

FIFTY-EIGHTH ORDINARY SESSION

In re RAJAB ALI

Judgment No. 730

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Mohammed Rajab Ali on 26 December 1984, as corrected on 23 March 1985 and supplemented by a further brief dated 19 March, the FAO's reply of 14 June, the complainant's rejoinder of 10 July and the FAO's surrejoinder of 29 August 1985;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal, FAO Staff Regulation 301.11 and .122 and FAO Manual provisions 314.734, 331.341, 331.52, 332.33, and 374.625;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a citizen of Bangladesh, joined the FAO on 21 September 1979 under a short-term appointment and was assigned to a project which the Organization was executing in that country. He was later given a fixed-term appointment as an administrative assistant at grade G.5. This appointment was extended twice and expired on 31 March 1981, when he left the FAO. By a letter of 28 April he appealed to the Director-General against the termination of his appointment but the Assistant Director-General in charge of Administration and Finance answered on 1 July that the Director-General rejected his claims. On 19 July he appealed to the Appeals Committee. In the report it submitted on 30 September 1982 the Committee recommended rejecting his appeal on the grounds that it was devoid of merit, and by a letter of 18 November 1982 the Deputy Director-General informed him that the Director-General had rejected it. The complainant received that letter on 25 November, and it is the final decision he is impugning. In August 1983 he filed suit with a local court in Bangladesh and, having held in his favour, the court ordered the Organization to reinstate him.

B. The complainant invites the Tribunal to waive the 90-day time limit set in Article VII(2) of its Statute for the filing of his complaint and declare it receivable. He explains at length that through no fault of his own he lost months in fruitless attempts to find out how to challenge the Director-General's final decision.

As to the merits the complainant alleges that the decision not to renew his appointment was an abuse of authority, not being founded on any objective reason but actuated by personal animosity towards him on the part of the project manager. He alleges breach of due process by the Appeals Committee. He seeks reinstatement in his former post, together with payment of his salary and other benefits, or else an award of damages.

C. In its reply the FAO contends that the complaint is irreceivable under Article VII(2) of the Statute of the Tribunal, the complainant having failed to provide any satisfactory explanation for the 23 months' delay in the filing of his complaint. FAO Staff Regulation 301.122 and Manual provision 331.52 state plainly that appeal against the Director-General's final decision will lie to the Tribunal, and Manual provision 332.33 states the time limit for such appeal. The texts are at the disposal of all staff members, and the complainant failed to show proper diligence.

As to the merits, the Organization observes that the complainant was separated from service for the simple reason that his appointment expired. The renewal of an appointment is at the Director-General's discretion, and there is no evidence to suggest that the decision not to renew the complainant's appointment was tainted with any of the flaws which would entitle the Tribunal to set it aside. In particular there is no evidence of personal prejudice against him or of any breach of the Staff Regulations and Staff Rules. The project manager was justified in forming the opinion that he would not make a suitable administrative assistant under a new project that was starting in Bangladesh.

D. In his rejoinder the complainant seeks to justify the delay in the filing of his complaint, alleging in particular that FAO staff in Bangladesh do not have access to the rules cited by the organization and that he did act with reasonable diligence in the circumstances.

He enlarges on his version of the facts and on his submissions on the merits. He believes that his separation was unfair and discriminatory, particularly since his post formed part of the new project, which was merely a second original one.

E. The FAO submits in its surrejoinder that the complainant's explanation for the tardy lodging of his complaint is unconvincing; after all he had no apparent difficulty in following the internal appeal procedure. It develops its arguments on the merits, rejects his allegations of irregularities, contends that his duties were not carried over to the new project and submits that there is nothing in the rejoinder to weaken the force of its earlier submissions.

CONSIDERATIONS:

1. The complainant, a native of Bangladesh, entered the service of the Organization on 21 September 1979. At the material time he held a fixed-term appointment at the Organization's office in Bogra, Bangladesh, as administrative assistant at G.5, which appointment was due to expire on 31 March 1981. By letter of 26 January 1981 he was notified that his services would not be required beyond 31 March. His appeal to the Director-General against this decision was rejected on 1 July 1981. A further appeal was considered by the Appeals Committee in Rome, which recommended its rejection. On 18 November 1982 the Director-General decided that the appeal should be rejected and by letter of that date informed the complainant accordingly. The complainant received this letter on 25 November and so under Article VII of the Tribunal's Statute had until 25 February 1983 to file a complaint to this Tribunal against the decision. His complaint was filed on 26 December 1984. The Organization objects to the complaint as irreceivable and subsidiarily as unfounded on the merits. As to receivability, the complainant alleges that he was unable to ascertain the address of the Tribunal or the procedures for making a complaint and contends that the Organization was "morally under the obligation to supply me with necessary data and informations".

RECEIVABILITY: THE FACTS

2. Nothing about any right of appeal is said in the letter of 18 November 1982. The complainant was, however, aware from Staff Regulation 301.11 that he could appeal to this Tribunal, but the regulation did not specify the time limit and of course gave no information about the procedure. All the necessary information, except the address of the Tribunal, is to be found in Manual section 332. The Organization contends that the complainant was or ought to have been aware of the procedure as described in the Manual section. It alleges generally that the Manual section is available to staff members on request; and specifically that the complainant had a copy of MS 331 which refers to MS 332.

3. The specific allegation is based on the letter which the complainant wrote to the Secretary of the Appeals Committee in Rome in the course of the appeal proceedings and in which he enclosed a counterstatement "as per MS 331.341". The complainant has produced the letter to which he was replying. In this letter the complainant is informed that "in accordance with MS 331.341 you have the right to submit a counterstatement". The letter does not state that a copy of MS 331 was enclosed and the complainant says that in his reply he was simply quoting the same number.

