

## SIXTY-NINTH SESSION

### *In re* DANG, KAPOOR and SESHADRI

#### Judgment 1049

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Nurani Ananthkrishnan Seshadri against the World Health Organization (WHO) on 10 March 1989, the WHO's reply of 27 April, the complainant's rejoinder of 26 June and the WHO's surrejoinder of 8 August 1989;

Considering the complaint filed by Mr. Dhoomi Chand Kapoor against the WHO on 10 April 1989, the WHO's reply of 15 June, the complainant's rejoinder of 19 July and the WHO's surrejoinder of 8 August 1989;

Considering the complaint filed by Mr. Khushi Ram Dang against the WHO on 10 July 1989, the WHO's reply of 9 August, the complainant's rejoinder of 5 September and the WHO's surrejoinder of 2 October 1989;

Considering the brief filed on 8 January 1990 by Mr. Ashok Mitra at the Tribunal's invitation on the three cases, the observations thereon filed by Mr. Kapoor on 7 February, by Mr. Dang on 19 February and by Mr. Seshadri on 21 February, and the WHO's final submissions of 9 March on Mr. Mitra's brief and on the complainants' observations;

Considering Articles II, paragraph 5, and VIII of the Statute of the Tribunal, WHO Staff Regulations 4.2 and 4.3, WHO Staff Rules 410.1 and 1230.1 and WHO Manual provision II.3.340;

Having examined the written evidence and decided not to order oral proceedings, which none of the parties has applied for;

Considering that the complaints raise the same issues and should be joined to form the subject of a single ruling;

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

A. Mr. Seshadri, an Indian born in 1940, joined the staff of the WHO in 1970 and was assigned to a post for an assistant accountant at grade ND.4 in the WHO's Regional Office for South East Asia (SEARO) in New Delhi. He was promoted to ND.5 in 1977 on assignment to another post and to ND.6 in 1980 on the reclassification of that post. In 1984 he was promoted to ND.7 - later renumbered ND.8 - on transfer to a post for an administrative assistant in the finance unit. He has held a career service appointment since 1988.

Mr. Kapoor, an Indian born in 1932, joined the WHO in 1959 and was assigned to a post for an assistant accountant at grade ND.4 in SEARO. He was granted a career service appointment in 1967. He was promoted to ND.5 in 1968 as an accountant on the same post, to ND.6 in 1972 on another post, and to ND.7 - later renumbered ND.8 - in 1980 on the reclassification of that post, his title being changed to finance assistant in 1981. He was promoted to ND.X on 1 January 1988. He began retirement on 1 May 1989.

Mr. Dang, an Indian who was born in 1930, joined the Organization in 1951 and was appointed typing clerk at grade ND.3 in SEARO. He has held a career service appointment since 1969. He was granted several promotions and at the material time held a post as finance assistant at grade ND.8. He has been awarded several salary increments for "meritorious service".

On 8 January 1987 SEARO advertised at grade ND.X - which is one above ND.8 - a vacant post, No. 5.1801, for a special budget assistant. There were five outside candidates and nine inside ones, including the three complainants and Mr. Ashok Mitra, an assistant at grade ND.7 in the budget section. An ad hoc Selection Committee that met on 26 February 1987 unanimously picked Mr. Mitra and the Regional Director accordingly appointed him on 2 March, albeit at grade ND.8 to begin with. Each of the three complainants appealed against the choice. Mr. Dang further asked that Mr. Mittar, the budget and finance officer and his supervisor, who, he said, had "ruined the career of many staff members", should be transferred to another region. Mr. Kapoor also asked that Mr. Mittar, who was his supervisor as well, be told to stop taking prejudicial action against his subordinates.

In its report of 11 February 1988 on Mr. Seshadri's appeal the Regional Board held that the Selection Committee had not followed the correct procedure and that there was no apparent justification for choosing someone who held a grade two below that of the vacant post. The Board recommended reversing the decision and making a new appointment. It also made general recommendations. By a letter of 19 February 1988 the Regional Director informed Mr. Seshadri that he confirmed his decision, and Mr. Seshadri appealed to the headquarters Board of Appeal.

The Regional Board's reports of 31 May 1988 on Mr. Dang's and Mr. Kapoor's appeals made similar findings and recommendations and, the Regional Director having told them by letters of 3 June that he was confirming his decisions, they in turn went to the headquarters Board.

In its report of 10 November 1988 on Mr. Seshadri's appeal the headquarters Board found several flaws in the selection process and it too recommended setting aside the appointment and issuing a new notice of vacancy. But by a letter of 14 December 1988, the decision Mr. Seshadri impugns, the Director-General told him of the rejection of his appeal.

Reporting on 19 December 1988 on Mr. Kapoor's appeal, the headquarters Board again found many flaws in the process of selection and recommended reversing the decision. But by a letter of 16 February 1989, the decision Mr. Kapoor is challenging, the Director-General rejected the Board's conclusions and his appeal.

The headquarters Board reported on Mr. Dang's appeal on 4 April 1989. Though it found no personal prejudice, for a third time it found many flaws in the selection and recommended reversing the decision and resuming the recruitment procedure. By a letter of 19 April 1989 the Director-General informed Mr. Dang that he rejected the Board's conclusions and the appeal, and that is the decision Mr. Dang is objecting to.

B. Mr. Seshadri contends that the selection process and the impugned decision show several of the flaws stated in Staff Rule 1230.1 to afford grounds for appeal.

(1) The decision to appoint Mr. Mitra was tainted with "personal prejudice" within the meaning of Rule 1230.1. Mr. Mittar, who was Mr. Mitra's supervisor and therefore an influential member of the Selection Committee, showed bias and improperly swayed the Committee in his favour. Mr. Mitra's performance had been poor, as Mr. Mittar must have known and as was plain from his having twice had short renewals of appointment, from September 1982 to February 1983 and again from March 1983 to February 1984, instead of the usual two years or more.

(2) There was "incomplete consideration of the facts" - Rule 1230.1.2 - in that SEARO failed to give the Selection Committee full information about all the applicants. It withheld information about the two short renewals of appointment given to Mr. Mitra and his poor performance at least up to 1983. There is no evidence to suggest that his work had so improved since then as to deserve a two-grade promotion. As the Regional Board said, it is inconceivable that neither Mr. Seshadri nor any other candidate at ND.8 was better fitted for the post; and, as the headquarters Board asked, why was an ND.7 official whose "performance had not been exemplary" put before all the ND.8 candidates?

By many of the criteria the Administration listed as relevant - length of service, professional training, occupational skills, personality and experience - Mr. Seshadri believes that he was ahead of Mr. Mitra; so the Selection Committee must have taken account of irrelevant factors.

(3) There was breach of the rules and of the terms of Mr. Seshadri's contract (Rule 1230.1.3).

(a) The custom at SEARO - which it described in defending another case in 1982 as "long-established practice" - is to promote General Service category staff by only one grade at a time. There is no reason to believe that SEARO has changed the policy; indeed a personnel officer said as much to the Regional Board. The choice of Mr. Mitra was contrary to that custom.

(b) There was a flaw in the notice of vacancy in that it failed to state that the post might be filled at a grade lower than the one advertised; had it done so ND.7 officials other than Mr. Mitra would have applied.

(c) The Selection Committee was not properly briefed. SEARO made no assessment of the candidates by marking

them according to the rules of the "factor-rating system" which were issued some years ago after consultation of the Staff Association and which, so far as the staff know, are still in force. There was also breach of Manual provision II.3.340: "Before a meeting of a selection committee, all applications are reviewed by the unit concerned and a short list of those candidates who seem to be the most suitable for the post is drawn up. ..." SEARO made no short list.

(4) Though both the Boards found in Mr. Seshadri's favour his appeal was rejected on the grounds that the relief recommended would be against the rules. The Director-General should have found some way of granting him proper relief. Even if the cancellation of the appointment was impracticable he should still be awarded damages for the material and moral injury he has sustained.

Mr. Seshadri seeks (1) the quashing of the appointment of Mr. Mitra to post 5.1801 and his own promotion "to the ND.X grade against the said post" as from 1 March 1987, or (2) his own personal promotion to ND.X as from the same date; in any event (3) an award of damages for "defamation as well as great mental agony and shock" in the sum of 50,000 United States dollars; (4) the issuance of a directive to the WHO to abide by the selection procedure properly in future; and (5) an award of costs.

C. In Mr. Kapoor's submission too the selection process and the challenged decision show flaws which Staff Rule 1230.1 says afford grounds for appeal.

(1) Mr. Kapoor puts forward the same plea of "personal prejudice" as is summed up under B(1) above. In particular he contends that to evade the charge of favouritism Mr. Mittar saw to it that someone else wrote good reports about Mr. Mitra to set him up for the post. Mr. Mittar, once a colleague of Mr. Kapoor's, rose to a higher grade and took to harassing him and other staff.

(2) Mr. Kapoor too pleads "incomplete consideration of the facts" (Rule 1230.1.2). Besides the points set out in B(2) above he submits that the Selection Committee was not properly briefed. SEARO made no assessment of the candidates by marking them according to the rules of the "factor-rating" system. By the criteria applied in factor-rating - length of service, quality of performance, training and experience - he himself came out top and Mr. Mitra seventh, but the Committee was never told the candidates' marks.

Lastly, Mr. Mittar, as supervisor, made no written recommendation and in his oral statement to the Selection Committee pushed forward Mr. Mitra by saying that the job called for qualifications which Mr. Mitra had but which neither the notice of vacancy nor the post description mentioned.

(3) Mr. Kapoor pleads breach of the rules and of the terms of his contract (Rule 1230.1.3) on the same grounds as does Mr. Seshadri and as set out in B(3)(a) and (b) above. He has the following further pleas.

(a) There was breach of Staff Regulation 4.2, which says that the "paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity".

(b) As the headquarters Board said in its report, the description of post 5.1801 was out of date; the notice of vacancy was misleading; the candidates' records had not been made available until the day the Selection Committee had met; and there was no short list as required by Manual provision II.3.340.

(c) Since Mr. Mitra was chosen according to irrelevant criteria there was breach of Staff Regulation 4.3, which requires that "selection shall be made on a competitive basis".

Mr. Kapoor discusses the six reports of the two Boards of Appeal.

He seeks (1) the quashing of Mr. Mitra's appointment to post 5.1801 and his own promotion to the post as from 1 March 1987; (2) the issuance of a warning to Mr. Mittar to "desist from prejudicial action against senior staff members" and the charging to Mr. Mittar of any sums awarded in damages and costs; (3) an award of damages for moral injury in the sum of \$50,000; (4) the issuance of a directive to the WHO to abide by the selection procedure properly in future; and (5) an award of costs.

D. Mr. Dang's case rests on much the same allegations of defects in the selection process and in the decision he impugns. He says that the choice of Mr. Mitra outraged many, including the two Boards of Appeal, besides

damaging staff morale in the Regional Office.

(1) In terms similar to those used by the other two complainants Mr. Dang submits that the appointment of Mr. Mitra was a decision flawed with "personal prejudice". Mr. Mittar, a dominant member of the Selection Committee, was Mr. Mitra's relation, supervisor and protector, had eased his burden, and, to silence any charge of favouritism, got someone else to write good reports about him so as to prime him for the post. A former colleague of Mr. Dang's, Mr. Mittar rose to a higher grade and took out his jealousy and resentment on him and indeed on many others. His treatment of Mr. Dang was often threatening and humiliating.

(2) On grounds similar to those set out in B(2) and C(2) above Mr. Dang pleads "incomplete consideration of the facts".

(3) He, too, contends that there was breach of the rules and of the terms of his contract and for reasons stated in B(3) and C(3) above. He observes in particular that Staff Regulation 4.2 cannot be observed when an official is promoted over the heads of several at a higher grade, with longer service and with a better record.

Mr. Dang further discusses the report of the Boards of Appeal on his own case and on the other two.

He seeks (1) the quashing of Mr. Mitra's appointment to post 5.1801 and the making of a new selection in accordance with the rules, or else his own promotion to grade ND.X as from 1 February 1987; (2) an award of damages for moral injury in the sum of \$30,000; and (3) an award of \$5,000 in costs.

E. In similar replies to the three complaints the WHO submits that an appointment is a discretionary decision and should be cancelled only for the most compelling reasons, which do not exist in this case.

(1) "Personal prejudice" within the meaning of 1230.1.1 is ordinarily seen as something that works to someone's detriment, not in favour of someone else. In any event there was no personal prejudice in Mr. Mitra's favour. The three annual reports he got before his appointment were satisfactory. The boards gave undue weight to earlier criticism of his performance. To put the burden on the Organization to explain why Mr. Mitra was picked is wrong and to hold past shortcomings against him for years is unfair. Mr. Mittar can hardly have swayed everyone else on the Selection Committee, including the staff representative, if they were not disposed to pick Mr. Mitra anyway. Mr. Kapoor's and Mr. Dang's allegations about Mr. Mittar's hostility towards them and other staff are speculative or merely intended to bring Mr. Mittar into disrepute.

(2) The complainants' charge of incomplete consideration of the facts is mistaken. The Selection Committee had access to all the applicants' personal files and was given a summary of the data in those files as prepared by the personnel unit of SEARO. Since Mr. Mitra's last three reports had been satisfactory there was no reason to inform it of the short extensions of his contract. That someone should be passed over in favour of a junior official is no evidence of improper selection. It is for the Committee to assess the candidates' merits and, as the Tribunal has said, seniority and experience are not the main criteria: indeed Staff Rule 410.1 says that the "paramount considerations in the selection of staff shall be competence and integrity". The other requirements orally stated by Mr. Mittar - leadership, initiative and ability to use computers - were hardly unexpected and did not call for the rewriting of the post description. Besides, other candidates possessed some of those qualities.

The Organization declines to say, even on appeal, how a selection has been made, because disclosure deters members of selection committees, who are often subject to personal pressure from candidates, from acting as conscience dictates and in the Organization's best interests. The process of selection must remain confidential. The WHO is nevertheless willing to disclose the Selection Committee's report and other papers to the Tribunal. The scores which Mr. Dang and Mr. Kapoor give for their own and for Mr. Mitra's performance are wrong. What Mr. Mitra lacked in length of service he made up for in "technical excellence" and "dynamism".

(3) There was breach neither of the rules nor of selection procedure and policy.

(a) There is no bar to picking a candidate who holds a grade two below that of the advertised post. In their reports on Mr. Dang's and Mr. Kapoor's appeals the Regional Boards of Appeal found no breach in that respect, and the headquarters Boards did not even take the point. In the 1982 case which the complainants cite the Regional Board concluded that it was not SEARO policy to refuse double promotion.

(b) There was nothing wrong with the notice of vacancy: neither it nor the rules would have prevented anyone two

or even more grades lower from applying for the post and being picked for it.

(c) The purpose of administrative arrangements like making a short list is orderly application of the rules on selection. A short list is needed only to make the Selection Committee's task more manageable by removing many unsuitable candidates and so it was unnecessary in this instance. The procedure in SEARO is for the Selection Committee itself to draw up the short list on the strength of the factor-rating. In keeping with SEARO procedures the Committee first gave marks to all the candidates; but the marks were not decisive, and the Committee was free to form its own opinion on the best candidate. No written statement is ordinarily submitted by the supervisor to a selection committee. It was the nine inside candidates who made up the short list.

(4) The WHO discusses several other issues raised by the Boards' findings and recommendations. It submits that cancelling the appointment would have caused Mr. Mitra serious injury. The Director-General put an end to the matter by rejecting the complainants' claims and, having done so, was not bound to offer them redress.

F. In their rejoinders one or more of the complainants put forward the following arguments.

They submit that the consequences to Mr. Mitra of setting aside the decisions they are challenging are no reason for denying them relief. The Boards' reports are scathing condemnation of wrong-doing in the Regional Office, which should not be allowed to get away with it under guise of discretionary authority. An unlawful decision cannot stand, whatever the consequences of quashing it may be.

The complainants enlarge on their main pleas. As to their charges of personal prejudice, they contend that Mr. Mittar resorts to all sorts of tactics to promote the interests of his protégés and shows disdain for subordinates. He made sure that Mr. Mitra's supposed qualities were played up and other candidates' certain merits played down. Their allegations of personal prejudice must carry weight "in the absence of clear rebuttal" by the Organization. The members of the Selection Committee were not given beforehand the personal files of all the candidates and, being misinformed, simply gave in to Mr. Mittar, who was backing Mr. Mitra for reasons of his own. So the Committee did not properly assess the other candidates. It should not have put Mr. Mitra on a par with candidates in a grade above.

Once the WHO has set rules and criteria for promotion it must abide by them; yet it disregarded even its longstanding policy of rejecting a candidate two grades below that of the vacant post. In fact, to Mr. Mittar's consternation, Mr. Mitra has proved unfit for the heavy duties of his post and has actually refused to perform some of them, Mr. Seshadri - so he says - having had to do the work instead. To get Mr. Mitra appointed so many breaches of procedure had to be committed that the headquarters Boards got the impression of determination to appoint him at all costs, despite the superior merits of several other candidates, and concluded that the selection had aroused feelings of frustration and dissatisfaction among the staff.

The Selection Committee was improperly constituted: one of its members, Mr. Mittar, had a personal interest in the appointment of the successful candidate, besides being his supervisor, and easily hoodwinked two of the other members. The Regional Director failed to look into the selection properly. SEARO was required to follow Manual provision II.3.340 and make a short list, and had no good reason for failing to do so. The purpose of factor-rating is to help in making such a list, not to do away with it altogether. Why was Mr. Mitra appointed when he scored much less than others by the factor-rating, and had a poor record to boot? The complainants reaffirm that there was unfairness and bias in the selection process, and they press their claims.

G. In its surrejoinders on the three cases the WHO enlarges on its earlier pleas. It maintains that a selection cannot be set aside just because others disagree with it: the decision has to be seriously flawed. If the challenged selection were set aside Mr. Mitra would have to be removed from his post and so suffer injury that was not of his making, whereas it would not be certain that any of the three complainants would get the post.

The Organization rejects outright the complainants' insinuations that Mr. Mittar was prejudiced in Mr. Mitra's favour: an investigation has revealed no evidence to support that view.

As for the charges of breach of the rules and the terms of the complainants' appointment, the WHO takes up the particular issues relating to the selection procedure followed, the composition of the Selection Committee and the application of the factor-rating system. It points out that the selection was not hurried and that it paid due regard to the material facts. Though ordinarily loth to produce the reports of selection committees it is willing in this case, so

as to shed light on the matter, to state what the Committee's conclusions were, and it therefore quotes the last paragraph of the minutes of the meeting the Committee held on 26 February 1987: the Committee "extensively discussed the merits of all the candidates particularly those who were more senior or equal to Mr. Mitra in terms of grade. The Committee agreed on the overriding need for technical excellence and dynamism in the post and regretted its inability to base its recommendation on seniority of service or of grade". So the Committee clearly grasped the material issues. In fact there is nothing especially unusual about promoting someone younger and less senior over the heads of other candidates, and it does not warrant setting the appointment aside, let alone affording redress for alleged moral injury.

H. After preliminary consideration of the case at its 68th Session the Tribunal ordered further submissions from Mr. Ashok Mitra, from the complainants and from the WHO.

In his brief Mr. Mitra comments on the submissions made by the parties in all three cases. He denies that he is related in any way to Mr. Mittar and submits that the complainants keep raking up charges of personal prejudice when there is not a jot of evidence to support them. He discusses his own qualifications for the post and submits that he has been carrying out his duties to his supervisors' satisfaction. He addresses the other issues the complainants raise, namely incomplete consideration of the facts, breach of the rules and the Boards' findings. He endorses the WHO's pleas and adds comments of his own. He adds that to remove him from his post would irrevocably harm his interests and render the WHO liable to him in damages.

I. In further submissions the complainants comment on Mr. Mitra's brief, enlarging on their own pleas and pursuing their claims. The WHO makes final observations on the brief and on the complainants' submissions thereon, observing in particular that the quashing of the appointment would not mean promoting any of the other candidates, let alone the complainants.

#### CONSIDERATIONS:

1. The material issue in these three cases is whether it was lawful to promote Mr. Ashok Mitra over the heads of Mr. Seshadri, Mr. Kapoor and Mr. Dang to fill a post, No. 5.1801, for a special assistant in the budget section of the WHO's Regional Office for South-East Asia in New Dehli.

2. Judgment 564 (in re Ali Khan) defined as follows the Tribunal's limited power of review over a discretionary decision to make an appointment after the holding of a competition:

"The complainant is challenging the decision to endorse the result of a competition held to fill a new post. Such a discretionary decision is subject only to limited review by the Tribunal. It may be quashed only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence. In this instance the Tribunal will exercise its power with especial caution, its function being not to judge the candidates on merit but to allow the selection board and the Director-General full responsibility for their choice."

The same principles apply to promotion to an existing post like the one that the WHO filled by the appointment of Mr. Mitra.

3. Each of the three complainants objected to Mr. Mitra's promotion in preference to himself and each appealed to the Regional Board of Appeal. In all three cases the Regional Board found flaws in the procedure that had culminated in the decision to promote Mr. Mitra and recommended reversing the decision and making a new appointment. The Regional Director disagreed with the recommendations and confirmed the promotion.

Each complainant thereupon went to the headquarters Board of Appeal. Once again in each case the headquarters Board found flaws in the procedure and recommended setting the decision aside; but in each case the Director-General again rejected the recommendation and confirmed the promotion.

4. Although each Regional Board has three members, some officials sat on more than one of the three Boards that heard the three appeals, so that there were in all five officials who made up the membership, and they were unanimous. Again, although each headquarters Board has five members, some sat on more than one of the three headquarters Boards: eleven officials made up the boards that heard the three appeals and they were unanimous in recommending reversal of the decision. So altogether 16 officials were substantially agreed in their findings, in

holding that the appointment of Mr. Mitra had been flawed and in recommending reversal of the impugned decision.

Examples of the findings by the headquarters Boards are:

(1) The notice of vacancy had not made it plain that candidates at the ND.7 grade would be considered and that the appointment might be made at first at the ND.8 grade.

(2) No short-list of candidates had been drawn up.

(3) The procedure for briefing the Selection Committee was defective in that the papers had been distributed to its members only 48 hours before it met and the candidates' personal files were not made available until the meeting took place.

(4) Qualifications not mentioned in the vacancy notice, such as "leadership", "drive" and "computer literacy", were announced at the meeting.

5. The Tribunal is satisfied on the evidence that there were at least two fatal flaws in the decision to appoint Mr. Mitra to the post.

One was the Organization's breach of the requirement in Manual provision II.3.340, which reads:

"Before a meeting of the selection committee, all applicants are reviewed by the unit concerned and a short-list of those candidates who seem to be the most suitable for the post is drawn up ... Brief curricula vitae of the candidates and the comments of the reviewing unit(s) are included with the short-list ...".

The other fatal flaw was that the Director-General drew mistaken conclusions from the evidence before him. After getting the reports of the headquarters Boards of Appeal - which found much the same defects as the three regional boards had earlier - he wrote letters in identical terms to each of the three complainants. The one he wrote to Mr. Seshadri on 14 December 1988 may be quoted by way of example:

"I have now received the report of the Headquarters Board of Appeal dated 10 November 1988 concerning your appeal. ...

I have carefully reviewed the relevant report of the selection committee and the decision of the Regional Director thereon and I am not convinced by the conclusions of the Headquarters Board of Appeal concerning defects in the selection process. I accordingly consider that the recommendation to quash the selection and issue a new vacancy notice for a fresh selection, along the lines suggested by the Board, would constitute a violation of the Organization's rules.

I, therefore, regret that I have to dismiss all the claims in your appeal. ..."

To reject the boards' findings in such terms was to draw clearly mistaken conclusions from the evidence put forward in their reports. They had indeed found so many procedural defects, and their unanimity was so striking, that in the particular circumstances of the case the Tribunal cannot but conclude that it was unwarranted to ignore their findings and to confirm Mr. Mitra's promotion.

6. Because the impugned decisions are flawed they must be set aside. It is not, however, a consequence of the quashing that any one of the complainants should be appointed to the post held by Mr. Mitra, and Mr. Kapoor's and Mr. Seshadri's claims to that effect are disallowed.

The complainants' further claims

7. Each complainant seeks other forms of relief.

8. Mr. Seshadri seeks (1) his own personal promotion "to the ND.X grade" as from 1 March 1987, (2) an award of damages in the amount of 50,000 dollars for "defamation as well as great mental agony and shock", (3) the issuance of a directive to the WHO to abide by the selection procedure properly in future and (4) an unspecified sum by way of costs.

As a matter of fact, after he filed his complaint, Mr. Seshadri was promoted to a ND.X post vacated by Mr. Kapoor, who took early retirement on 1 May 1989. But the Tribunal denies claim (1) anyway, which is not the sort of relief it is competent to grant under Article VIII of its Statute. Claim (3) fails for the same reason. Mr. Seshadri is awarded \$2,500 in damages and \$1,000 in costs.

9. Mr. Kapoor also seeks (1) the issuance of a warning to Mr. Mittar to "desist from prejudicial action against senior staff members" and the charging to Mr. Mittar of any sums awarded in damages and costs, (2) an award of \$50,000 in damages for moral injury, (3) the issuance of a directive to the WHO to abide by the selection procedure properly in future and (4) an unspecified sum by way of costs.

The claim, under (1), to issuance of a warning to Mr. Mittar and claim (3) are rejected because the Tribunal is not competent to make orders of the kind sought.

The Tribunal orders the Organization to pay Mr. Kapoor \$2,500 in damages and \$1,000 in costs.

10. Mr. Dang further seeks (1) his own promotion to grade ND.X as from 1 February 1987, (2) an award of \$30,000 in damages for moral injury and (3) \$5,000 in costs.

Claim (1) fails for the same reason as is given under 8 above for refusing Mr. Seshadri's claim to promotion. The Tribunal awards Mr. Dang \$2,500 in damages and \$1,000 in costs.

#### DECISION:

For the above reasons,

1. The impugned decisions by the Director-General of the WHO are set aside and Mr. Ashok Mitra's appointment to ND.X post No. 5.1801 in the Regional Office for South East Asia is quashed.
2. The Organization shall pay each of the three complainants 2,500 United States dollars in damages for moral injury.
3. It shall pay each of them \$1,000 in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner