

EIGHTY-SECOND SESSION

In re Rajah

Judgment 1576

The Administrative Tribunal,

Considering the complaint filed by Mr. Kathiravelu Canaga Rajah against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 7 November 1995 and corrected on 5 December 1995, UNESCO's reply of 26 January 1996, the complainant's rejoinder of 29 February and the Organization's surrejoinder of 3 April 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, a Malaysian who was born in 1934, joined the staff of UNESCO in January 1982 on transfer from the Food and Agriculture Organization of the United Nations (FAO). His first job was as a programme specialist at grade P.4 in the Reports and Documentation Division. He later served in the Bureau of Personnel and the Staff Administration Division. He retired on 30 September 1994.

By a memorandum of 23 June 1994 he applied to the Director-General for "end-of-career promotion", which administrative circular 1663 of 25 May 1989 allows in "particularly deserving" cases. Replying by a memorandum dated 18 July 1994 the acting Deputy Director-General told him that the Director-General had rejected his claim.

On 25 August he protested to the Director-General. In a letter of 3 November the Director of Personnel told him that the Director-General was upholding the decision. On 21 October he went to the Appeals Board, which in a report of 27 June 1995 recommended giving him the promotion. But by a letter of 28 August 1995, which he is impugning, the Director-General rejected his appeal.

B. The complainant submits that he met the conditions in circular 1663 for end-of-service promotion. He contends that, though circular 1883 of 6 July 1993 replaced No. 1663, the later circular did not apply to him. He pleads misuse of authority, discriminatory treatment and breach of due process.

He wants the Tribunal to quash the impugned decision and order his promotion, awards of moral damages and costs and any other "appropriate" relief.

C. UNESCO replies that refusing him promotion was a proper exercise of discretion. In any event the Tribunal will not determine whether, to quote circular 1663, someone is "particularly deserving".

D. In his rejoinder the complainant enlarges on his pleas and presses his claims.

E. The Organization observes in its surrejoinder that the rules confer no right to promotion.

CONSIDERATIONS

1. The complainant joined UNESCO on an inter-agency transfer from the FAO in 1982 and served as a programme specialist at grade P.4. Having served in the United Nations system for over 25 years and reached the age of 59 on 30 September 1993, he made a claim on 23 June 1994 to "end-of-career promotion" in accordance with administrative circular 1663 of 25 May 1989. The circular stated that the Director-General might grant such promotion "in specific cases which he considers to be particularly deserving" for the twelve months up to the date of retirement provided that the staff member met certain conditions. The conditions were that he must have 25 years' service, have reached the age of 59, have an entirely satisfactory record of service and have had no personal promotion already in his career.

2. The Director-General did not grant the promotion and the complainant appealed. The Director-General confirmed his decision and the matter went to the Appeals Board, which recommended granting the promotion. The Director-General having rejected the Board's recommendation and dismissed the appeal on 28 August 1995, the complainant has filed this complaint with the Tribunal.

3. The complainant contends that he was entitled to claim end-of-career promotion under circular 1663, and not under circular 1883, which superseded it on 6 July 1993, because all the relevant biennial reports appraising his performance were prepared while circular 1663 was still in force. He argues that circular 1883 is discriminatory in that its retroactive application has created a class of officials who relied on circular 1663 and are left without a remedy. The Organization submits that inasmuch as his claim was made on 23 June 1994 the applicable circular is 1883.

4. Since the award of end-of-service promotion falls within the Director-General's discretion, the Tribunal exercises only a limited power of review: it will intervene only if there has been breach of some rule of form or procedure or a mistake of law or fact or failure to take some essential fact into account.

5. Circular 1883 states that it replaces the provisions on end-of-service promotions in circular 1663 with the conditions which it sets out, and which include the requirement that the staff member has had a general rating of A ("outstanding") or B ("more than satisfactory") in the last two reports on performance.

6. The complainant's argument that he may benefit under circular 1663 is unfounded because it was no longer in force by the time he made his claim. In Judgment 596 (*in re* Chomentowski) the Tribunal held that conditions of promotion do not confer an acquired right on an official but are subject to amendment. The complainant's performance was rated only C ("satisfactory") for the period ending in June 1992. So he failed to qualify for the promotion under circular 1883, the one in force by 23 June 1994. Since he has shown no flaw in the impugned decision, his complaint cannot succeed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas
Michel Gentot
E. Razafindralambo
A.B. Gardner