

**EIGHTY-FOURTH SESSION**

***In re Salahuddin***

**Judgment 1683**

**The Administrative Tribunal,**

**Considering the complaint filed by Mr. Mohammad Salahuddin against the Food and Agriculture Organization of the United Nations (FAO) on 16 November 1996 and corrected on 12 December 1996, the FAO's reply of 24 March 1997, the complainant's rejoinder of 1 May and the Organization's surrejoinder of 6 August 1997;**

**Considering Article II, paragraph 5, of the Statute of the Tribunal;**

**Having examined the written submissions and disallowed the complainant's application for the hearing of a witness;**

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

**A. The complainant, a citizen of Bangladesh who was born in 1942, joined the staff of the FAO in 1981. At the material time he held a fixed-term appointment as an administrative assistant at grade G.7A at Dhaka.**

**Under a collective insurance contract the staff of the FAO have sickness and accident insurance coverage with a company of brokers known as Van Breda. On 4 May 1993 the complainant put in a claim to the repayment of medical expenses for the treatment of his wife from 16 to 30 April 1993 in the General Farabi Hospital in Dhaka. The total came to 58,495 takas, or 1,480 United States dollars. On 17 June 1993 he was paid 1,350.54 dollars.**

**From 6 to 10 August 1994 Van Breda carried out an inquiry in Dhaka into the complainant's medical expenses. By a letter dated 28 September 1994 the officer in charge of the social security group of the Personnel Division accused the complainant of submitting false bills on 4 May 1993, told him that he intended to recommend dismissal for unsatisfactory conduct, and gave him five working days in which to comment. By another letter of the same day the Director of the Personnel Division forwarded to him the letter of the officer in charge and approved the proposal. By a letter of 7 October 1994 the complainant rejected the accusations, supplied an attestation from Dr. Moinul Hoque, the doctor who he said had treated his wife at the hospital, and asked the Administration to get in touch with that doctor. By a letter of 28 October the Assistant Director-General in charge of the Administration and Finance Department told the complainant that the charges warranted dismissal for unsatisfactory conduct, but because his fixed-term appointment was to expire anyway at 31 October the decision had been taken not to renew it.**

**On 5 January 1995 the manager of Van Breda stated in writing that in an inquiry which he had himself conducted the head of Farabi had confirmed that the bill for hospital treatment of "Mrs. Begum Sullaiman" was "false". On 4 January 1996 an employee of Van Breda corrected that statement by saying that "Begum Sullaiman" should read "Sultana Begum".**

**Meanwhile the complainant had appealed against the decision not to renew his contract in a letter dated 10 November 1994 to the Director-General. The Assistant Director-General in charge of administration and finance dismissed his appeal on 19 July 1995 and he went to the Appeals Committee on 15 August 1995. In its report of 17 May 1996 the Committee recommended allowing the appeal, granting Mr. Salahuddin compensation and carrying out an inquiry in Dhaka and at headquarters to determine who was to blame for "such reprehensible incompetence". The Committee also drew the Director-General's attention "to the financial cost to the Organization for a so lamentably conducted case". By a letter of 7 October 1996 the Director-General dismissed the appeal, and that is the decision under challenge.**

**B. The complainant contends that the sum of which he claimed the refund was indeed made over to Farabi. He says that there was confusion over the name of his wife and that neither Van Breda nor the FAO made any attempt to get in touch with the doctor who had treated her. He adds that he was not questioned in the course of the inquiry and no one ever showed him the material evidence.**

**He objects to flaws in the procedure that the Organization followed. He says that the time limit of five days which he was given to answer the charges applied only to headquarters staff. Since the two letters dated 28 September 1994 were not made over to him until 4 October, he had only "24 days notice instead of 31". He submits that the Organization took a whole year after his departure to pay his terminal entitlements and pension and that it has withheld the sum of 1,457.97 dollars paid by Van Breda against the costs of medical treatment of his daughter in 1993.**

**Lastly, he contends that the FAO's representative in Dhaka and the administrative officer had been harassing him since 1991. He accuses them of holding up one transfer, objecting to a second one, doing their utmost to involve him in a case of fraud over sickness insurance, giving instructions to hold up the arrangements for termination and compelling him to work, under pain of refusal of his pension entitlements, until the end of the project he was working on, i.e. up to 6 July 1995.**

**He asks the Tribunal to order the FAO to grant him "a quick and proper compensation", pay him for the work he did after the official date of termination, repay the sum of 1,457.97 dollars remitted by Van Breda, and pay him back the 1,350.54 dollars docked from his terminal entitlements. He claims damages for the blocking of his pension entitlements for a whole year and the grant of an appointment in the office of the FAO's representative in Dhaka.**