4. As to the general allegation, no doubt the Manual section ought to have been available, but the Organization has produced no evidence that in fact it was. The complainant's evidence is to the contrary. Obtaining no help from the Organization's office in Bogra, he travelled to Dhaka where he visited the offices of the FAO country representative. Getting no help from them, he went to the office in Dhaka of the United Nations, where he was advised to write to the Secretary-General. On 12 December 1982 he wrote to the Secretary-General enclosing all the papers and asking for a review of the Appeals Committee's decision. This letter no doubt took some time to reach the Administrative Review Unit of the United Nations in New York. It was answered in a letter dated 17 February 1983 which stated that the Secretary-General could not review decisions concerning the staff of the FAO and added: "You may wish to consult with your counsel regarding any further recourse (possibly including judicial review by the ILO Administrative Tribunal)". The dossier does not show when this letter arrived in Bogra but it must have been about the date when the time limit of 90 days was expiring. On 23 March the complainant wrote to the Director of the ILO in Bangladesh asking for the address of the ILO Tribunal and for "detailed procedures". On 5 April the Director replied that the procedures of the Tribunal were not available in Bangladesh and suggested that the complainant write to the office of the ILO Legal Adviser in Geneva. On 10 April the complainant wrote to the Legal Adviser accordingly (a copy of the letter is in the dossier) but he received no reply.

5. The next step taken by the complainant, presumably on the advice of counsel, was in August 1983 when he

brought an action against the Organization in the local courts of Bangladesh. The Organization did not appear and judgment was given against it on 7 July 1984; the judgment declared that the notice of termination was void and that the complainant was still in the service of the Organization. The complainant's counsel gave notice of this judgment to the Organization on 12 August 1984. This led to correspondence with the Legal Office of the Organization and with the Registrar of this Tribunal and, as stated above, the complaint was filed on 26 December 1984.

6. The Tribunal accepts the complainant's evidence that he was not supplied in Bogra with the Manual section nor given the advice and assistance which he needed. The whole story makes it quite clear that from the outset and throughout he was a complainant of exceptional keenness and persistence. He knew that there was an appeal to a tribunal. It is inconceivable that if he had known also how to get to it he would have wasted time over the United Nations and spent money on local courts. His endeavours were not always well-directed. The Organization asks why he did not answer the Director-General's letter of 18 November 1982 by inquiring about his rights of appeal. Of course if the Director-General had followed the practice which is now very general and which the Tribunal has recommended of setting out all the necessary information, and especially the time limit, in the letter which conveys the appealable decision, there would have been no difficulty. The Organization sounds incredulous of the complainant's explanation of his failure to ask headquarters what he should do; he said in effect that the litigant on one side cannot be expected to help the other; this must sound less convincing in Rome than in Bangladesh.

RECEIVABILITY: THE LAW

7. The questions of law are:

- (1) whether there was any obligation on the Organization to assist the complainant in the prosecution of his appeal;
- (2) if so, whether there was a breach of that obligation;
- (3) if there was a breach, what effect does it have on the provisions of the Tribunal's Statute?

8. The Tribunal holds that in the circumstances of this case there was an obligation forming part of the general duty which an employer owes to an employee. In many cases, for example in a large office where there is a staff association given facilities by the organisation, the administration can properly feel that it need do nothing more. But in a small office remote from headquarters it is different. The Organization in this case accepts that the staff member should have access to the Manual section to which the Statute of the Tribunal is annexed. The failure to provide this or any alternative source of information was a breach of the obligation.

9. Article VII(2) puts upon the complainant a requirement which is in terms mandatory and absolute. In particular it does not provide for any extension of the time limit when the complainant files suit with a national court that has no competence. But where the requirement cannot be fulfilled without the co-operation of the Organization and that co-operation is lacking, the Tribunal can give relief. The Tribunal has already held that the requirement that the internal means of redress must be exhausted presupposes that the means are designed to produce a result within a reasonable time. In the present case the Tribunal, having found that in all the circumstances the complainant exercised due diligence in the pursuit of his remedies and consequently that his failure to file a complaint within the prescribed period was caused solely by the Organization's breach of obligation to render the necessary assistance, concludes that the delay does not render the complaint irreceivable.

MERITS

10. The complainant was employed on project BGD 73/048, which came to an end on or about 31 March 1981, the date when the complainant's fixed term expired. This project was succeeded by project 80/001. A number of employees in the old project were given posts in the new, but the complainant was not among them. The project manager, rightly or wrongly, considered the complainant to be unsuitable for a post in the new project and offered his post of administrative assistant to a new recruit. There is no evidence that the manager was acting otherwise than in the interests of the Organization as he believed them to be or that he was prejudiced against the complainant. Two other employees were "separated" in the same way.

11. Notice in advance of separation was given by the project manager in a letter to the complainant of 26 January 1981. It was not a notice of termination but of non-renewal and so is worded to say that after 31 March the complainant's services will no longer be required. Whether the project manager had authority to take this decision

may be in doubt; if he had not, he was assuming that he would be upheld by the Country Project Officer. The latter wrote on 12 February that, although "caught by surprise", he would support the action. Consequently, and obviously on the initiative of the project manager, the complainant's appointment was not extended. The complainant is mistaken in thinking that MS 374.625 and 314.734 and Circular 79/4 are applicable to decisions not to renew.

12. Since the complainant has been put to substantial expense because of the Organization's breach of obligation, he will be awarded 250 United States dollars as costs.

DECISION:

For the above reasons,

1. It is declared that the complaint is receivable but is dismissed on the merits; and
2. It is ordered that the complainant be paid by the Organization US\$250 as costs.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 17 March 1986.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner