

SEVENTY-THIRD SESSION

***In re* BANSAL (No. 2),
CHOWDHARY,
HARPALANI (No. 2)
and MARWAH (No. 2)**

Judgment 1190

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaints filed by Mr. Prem Kumar Bansal, Mr. Mohan Amulrai Harpalani and Mr. Dharam Pal Marwah against the World Health Organization (WHO) on 3 October 1991 and the complaint filed by Mr. Satya Paul Chowdhary against the Organization on 7 October 1991, the WHO's single reply of 11 March 1992, the complainants' rejoinder of 25 March and the Organization's surrejoinder of 30 April 1992;

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

Considering the applications by Mr. Joginder Singh Battra and Mr. Inder Jit Saluja to intervene in the complaints and the WHO's observations thereon of 5 May 1992;

Considering Articles II, paragraph 5, and VIII of the Statute of the Tribunal, Article 17 of the Rules of Court, WHO Staff Regulation 3.2, WHO Staff Rules 320.2, 1230.3, 1230.4 and 1310.3 and WHO Manual paragraph II.1.40;

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

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

A. WHO Staff Regulation 3.2 reads:

"... The salary and allowance plan shall be determined by the Director-General following basically the scales of salaries and allowances of the United Nations, provided that for staff occupying positions subject to local recruitment the Director-General may establish salaries and allowances in accordance with best prevailing local practices ..."

The text of Rule 1310.3 is similar.

As Judgment 1160 explained, under A, every few years there is a review of salary scales of the WHO's General Service category staff on the strength of comprehensive surveys of local practice. Between such surveys there may be adjustments on the strength of "mini-surveys". As from 1 January 1985 the International Civil Service Commission (ICSC) approved a "general methodology" for carrying out surveys and the Consultative Committee of the United Nations on Administrative Questions (CCAQ) has issued a Manual on how to apply it. Paragraph A.2.2 of the Manual says that at each duty station a Local Salary Survey Committee should make the arrangements and, where there is none, it is up to the "designated agency" for the duty station to appoint one. At the material time the "designated agency" for New Delhi was the WHO.

At the bidding of WHO headquarters in Geneva the Local Salary Survey Committee carried out in November 1985 and early 1986 a comprehensive survey of the salaries of staff in the General Service category in New Delhi. It recommended applying as from 1 January 1986 new scales to such staff serving any of the United Nations organisations in New Delhi. The WHO approved new scales as from 1 January 1986 for its General Service staff in its Regional Office for South East Asia (SEARO), in New Delhi, and they are commonly known as "revision 27".

Headquarters having asked for interim adjustment, the Local Committee carried out a mini-survey in the first half of 1987. The Organization approved its recommendations and by what it calls "revision 28" brought in increases in

salary for the General Service staff of SEARO as from 1 January 1987.

The nine complaints which the Tribunal joined and ruled on in Judgment 1160 of 29 January 1992 challenged both the 1986 and the 1987 scales. That judgment held the challenge to the 1986 scales to be irreceivable but quashed decisions that the Director-General had taken applying the findings of the 1987 survey and ordered him to take a new decision in the light of the judgment.

The Local Committee carried out a second mini-survey in 1988, again purporting to follow the general methodology and the CCAQ Manual. WHO headquarters having approved the Committee's findings, SEARO announced new scales in a memorandum headed "revision 29" and applied them as from 1 April 1988. The WHO explains that the reasons for picking that date instead of 1 January 1988 were that one of the "comparator" local employers had put salaries up only as from April and an earlier effective date would have precluded counting that increase, and that the Indian Government had made tax changes as from 1 April.

The new scales provided for a 9.2 per cent increase in salary at grades ND.1 to ND.6. The application of the same increase to salaries at higher grades would have meant an actual increase of only 0.9 per cent for ND.7 and none at all for ND.8 and ND.X because of "negative indexation" (a measure which is described in Judgment 1160, under A); instead a real increase of at least 3 per cent was paid to staff at those grades.

By a further memorandum which it issued to General Service staff on 1 February 1989 the Organization announced amended scales known as "revision 29, amendment 1". They brought in interim adjustments that were again to apply as from 1 April 1988 and it is they that are at issue in this case. Although the average increase was still 9.2 per cent, the inter-grade differentials were altered. Salaries were put up by 8.9 per cent at grades ND.1 to ND.6 and by 14 to 16 per cent (again subject to negative indexation) at higher grades. The number of steps in grades ND.5 to ND.8 was increased to 18.

