

## EIGHTY-EIGHTH SESSION

### *In re Ochani* (No. 6)

#### Judgment 1942

The Administrative Tribunal,

Considering the sixth complaint filed by Mr Parmanand Sachanand Ochani against the World Health Organization (WHO) on 11 June 1998, the WHO's reply of 21 September, the complainant's rejoinder of 20 November 1998 and the Organization's surrejoinder of 17 February 1999;

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 neither party has applied for;

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

A. Details of events forming the background to this case are to be found in Judgments 1856, 1857 and 1858 on the complainant's second, third and fourth complaints.

The complainant is a former staff member of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi. His service was terminated on 5 August 1996.

The complainant was on sick leave from 9 April to 26 May 1996. On 9 April SEARO had a letter delivered by messenger to his home asking him to explain in a letter, by 19 April, why there were discrepancies on two receipts he had submitted relating to his son's dental treatment that he wanted reimbursed. While he was in a clinic, the regional staff physician and staff nurse made attempts to contact the complainant by phone.

The complainant wrote to the Regional Personnel Officer on 11 June 1996 complaining of the way he had been "harassed", and holding him responsible. Having received no response, on 12 September 1996 the complainant wrote to him again, claiming compensation for the "biased actions" taken against him while he was on sick leave, and which had affected his health. In the absence of a reply he appealed to the regional Board of Appeal on 5 February 1997. In its report of 12 September 1997 the Board concluded that his appeal was irreceivable as it had not been filed within the applicable time limit and he had not challenged any final decision taken by the Administration. The Regional Director informed the complainant of this on 30 September 1997 and dismissed his appeal. On 17 November the complainant filed an appeal with the headquarters Board of Appeal which, on 12 May 1998, also recommended rejecting it. The Director-General endorsed that recommendation on 5 June 1998, which is the decision the complainant now impugns.

B. The complainant submits that the Administration kept on "hounding" him from the first day of his sick leave first at home, and then in the nursing home to which he was admitted. Inquisitive and demanding telephone calls were made to him or his attending doctors by the regional staff physician and the staff nurse, which he assumes were prompted by the Regional Personnel Officer. He recorded some calls from the staff nurse on cassette and forwarded copies to the regional Board of Appeal. On 15 April 1996 he even received a written notification from one of the doctors in the clinic telling him that the SEARO medical services wished to contact him. During his leave and up until he was dismissed he suffered "relentless and merciless harassment", which took its toll, severely affecting his health. He refers to the 'personal animosity' of the Regional Personnel Officer towards him.

He seeks compensation of 1,000,000 United States dollars "for suffering irretrievable damage to his physiological system". In view of the permanent injury caused to him he asks for reassessment of his pension rights in line with the provisions on "Compensation Payments" in the WHO Manual. He also claims \$10,000 in costs.

**C. In its reply the Organization contends that the complaint is irreceivable as it does not challenge any administrative decision that affected the complainant's past appointment status or breached the Staff Regulations or Rules. The complainant's claim that he was subjected to harassment is vague and unsubstantiated. Moreover, there was little resemblance between the claims the complainant made in his demand of 12 September 1996 to the Regional Personnel Officer and his main pleas in his internal appeal of 5 February 1997. In his letter of 12 September he chiefly sought the imposition of disciplinary measures and a personal penalty on the Regional Personnel Officer, whereas his internal appeal centred on allegations of harassment on the part of the regional staff physician and staff nurse while he was on sick leave, for which he claimed compensation. Therefore, he did not appeal against an implied rejection of his demand of 12 September, but rather filed a new claim - outside the prescribed time limits and six months after he ceased to be a staff member.**

**The Organization justifies the appropriateness of sending the letter of 9 April 1996 by messenger to the complainant's home, and does not see that as harassment. No authorisation had been given for the complainant's absence from duty. The regional staff physician had examined the complainant the previous day and had not advised sick leave or urgent surgery.**

**Even if the complainant alleges that he made recordings of telephone calls by SEARO medical staff to his residence he has provided no such evidence to the Organization. The regional staff physician and staff nurse telephoned him in their official capacity to find out the date of his return to duty. The written notification that one of his doctors sent him on 15 April 1996 was courteous in tone and did not constitute harassment.**

**In view of the frivolous nature of the complaint the Organization asks for an award of nominal costs against the complainant.**

**D. In his rejoinder the complainant argues that he filed his internal appeal within the prescribed time limits, and pleads that his complaint is receivable. He presses his pleas.**

**He holds that there was no deviation between the claims he made in his internal appeal and those he put forward in his initial letter of 12 September 1996. The complainant refers to insinuations made by the Regional Personnel Officer in correspondence addressed to him in May 1996 and is of the view that a personal penalty should be imposed on that official.**

**E. The WHO, in its surrejoinder, maintains its earlier arguments on the irreceivability of the complaint. It points out that the complainant concentrates in his rejoinder on the alleged personal prejudice towards him of the Regional Personnel Officer. It rejects the complainant's claim that a penalty be imposed on that official. His claim is groundless and, being new, is irreceivable.**

## **CONSIDERATIONS**

**1. The complainant entered the service of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi in 1988. He was dismissed for misconduct after having failed to provide a satisfactory explanation as to why he had produced two altered receipts in support of a claim for the reimbursement of his son's dental treatment in the United States. His dismissal took effect on 5 August 1996.**

**2. The complainant asserts that he suffered harassment by officials of the Organization while he was on sick leave between 9 April and 26 May 1996. He says that this harassment caused serious damage to his heart and brain, for which he claims compensation. He assesses the injury suffered at 1,000,000 United States dollars and requests the reassessment of his pension rights, as well as 10,000 dollars in costs.**

**3. On 12 September 1996, the complainant claimed compensation of 1,000,000 dollars from the Organization for the injury suffered. Not having received a reply, he filed an appeal on 5 February 1997 with the regional Board of Appeal. On 12 September 1997, the Board concluded that the appeal was irreceivable. The Regional Director confirmed this decision in a letter to the complainant dated 30 September.**

**On 17 November 1997, the complainant appealed to the headquarters Board of Appeal against the Regional Director's decision. The headquarters Board also concluded on 12 May 1998 that the complainant's claim was irreceivable. This opinion was endorsed by the Director-General on 5 June 1998.**

**4. Once the internal remedies had been exhausted, the complainant came to the Tribunal on 11 June 1998. He seeks 1,000,000 dollars in compensation, the reassessment of his pension rights in view of the permanent nature of the injury suffered, and 10,000 dollars in costs.**

**The defendant rejects the complainant's allegations, considers that the complaint is clearly frivolous and requests the Tribunal to award it nominal costs.**

**5. Taking into account its decision on the merits, the Tribunal will not examine the issue of the receivability of the complaint.**

**6. A general principle of law, set out in the Tribunal's case law on several occasions, has it that for a claim for damages to be entertained, the complainant must provide evidence of the actual injury and of a causal link between the unlawful act and the injury suffered.**

**In the present case, the complainant claims to have been the victim of harassment which he says caused him injury in a sum that he sets at 1,000,000 dollars. However, the complainant confines himself to mere allegations and does not provide any evidence of the truth of his assertions. The results of certain medical examinations are not sufficient to demonstrate that the Organization is responsible for the deterioration of his state of health resulting from any harassment by certain of its officials at SEARO, whose personal responsibility must in any case be excluded.**

**7. The Tribunal holds that, in the circumstances of the case, there are no grounds for allowing the Organization's counterclaim to an award of costs against the complainant.**

## **DECISION**

**For the above reasons,**

**1. The complaint is dismissed.**

**2. The Organization's counterclaim is also dismissed.**

**In witness of this judgment, adopted on 12 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Julio Barberis, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.**

**Delivered in public in Geneva on 3 February 2000.**

***(Signed)***

**Michel Gentot  
Julio Barberis  
Seydou Ba**

**Catherine Comtet**