

EIGHTY-THIRD SESSION

***In re* Agnihotri and others**

Judgment 1645

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed against the World Health Organization (WHO) on 4 March 1996 by:

**Mr. N. S. Agnihotri
Mr. S. Agrawal
Mr. S. P. Ahuja
Mr. A. K. Bansal
Mr. V. K. Batra
Mr. J. S. Battra (No. 2)
Mr. M. L. Behl
Mr. R. Bhandari
Mr. S. L. Bhardwaj
Mr. N. K. Bhatia
Mr. D. Chopra
Mr. H. Chopra
Mr. P. P. Chopra
Mr. J. K. Dass
Mr. P. Dass
Mrs. C. Debnath
Mr. P. Diwan
Mr. N. A. Doraiswami
Mr. S. S. Easwar
Mr. G. Chand
Mr. K. P. Gaur
Mr. P. Grover
Mr. S. K. Gupta
Mr. S. R. Gupta (No. 2)
Mr. U. Gupta
Mr. M. A. Harpalani (No.5)
Mr. S. D. Iyer
Mr. N. K. Jagasia
Mr. S. K. Jain
Mr. Y. Kapoor
Mrs. S. Katyal
Mr. M. L. Khera
Mr. Y. P. Khullar
Mr. A. S. Kohli
Mr. A. Kukreja
Mr. P. Kumar
Mr. S. K. Madanpotra
Mr. J. M. Mago
Mr. R. Malhotra
Mr. R. K. Malhotra (No. 2)
Mrs. A. Mathew
Mr. N. Mitroo (No. 2)
Mr. S. Muthusamy
Mr. J. S. Narula
Mr. K. C. Oberoi
Mr. R. S. Pahwa
Mr. D. C. Pathak**

Mr. V. P. Rustagi
Mr. R. K. Sabharwal
Mr. R. Sampathkumaran
Mr. K. Satyamurthy
Mr. D. N. Sethi (No. 2)
Mr. V. K. Sethi
Mr. A. K. Sharma
Mrs. R. Sharma
Mrs. S. Stephens
Mr. A. Singh
Mr. G. Singh
Mrs. R. Srinivasaratnam
Mr. P. K. Sundaresan
Mr. B. L. Taneja
Mr. P. S. Thakur
Mr. V. K. Thakur
Mr. B. M. Tokish

Considering the WHO's single reply of 10 September and the complainants' letter of 18 September 1996 informing the Registrar of the Tribunal that they did not wish to rejoin;

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

Having examined the written submissions and decided not to order hearings, 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. The complainants are employed by the WHO in its Regional Office for South East Asia (SEARO) at New Delhi. The salaries of the staff in the General Service category, which the complainants all belong to, are set and reviewed according to the provisions and method that were described, under A, in Judgment 1160.

By a memorandum dated 3 December 1993 a personnel officer announced the implementation of revisions to salary scales in the General Service category: as from 1 April 1992 for revision 35 and 1 January 1993 for revision 36. The complainants filed appeals against that decision on 11 February 1994.

In a report of 25 November 1994 the regional Board of Appeal recommended that the Regional Director should refer the matter to the Organization's headquarters for review of the scales in revisions 35 and 36 in the light of "facts" about the cost of housing. In letters of 31 January 1995 the Regional Director rejected their appeals.

On 1 May 1995 they put their case to the headquarters Board of Appeal. In its report of 9 October the Board recommended rejection. By a decision conveyed in a letter dated 28 November 1995, which they impugn, the Director-General endorsed the recommendation of the headquarters Board.

B. The complainants submit that the revised salary scales are unlawful. They allege failure to take account of essential facts, breach of the applicable method and absence of "proper" consultation with staff representatives.

They seek (1) the quashing of the impugned decision; (2) prompt revision of the salary scales "based on" the recommendations of the Local Salary Survey Committee for revisions 35 and 36; (3) reimbursement of costs their counsel incurred during hearings at the headquarters Board of Appeal; (4) "corrective action" and "appropriate salary scales" based on recommendations by the Local Committee for revisions 37 and 38; and (5) 5,000 United States dollars each by way of moral damages. They also claim \$1,500 each in costs.

C. In its reply the Organization argues that the complaints are in part irreceivable and in any event devoid of merit. As to the complainants' claims concerning revisions 37 and 38 it observes that they have failed to exhaust the internal redress open to them. It is not the Organization's practice to refund expenses for counsel to attend hearings of the headquarters Board at the request of an appellant. The WHO denies

offending against the applicable rules and says it applied the method adopted by the International Civil Service Commission.

CONSIDERATIONS

1. These complaints come from sixty-four locally recruited staff who belong to the General Service category in the WHO's Regional Office for South East Asia (SEARO) in New Delhi. They are challenging two salary revisions, No. 35, which took effect at 1 April 1992, and No. 36, which took effect at 1 January 1993.

2. WHO Staff Regulation 3.2 provides:

"... 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 ..."

WHO Staff Rule 1310.3 is to the like effect.