Many of the General Service category staff in New Delhi objected to the new scales in revision 29, amendment 1, as well. Over thirty of them, including the complainants, filed appeals with the Regional Board of Appeal, also at New Delhi: Mr. Bansal did so on 3 April 1989, Mr. Chowdhary, Mr. Harpalani and Mr. Marwah on 5 April. All four were at grade ND.7 at the material time. The grounds for their appeals were incomplete consideration of the facts; failure to observe the WHO's rules, the terms of their appointments, the methodology and the CCAQ Manual; misapplication of the WHO's post classification standards; and personal prejudice. Each appellant sought in substance the quashing of the application to himself of the scales in revision 29, amendment 1, damages for moral injury and costs.

Five Regional Boards were set up to hear different groups of appeals. They reported on 18 January 1990. Though they found no evidence of personal prejudice, they were unanimous in holding that the Organization had acted in breach of the methodology and the Manual and had had no "rational basis" for issuing the scales in amendment 1, which "violated the rights acquired by the staff members" under revision 29. They recommended "a uniform across-the-board increase of 9.2 per cent without any negative indexation" for all General Service category staff in New Delhi as from 1 April 1988; the restructuring of the scales so as to keep the same number of salary steps as before in all grades and maintain "inter-step and inter-grade differentials" in line with the methodology and the Manual; the redetermination of step 1 of grade ND.X; and the review of salaries of staff in ND.7 and in particular the matter of the grant of additional steps.

The Regional Director rejected those recommendations in letters which he sent the appellants on 19 April 1990. Just under thirty New Delhi staff, again including the complainants, filed appeals on 11 May 1990 with the headquarters Board of Appeal pressing their original pleas and claims.

In its report of 29 April 1991 the Board concluded, with one dissenting opinion, that, though there had been neither personal prejudice nor misapplication of the rules and classification standards, the full facts had not been considered. It expressed surprise at the Organization's "high-handed approach", as shown for example in its failing to explain the changes made by amendment 1 of revision 29. It held that only a comprehensive survey afforded a proper opportunity for structural change. It recommended granting all the General Service staff in New Delhi as from 1 April 1988 9.2 per cent increases - which it held that the mini-survey had suggested they were entitled to - subject only to the "negative indexation" that had been in force at that date. It also recommended awarding reasonable costs.

In letters of 12 July 1991 the Director-General informed the appellants that, though he understood why the Board had made its recommendation for the 9.2 per cent increase, he rejected it because it would mean little or no increase in salary for grades ND.1 to ND.6 and "significant recoveries" from staff in grades ND.7 to ND.X. He agreed to meet reasonable costs.

Those are the final decisions the complainants are impugning.

B. The complainants give a detailed account of the second mini-survey and of the appeal proceedings and submit that for several reasons the decisions they impugn are unlawful.

(1) In the complainants' view those decisions were in breach of WHO Manual paragraph II.1.40.1, which says that staff shall receive equal pay for equal work. Under the 1988 scales the complainants were, they say, paid less than others to whom they were senior in grade and in length of service. Each of them cites by way of example cases of junior staff who as from 1 April 1988 were paid more than himself. Such treatment harmed their material interests and caused them distress and humiliation. It was also in breach of Staff Regulation 3.2, which requires that the salary levels of staff shall be determined "on the basis of their duties and responsibilities".

(2) The Organization misapplied paragraphs 59, 60 and 62 of the methodology and Part II.D.5.3 of the CCAQ Manual. Both documents provide that each grade shall ordinarily have between 9 and 12 steps, excluding longevity steps, and that the number of steps shall not change between comprehensive surveys. The adjustments in revision 29, amendment 1, were flawed in that the number of steps in the complainants' grade, ND.7, was increased from 15, in revision 28, to 18. That increase caused them injury because the financial value of each step in their grade fell accordingly.

Secondly, the methodology and the Manual provide that the "inter-grade differential", i.e. the difference in percentage between grades, should be between 15 and 35 per cent. The differentials in the new scales ranged between only 10 and just over 18 per cent.

Thirdly, the methodology stipulates that the "inter-step differential" shall be between 3 and 5 per cent of step 1 of the grade and uniform throughout the grade. The new differentials diminished in terms of percentage from step to step and were under 3 per cent in the higher steps.

Fourthly, both methodology and Manual prescribe an "across-the-board increase" if the mini-survey so warrants. Yet revision 29, amendment 1, applied different percentages of increase to different grades.

The complainants observe that the Regional Boards' conclusions supported their contentions and in particular rejected the WHO's view that creating more steps was a proper solution to the problem of keeping some staff at the top of their grade for too long.

(3) There were flaws in the proceedings before the headquarters Board of Appeal.

(a) The Board's chairman issued an unsigned notice on 7 May 1990, before the Board had even received some of the full statements of appeal, to say that since processing all the appeals "would require an enormous amount of time and work" he would "accept only one", Mr. Marwah's, the first to have been filed. Only in response to protest did the chairman back down, in a letter of 12 June from the secretary to the Board, and accept the other appeals.

(b) The Board took almost a year to report, though Rule 1230.3.3 requires it to do so within 90 days of the filing of the full statement of appeal. The Director-General took 74 days to decide on the Board's recommendations, though 1230.3.2 requires him to do so within 60. The Regional Boards were also dilatory in reporting and the Regional Director in taking his decision.

(c) In her letter of 12 June 1990, mentioned in (a) above, the secretary to the headquarters Board invited the appellants to exercise their right, under Rule 19 of the Board's Rules of Procedure, to object to not more than two of the proposed members of the Board. By a letter of 9 July Mr. Bansal informed the secretary of his objections to two of them and of his preference for alternate members. Yet the Board that heard his complaint did not include those members. Since he never waived his objections, that was a serious flaw.

(4) The headquarters Board recommended a 9.2 per cent increase for everyone and made it "subject only to negative indexation". The increase should have been 14 per cent, and negative indexation is not provided for in the

rules.

(5) The impugned decisions show personal prejudice. In Judgment 495 (in re Olivares Silva) the Tribunal held that the first and greatest safeguard against prejudice was procedural requirements, whose "main object is to exclude improper influences". In this case several procedural requirements were overlooked.

One recommendation by the Regional Boards was that the salaries of ND.7 staff should be redetermined by granting additional steps as from 1 April 1988 so that the differentials between their salaries and those of staff junior in grade and in service should be equivalent to at least one step in ND.7. That would have been in line with Rule 320.2, which says that on promotion a staff member's base salary shall be at the lowest step in his new grade that gives him an increase "at least equal to that which would have resulted from the granting of two steps" in his former grade. Yet the Organization could not agree even to that.

Each of the complainants asks the Tribunal to order the WHO (1) to "refix [his] salary effective 1 April 1988 so that the difference in his salary when compared to staff junior to him in every respect is equivalent" to not less than one salary increment in his grade and (2) to restructure revision 29, amendment 1, in accordance with the methodology and Manual "after providing a 14 per cent increase in the ND.7 grade"; or (3) - in lieu of (1) and (2) - to pay him 5,000 United States dollars in damages for material and moral injury; and (4) to pay him \$2,000 in costs.

C. In its replies the WHO gives its own version of the facts that have prompted the dispute and submits that the complainants' pleas are devoid of merit.

(1) "Negative indexation", which means "freezing" the salaries of higher General Service grades, does not offend against the principle of equal pay for equal work. According to revision 29, amendment 1, grades were still properly structured according to a rising scale: for example salary was higher at the lowest step of grade ND.X than at the lowest step of ND.8 and higher at step 10 of ND.7 than at the same step of ND.6. Equal pay was paid for the performance of duties classified in the same grade, whatever the grade might be. Although some staff in the higher grades fared less well than others, that was the inevitable effect of indexation: an interim increase applied in full to grades in which salaries were not "frozen" but only in part, if at all, to grades in which they were. But that was no impairment of the principle of equal treatment in Manual paragraph II.1.40.1. At headquarters in Geneva many General Service staff earn more than Professional category staff.

(2) The methodology offers mere advice and guidance and allows for a flexible approach that may take account of local circumstances. That is plain from its use of terms like "desirable", "should" and "normally". So the Organization was free, for example, to adopt inter-grade differentials outside the range of 15 to 35 per cent. It was also right to increase the number of steps within grades because the comprehensive 1986 survey had already revealed that local employers gave more than 15 and the increase in steps improved the lot of General Service staff who had reached the top of their grade and so could get no further increment.

As measured not in percentages but in actual amounts, the inter-step differentials remained uniform in each grade in the 1988 salary scales. What the methodology requires is that the amounts be uniform; it is therefore impossible for the percentages to be uniform as well.

The 1986 survey revealed that, although in grades ND.1 to ND.4 salaries were in line with the best prevailing local rates, in ND.5 and above they were higher. Since there was therefore no question of increasing them the scales of 1985 continued to apply unchanged to those higher grades and the inter-step differentials therefore held good.

It is mistaken to allege that an "across-the-board increase" is to be granted as a result of each interim adjustment. True, the methodology says that salary increases intended to reflect trends in local pay "should normally be expressed as a single percentage" not affecting inter-grade and inter-step differentials, and the CCAQ Manual too provides that such increases "would normally be in the form of a single across-the-board percentage" which would not alter such differentials. But the Manual adds that there may be a flexible approach if it serves better the fundamental purpose, which is to reflect the best local rates of pay. The term "normally" also allows of flexibility.

