

EIGHTY-EIGHTH SESSION

In re Ochani (No. 7)

Judgment 1943

The Administrative Tribunal,

Considering the seventh complaint filed by Mr Parmanand Sachanand Ochani against the World Health Organization (WHO) on 27 June 1998, the WHO's reply of 2 October, the complainant's rejoinder of 18 December 1998 and the Organization's surrejoinder of 29 March 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. The complainant, a citizen of India born on 28 September 1937, is a former staff member of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi. His last contract was due to expire on 30 September 1997 on his reaching retirement age, but his service was terminated on 5 August 1996 under circumstances related in Judgment 1856 on his second complaint.

In July 1990 all WHO staff were notified of an amendment to Staff Rule 1020.1. That Rule now reads:

"Staff members shall retire on the last day of the month in which they reach the age of 60. However, staff members who have become participants in the United Nations Joint Staff Pension Fund on or after 1 January 1990 shall retire on the last day of the month in which they reach the age of 62."

The retirement age of 60 was applicable to the complainant as he had been in service from 1988 to 1996. However, on 14 April 1997 he wrote to the Regional Director asking that his notional retirement age be raised to 62 on a par with officials who became participants in the Pension Fund after 1 January 1990. Having received no response he appealed, on 26 August 1997, to the regional Board of Appeal, which concluded in its report of 11 September that his appeal was irreceivable. That was confirmed to him by the Regional Director in a letter of 30 September and he lodged an appeal with the headquarters Board of Appeal on 17 November 1997. In its report of 19 March 1998 the Board found that his appeal was time-barred as he had failed to contest the general decision regarding the retirement age contained in Rule 1020.1 when it was notified to all staff in July 1990. The Director-General notified the rejection of his appeal in a letter of 15 April 1998, which the complainant impugns.

B. The complainant wants to benefit from the higher retirement age of 62 so that he might have a longer tenure of service in the event of his previous appeal against his dismissal leading to reinstatement. He submits that the decision to choose 1 January 1990 as the determining date in the amended version of Staff Rule 1020.1 was an arbitrary one. It breached the principle of equal treatment as staff like him, in service before that date, were discriminated against. There was no justification for extending the benefit of the raised retirement age to certain staff and not to others. The application of the amended version of the Rule affected his "appointment status", and so he maintains his complaint is receivable under Article II, paragraph 5, of the Tribunal's Statute. Furthermore, in breach of Article VIII 8.1 of the Staff Regulations, the amendment to Rule 1020.1 was made without any consultation with staff members.

He asks that the notional date of his retirement be set at 30 September 1999 when he will attain the age of 62, and also claims 10,000 United States dollars in costs.

C. In its reply the Organization argues that the complaint is irreceivable. The complainant is challenging a general decision but no individual decision exists against him that would put the general one into effect.

There could be none as he was dismissed from service before the age of retirement: therefore he shows no cause of action. Even if it were shown that an internal appeal could be filed against the amendment in Rule 1020.1, the complainant filed his appeal to the regional Board more than seven years after the amendment was notified to him and it was accordingly out of time. In its view the complainant was not challenging any earlier administrative decision connected with his appointment status, but was asking for a new "notional" decision to be taken.

On the merits the Organization submits that the decision not to apply the amendment retroactively was not arbitrary: it took account of staff members' existing rights. The complainant was not the victim of unequal treatment. At the time of his recruitment in 1988 he was subject to the former version of the staff rule that set the retirement age at 60, and was in a different position from staff recruited later who had become participants in the Pension Fund after January 1990. In view of the frivolous nature of the complaint it asks for an award of nominal costs against the complainant.

D. In his rejoinder the complainant presses his pleas. He argues that he appealed against the general decision when he was likely to be affected by it personally. He asked the Organization to extend notionally to him the benefit of the raised retirement age in the event that the case he filed with the Tribunal against his dismissal would not be resolved before he reached the retirement age of 60. Any appeal made thereafter would have been out of time. He could not have contested the decision earlier as it was a general decision which had not been communicated to him personally.

E. In its surrejoinder the Organization maintains the arguments developed in its reply. In its view the complainant is in effect asking for application to him of an amendment that he considers to be illegal.

It points out that all staff members, including the complainant, were notified of the amendment to Rule 1020.1 in July 1990 and were provided with the text of the new Rule. Staff had been consulted beforehand: through their participation in such bodies as the United Nations Joint Staff Pension Board, representatives of the personnel had had the opportunity to take part in the discussion leading to the amendment.

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 of 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. On 29 April 1998, the complainant lodged a complaint against the decision to dismiss him.
3. On 27 June 1998, he lodged the present complaint, in which he seeks to have the date of his retirement fixed at 30 September 1999. He indicates that the present complaint was lodged in case the Tribunal allowed his complaint of 29 April 1998.
4. In Judgment 1856, delivered on 8 July 1999, the Tribunal dismissed his complaint of 29 April 1998. It thereby confirmed the administrative decision to dismiss the complainant for misconduct, with effect from 5 August 1996.
5. The present complaint therefore shows no further cause of action.
6. 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 are 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

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