

EIGHTY-FIRST SESSION

In re RAJAGOPAL

Judgment 1524

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Krishnamurthy Rajagopal against the Food and Agriculture Organization of the United Nations (FAO) on 25 August 1995, the FAO's reply of 15 December 1995, the complainant's rejoinder of 19 January 1996 and the Organization's surrejoinder of 16 April 1996;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, an Indian born in 1956, joined the staff of the FAO in 1983 as an accounting clerk under a fixed-term appointment at grade G.4. He was assigned to the Organization's Programme for the Bay of Bengal at Madras. The FAO promoted him to G.5 in 1985 and to G.6 in 1991.

By a memorandum of 5 October 1992 the Director of the Programme told him that reductions in activities had made his post unnecessary and his contract would not be extended after it expired on 31 January 1993.

By a memorandum dated 23 December he appealed to the Director-General against what he described as "notice of termination".

The FAO having granted him sick leave until 11 April 1993, his formal separation took place after the medical officer declared him fit on 27 April 1993.

By a letter of 10 May 1993 the Assistant Director-General in charge of the Administration and Finance Department rejected his appeal of 23 December 1992 on the Director-General's behalf and referred him to the rules on appeal to the Appeals Committee.

In a letter of 3 November 1993 he submitted a claim to a senior personnel officer in Rome for payment of termination indemnity. By a reply dated 11 November the officer informed him that staff members whose fixed-term appointments expired at the scheduled date were not entitled to the indemnity.

In a letter of 1 December 1993 he asked the Director-General to review the decision. The Director of the Personnel Division confirmed in a letter of 17 January 1994 that termination indemnity was not payable upon expiry of a fixed-term appointment.

By a memorandum of 10 March 1994 he appealed to the Appeals Committee. In its report of 30 March 1995 the Committee recommended rejecting his appeal on the merits.

In a letter of 15 June 1995, which he impugns, the Director-General endorsed that recommendation.

B. The complainant submits that he has a "legitimate entitlement" to termination indemnity under the rules on termination for abolition of post. He says the FAO resorted to termination as a retaliatory measure after he denounced mismanagement in the Programme. He cites the case of another FAO official who was also terminated on grounds of abolition of post and who did get the indemnity, and he contends that he was discriminated against.

He seeks payment of termination indemnity plus interest at 24 per cent a year from the date of separation and damages for loss of "career prospects" and "severe stress". He also claims 1,000 United States dollars in costs.

C. In its reply the FAO observes that it did not terminate the complainant's appointment. For lack of funds it was unable to extend his appointment, but for the period of sick leave, beyond the contractual date of expiry. It did not discriminate against him: the official he mentions was not in like case since his appointment was terminated upon

the abolition of his post, whereas the complainant's was not.

D. In his rejoinder the complainant disputes elements in the FAO's reply and presses his claims. There was, in his submission, no difference between his case and the other official's: both came down to abolition of post.

E. In its surrejoinder the Organization comments on pleas in the rejoinder and returns to the arguments it put forward in the reply.

CONSIDERATIONS:

1. The complainant joined the FAO in 1983 as an accounting clerk. He was assigned to its Programme for the Bay of Bengal and stationed at Madras. A memorandum of 5 October 1992 from the Director of the Programme informed him that his fixed-term contract would not be extended beyond the date of its expiry, 31 January 1993. The FAO later granted him sick leave until 11 April 1993, and, with the medical officer's approval, he left the Organization's service on 27 April 1993.

2. On 23 December 1992 he had appealed to the Director-General against what he described as "notice of termination" of his contract. A letter of 10 May 1993 from the Assistant Director-General in charge of the Administration and Finance Department conveyed to him the Director-General's rejection of his appeal, but observed that he had had his contract extended to cover the period of his sick leave. He took no further steps to challenge the decision not to renew his contract.

3. In a letter of 3 November to a senior personnel officer he claimed entitlement to termination indemnity. That officer refused his claim on 11 November. In reply to his letter of 1 December 1993 to the Director-General requesting review of the decision, the Director of the Personnel Division confirmed on 17 January 1994 that no termination indemnity was payable upon expiry of a fixed-term appointment. He lodged an internal appeal on 10 March 1994. In a report of 30 March 1995 the Appeals Committee recommended rejecting it and on 15 June 1995 the Director-General did so. He is claiming payment of termination indemnity under Staff Regulations 301.151 and 301.152, together with other relief.

4. His first plea is that he had to leave because of abolition of his post, not, as the Organization maintains, the expiry of his contract.

5. One clause in his contract provided for termination by either party upon written notice of 30 days. A termination indemnity would then be paid in accordance with Regulation 301.093, which makes payment of the indemnity conditional on the Director-General's terminating the appointment. Regulation 301.151, which the complainant cites, applies to staff whose appointments are terminated for abolition of post, and Regulation 301.152 provides for payment of a larger indemnity in certain circumstances. Lastly, Regulation 301.157 states:

"No termination indemnity shall be paid to:

...

301.1572a staff member whose fixed-term appointment is completed on the expiration date ..."

6. The Staff Regulations on which the complainant is relying relate to the termination of appointment before the date of expiry. His own situation falls within the ambit of Regulation 301.157, which excludes entitlement to the indemnity.

7. His second plea is breach of equal treatment, and he cites the case of another staff member who did get the termination indemnity. But that case differs from his own in that the other staff member's contract had been terminated prematurely, i.e. before the date of expiry.

8. The conclusion is that his claims to payment of the termination indemnity and interest must fail.

9. Lastly, his claim to an award of damages for loss of career fails because, as was said in 2 above, he did not pursue his challenge to the decision not to extend his appointment and he has therefore failed to exhaust the internal means of redress, as Article VII(1) of the Tribunal's Statute requires.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

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