(3) It is not for the WHO to defend the decisions on matters of procedure taken by an independent body like the headquarters Board. But it was only reasonable for the Board to join all the internal appeals, since they raised the same issues of fact and of law, and therefore to have the same composition when examining all the appeals, despite

any preference expressed for alternate members.

(4) Negative indexation is a practice aimed at keeping salaries in line with the best local rates. Applying it in this instance caused the complainants no financial loss. There are precedents for applying it in the United Nations system both to the General Service and to the Professional categories of staff. It is only reasonable that there should be no express provision for it in the WHO's written rules since it is a practice the Organization will follow only when sound financial management and good staff relations so require. The practice is no less lawful for not being embodied in the rules. It is immaterial that the methodology and the CCAQ Manual do not provide for it since those texts are not binding in law anyway.

(5) It is absurd to suggest that the findings of a mini-survey intended to update salary scales could be tainted with personal prejudice against the complainants. Judgment 1160 dismissed similar allegations about the 1986 and 1987 surveys.

The WHO submits that the mini-survey duly followed the procedure set out in the methodology and the Manual and complied with its own rules and practices. It abided by the precedents set in earlier mini-surveys. The staff representatives were given every opportunity to take part throughout, although for reasons of their own they chose not to attend some of the Local Committee's meetings. Moreover, the complainants suffered no financial loss on account of the application to them of the resultant salary scales.

D. In their rejoinder the complainants submit that much of the WHO's reply to their complaints is irrelevant, evasive or gratuitous and they enlarge on their earlier pleas.

They press their objections to the composition of the headquarters Board of Appeal. They observe that in his letter of 1 October 1991 to Mr. Bansal the Director-General said that "in strict compliance with Staff Rule 1230.4.3, a staff member appealing to the Board has a right of objection to the composition of the Board. However, since the appeals have the same purpose and rest on the same pleas ... I understand the decision of the Board to join them for the purpose of making a single recommendation". In its reply the WHO changes tack and says it does not have to defend the Board's action. In fact the complainants were invited to exercise their right to object to its composition, and to ignore any such objections was a serious procedural flaw.

The complainants affirm that breach of the principle of equal pay for equal work is plain from the figures given in their original brief. It is immaterial, in their view, whether the breach was due to a "freeze" or to some other action by the Organization. The treatment of General Service category staff at headquarters in Geneva is also irrelevant: what matters is to adapt salary scales according to trends in the best rates of pay prevailing in New Delhi.

By a decision of 10 December 1991 the Regional Director agreed, on the recommendation of the Regional Board of Appeal, to redefine the salary of Mr. J.S. Narula, an ND.6 staff member of SEARO, by awarding him two salary increments so that he should not suffer financial loss on account of promotion. That shows that the Regional Director may use his authority to take corrective measures to safeguard the principle of equal pay for equal work. Under the 1988 scales the complainants were paid, simply because they had been promoted, lower salaries than juniors in grade and service. Not to take similar corrective action in their case is discriminatory.

The complainants submit that, since Judgment 1160 set aside decisions applying the findings of the 1987 salary survey as reflected in revision 28, the implication is that the findings of the 1988 survey are invalid as well: revision 29, amendment 1, cannot hold good now that the Director-General has to take a new decision on the scales that it is based on. The WHO's plea that the 1988 survey complied with the methodology and the CCAQ Manual has therefore become irrelevant. Since the Tribunal has held that the 1987 survey, and by implication the 1986 one, were not properly carried out, the 1988 one must have been flawed too in that it followed the same methods and procedure.

The complainants explain why they regard the WHO's pleas in defense of negative indexation as unsound and develop the objections to it as summed up in Judgment 1160, under B and D. They also press their pleas of personal prejudice and breach of the Staff Rules.

E. In its surrejoinder the Organization submits that the rejoinder goes over much-trodden ground and raises no new issue of fact or law that calls for any development of its reply. It points out, however, that the complainants are guilty of distortion in inferring from Judgment 1160 that the 1986 salary survey was not carried out in accordance

with the methodology and the Manual. All that the Tribunal said - under 12 - was that it would "proceed on the assumption that the 1987 survey was not properly carried out". It did not rule on the merits of the 1986 survey at all because it upheld the Organization's objections to the receivability of the earlier complaints on that score.

The WHO observes that the Tribunal acknowledged the validity of negative indexation in Judgment 830 (in re Kossovsky and Shafner-Cherney) even though the relevant instruments made no express provision for it. So did the CCAQ in a document which it published in 1989 (ACC/1989/6, paragraph 62 b)) and which the Organization quotes.

Lastly, the Organization states that in execution of Judgment 1160 the Director-General wrote the complainants letters of 30 April 1992 which said:

"As you know, the 1987 mini survey only updated the results of the 1986 comprehensive salary survey. However, in order to lay to rest this long-standing complaint, but without prejudice to the legal principles involved in the decisions relating to those surveys, I am prepared to offer you a lump-sum payment based on the overall results of the 1987 interim adjustment to be applied across the board. Of course, the supplementary financial compensation given to you as per the memorandum of Director, Support Programme of 24 May 1989 would be deducted. I am also prepared to apply this decision to the 1988 mini survey."

The Director-General further stated that, if the complainants accepted that offer, they should withdraw their complaints.

The Organization submits that the offer is fair and reasonable and invites the Tribunal to endorse it and accordingly dismiss the complaints as devoid of substance.

CONSIDERATIONS:

1. In 1985-86 there was a comprehensive survey of the salaries of the General Service category staff of the WHO's Regional Office for South East Asia, which is in New Delhi. The new scales were approved as from 1 January 1986 and announced to the General Service staff by a memorandum of 8 October 1986, which is known as "revision 27". Salaries held good for staff in grades ND.1 to ND.3 and ND.5 to ND.8. They were raised for grade ND.4 and the number of steps in the grade was increased from 15 to 19. For grades ND.5 to ND.8 and ND.X there was to be "negative indexation", a form of freeze on future increases ranging from 2 per cent to 16 per cent. A spouse allowance was introduced and the child allowance put up. Those scales were challenged but, as the Tribunal ruled in Judgment 1160 (in re Banota and others), on 29 January 1992, the challenge was unsuccessful.

2. An interim adjustment was made in 1987 as the result of a "mini-survey" by the Local Salary Survey Committee. The Committee's recommendations were approved as from 1 January 1987 and notified to General Service staff in New Delhi by a memorandum of 27 November 1987 in the form of "revision 28". Salaries went up for staff in grades ND.1 to ND.4 by 10.6 per cent, in ND.5 by 8.9 per cent, in ND.6 by 5.1 per cent, and in ND.7 and ND.8 by 3 per cent. There was a lump-sum increase at step 1 of grade ND.X. Indexing was dropped for ND.5 and ND.6.

3. The 1987 scales too were challenged, and in Judgment 1160 the Tribunal allowed the challenge. The headquarters Board of Appeal had held that the Administration had failed to follow the methodology which the ICSC had approved, which was set out in the CCAQ Manual, and which the WHO itself had directed SEARO to apply. The Director-General said that he was not convinced that any failure to implement the methodology affected the validity of the surveys. The headquarters Board of Appeal stated, without explanation, that it was no longer possible to determine with certainty whether the outcome of the 1986 and 1987 surveys reflected the best local practice. In the absence of any reasoning the Tribunal refused to accept that it was administratively impossible to carry out a new survey for 1987, the impugned decision was quashed, and the case was sent back to the Director-General for a new decision.

4. In 1988 the Local Salary Survey Committee carried out another mini-survey, though the staff representatives refused to take part. It is the scales that were introduced as a result of that survey that form the subject of the present complaints.

There is no evidence to suggest that the survey, the purpose of which was to ascertain the best local conditions, was not carried out properly or that the weighted average increase of 9.2 per cent was wrongly calculated. That is not

what the complainants are alleging: what they are objecting to is the way in which the findings of the survey were applied to the salary scales.

5. What happened was that headquarters applied the 9.2 per cent increase to the 1987 scales for grades ND.1 to ND.6. Because of the residual negative indexation applied in 1986 the result in the higher grades would have been an increase of 0.9 per cent for grade ND.7 and none at all for ND.8 and ND.X. Headquarters therefore decided to grant instead a real increase of at least 3 per cent to grades ND.7, ND.8 and ND.X. That still left the top three grades with some residual negative indexation. All salaries were increased as from 1 April 1988 and paid, together with the arrears, in December 1988. The new scales were known as "revision 29".

6. According to the Organization, however, the Local Salary Survey Committee "insisted" on a different distribution by grade in order to eliminate all residual negative indexation for ND.7, ND.8 and ND.X. After some initial resistance headquarters granted the demand, again as from 1 April 1988, and the new scales were known as "revision 29, amendment 1". The increase for ND.1 to ND.6 was reduced to 8.9 per cent. The higher grades got 14 to 16 per cent and, when the negative indexation was subtracted, grade ND.7 got an effective 5.35 per cent and grade ND.8 got 4.6. Grade ND.X was adjusted accordingly. The number of steps in ND.5 and ND.6 was also increased from 17 to 18 and the number of steps for ND.7 and ND.8 from 17 and 16 respectively to 18. It is the decision the Director-General took on 12 July 1991 to uphold the scales in revision 29, amendment 1, that is the one impugned.

7. Five Regional Boards of Appeal heard internal appeals by 32 staff members against those scales and produced a joint report on 18 January 1990. The report set out certain guidelines laid down in the ICSC methodology and reproduced in Part II.D.5.3 of the CCAQ Manual. They were:

- (a) that the number of steps in each grade should normally be 9 to 12 (paragraph 59 of the methodology);
- (b) that the number of steps should normally remain unchanged from one comprehensive survey to another (paragraph 62);
- (c) that the differential between steps in any grade should be from 3 to 5 per cent of step 1 (paragraph 62); and
- (d) that the differential between grades should be from 15 to 35 per cent (paragraph 60).

The Boards held that revision 29, amendment 1, ignored those guidelines. The increase in the number of steps in grades ND.5 to ND.8 was in breach of the methodology and the Manual: the number should not have been increased at all. Parity between grades was upset. An average uniform increase was not granted to all General Service staff. The increases granted by revision 29 in December 1988 were dropped as from 1 April 1988, so that there was a decrease for ND.1 to ND.6 and increases for ND.7, ND.8 and ND.X, and no explanation had been given for the changes in percentages. There were several examples of staff who were drawing salaries less than staff junior to them both in length of service and in grade, and that was in breach of WHO Manual paragraph II.1.40.1, which prescribes equal pay for work of equal value. The problem of having staff at the top of their grade should - said the Committee - be handled otherwise than by increasing the number of steps, since that was again in breach of the methodology and the Manual. Lastly, if the number of steps in grade ND.8 was increased, then step 1 of grade ND.X ought to have been determined by reference to the last of those steps.

The Regional Boards accordingly recommended granting a uniform 9.2 per cent increase to all grades without negative indexation; restructuring the salary scales so that there was the same number of steps as before the 1988 survey; keeping the differentials between steps and between grades that both the methodology and Manual required; recalculating step 1 of grade ND.X by reference to the last step of ND.8; and reviewing salaries at ND.7 and granting additional steps to staff at that grade so that they should be paid the equivalent of at least one within-grade increment more than staff junior both in length of service and in grade.

8. The case was then referred to the headquarters Board of Appeal. In its report of 29 April 1991 that Board observed that because the situation had been unusual before the introduction of the new scales strict adherence to the rules was not possible. Earlier revisions had already created anomalies and the new one compounded them. The Board recommended amending the salary scales as from April 1988 to May 1989 so as to grant General Service staff a 9.2 per cent increase subject only to the negative indexation in force and paying them the difference between their actual pay and what they would have received had those amendments been in force all along. It recommended

paying costs and taking care in future not to use the findings of mini-surveys as a basis for structural change in scales; such change must follow a comprehensive survey.

9. In letters of 12 July 1991 to the complainants, which are the final decisions they are challenging, the Director-General said that though he understood the reasons for recommending the 9.2 per cent increase, the effect of it would be to the detriment of most General Service staff and so he did not accept it. He did, however, agree to awards of costs.

10. Each of the complainants is in grade ND.7. They submit a common statement of facts and arguments which they base on Mr. Bansal's case, and each of the other three complainants also submits a short statement showing how he himself fared under the 1988 scales. Succinctly stated, their five main pleas are the following.

(1) They plead breach of WHO Manual paragraph II.1.40.1, which embodies the principle of equal pay for work of equal value. (2) They allege failure to comply with the requirements of the methodology and the Manual in particular as to the number of steps and the differentials between steps and between grades. They submit that a uniform increase should be granted to all grades as a result of the mini-survey. (3) Mr. Bansal contends that, contrary to Staff Rule 1230.4, the composition of the headquarters Board of Appeal was not as he had asked. It is not clear whether the other three complainants are also putting forward similar contentions. (4) The complainants believe that the freezing of salaries was unlawful. (5) They allege personal prejudice.

The relief they seek is set out at the end of B above.

11. The powers of review that the Tribunal will exercise in this case are limited. It will not seek to determine whether the salary scales set by the Organization are appropriate for different grades and steps or what salary increases should be granted.

There are three points to be made at the outset. First, the only issue the Tribunal may entertain is whether the Director-General's confirmation of the increases shows any flaw. Secondly, it will consider only such aspects of the 1988 scales as directly affect the present complainants: it is essential to justice that a litigant be allowed to argue only his own particular case and not to put forward pleas that relate to the case of others. The third point is that a comprehensive survey was carried out, the findings were put into effect in new scales as from June 1989, and those scales have their own validity. It is utterly inappropriate for the Tribunal to embark on an examination of the structure of salary scales that are long out of date; besides it lacks the technical qualifications for doing so. So all it will do is make a ruling on the complaints now before it.

12. The complainants first plea is breach of Manual paragraph II.1.40.1 and the principle of equal pay for work of equal value. The corollary of that principle - and it is relevant to the complainants' case - is that where work is of greater value pay should be higher.

