EIGHTY-SEVENTH SESSION

In re Ochani (No. 2)

Judgment 1856

The Administrative Tribunal,

Considering the second complaint filed by Mr Parmanand Sachanand Ochani against the World Health Organization (WHO) on 29 April 1998, the WHO's reply of 31 July, the complainant's rejoinder of 12 August and the Organization's surrejoinder of 13 November 1998;

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. By Judgment 1827 of 28 January 1999 the Tribunal dismissed Mr Ochani's first complaint.

The complainant, a citizen of India born on 28 September 1937, used to be a staff member of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi. His son, who was studying in the United States, underwent dental treatment there on 13 and 14 September 1995 and on 29 December 1995 the complainant submitted a claim for reimbursement of his treatment under the Staff Health Insurance scheme.

On 8 April 1996 the complainant was summoned to see the Regional Personnel Officer and another personnel officer in order to explain the calculation of the dental surgeon's receipts submitted with his claim, which had been referred to the Regional Surveillance Committee of the scheme, as it appeared that sums on the receipts had been altered. The dentist's statement for 13 September showed itemised treatment costs of 176 United States dollars but a payment of 976 dollars, and the one for 14 September showed costs amounting to 686 dollars but a payment of 1,686 dollars, resulting in an overall discrepancy of 1,800 dollars for which the complainant was claiming reimbursement.

By a letter of 9 April 1996 the Insurance Officer of the scheme sought corroboration of the sums from the dentist concerned, which he provided on 23 May. The Regional Personnel Officer also wrote to the complainant on 9 April asking him to supply a written explanation to elucidate the discrepancies. The complainant was on sick leave until 26 May inclusive, and at his request the time limit for replying was extended. In a letter of 17 June he explained that he would be able to research discrepancies if the record of all payments made on behalf of his son to the dentist concerned could be made available to him for inspection.

The matter was referred to the Headquarters Surveillance Committee which was to meet on 25 June. On 14 June the secretary of the Regional Committee gave him notice of this, told him he had the right to communicate his comments in writing before the Committee made a recommendation to the Director-General and invited him to submit his comments to the Committee by the 24th. Consideration of the case was subsequently deferred until the investigation into the disputed claim was complete.

The Regional Personnel Officer told the complainant in a letter of 5 July 1996 that he had already been provided with all the information he needed to produce the explanation required from him and that disciplinary action, including dismissal, was being considered. The complainant asked in a letter of 10 July 1996 to be allowed to withdraw his claim for reimbursement of the dental expenses; that measures other than his dismissal should be envisaged or, failing that, he requested early retirement. The next day he proffered in a letter a further option which was "mutual separation".

The Regional Director accepted conditionally his request for early retirement under Staff Rule 1010 and the Regional Personnel Officer so informed him in a letter of 15 July, also accepting the withdrawal of his claim. However, on 22 July the complainant withdrew his request for early retirement, contending that he had wanted to know in advance the terms and conditions of the option chosen by the Organization and that Staff Rule 1010 governed resignation and not retirement. The Organization in turn rescinded its conditional acceptance of his early

retirement.

By a letter of 31 July a personnel officer informed him that he would be dismissed for misconduct under Staff Rule 1110.1.4 with effect from 5 August 1996. The Regional Surveillance Committee reconvened to examine the complainant's case. It decided to pay certain of his health insurance claims, but not the disputed dental claim. At the complainant's request his appeal went to the headquarters Board of Appeal, which reported on 3 February 1998, recommending his dismissal. The Director-General endorsed its recommendation and, on 5 March 1998, rejected his appeal. That is the decision under challenge.

B. The complainant pleads that there were procedural flaws in the action the Organization took against him.

From reading together Staff Health Insurance Rules 560, 562 and 564 and WHO Manual paragraphs IV.1.310-345 it is clear, he contends, that any action taken in a case of committed or attempted fraud is to be governed by the Insurance Rules. Apart from a reference to "disciplinary action" in IV.1.320 the relevant Manual paragraphs do not provide for the type of disciplinary proceedings instituted against him.