3. The salary scales of locally recruited staff in the General Service category are reviewed every three to five years on the strength of comprehensive surveys of the best prevailing local practice. In between such surveys interim salary adjustments may be made on the strength of what are called "mini-surveys". In 1985 the International Civil Service Commission (ICSC) issued a "general methodology" for making the surveys. The Consultative Committee of the United Nations on Administrative Questions (CCAQ) has published a Manual on how to apply that methodology. According to the Manual the survey is conducted at each duty station by a Local Salary Survey Committee (LSSC), which consists of representatives of the local staff and administrations of the organisations concerned. If no such Committee exists, the "designated agency" for the duty station must establish one. The WHO, or rather its Regional Office, is the "designated agency" for New Delhi.

4. The Manual requires the Local Committee to submit its report and recommendations to the "designated agency" and that agency to submit its own report and recommendations to the "responsible agency" for review and decision. In this instance it is WHO headquarters in Geneva that is the "responsible agency". In the course of review the responsible agency may ask for explanations and additional data and make such changes in the results of the survey as it thinks justified. The review concludes with the approval by the responsible agency of the salary scales and allowances.

5. The Manual lays down the following procedure for reporting the responsible agency's decision:

"A final report is prepared by the Headquarters of the designated agency following the review and approval by the responsible agency. Prompt submission of this report is an essential step in the survey process, contributing to better understanding by staff in the field and to more effective surveys in the future." (Manual, Part IV, Step F.7)

6. A comprehensive survey was carried out in New Delhi in 1990, and the result was Revision 30, which took effect at 1 June 1989. There followed in quick succession several mini-surveys which resulted in Revisions 31, 32, 33 and 34. Those revisions meant uniform salary increases of 7.8, 9.2, 11.2 and 15.2 per cent respectively, and they took effect at 1 January 1990, 1 July 1990, 1 April 1991 and 1 September 1991.

7. In 1993 the Local Committee conducted another mini-survey using data about four of the five "comparator employers" -- i.e. the local employers who are taken for the purpose of comparison -- that the comprehensive survey for 1990 had covered. It submitted two reports to SEARO, which in turn forwarded them to headquarters expressing complete agreement.

8. In its report on that mini-survey the Local Committee observed that some comparator employers were providing company housing benefits for management staff, for instance by paying large interest-free deposits to landlords for housing, which was then let at low rentals. It recommended changing the method of reckoning the value of such housing benefits "from the notional market rental which is very difficult to ascertain, to the 'cost-to-the-employer' basis" on the grounds that there would otherwise be "serious distortions which it [would] be impossible to correct even at the time of [the next] Comprehensive Survey".

9. The Local Committee also found that two of the four comparator employers had recently been recruiting

management staff at rates -- known as the "hiring rates" -- above the minimum of the established salary scales, and that some employees were still getting salary increments even after reaching the maximum of the scales applicable to them. It recommended treating those "hiring rates" as the minimum of the scales for the purpose of comparing salaries.

10. While in favour of two salary increases, one as from 1 April 1992 and the other from 1 January 1993, it recommended making different, or "staggered", percentage increases for four categories of staff, instead of a single uniform increase. The reason it gave was that the employment market in India was volatile:

"... remuneration packages for the managerial category are moving very fast as compared to the lower level staff. Continuous application of [a] single percentage increase will generate UN scales which would be far removed from the market data, correction of which [would] be very difficult if not impossible at the time of the next comprehensive survey."

11. After review WHO headquarters, the responsible agency, rejected Local Committee's recommendations on housing benefits, hiring rates and staggered increases. Instead it approved uniform salary increases of 7.5 per cent as from 1 April 1992 under revision 35 and of 12 per cent as from 1 January 1993 under revision 36. That is the decision the complainants are objecting to. Having exhausted their internal remedies, they seek the quashing of the final decision confirming that decision, the implementation of the Local Salary Survey Committee's recommendation and the award of costs incurred by their representative at the hearings before the headquarters Board of Appeal. They also ask for "corrective action ... based on the LSSC recommendations relating to Revisions 37 and 38".

Housing benefits

12. The complainants advance three arguments in support of the so-called "cost-to-the-employer" formula recommended by the Local Committee.

13. The first is that there had been such changes in the practice of comparator employers as to justify the adoption of a different method of "quantifying" housing benefits.

14. The CCAQ Manual provides in Part V.I.A.5:

"The method for the quantification of benefits should also normally remain constant, unless a significant change has occurred in comparator employer practice since the comprehensive survey. In such a case a modification may be considered."

The complainants' plea must fail because the Local Committee's two reports did not show that any change in the practice of comparator employers as to housing benefits had occurred since the previous comprehensive survey in 1990. On the contrary, previous Local Committee reports and clarifications show that the practice had been the same even at the time of the comprehensive survey in 1990.

15. The complainants' second argument is that the United Nations Development Programme (UNDP) was using the "cost-to-the-employer" formula. But that is irrelevant: the practice of the UNDP related to "national professional officers", a category of staff not comparable to the General Service category.

16. Thirdly, the complainants point out that the International Civil Service Commission endorsed a new methodology that applied the "cost-to-the-employer" formula. Though that is true, the change was inapplicable to the impugned revisions because it did not take effect until 1 July 1993, after the date of the mini-survey and the effective dates of the revisions. It would have become applicable to the next comprehensive survey which, as the defendant observes in its reply, should have been conducted in 1994 but was delayed by the Local Committee until 1995. The provision that applied to Revisions 35 and 36 was Part II.C.8.1 of the same Manual:

"Non-cash quantifiable benefits should normally be converted into monetary terms on the basis of their market value ... rather than cost to the employer."

That text covered mini-surveys, and, according to paragraph 4 of Appendix IX to the Manual, "non-cash" benefits included housing provided free of charge or at reduced rental.

17. The conclusion is that the decision not to adopt the "cost-to-the-employer" formula shows no flaw.

18. As to the comparison of salary rates the Manual contains the following provisions:

Part V.I.A.5:

"Up-to-date salary data are collected for the pre-determined comparison points ..."

Part V.II.C.3:

"The minimum salary rates retained at the time of the last comprehensive survey would need to be updated for the relevant employers and jobs. The analysis will normally be based on minimum salaries only; determination of the adjustment to maximum salaries will not generally be necessary."

19. The Local Committee's two reports did not show that comparator employers had officially changed their established salary scales. The WHO was therefore right to keep to the predetermined points of comparison instead of adopting the new "hiring rates". Any change in the methodology was a matter for the next comprehensive survey.

"Across-the-board" increases

20. The complainants contend that by granting "across-the-board" increases to all members of the General Service category of staff the WHO "created a situation with dangerous portents of bringing in data at the time of the next comprehensive survey which might result in very heavy negative indexation for the lower categories".

21. According to both the methodology and the Manual uniformity of increases was the norm. Paragraph 72(c) of the methodology reads:

"The movement of outside salaries should normally be expressed as a single percentage which would not affect intergrade and step relativities."

and Part V.II.D.1 of the Manual:

"In arriving at the revised scale, resulting from interim adjustment procedure, an across-the-board percentage increase should normally be applied to the existing scale. By applying a single percentage increase at all grades, the general structure of the salary scale remains intact ... An exception to the above norm could be considered if major changes have occurred in the structure of comparators' scales and if disregarding such changes would cause difficulty at the time of the next comprehensive survey."

22. The need to consider making "staggered increases" seems to have arisen because the Local Committee assumed that salaries had risen much more for management staff than at lower levels. That increase appears, however, to have been almost wholly due to the application by the Committee of the new methods of reckoning housing benefits and comparing salaries.

23. The complainants having thus failed to show any significant changes either in the salary scales of comparator employers or in their practice as to housing benefits, no exception to the norm of uniform increase is justified.

Staff participation

24. The complainants allege that the WHO violated the methodology, the Manual and the Staff Regulations by "unilaterally and drastically" reducing the increases recommended by the Local Committee and by implementing the revisions determined at headquarters without reporting back to the "designated agency" or to the Committee.

25. Article VIII of the Staff Regulations requires the Director-General to make provision "for staff participation in the discussion of policies relating to staff questions", and the Manual provides that the Local Committee "is the forum for staff-management and inter-agency consultations during the salary survey process".

26. The Tribunal held in Judgment 1279 (*in re* Almazán-Aguirre and others), which the complainants have cited, that the "requirement of Article VIII would ordinarily be met by staff participation in the work of the

Local Salary Survey Committee", but that in that case there had been breach of it in the failure to consult the Local Committee before discarding two comparator employers it had chosen and replacing them with two others. In the present case the WHO did not in carrying out its review introduce any new element of which the Committee had been unaware. Since it held to the methods and principles consistently applied in and after the 1990 comprehensive survey, the circumstances called for no further consultation. Nor is there any provision in the methodology or the Manual which requires the responsible agency to refer the changes made back to the designated agency or to the Committee; on the contrary, the Manual expressly provides in Part IV.F.3.5:

"In completing its review, the responsible agency may introduce modifications to the survey results which it considers justified."

The costs of internal appeal hearings

27. Staff Rule 1230.7 entitles a complainant to the reimbursement of the expenses incurred by his representative for the purpose of attending hearings before the headquarters Board of Appeal only if that Board so recommends. In this case it made no such recommendation, and the complainants' claim to costs fails.

Other claims

28. The complainants ask the Tribunal to join with the present complaints an internal appeal that staff of SEARO have lodged with the regional Board of Appeal relating to Revisions 37 and 38, which took effect from 1 November 1993, and to direct the responsible United Nations agencies to stop the use of a draft Manual prepared to reflect the changes in the methodology which the International Civil Service Commission decided upon in 1993.

29. The complainants have failed to exhaust their internal remedies in pursuing those claims, which are therefore irreceivable under Article VII(1) of the Tribunal's Statute.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

William Douglas
Michel Gentot
Mark Fernando
A.B. Gardner