**C. In its reply the Organization says that the attempted fraud is proved. The head of Farabi has confirmed that "Mrs. Begum Sultana, the wife of Mr. Mohammad Salahuddin" was not treated there from 16 to 30 April 1993 and that Dr. L.A. Begum, who signed the "discharge certificate", never worked for the hospital. The Organization adds that Dr. Hoque's name was not mentioned until 5 October 1994, two months after the inquiry, and that Van Breda saw no point in getting in touch with him. There being two inconsistent statements, the Organization gave preference to the one by the head of the hospital, who described the documents produced in support of the claim to repayment as "totally false".**

**The defendant says that the muddle over the name of the complainant's wife occurred only in the statement by the manager of Van Breda after the inquiry was over and that the statement was corrected. The mistake had no effect on the outcome of the inquiry or on the statements by the head of the hospital, who gives the right name. The complainant's argument on that score is irrelevant.**

**The FAO further contends that the complainant's accusations of harassment are not borne out by any evidence. It rejects his contention that he had to go on working after the date of termination. It maintains that it did not act tardily in processing his pension. It observes that the Manual draws no distinction between headquarters staff and others as to the time limit of five days for answering a disciplinary charge. Lastly, it says that Van Breda decided, because there had been other fraudulent claims from the complainant to reimbursement, to suspend all payments to him. That is why, at the FAO's request, the cheque for 1,457.97 dollars which Van Breda had sent to the FAO for transmittal to the complainant was returned to them. Citing the Manual, the Organization invites the complainant to sort out the matter of his claims with Van Breda.**

**D. In his rejoinder the complainant says that Van Breda made a mistake over the name of his wife in its inquiry. Besides, the Appeals Committee pointed out that the inquiry was superficial. He says that the statements by the head of the hospital are suspect. He repeats his allegations of harassment and of being forced to work and says that headquarters took too long to put through his internal appeal. He accuses the FAO and Van Breda of seeking to harm his good name.**

**E. In its surrejoinder the Organization presses its pleas. It says that it was in no position to block the payment of the complainant's pension since it is the United Nations Joint Staff Pension Fund that makes payment.**

## **CONSIDERATIONS**

1. The complainant joined the staff of the FAO on 1 September 1981. He served under several fixed-term contracts as an administrative assistant. The last of them was to expire at 31 October 1994, and on the grounds of misconduct the FAO decided not to extend it beyond that date. Van Breda, the insurance brokers, had carried out an inquiry in August 1994 and the Organization believed that he had trumped up certificates in support of his claim to repayment of the costs of treating his wife in hospital. He went to the Appeals Committee, and it recommended allowing his claim. The project he had been working on was over; so the Committee did not recommend reinstating him. But it did take the view that he should have "quick and proper compensation" and should in any event be paid for the work he had done up to the end of the project. The Committee had had things to say of the Organization's handling of his case, which it described as "lamentably conducted": the inquiry had been flawed, his guilt was not proved, and the rules on the legal relationship between the staff and Van Breda were unclear.

2. The Director-General rejected the Committee's recommendation and so informed the complainant in a letter of 7 October 1996. According to an affidavit - he observed - from the head of the hospital where his wife had supposedly been treated, she had not been in the hospital at all at the time, and so his claim was fraudulent; though such serious misconduct would have warranted disciplinary proceedings, the upshot was that he would not have his appointment extended. That is the decision he is impugning and his complaint is receivable.

3. He wants the Tribunal to set aside the decision not to renew his appointment. He claims an award of damages; pay for the services he rendered from 1 November 1994 until 5 July 1995; payment of the 1,480 United States dollars remitted by Van Breda but deducted from his terminal entitlements, an amount he lowers to \$1,350.54 in his rejoinder; and payment of the \$1,457.97, for which Van Breda issued a cheque that the FAO returned to the company, to meet costs that are not at issue; compensation for delay in determining his pension entitlements; and reinstatement.

4. He first pleads a formal flaw. On 4 October 1994 he got a letter from the Organization announcing disciplinary proceedings and giving him five working days in which to comment. He submits that the five-day time limit in Manual paragraph 330.325 does not apply to field staff. But he offers not a single argument in support: the paragraph he cites is a general one and in any event the disciplinary proceedings were dropped. Besides, his allegations are mistaken: the charges against him were plain and he was duly given the opportunity of answering them.

5. He contends that the decision not to renew his appointment is unlawful and rests on mistakes of fact. The thrust of his case is that neither the enquiry that Van Breda commissioned nor the affidavits from the hospital where he says his wife was treated are to be credited.

6. On 4 May 1993 he claimed the refund of 58,495 takas against an invoice purporting to cover the cost of treating his wife from 16 to 30 April 1993 in a hospital in Dhaka known as Farabi General. The invoice gave his wife's name as Mrs. Sultana Begum. A certificate bearing the letterhead of the hospital and the name of the consultant, Dr. L.A. Begum, stated that she had been discharged on 30 April. But statements by senior officers of the hospital and later written affidavits from the head of the hospital and from his wife declared the invoice and the discharge certificate to be forgeries: the hospital had no record of the admission of Mrs. Sultana Begum and had never engaged anyone by the name of Dr. L.A. Begum. One of the two investigators appointed by Van Breda said in a statement dated 5 January 1995 that according to the head of the hospital the invoice for 58,495 takas which "related to the admission on April 16, 1993 of Mrs. Begum SULLAIMAN ... was false". A statement signed on 4 January 1996 by the other investigator said that the invoice, which Van Breda regarded as forged, had been made out in the name of Mrs. Sultana Begum, not Mrs. Begum Sullaiman.

The complainant takes umbrage at the muddle over names. It does indeed, as the Appeals Committee held, show that the investigation was somewhat careless. Yet it does not seem to discredit the findings. The evidence is that the disputed bill and hospital discharge certificate did give the name as Mrs. Sultana Begum. The affidavit from the head of the hospital said that the falsified documents concerned "Mrs. Begum Sultana, wife of Mr Mohammad Salahuddin", and it was only in the statement dated 5 January 1995 from Van Breda that the name "Mrs. Begum Sullaiman" first appeared. It was later corrected. In fact the mistake is understandable since Van Breda's accounts call the complainant's wife, for whom it had made many payments, "Sullaiman Begum" even though the same person was intended. Again, the great delay in making

the corrective statement of 4 January 1996 neither casts doubt on its genuineness nor makes it invalid.

The complainant's main item of evidence is a certificate signed by a Dr. Moinul Hoque on 5 October 1994 who was serving in the hospital at the time and who says that Mrs. Sultana Begum was admitted to Farabi on 16 April 1993 for an operation and discharged on the 30th. It is odd that Dr. Hoque, who had since left the hospital, was neither interviewed nor even asked to give confirmation or further information. Obviously the enquiry was not as careful as it should have been. But the Tribunal is satisfied that nothing in the complainant's own statements or in the evidence before it disproves what the hospital told the investigators sent by Van Breda. The decision to renew an appointment is discretionary and the Tribunal will interfere only if there was some such flaw as a mistake of fact or of law or misuse of authority. Despite some inconsistencies and errors of detail it is not proved that the Organization got the material facts wrong, and the Director-General properly exercised his discretion by relying on them. In support of the plea of misuse of authority the complainant alleges that two local officials were hostile and mounted a whole "conspiracy" against him. His charge is not borne out by the evidence.

7. He maintains that he was "forced" to go on working, from 1 November 1994 to 6 July 1995, even after the Organization had given him notice of non-renewal. The decision was taken on 28 October 1994 and he does not allege lack of due notice. The coordinator of the project has provided an attestation saying that he "never appointed" the complainant to do any work after 1 November 1994. The only evidence he adduces in rebuttal is statements in identical language by his son, who acted from time to time as his secretary, and by a part-time driver. So in any event there is no question of accepting his contention that by forcing him to go on working the Organization implicitly renewed his contract.

8. As for his claims to reimbursement, his dispute is with Van Breda. The company was quite warranted in stopping payment in view of the inconsistencies and mistakes in medical certificates and chemists' bills which he had submitted in support of other claims. He objects to the FAO's returning to Van Breda a cheque for \$1,457.97. Though that sum does appear to match actual expenses that is a distinct issue to be settled between him and Van Breda.

9. On 15 May 1995 the complainant sent the United Nations Joint Staff Pension Fund in New York an inquiry about his pension entitlements. The Fund forwarded it to the FAO in a letter which the Organization got on 21 July 1995. He accuses it of bad faith in dealing with that inquiry. But the Tribunal is satisfied on the evidence before it, including the texts of correspondence that the defendant cites in its reply, that the charge is unfounded.

10. The conclusion is that the complainant's case fails in its entirety. He is entitled neither to the quashing of the impugned decision, nor to any award of damages, nor to reinstatement.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

*(Signed)*

Michel Gentot  
Julio Barberis  
Seydou Ba

A.B. Gardner

