

EIGHTY-SEVENTH SESSION

In re Rai

Judgment 1876

The Administrative Tribunal,

Considering the complaint filed by Mr Ram Lakhpat Rai against the World Health Organization (WHO) on 25 May 1998 and corrected on 1 July, the WHO's reply of 2 November, the complainant's rejoinder of 30 December 1998 and the Organization's surrejoinder of 7 April 1999;

Considering the applications to intervene filed by Mr Jogindar Singh Battra and Mr Devendra Nath Sethi;

Considering Articles II, paragraph 5 and 6, and VII 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 citizen who was born in 1932, joined the staff of the WHO's Regional Office for South-East Asia (SEARO), in New Delhi in 1959 at grade ND.4. He retired on 1 April 1992 at grade ND.8 and remained a participant in the WHO Staff Health Insurance scheme.

Rule 520 of the Staff Health Insurance Rules requires that:

"In each region the regional director establishes a surveillance committee of similar composition to that at headquarters, and representative of administration, staff and retired staff ... The regional budget and finance officer acting as regional insurance officer serves as secretary of the committee."

Rule 500 of the same Rules provides in part that:

"The Surveillance Committee is composed of ... a member and an alternate member designated by the retired staff members ... The term of office of each member and alternate is two years."

As from 1992 the two retiree representatives on the Regional Surveillance Committee had been nominated by the President of the United Nations Pensioners' Association (UNPA) in India, each time for a two-year period. The complainant was President of that Association in 1996. In a letter of 5 February 1996 to the insurance officer of the Health Insurance scheme he nominated himself and another retiree as representatives on the Committee for 1996-97. As secretary of the Committee, the insurance officer bypassed those nominations and reappointed the two retirees who had been representatives on the Committee up to 1995.

During an exchange of correspondence with SEARO the complainant asked the Regional Director how SEARO intended arranging WHO retiree representation on the Committee for 1998-99. Writing on his behalf the Director of Administration and Finance told him in a letter of 4 September 1997 that the Regional Office would "be communicating directly with retirees" to obtain nominations. In a reply of 3 October 1997 the complainant suggested that SEARO should adopt the procedure used to elect representatives to the WHO Staff Pension Committee. On 20 October 1997 the secretary of the Regional Surveillance Committee sent out a memorandum to all retired staff members in the region asking for nominations of a member and alternate member for 1998-99. It said retirees were free to propose the names of any retired WHO official. It is the nomination procedure described in that memorandum that is under challenge.

On 3 November 1997 the complainant notified the regional Board of Appeal of his intention to appeal against the memorandum. Having received no request from the Board to submit his formal appeal he wrote to the Director-General on 9 February. The Regional Director replied to him on 18 February on the Director-General's behalf attaching a report of the regional Board of Appeal dated 20 January 1998 holding that his appeal was not receivable as he was no longer a staff member. The Regional Director nevertheless said he was asking the Board to contact the complainant for his completed appeal documentation. In a fax of 16 March 1998 the complainant asked the Regional Director to waive appeal to the headquarters Board and allow him to go directly to the Tribunal. He

refused in a reply of 25 March. By a letter of 21 May the secretary of the regional Board of Appeal asked him to file a full statement of appeal within fifteen days. On 25 May he filed his complaint with the Tribunal.

B. The complainant pleads that the procedure adopted for nominating representatives of retired officials to the Surveillance Committee for 1998-99 was "faulty and subjective". The secretary had no authority to conduct the election of the representatives. Rule 520 of the Staff Health Insurance Rules, which defines the responsibilities of the Committee and thereby the mandate of the secretary as well, makes no provision for him to do so. The procedure was flawed because the names of the two previous representatives appeared in the opening sentence of the memorandum of 20 October 1997 calling for nominations: that was tantamount to a recommendation to nominate them. The retirees so elected to the Committee should be removed and a new election held for 1998-99. The Association of Former WHO Staff Members in South-East Asia was established in 1995 and the complainant was elected president. SEARO, he says, should offer "basic facilities" to the Association so that it can carry out the task of nominating the representatives of the Surveillance Committee.

He contends that the internal appeal proceedings were flawed too. The secretary of the regional Board of Appeal did not apply the Rules of Procedure correctly or "guide" the proceedings properly. He misled the complainant and let the matter drag on. He was not impartial. There was connivance between him and the secretary of the Surveillance Committee. The Board was "unconstitutionally constituted" and submitted its recommendation to the Regional Director without "any input" from the complainant. There was no "express decision" in the Regional Director's letter of 18 February 1998 and as the matter was pending the complainant lodged his complaint with the Tribunal.

The secretary was wrong not to heed his suggestion, put to the Regional Office on 3 October 1997, to follow a "duly established, universally accepted and adopted democratic procedure" by electing representatives of retirees in the same way as representatives of participants in the Pension Fund are elected to the WHO Staff Pension Committee.

He points out that he made attempts to resolve the whole matter through discussion with the Administration, and had asked unavailingly for a meeting with the Regional Director. A meeting he had with the Director of Administration and Finance on 27 April 1998 resolved nothing as the Director only defended the standpoint of the Organization on the issue.

The complainant seeks the setting aside of the nomination procedure given in the memorandum of 20 October 1997 and the quashing of the illegal nominations. He calls on the Tribunal to "direct" the Organization to ask for nominations for the Committee for 1998-99 either "as per the procedure already adopted at WHO/[headquarters] from the WHO retirees association" or "as per the established procedure followed for the election of participants' representatives for WHO Staff Pension Committee". He requests the Tribunal to ask the Organization to "issue suitable instructions for strict adherence to the rules ... and established procedures which include the internal recourse process". He claims 25,000 United States dollars in damages for moral injury and 2,500 dollars in costs.

C. The Organization claims that the complaint is irreceivable under Article VII of the Tribunal's Statute for failure to exhaust the internal means of redress open to the complainant. He "ignored" the request of 21 May 1998 from the secretary of the regional Board to file a full statement of appeal. There is no "final" decision to appeal against to the Tribunal. In challenging a memorandum of 20 October 1997 his complaint is also out of time.

Furthermore the complainant is not challenging an administrative action or decision constituting breach of the terms of his former contract which is appealable under the Staff Regulations or Rules. Neither is he challenging a decision taken by the Surveillance Committee about the settlement of a claim which affects him as an individual and would infringe the Staff Health Insurance Rules. He is challenging an election procedure in order to safeguard "the interests of the present and future retirees of WHO in South East Asia". As no appeal involving collective interests lies to him under those Rules the memorandum setting out the procedure was not a challengeable decision.

His complaint is also devoid of merit. That memorandum contained no recommendation to nominate the two representatives mentioned, so the procedure was not flawed. The Organization chose a "fair and democratic" process. The choice of representative lay with the retirees: the secretary had no vote.

Retirees are not members of the WHO Staff Pension Committee, so its election procedure is irrelevant. The Staff Health Insurance Rules do not lay down a procedure for appointing representatives of retirees to the Surveillance

Committee. No association the defendant knew of could have conducted the election as none represented a significant number of WHO retirees. It breached no rule in 1995 in turning down the complainant's request for facilities for the new Association of Former WHO Staff Members and the complainant did not challenge that decision at the time.

The Organization rejects the complainant's plea that the secretary of the regional Board of Appeal misinformed him: in any case his allegations are unsubstantiated and irrelevant.

It refutes the complainant's suggestion that it acted improperly by not resolving the whole matter amicably: it did conduct lengthy correspondence with him. The Director of Administration and Finance also met him twice, but on those occasions the complainant maintained his request to be nominated and replace a current member of the Committee.

D. In his rejoinder the complainant enlarges on his pleas. He contends that his complaint is receivable. Being a retiree he filed it under Article II, paragraph 6(a) of the Tribunal's Statute. What he is challenging is an administrative action taken by the secretary of the Surveillance Committee: his issuing the challenged memorandum of 20 October 1997 was gross misuse of authority. At issue are his own rights, but in filing his complaint he is acting in the "collective interests of present and future retirees", and as the representative of the retirees.

It was up to the UNPA to nominate retiree representatives: a formal agreement existed between the SEARO Administration and the Association for it to do so, and had existed since before 1990 when SEARO asked the president of UNPA to designate an observer to the Surveillance Committee. There was connivance between the Organization and "unscrupulous individuals" in the nomination process, and connivance later on between the secretaries of the Surveillance Committee and the Board of Appeal.

He rebuts the suggestion in the Organization's reply that he asked the Director of Administration and Finance to support his nomination to the Surveillance Committee. It was "mischievous" of the Organization to suggest that he did. The allegation was an attempt to malign him and harmed his reputation and he therefore claims an additional 25,000 dollars in damages for moral injury. He also requests the Tribunal to ask the Organization to produce documents previously requested by him, including copies of correspondence exchanged between SEARO and UNPA between 1990 and 1995.

E. In its surrejoinder the Organization points out that as the complainant is challenging the memorandum of 20 October 1997 the sole issue turns on whether, in issuing it, the Organization infringed the Staff Regulations, Staff Rules or Staff Health Insurance Rules. It asserts that it did not.

The WHO contests the collective nature of his complaint: inasmuch as the complainant filed it on behalf of WHO retirees it is irreceivable. The additional claim for damages put forward in the rejoinder is also irreceivable.

The issuing of the memorandum of 20 October 1997, the defendant maintains, was not illegal. First, the terms of Staff Health Insurance Rule 500 do not require that the designation of retirees should be conducted through an association, let alone through any particular association, nor does that Rule make any particular provision for their election. Secondly, the UNPA includes retired officials from other organisations: consultation in the nomination process between its president and WHO retirees had simply been a way of ensuring that the wishes of the latter were taken into consideration. The memorandum at issue allowed the consultation process to be formalised. Thirdly, the defendant reiterates that it was not aware of a separate WHO association in the region that had "come effectively into operation", had been endorsed by a "fair number" of WHO retirees and so could have designated the retirees. The complainant has adduced no evidence that such an association existed before 20 October 1997.

Before circulating the memorandum the SEARO insurance officer did enquire about nomination procedures in headquarters and at various regional offices.

The Organization further denies that a formal arrangement ever existed between SEARO and the UNPA, vesting in the president of UNPA the authority to designate retiree representatives to the Surveillance Committee. By not giving effect to the complainant's nomination of himself, in his capacity as president of UNPA, there was no infringement of a formal arrangement, as none existed.

CONSIDERATIONS

1. Since 1990 the Staff Health Insurance Rules have allowed representatives of retired staff members to become members of the Staff Health Insurance Surveillance Committees both at headquarters and in the regions. The Rules provide for representation by one retired member and one retired alternate member. The complainant is a former staff member of the WHO's Regional Office for South-East Asia (SEARO) who retired on 1 April 1992 and was the president of the United Nations Pensioners' Association in 1996. In February of that year he nominated himself as a retired member of the Surveillance Committee for the South-East Asia Region for 1996-97. The complainant also became president of an association established in December 1995 called the Association of Former WHO Staff Members in South-East Asia; he informed the insurance officer in a letter of 14 March 1996 that, in future, nominations for the Surveillance Committee would be made by that Association. However, on the basis of proposals from 60 per cent of WHO retirees stationed in Delhi the insurance officer accepted the nomination of the existing member and alternate member to continue representing the retirees for the years 1996-97. The complainant was so informed on 19 June 1996.
2. Protracted correspondence followed including a letter of 3 October 1997 from the complainant in which he took note that the Regional Office would communicate directly with the retirees to obtain nominations for WHO retiree representatives to the Regional Surveillance Committee for 1998-99. On 20 October 1997 the secretary of the Surveillance Committee sent out a memorandum to all retired staff members in the region inviting them to nominate two persons and enclosing a ballot paper. The results of the ballot were sixty-two votes in favour of the outgoing member, fifty-five votes in favour of the outgoing alternative member and four votes for the complainant.
3. On 3 November 1997 the complainant filed notice of his intention to appeal to the regional Board. He identified the contested administrative decision as the memorandum of 20 October 1997.
4. On 20 January 1998 the Board, without hearing the complainant, recommended to the Regional Director that the appeal be dismissed as irreceivable because the complainant had ceased to be a staff member. However, that recommendation was rejected by the Regional Director, who remitted the matter to the Board asking it to obtain complete documentation and issue a new report. In a letter of 18 February 1998 the Regional Director so informed the complainant.
5. On 16 March 1998 the complainant wrote to the Regional Director criticising the secretary of the Board and asking for his removal. On the same day he wrote to say that the instructions to the Board to proceed further would "go against the spirit of the established rules and would therefore be bad in law". As the Director-General had not responded to his request for waiver of the internal proceedings with the headquarters Board of Appeal he asked the Regional Director to do so and allow him to file a complaint directly with the Tribunal. He also suggested a personal meeting to settle the matter out of court.
6. In a letter of 25 March 1998, the Regional Director declined to agree to his request for waiver. He suggested the complainant could arrange a meeting with the Director of Administration and Finance with a view to settling the matter.
7. On 27 April 1998 the complainant duly contacted the Director of Administration and Finance, who arranged a meeting for the same day, but this meeting did not result in settlement.
8. The complainant wrote to the Regional Director on 28 April 1998 stating that given his discouraging treatment he proposed filing a complaint immediately with the Tribunal. The regional Board of Appeal replied by a letter of 21 May 1998 requesting the complainant to file a statement of appeal within fifteen working days after 25 May 1998.
9. On 25 May 1998 the complainant filed his complaint under Article VII(3) of the Statute of the Tribunal. Under item 3 of the complaint form where the challenged decision is identified, he specifies the date on which he notified his claim as 3 November 1997, the date on which he sent notification of his intention to appeal to the regional Board of Appeal.
10. On 26 May he informed the Regional Director that he had proceeded as he had proposed in his letter of 28 April 1998 and had already filed a complaint directly with the Tribunal. The letter of 21 May 1998 from the regional Board of Appeal was consequently irrelevant and he was ignoring it.
11. The relief sought by the complainant is as follows:

- "1. To set aside the procedure contained in the memorandum dated 20 October, 1997 to WHO retirees in the South-East Asia region.
2. To declare nominations of individuals resulting from the application of illegal procedure and conducted by an unauthorized person as null and void and their removal from the Regional Surveillance Committee forthwith.
3. To direct the Organization to seek nominations of WHO retirees representatives on WHO [Staff Health Insurance South-East Asia] Regional Surveillance Committee for the years 1998/99: (a) as per the procedure already adopted at WHO [headquarters] from the WHO retirees association, (b) alternatively conduct the elections for 1998-1999 as per the established procedure followed for the election of participants' representatives for WHO Staff Pension Committee as suggested by the complainant in his letter of 3 October 1997 addressed to the Director [Administration and Finance].
4. To ask the Organization to issue suitable instructions for strict adherence to the rules and relevant provisions and established procedures which include the internal recourse process.
5. The complainant be paid damages for humiliation, continued mental and physical stress to the tune of US\$25,000.
6. The complainant be also paid administrative costs of US\$2,500."

In addition, in his rejoinder he asks for an additional 25,000 dollars in damages for moral injury and the production of certain documents by the Organization.

12. In challenging the validity of the memorandum of 20 October 1997 the complainant contends that:

- (1) The Organization ought to have sought nominations from the "legally constituted UNPA and the Association [of former WHO Staff Members in South East Asia]".
- (2) Members should have been designated in the same manner as at headquarters.
- (3) The authority for the establishment of the Surveillance Committee rested with the Regional Director; the secretary of the Surveillance Committee was not empowered to conduct elections.
- (4) The memorandum demonstrated personal prejudice in that it contained the names of the outgoing member and alternate member, thereby impliedly recommending them for nomination.
- (5) The manner in which the ballots were opened was illegal.

He also challenged the validity of the designation of the retirees' representatives throughout the years 1990-97.

13. It is the opinion of the Tribunal that the Staff Health Insurance Rules do not require the designation of retirees' representatives to be carried out by an association. They make no provision for the manner in which such representatives should be chosen and in particular they do not specify that it should be done in the same way as at headquarters. The authority to establish the Surveillance Committee rests with the Regional Director. The secretary of the Committee issued the memorandum of 20 October 1997 following the Regional Director's of 4 September 1997 to contact retirees individually with a view to selecting their representatives. The secretary did not therefore act without authority. In any event the complainant, by his letter of 3 October 1997, acknowledged the decision to communicate directly with the retirees. There is no credible evidence that the memorandum demonstrated personal prejudice.

14. The ballot papers were opened and counted in the presence of the Director of Administration and Finance, the secretary of the Surveillance Committee, a member of the committee representing serving staff and an administrative assistant of the Staff Health Insurance scheme. On scrutiny of 102 ballot papers received, 17 were declared invalid. The balance of 85 ballot papers was counted and a record was made of every vote. The complainant's allegation that the manner in which the ballot papers were opened was illegal cannot be sustained.

15. The complainant's view that the procedure for designating representatives of retirees to the Surveillance Committee should be different is irrelevant as there has been no breach of the Insurance Rules. There was no personal prejudice on the part of the secretary of the Committee. Therefore the complainant is not entitled to succeed on the substantive issue in this complaint. With regard to the flaws alleged in the internal appeals procedure, the complainant has not suffered prejudice since his right to abandon his internal appeal and come directly to the Tribunal has been upheld. As he has not succeeded in his complaint any delay involved has not

caused him prejudice.

16. Since the complaint fails on the merits there is no need to consider its receivability.

17. Two applications to intervene in this complaint have been received from Mr Jogindar Singh Battra and Mr Devendra Nath Sethi. Since neither of them has shown that they are in the same position in fact and in law as the complainant, apart from being retirees of SEARO, their application to intervene is refused.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 May 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr Mark Fernando, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Michel Gentot
Mella Carroll
Mark Fernando

Catherine Comtet