answering his case the Administration conceded that his request for review, being supported by his supervisors, should have been forwarded to headquarters. But in its report of 14 February 1995 the Board held that, although the duties of the post might have so changed as to require revision of the 1981 description, the need for regrading did not follow:

"Since the Regional Administration had decided that the post was correctly graded at ND.08, the Board considered that the Regional Administration was acting within its authority and was not required to forward the post description to the Headquarters Administration. However, the Board felt that this did not preclude further review and noted with satisfaction that the Headquarters Administration had requested the Regional Administration to forward a revised post description for classification review by Headquarters."

The Board recommended dismissing the appeal and the Director-General did so on 12 April 1995. That is the decision impugned in this complaint, which was filed on 2 June 1995.

9. On 10 March 1995 SEARO began drafting a revised description of the complainant's post. His supervisors and then the Regional Director approved it and on 11 May it was issued in final form under the title "Maintenance technician VI". Although the list of duties and responsibilities that it contained did differ in some respects from the description of 1981, the post was still graded ND.8. SEARO forwarded the new description on 29 May to headquarters, which after evaluation concluded that the grading was correct. The Personnel Division of SEARO so informed the complainant by a memorandum of 24 July 1995.

10. The complainant contends that he had the right to apply under the Staff Rules and Manual for revision of the description and grade of his post but the WHO failed to recognise that right.

11. The Organization replies that though his workload might have increased he had not been assigned new duties. His request for reclassification was denied first by the Personnel Division of SEARO on the Regional Director's behalf, on 14 September and 3 November 1992, and by the Personnel Division at headquarters on 24 July 1995.

The defendant says that there was no need to put the matter to headquarters for decision: first, because Manual paragraph II.1.130.3 authorises the Regional Director to decide on reviews of the grading of all regional posts in the General Service category; secondly, because the post description submitted by the complainant had not been approved by his supervisors. Anyway it made no difference whether the review was done at SEARO or at headquarters because after consideration in accordance with the established procedures the outcome was the same: no regrading. And any delay in review by headquarters was immaterial to that outcome.

12. What is relevant to this case is the request which the complainant made in April 1993. Though SEARO had rejected his earlier ones, that neither justified nor constituted denial of his request of April 1993. The request was a new one, supported by new material and made after his supervisors had for the first time acknowledged that the description of his post needed revising. Manual II.1.210 required that it be considered.

13. There is no merit in the WHO's contention that it had been considered at the regional level and at headquarters. It was because it was not considered at the regional level that the complainant had to appeal to the regional Board, properly inferring from that omission a final decision to refuse it. Belated consideration, whether at the regional level or at headquarters, after the conclusion of the internal appeals and after the taking of the impugned decision neither made good the failure to deal with his request at the proper time nor took from him his right to have the Tribunal review the decision now impugned.

14. The defendant's further plea that it was the Regional Director who was competent to decide on his request is based on an isolated reading of Manual paragraph II.1.130.3. That provision must be read with others, particularly Manual paragraph II.1.200, which make it clear that only headquarters could decide on a request for the upgrading of a post from the General Service to the Professional category. Indeed the Administration conceded as much in its pleadings before the headquarters Board.

15. The Tribunal will not determine whether the complainant had new duties warranting changes in the description and grade of his post. But the impugned decision refusing his request was tainted with errors of fact and law and with failure to abide by the provisions of the Staff Rules and the Manual. It must therefore be quashed, and the complainant's request taken up anew.

16. Since the complainant was denied due process he is entitled to an award of damages for moral injury, and the Tribunal sets the amount at 2,500 United States dollars. It also awards him costs.

17. Because his complaint succeeds for the foregoing reasons there is no need to entertain his other pleas.

#### DECISION:

For the above reasons,

1. The Director-General's decision of 12 April 1995 is quashed.
2. The WHO shall process anew the complainant's request of 22 April 1993 for the regrading of his post.
3. It shall pay him 2,500 United States dollars in moral damages.
4. It shall pay him 500 dollars in costs.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

William Douglas  
Mella Carroll  
Mark Fernando  
A.B. Gardner

