

## EIGHTY-NINTH SESSION

*In re Ochani (No. 9)*

**Judgment No. 1957**

The Administrative Tribunal,

Considering the ninth complaint filed by Mr Parmanand Sachanand Ochani against the World Health Organization (WHO) on 18 January 1999, the WHO's reply of 26 April and the complainant's letter of 23 April 1999 informing the Registrar of the Tribunal that he did not wish to enter a rejoinder;

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 is a former official of the WHO's Regional Office for South-East Asia (SEARO) in New Delhi. Under circumstances explained in Judgment 1856, delivered on 8 July 1999 on his second complaint, his service was terminated with effect from 5 August 1996. The decision to dismiss him was notified to him on 31 July 1996.

When the complainant entered the service of the Organization the year of his birth was recorded as 1937 on the basis of a school leaving certificate he provided. The complainant obtained a copy of his birth certificate on 1 May 1997 from the Indian High Commission in Islamabad, Pakistan. On 7 May the complainant wrote to the Regional Personnel Officer asking to have the year of his birth recorded as 1939 instead of 1937. In a letter of 13 May 1997 the Personnel Officer at SEARO refused his request on the grounds that his date of birth had been correctly established in line with documentation submitted when he began working at SEARO in 1988.

On 22 December 1998 he notified his intention to appeal to the headquarters Board of Appeal saying that he had appealed on 7 July 1997 to the regional Board but had received no reply. The Secretary of the headquarters Board wrote to the complainant on 6 January 1999 informing him that she was seeking information from the regional Board about the status of his appeal.

The Organization says that on 20 January 1999, two days after the filing of the present complaint, the Secretary wrote to the complainant again informing him that the regional Board had no record of his appeal and asked him to send another copy. She also told him that in the absence of a reply within fifteen working days the headquarters Board would assume that he did not wish to pursue the matter. He did not reply.

B. The complainant submits that since the WHO Manual and Staff Regulations and Rules are silent on the matter of determining a date of birth there can be no bar to his raising the matter. The WHO did not insist on his supplying a formal birth certificate when he entered its service which shows that there are no "hard and fast" rules about "recording or re-recording" a date of birth.

It was as a result of his difficult family circumstances that confusion had arisen as to the year of his birth. Following the political events of 1947 his family had to flee from Pakistan to India abandoning all they owned. Later in life he deduced that his year of birth was 1939 rather than 1937 and made efforts to procure a copy of his birth certificate.

He wants the Tribunal to direct the WHO to alter its records to show his date of birth as 28 September 1939, and allow him any benefits arising therefrom "in case the dismissal order dated 31 July ... is quashed" by the Tribunal. He also asks for "any other relief that the Tribunal may ... deem appropriate".

C. The Organization holds the view that the complaint is irreceivable under Article VII(1) of the Tribunal's Statute because the complainant has failed to exhaust the internal means of redress available to him. The regional Board

did not receive his appeal, and, instead of checking to find out why he had not received a reply, he let seventeen months elapse before notifying his intention to appeal to the headquarters Board. His complaint is also irreceivable under Article VII(2) of the Statute as it was filed out of time.

As he first raised the matter with SEARO more than nine months after he was dismissed his complaint shows no present cause of action and he suffered no injury. The refusal to change his date of birth had no effect on his situation as he was dismissed before reaching the age of retirement.

On the merits, the Organization says that if the complainant had been in doubt as to the year of his birth he should have voiced his doubts at an earlier stage during his employment. He did not do so, and on his personal history form dated 1986 and an affidavit dated 30 June 1987 recorded his date of birth as 28 September 1937, the date that appears on his school leaving certificate.

### CONSIDERATIONS

1. The complainant, who was dismissed from the Organization with effect from 5 August 1996, requested the Administration in a letter of 7 May 1997 to change his year of birth in the WHO's records from 1937 to 1939. This request was refused on 13 May 1997.
2. He claims to have filed an internal appeal with the regional Board of Appeal on 7 July 1997; however, the Board has no record of ever receiving it.
3. The complainant filed an appeal with the headquarters Board of Appeal on 22 December 1998 claiming "inordinate, inexcusable and inexplicable delay" on the part of the regional Board. The Secretary of the headquarters Board replied on 6 January 1999 saying that information about the status of his appeal was being sought from the regional Board. Having found out that no appeal had been received by it, the Secretary wrote to the complainant on 20 January 1999 asking him for a copy of the appeal of 7 July 1997 with proof of posting. The complainant did not reply. He had, however, lodged a complaint with the Tribunal on 18 January 1999 on the grounds that the headquarters Board had failed to reply to his letter of 22 December 1998.
4. Quite apart from any argument concerning irreceivability that could be made concerning the complainant's failure to exhaust the means of internal redress, it is clear that the complainant would only have a cause of action if the decision to dismiss him, which formed the subject of Judgment 1856 (*in re* Ochani No. 2), had been quashed. Since that decision was upheld by the Tribunal, the application to change his date of birth is without purpose. The complainant was not adversely affected by the refusal and has suffered no injury: see Judgment 1220 (*in re* Kapoor No. 2).
5. The complaint is irreceivable on this ground and it is not necessary to consider any other ground of irreceivability.

### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