Furthermore Rule 560 states that: "If it is established that fraud has in fact been committed or attempted, the case shall be referred to the Headquarters Surveillance Committee or to the regional surveillance committee concerned". A prerequisite should have been to "establish" that fraud had been committed and only then refer the matter to the relevant Surveillance Committee. The complainant should also have been allowed the opportunity to communicate his comments in writing to the Headquarters Committee before it made a recommendation to the Director-General.

The WHO denied him the chance to see the exchange of correspondence with the dental surgeon. The complainant could not know what discrepancies or alterations were alleged, and therefore could not render an explanation.

The Organization acted in breach of the Staff Rules and Manual. The procedure to dismiss him was flawed because the letter of dismissal dated 31 July 1996 cited Staff Rule 110.8 on misconduct but did not specify the relevant subparagraph. From the terms of that letter it appears that the Organization acted as final arbiter, but did not clearly establish the charge against him and there was no opportunity for adversarial proceedings. Furthermore the Regional and Headquarters Surveillance Committees "abdicated their functions to the Administration". Two parallel procedures were put in motion against him: one under the Insurance Rules and another under the Staff Rules.

The Administration did not comply with Staff Rule 1130 under which a staff member may not be dismissed for misconduct "until he has been notified of the charges made against him and has been given an opportunity to reply to those charges". Under Manual paragraph II.9.490 a proposal to terminate an appointment for misconduct should be based on a report prepared by the supervisor, "stating the established facts": the "subjective conclusions" of the Personnel Department were taken to be established facts. No action was taken to find out the extent of the complainant's involvement in the matter.

The Administration "was driven by malice and arbitrariness". Even though there were inconsistencies in the unsigned statements of account supplied by the dental surgeon, the evidence went against the complainant. The Administration intimidated him, threatening him with dismissal, and violated the rules of natural justice.

At the request of an insurance assistant he went to SEARO on 3 March 1997 to settle pending medical claims. As the complainant refused to part with a cheque issued to him in error the official "grappled" with him, causing his glasses to break. On 7 March he received a letter from the Regional Personnel Officer accusing him of destroying the dentist's original receipts during that incident.

He seeks: (1) the quashing of the Regional Director's order dated 31 July 1996 dismissing him and "proforma reinstatement as he has since attained the age of superannuation. The period from the date of dismissal (31 July 1996) to the date of his normal retirement (30 September 1997) be treated as period spent on duty for all purposes and with all consequential benefits like payment of salaries, restoration of health insurance cover, after-service participation in the Staff Health Insurance Scheme (which was agreed to by the Head, SHI/HQ on 24 March 1993), pensionary benefits and release of all his pending medical claims, etc."; (2) an award of 200,000 United States dollars in damages for moral injury; and (3) 10,000 dollars in costs.

C. In its reply the Organization argues that there was clear evidence of misconduct in that the figures on the receipts had been tampered with. A slightly different black pen had been used to change the two disputed figures. The

complainant had destroyed the original receipts on 3 March 1997 and they could not now be submitted in evidence. An "account status report" provided subsequently by the dental surgeon confirmed a costing of 862 dollars and not 2,662 dollars, resulting in the same difference of 1,800 dollars. The complainant had previously argued that payments had been made by third parties, but that argument was unsound as he never suggested who they might be or what amounts they had paid. In any event he had requested reimbursement of charges for services not received, and that amounted to an act of misconduct. The onus was on the complainant to submit an accurate claim backed up by accurate documentation.

The Organization submits that the complainant had been given ample opportunity to defend himself. The decision to dismiss him was taken in its best interests as a proper exercise of its authority and without personal prejudice. It denies the complainant's allegation that it sought his dismissal at all costs. It had even tried to settle the matter in a manner avoiding his dismissal, but the complainant retracted his request for retirement.

As for the incident of 3 March 1997 it refutes the complainant's version. It was the complainant who asked to see his file and then snatched it from the officer's hands, destroying the receipts at the same time.

The Organization met the requirements of the Staff Rules in the procedure it followed to dismiss him. By its letter of 9 April 1996 he was notified of the charges against him and given the right to reply: he knew on what evidence the charges rested.

The initiation of a dual procedure was not contrary to the Staff Rules either. Fraud under the Staff Health Insurance Rules also constitutes misconduct under Staff Rule 110.8 which can lead to a disciplinary measure being taken against him under Rule 1110.

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

He denies the receipts had been "altered". He reiterates that on 3 March it was the insurance assistant who "beleaguered and assaulted" him and who destroyed the receipts.

Only in its reply did the Organization use words like "falsified" in connection with the charge against him. Only after his dismissal did it speak of "a slightly different black pen" being used to change the figures. It did so with "tongue in cheek" as the receipts no longer existed as evidence. Those were "lame attempts" to show there was a charge against him, as evidence of discrepancies is in itself no charge.

At no stage was the dental surgeon asked about the discrepancy between the itemised charges and the total sums on the receipts "which may have been occasioned on account of third party cash payments" and therefore the charge against him remains unsubstantiated. E. In its surrejoinder the Organization presses its arguments.

It reaffirms that the complainant destroyed the original receipts when he snatched the file from the insurance assistant. It insists that it had spoken of "alterations" to the complainant from the outset and particularly in its letter to him of 9 April 1996 on the matter. The charge against him was therefore established.

The complainant had the responsibility of ensuring that his claim and supporting documents were accurate. He had ample opportunity to send the receipts back to the dentist for recertification before submitting his claim. The Organization offered the complainant an opportunity of seeing again the original receipts on which all the charges hinged. It respected his right of defence.

CONSIDERATIONS

1. The complainant was employed by the WHO at its Regional Office for South-East Asia (SEARO) in New Delhi as from 1988. He was dismissed because he had failed to furnish a satisfactory explanation for submitting two altered receipts in support of a claim for reimbursement of expenses incurred for dental services provided for his son in the United States.

2. His claim, dated 29 December 1995, included a request for reimbursement of 2,662 United States dollars. That was supported by two receipts showing total charges and payments as follows:

Date		Charges		Payments
13.9.95		$ 976		$ 976

14.9.95		$ 1,686		$ 1,686

However, the itemised charges set out in the body of the receipts added up to only 176 dollars and 686 dollars - a difference of 1,800 dollars - giving rise to the suspicion that "176" had been altered to "976", and the "1" added before "686".

3. At the request of the WHO, the dentist furnished computer printouts of his "account status" and "billing information" for the complainant's son. These showed that charges totalling 176 dollars made on 13 September 1995 had been settled by a BANKCARD payment on 18 September; that charges totalling 686 dollars made on 14 September had been settled on 25 September by the reversal of one item of 385 dollars and a BANKCARD payment for the balance of 301 dollars; and that, in all, charges totalling 477 dollars had been settled in full by two BANKCARD payments.

4. On 8 April 1996 the Regional Personnel Officer and another personnel officer at SEARO discussed the discrepancies with the complainant. According to their "Note for the Record", he maintained that his son had paid the full amount of 2,662 dollars, but he could not explain what other services had been rendered besides those shown in the receipts. Indeed, he alleged that the dentist himself had changed the amounts without specifying any additional services rendered; and after examining the "account status report", he claimed that the dentist had demanded 1,800 dollars in cash, which his daughter had paid, but no receipt had been issued. Finally, he offered to withdraw his claim, but was told that an official investigation was being carried out and that his written explanation would be called for.

5. By letter dated 9 April 1996, the Regional Personnel Officer sent to the complainant copies of the receipts and the computer printouts, and asked him to submit, by 19 April, a written explanation of the alterations and discrepancies. As he was on sick leave, he endorsed that letter to the effect that he would furnish his explanation on his return to work, and that he had verbally "explained [his] point of view during the meeting on 8 April".

6. Also on 9 April, the Insurance Officer at SEARO wrote to the dentist asking for clarification as to the amounts actually charged in September 1995, and whether the amount of 385 dollars had been paid. The reply by fax of 23 May stated that the 385 dollars had not been paid because the patient had decided to wait; and that the value of the services rendered and paid for in September was 477 dollars.

7. On his return from sick leave on 27 May, the complainant asked for and was given time till 17 June "to prepare and furnish" his explanation. By a letter dated 17 June, he informed the Regional Personnel Officer that he was already in touch with his son to obtain full particulars of cash payments made to the dentist by third parties on behalf of his son; that until his son's entire medical record and the record of all payments (including cash and third party payments) had been obtained from the dentist and made available to him, he would be unable to offer his comments; and that he denied the charge of alteration made in the letter dated 9 April.

8. Replying on 5 July 1996, the Regional Personnel Officer said that copies of all relevant documents had already been given to the complainant, but offered to show him the originals again; that not having received a satisfactory explanation, disciplinary action, including dismissal for misconduct under Staff Rule 1110.1.4, was being considered; and that it had been decided to give him a further opportunity to furnish a written explanation (in accordance with Staff Rule 1130) by 17 July in respect of the discrepancies and "third party payments".

9. Instead of an explanation, in his reply dated 10 July, the complainant offered three options by way of compromise. He suggested, first, that he be allowed to cancel and withdraw his entire medical claim of 29 December 1995, without prejudice to his denial of the charge of alteration; or, second, that he be permitted "to take 'constitutional responsibility' only", and that accordingly a disciplinary measure less severe than dismissal be considered; or, third, that he be allowed to take early retirement. On 12 July he suggested a fourth option: separation on terms to be agreed mutually.

10. On 15 July the Regional Personnel Officer, while pointing out that the complainant had not provided any clarification regarding the alterations and the "third party payments", informed him that the Regional Director had approved his early retirement as from 1 August subject to certain conditions.

11. Due to disagreements as to the basis of retirement, the settlement fell through. Thereupon, by letters dated 17 and 23 July, the Regional Personnel Officer told the complainant that his letters of 10 and 12 July would be

considered as his final reply to the letter of 5 July which was issued in accordance with Staff Rule 1130.

12. On 31 July the complainant replied to the letters of 5 and 23 July reiterating the position that he had taken up in his letter of 17 June. He also asked for the return of the original receipts for recertification by the dentist of all payments made, as the dentist had insisted on the originals being submitted for that purpose.

13. On the same day, a personnel officer informed the complainant that in his several replies he had not provided a satisfactory explanation for the alterations in the receipts, and that it had accordingly been determined that an attempt had been made to defraud the Staff Health Insurance scheme, which amounted to misconduct within the meaning of Staff Rule 110.8, for which the Regional Director had decided to dismiss him with effect from 5 August 1996 with one month's salary in lieu of notice.

14. The complainant appealed to the regional Board of Appeal on 20 August 1996. There was undue delay by the regional Board in dealing with that appeal, and on 17 June 1997 the headquarters Board of Appeal granted the complainant's request to be allowed to appeal directly to it. On 3 February 1998, the Board concluded that the receipts had been falsified, that the complainant was responsible for the claim which he had submitted, and that the Administration had acted in accordance with the Staff Rules in imposing disciplinary measures. It recommended dismissal of the appeal. On 5 March 1998 the Director-General accepted that recommendation. The complainant asks the Tribunal to quash the decision to dismiss him, and to award him compensation in a sum of 200,000 United States dollars, and to consider the time from 31 July 1996 to 30 September 1997 as being a period of service with all consequential relief. He claims costs.

15. The complainant's first contention is that allegations of fraud can only be dealt with in accordance with the Staff Health Insurance Rules 560, 562 and 564, read with WHO Manual paragraphs IV.1.310-345, and that the only permissible penalty for such fraud is the suspension of or exclusion from Staff Health Insurance benefits: any other administrative action or penalty is *ultra vires*.

The Staff Health Insurance Rules mentioned above provide:

"560 All cases of fraud, confirmed, attempted or suspected, against the funds of the Insurance, shall be dealt with in accordance with the procedure for reporting and follow-up of cases of fraud and losses of cash or property laid down in IV.1.310-345. If it is established that fraud has in fact been committed or attempted, the case shall be referred to the Headquarters Surveillance Committee or to the regional surveillance committee concerned.

562 The Headquarters Surveillance Committee examines the case in the light of its facts and circumstances and may recommend to the Director-General the full or partial suspension or exclusion of the benefits and entitlements of the participant concerned. Regional surveillance committees examine cases referred to them ... in the light of the facts and circumstances and may recommend, through the regional director, to the Headquarters Surveillance Committee, the full or partial suspension or exclusion of the benefits and entitlements of the participant concerned. The participant is given the opportunity to communicate his or her comments in writing to the Headquarters Surveillance Committee before any recommendation is made by the latter to the Director-General on the measures described in these provisions.

564 The Director-General takes his decision on the suspension or exclusion of participation in the Insurance on the basis of the recommendation of the Headquarters Surveillance Committee ..."

16. The WHO Manual provides:

"IV.1.310 Any fraud, confirmed, attempted or suspected, ... must, on discovery, be immediately reported to the assistant director-general responsible for administration and financial matters ...

IV.1.320 At the same time, or as soon as possible afterwards, a full, detailed report is prepared by the director, support programme, in the regions ... stating clearly the particulars of the amount involved, the circumstances under which the fraud or loss took place, and the corrective or disciplinary action, if any, taken at the office where the loss occurred."

17. A fraud or an attempted fraud in respect of the funds of the insurance gives rise to two distinct issues. One is whether the staff member, *qua* participant in the Staff Health Insurance, should be allowed to continue to enjoy the benefits of participation in the scheme; and for that the Staff Health Insurance Rules 560, 562 and 564 prescribe the procedure and the consequences. The other is whether, *qua* staff member, he should be subjected to a disciplinary measure. The Insurance Rules and the Manual confer no jurisdiction on the Headquarters Surveillance Committee or the Regional Surveillance Committee in that respect, but recognise, on the contrary, that cases may be referred to those committees after it is established that fraud has been committed or attempted, and even after disciplinary action has been taken. Therefore the Administration was entitled to take disciplinary proceedings against the

complainant before the Headquarters Surveillance Committee dealt with his case.

18. The complainant's second submission is that the WHO failed to notify him of the charges made against him - with sufficient precision to enable him to render an explanation - and thus infringed Staff Rule 1130, which provides:

"A staff member may not be ... dismissed for misconduct ... until he has been notified [in writing] of the charges made against him and has been given ... eight days ... within which to submit his reply ..."

Manual II.9.490 provides:

"A proposal to terminate an appointment for misconduct is based on a report prepared by the supervisor or by another authorized WHO staff member stating the established facts considered to constitute misconduct. The charges are notified to the staff member, who is given an opportunity to reply within eight days ..."

19. The complainant further alleges that the WHO was in correspondence with the dentist, and that its actions were largely based on that correspondence, and that because he was not furnished with copies, he could not understand what discrepancies or alterations were alleged against him, and thus was prevented from rendering an explanation. He could not rebut evidence that was being concealed from him, and this constituted a denial of natural justice.

20. The Regional Personnel Officer's letters of 9 April and 5 July 1996 satisfied the requirements of the Staff Rules. The complainant's attention was drawn to the "established facts", namely, the alterations in the receipts and the discrepancies between the services rendered and the payments made, as well as the applicable Staff Rules; he was given copies of the four documents which contained the evidence against him; and he was allowed eight days to reply. The correspondence with the dentist (including the reply by fax mentioned at 6 above) added nothing to the allegations or the evidence against him, and the failure to give him copies of that correspondence in no way affected his ability to render an explanation or to defend himself. Indeed, while the complainant now tries to make out that "the alleged alterations or discrepancies could never be construed as charges" against him, yet his letters of 17 June and 10 July show that he knew full well that a "charge" of alteration had been made on 9 April, which he denied without complaining of any lack of precision or particulars.

21. Thirdly, the complainant claims that the charge has not been proved. By lodging his claim for reimbursement, the complainant represented to the WHO that services had truly been rendered on 13 and 14 September, that the dentist had in fact made charges totalling 2,662 dollars for those services, and that this amount had actually been paid in full. However, the receipts and the computer printouts established, *prima facie*, that for the services rendered on 13 and 14 September the dentist had charged, and was paid, only 477 dollars.

22. The Tribunal ruled in Judgment 1070 (*in re* Couton) that when a staff member files a claim for reimbursement of medical expenses he "had a duty to make sure that the 'supporting documents' were genuine and he could not shirk it by shifting responsibility to his former wife and professing his own ignorance and good faith"; and that breach of that duty amounted to misconduct warranting dismissal.

23. The explanation which the complainant gave on 8 April was that the dentist himself had altered the figures in the receipts without specifying what additional services had been rendered. Even if the complainant's assertion that he submitted the receipts exactly as they were when his son had received them from the dentist is true, nevertheless neither he nor his son ever said that additional services had actually been rendered, or provided a shred of evidence that anyone had paid the dentist 1,800 dollars in cash. Thus the inescapable conclusion is that the complainant filed his claim knowing that the receipts had been altered to include charges of 1,800 dollars for services not actually provided, and payments of 1,800 dollars not actually made. He knew therefore that he was not entitled to reimbursement from the Staff Health Insurance scheme, and it is not surprising that later he offered to withdraw his entire claim. The Administration was justified in concluding that the evidence established that the complainant had acted improperly in claiming reimbursement.

24. The complainant's fourth argument is that the Administration violated Staff Rule 110.8 in finding him guilty of misconduct without specifying which subrule it relied on. Staff Rule 110.8 provides:

"Misconduct" means:

110.8.1 any improper action by a staff member in his official capacity;

110.8.2 any conduct by a staff member, unconnected with his official duties, tending to bring the Organization into public discredit;

110.8.3 any improper use or attempt to make use of his position as an official for his personal advantage;

110.8.4 any conduct contrary to the terms of his oath or declaration. 25. The Tribunal holds that the complainant's conduct fell within one or more of those subrules, and that it was unnecessary to specify in which one.

26. The complainant's final contention is that the entire proceedings against him were vitiated by malice, prejudice and caprice: that upon a mere suspicion that he had altered the receipts the WHO prejudged his guilt, kept threatening him with imminent dismissal, and denied him a fair hearing.

27. The evidence shows that the charges were made after an investigation, and were based on documents, and that the complainant was given several extensions of time to reply. None of this suggests personal prejudice. Notifying him of the disciplinary measures that could result in the absence of a satisfactory explanation was perfectly proper. The fact that the WHO was prepared to settle the matter in a manner that would have avoided dismissal is strong evidence of the absence of prejudice.

28. The complainant also refers to an incident which occurred in March 1997. Even if his version of that incident is true, it has no relevance to the question whether there was personal prejudice at or before the time of dismissal.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 1999, Miss Mella Carroll, Vice-President of the Tribunal, Mr Mark Fernando, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Mella Carroll
Mark Fernando
James K. Hugessen

Catherine Comtet

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