The complainants are not all in the same position.

Mr. Bansal joined the Organization on 12 November 1971 at ND.4. He was promoted to ND.5 in June 1978 and to ND.6 (now renumbered ND.7) in June 1983. He draws a comparison with Mr. Toteja, who joined on 25 November 1971 and was promoted to ND.6 in July 1980; with Mr. Gupta, who joined in December 1971 and was promoted to ND.5 (renumbered ND.6) in February 1983; and with Mr. Lakshminarayanan, who joined on 22 November 1971 and was promoted to ND.5 (renumbered ND.6) in May 1979. He submits that all three were junior to him in length of service and in grade, yet earned more than he, discounting one within-grade salary increase granted to him for meritorious service.

Mr. Chowdhary joined the Organization on 18 December 1968, was promoted to ND.6 in May 1979 and to ND.7 in October 1983. Mr. Harpalani joined on 15 October 1968, was promoted to ND.6 in May 1979 and to ND.7 in March 1985. Mr. Marwah joined on 28 July 1969, was promoted to ND.6 in August 1979 and to ND.7 in October 1983. All three of them had reached grade 7, step 9, by 1 March 1989.

They compare themselves with Mr. Dhawan, who joined the Organization on 9 July 1969 and was promoted to ND.6 in July 1979. He had reached ND.6, step 15, by February 1989 and was getting more salary than they. He was promoted to grade 7, step 10 - a step higher than the complainants' - in March 1989 and thereby got an even higher salary.

Mr. Bansal was getting less salary than someone at a lower grade with less seniority. Mr. Chowdhary and Mr. Harpalani, too, were already in February 1989 getting less salary than someone at a lower grade with less seniority and as a result of his promotion in March 1989 were passed over in step by someone who had been promoted years later than they. The other official had slightly greater seniority, however, than Mr. Marwah.

13. The Organization acknowledges the anomaly and seeks to explain it away as the inevitable consequence of the partial freeze applied to pay at grades ND.7 and above at a time when the increase resulting from the mini-survey was applied fully to lower grades not affected by the freeze. It points out, too, that some General Service staff at headquarters in Geneva earn more than some staff in the Professional category. But that is not comparing like with like: there are two different categories and there is a different method of reckoning pay for each of them. Here there were staff members earning less than others who were junior in grade and had less seniority.

The Organization is wholly to blame for this odd result and has taken no action to put things right. Manual paragraph II.1.40.1 holds good within a single category of staff: matters relating to step increases or salary must depend on the quality of officials' services, not on improper changes by the Organization in its rules.

Salary scales for a particular category which did not take that situation into account were in breach of the Manual paragraph II.1.40.1. True, the Regional Boards of Appeal recommended reviewing pay by granting an additional step so that the difference in pay for staff junior in grade and service should be equivalent to at least one yearly within-grade increment. But that solution might have led to other anomalies as unwelcome as the ones which it was the purpose to remove. The Organization shall therefore pay Mr. Bansal, Mr. Chowdhary and Mr. Harpalani damages equivalent in each case to the amount of one within-grade salary increase for a period of one year under the scales as set out in revision 29, amendment 1. No such award is made to Mr. Marwah, however, since he did not have greater seniority than the official whose case he gives by way of comparison.

14. The complainants' second plea is failure to observe the methodology and the CCAQ Manual. The methodology serves as a guide in relating General Service salary scales to the best prevailing conditions of employment in the locality. The intention is to ensure flexibility, although the degree of flexibility of course has its limits and, as was said in 11 above, the Tribunal will not review salary scales beyond the context of the present complaints.

15. In point of fact no breach of the methodology which the complainants rely on caused them injury. The increase in the number of steps in their grade from 15 to 18 did not affect them during the period of application of the scales since they were all at step 9 and there was no objection anyway to increasing the number of steps as a result of the next comprehensive survey, in 1989. The differentials between steps in their grade were constant throughout and were not reduced. Moreover, any changes in the inter-grade differential were due to increases in salary that were well above the weighted average increase of 9.2 per cent and were therefore to their advantage.

The conclusion is that there is no call for any further consideration of the way in which the methodology was applied. Whatever the wisdom of making structural change after a mini-survey, it is not necessary to order any changes in the structure of the pay scales as they applied to the complainants.

16. The complainants contend that there should have been a "single across-the-board percentage" increase because the 1988 scales were the outcome of a mini-survey. They cite paragraph 72(c) of the methodology, which says that "the movement of outside salaries should normally be expressed as a single percentage which would not affect intergrade and step relatives", and paragraph V.I.A.6 of the CCAQ Manual, which provides that "salary increases based on a mini-survey would normally be in the form of a single across-the-board percentage ... which would not affect intergrade and interstep differentials".

The argument is mistaken. As the Manual itself says in paragraph V.2, what applies "normally" need not apply in the circumstances of a particular survey if it runs counter to the fundamental purpose of continuing to reflect the best prevailing conditions in the locality.

17. What the complainants want is an increase of 9.2 per cent without negative indexation.

That is precluded because the decision of 1986 which introduced negative indexation held good at the material time and its residual effects were still being felt. If there had been an "across-the-board" increase of 9.2 per cent that took account of negative indexation - as it would have had to - the complainants would have got an increase of only 0.9 per cent. Since under the scales in revision 29, amendment 1, they were entitled to 14 per cent and

received an actual 5.35 per cent increase, they have no valid objection to the way in which the percentage increase was applied to them.

18. The third plea relates to Mr. Bansal alone. Although the other three complainants have adopted his brief as their own, only he produces items of evidence to show that he sought to exercise his rights under Staff Rule 1230.4 as to the membership of the headquarters Board of Appeal.

Article XI of the Staff Regulations provides that the Director-General "shall establish administrative machinery with staff participation to advise him in case of any appeal by a staff member against an administrative decision". Rule 1230.4 says that the headquarters Board of Appeal shall consist of five members having equal votes and provides:

"The staff member appealing to the Board shall have the right to object to not more than two members, whether appointed by the Director-General or drawn from the staff panel. ... If objection is raised against members appointed by the Director-General, they shall be replaced by alternative or substitute members appointed by the Director-General."

19. The secretary of the headquarters Board informed Mr. Bansal by a letter of 12 June 1990 of the proposed composition of the panel that was to hear his appeal and said who were to be the alternate members if he exercised his right of objection to not more than two members. By a letter dated 9 July 1990 Mr. Bansal asked for two changes in the proposed membership, one being the Chairman and the other an alternate member appointed by the Director-General. On 17 October the secretary of headquarters Board of Appeal wrote to Mr. Bansal referring to the large number of cases on the subject, saying that he was the only appellant to ask for changes of membership, pointing out that it would mean setting up a separate board for his appeal, and asking him to waive his request. He never did so. The Director-General wrote to him on 12 July 1991 enclosing a copy of the Board's report, and he replied on 2 August 1991 to say that the composition of the Board had not been what he had asked for. The Director-General's reply of 1 October 1991 was that he had failed to show that the joinder of his case with others was prejudicial or that any of his pleas had been ignored and the decision in the letter of 12 July 1991 was confirmed.

20. There was thus a serious flaw in the internal appeals procedure. The right to object to the composition of the Board without having to show cause affords an important safeguard for the staff member by conferring on him a limited veto in determining who is to hear his appeal and make recommendations on his case. Since Mr. Bansal did not express willingness to waive that right there was no choice for the Board but to respect it. It is no answer that it is not for the Organization to defend the Board because it is a completely independent body. The issue is whether the Director-General was entitled to treat the Board's report as being in accordance with the rules and the report itself discloses that the rights of some appellants, one of whom was Mr. Bansal, had been ignored.

The Director-General has a duty to enforce the rules. He knew of the breach and should have rejected the report insofar as it concerned those who objected to it as not being in accordance with those rules: he was not entitled to proceed as if no breach had occurred. Since Mr. Bansal's plea under this head is sound he is entitled to redress. The Tribunal does not, however, consider it appropriate to rescind the Director-General's decision, but orders instead under Article VIII of its Statute the award of compensation to Mr. Bansal for the injury caused to him in the sum of \$250.

21. The Organization has made an offer in an attempt to settle the dispute over the 1987 salary scales. The Tribunal will not take up the issue, which is not material to the present complaints.

22. Since the complainants succeed in part they are entitled to awards of costs.

23. The applications to intervene, which are receivable under Article 17 of the Rules of Court, are allowed: the interveners have the same rights as the complainants themselves insofar as they are in like case in law and in fact.

DECISION:

For the above reasons,

1. The Organization shall pay to Mr. Bansal, Mr. Chowdhary and Mr. Harpalani the equivalent of one within-grade salary increment at grade ND.7 for one year as provided for under the scales set out in revision 29, amendment 1.

2. It shall pay Mr. Bansal and any other complainant who exercised his right under WHO Staff Rule 1230.4 an award of 250 United States dollars each in damages under Article VIII of the Tribunal's Statute.

3. It shall pay Mr. Bansal \$250 and Mr. Chowdhary and Mr. Harpalani \$50 each in costs.

4. The complainants' other claims are dismissed.

5. The interveners shall have the same rights as the complainants insofar as they are in like case in law and in fact.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner